Acit Cc1 Nashik, Nashik vs Viraj Estates Private Limited, Nashik on 27 May, 2026

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

Sr No	ITA No.	Appellant	Respondent	Date of order of the Ld. CIT(A)	A.Y.
1	3001/PUN/2025	Viraj Estates Pvt Ltd Flat No.2, Ground Floor, Clover Co-Op. Housing Society, Naushir Barucha Marg, Grant Road (West), Mumbai - 400007 PAN: AAACM4414F	ACIT, Central Circle-1, Nashik	31.10.2025	2014-15
2	3002/PUN/2025	-do-	-do-	31.10.2025	2017-18
3	3015/PUN/2025	-do-	-do-	31.10.2025	2020-21
4	3028/PUN/2025	-do-	-do-	31.10.2025	2022-23
5	3027/PUN/2025	-do-	-do-	31.10.2025	2023-24

Sr No	ITA No.	Appellant	Respondent	Date of order of the Ld. CIT(A)	A.Y.
1	3289/PUN/2025	ACIT, Central Circle-1, Nashik	Viraj Estates Pvt Ltd Flat No.2, Ground Floor, Clover Co-Op. Housing Society, Naushir Barucha Marg, Grant Road (West), Mumbai - 400007 PAN: AAACM4414F	31.10.2025	2014-15
2	3290/PUN/2025	-do-	-do-	-do-	2017-18
3	3291/PUN/2025	-do-	-do-	-do-	2020-21
4	3292/PUN/2025	-do-	-do-	-do-	2022-23
5	3293/PUN/2025	-do-	-do-	-do	2023-24

Assessee by : CA V.R. Suresh, CA Sneha Karan Shah and CA Mahavir Anil Nahata

Department by : Shri Amit Bobde, CIT

Date of hearing : 10-03-2026

Date of pronouncement : 27-05-2026

ORDER

PER BENCH:

> 3028/PUN/2025 and 3027/PUN/2025 filed by the assessee and ITA Nos.3289/PUN/2025, 3290/PUN/2025, 3291/PUN/2025, 3292/PUN/2025 and 3293/PUN/2025 filed by the Revenue are cross appeals and are directed against the separate orders dated 31.10.2025 of the Ld. CIT(A), Pune-12 relating to different assessment years as mentioned above. Since common issues are involved in all these cross appeals, therefore, these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. First we take up cross appeals vide ITA No.3001/PUN/2025 (by the assessee) & 3289/PUN/2025 (by the Revenue) for assessment year 2014-15 as the lead cases.

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of sale and purchase of land, plots and development of land. It specializes in purchase of litigated agricultural or raw plot of land and develops roads after resolving the litigated issues, creates layouts of saleable plots and sells the plots to the end users for residential projects, townships etc. It is also involved in construction of residential flats as well as commercial shops. The group, as a part of its modus operandi, to buy land has formed many companies to transact through these entities. It filed its original return of income on 22.12.2014 declaring total income of Rs.9,22,52,410/- along with audit report dated 15.10.2014 in Form 3CA- 3CD.

4. A search & seizure action u/s 132 of the Income tax Act, 1961 (hereinafter the Act) was conducted in Viraj Group cases on 20.04.2023. As a part of this search action, office premises of M/s Viraj Estates Pvt. Ltd. situated at 4th Floor Abhyankar Tower, MG Road, Nashik-422001 [Party No.YO-01 of Viraj Group), office premises at 3rd Floor, Abhyankar Tower, MG Road, Nashik-422001 (Party No.YO-1(1) of Viraj Group) and office premises at Flat No.06 Anandvalli, Behind Petrol Pump, Near Makaloo Hotel, Gangapur Road, Nashik [Party No. YO-2 of Viraj Group] was covered u/s 132 of the Act on 20.04.2023. During the search action, residences of Key directors & members of Viraj family S/Shri Rajendra Rasiklal Shah, Vilas Rasiklal Shah, Karan Rajendra Shah and Viraj Vilas Shah and of key employees, were also covered u/s 132 of the Act on 20.04.2023 during which various incriminating documents and digital data were found & seized.

5. Consequent upon the search action, the case was selected for verification based on available information in the documents seized during the search action. Accordingly, a notice u/s 148 of the Act was issued and duly served on the assessee on 28.03.2024 in response to which the assessee filed its objections vide letter dated 10.05.2024 and requested for reasons for satisfaction and copy of approval granted by the DGIT(Inv), Pune. The Assessing Officer disposed of the objections raised by the assessee vide letter dated 24.05.2024 requesting the assessee to file return of income in

response to the notice u/s 148 of the Act so as to enable the Assessing Officer to provide the desired documents. The assessee in response to the same filed its return of income on 25.06.2024 and vide letter dated 08.07.2024 requested the Assessing Officer for providing the desired documents. The Assessing Officer provided the desired documents / information and also disposed of the objections raised by the assessee. The Assessing Officer, thereafter issued statutory notice u/s 143(2) of the Act. The assessee filed various objections challenging assumption of jurisdiction by the Assessing Officer, such as issue of notice u/s 148 which is not in accordance with provisions of section 151A, jurisdiction to issue notice u/s 148 and validity of notice issued u/s 143(2) of the Act. The assessee also challenged the approval granted u/s 151 of the Act. However, the Assessing Officer rejected all those objections.

6. Thereafter, the Assessing Officer issued statutory notice u/s 142(1) of the Act along with a questionnaire calling for various information / details based on the return of income and incriminating documents and electronic data seized during the course of search from the office and residential premises belonging to the Viraj group and key employees of the group. The assessee requested the Assessing Officer to provide the details of quantification of transactions identified during the post search enquiry which were provided to the assessee. During the course of assessment proceedings the assessee raised objections stating that the office premises at 3rd Floor, Abhayankar Towers, MG Road, Nashik searched by Party No. YO-1(1) by Search Team is in the name of S.C Pawar, Advocate. Further, office premises at Anandvalli, Behind Petrol Pump, Near Makaloo Hotel, Gangapur Road, Nashik searched by Party No.YO-2 by Search Team is also third party premises. Both these premises are neither owned by the assessee nor by any of the entities of the 'Viraj Group'. Accordingly, findings of incriminating documents found and seized from office premises of 'Viraj Group' is incorrect.

7. Vide response dated 10.03.2025, the assessee reiterated the issue citing reliance on the statement of Shri Rohit Manilal Shah recorded u/s 132(4) of the Act, wherein he has stated that the premises YO-2 is not on rent or owned by Viraj Group and the premises is owned by Vilas Joshi. It was submitted that Shri Karan Rajendra Shah in his reply to question No.31 has stated that description 'VR' represents different Viraj Group entities like VEPL, VRPL, individuals, proprietorship, firms, etc. and therefore, findings of handwritten cashbook cannot be attributed in the hands of the assessee. The assessee averred that statement of Shri Karan Rajendra Shah is inadmissible as the statement is signed by various members of the Viraj family as recorded in an unusual manner. Vide response dated 31.01.2025, objection was raised stating that documents are found and seized from third party's premises and therefore, presumption under Section 292C of the Act as to the found & seized documents from the premises YO-1(1) and YO-2 of Viraj Group to be drawn. It was submitted that the digital data in Tally Software "V89" and "CON' are computer generated with figures indicating nondescript cash transfers and there being no specific evidence suggesting that notings pertain to the assessee. It was reiterated that presumption u/s 292C cannot be settled on the basis of repudiated statements.

8. However, the Assessing Officer rejected the above arguments of the assessee on the ground that one of the directors of the Viraj group of companies namely Shri Karan Rajendra Shah and member of Viraj family and the key person who looks after overall administration work, accounts, financial

transactions, banking etc. in his answers to Q.Nos.10, 11, 12, 30, 31 and 33 recorded on oath u/s 132(4) of the Act on 24.04.2023 has accepted that the premises YO-1(1) and YO-2 are rented by the Viraj group where books of account of Viraj group companies / entities are kept. So far as the statement of Shri Rohit Manilal Shah recorded u/s 132(4) of the Act wherein he had stated that the premises YO-2 is not on rent or owned by Viraj group is concerned, he noted that Shri Rohit Manilal Shah in his statement recorded u/s 132(4) of the Act had stated that the documents found from the premises of YO-2 are related to the entities of the Viraj group and its key is handed over to him on instruction of Shri Karan R. Shah and Shri Vilas R. Shah. Further, Shri Rohit Manilal Shah had stated that the entries in the documents are entered on the instruction of Shri Karan Rajendra Shah and Shri Vilas Rasiklal Shah, directors and key persons of the entities of Viraj group.

9. So far as the issue of rent payment and its verification is concerned, the Assessing Officer noted that what is self-evident by admission of party, need not be verified. According to him, in view of the testimony of Shri Rohit Manilal Shah and Shri Karan Rajendra Shah, the matter has already been put to rest that the books of account of Viraj group and the individuals were kept at the premises which the assessee is now stating as third party premises. Since the Viraj group has already owned up the seized documents and the contents during the proceedings u/s 131(1A) vide letter dated 28.07.2023 signed by Shri Karan Rajendra Shah in the capacity of Director proposing to tax the income arising from the documents found and seized from the disputed premises proportionately in the hands of M/s. Viraj Estates Pvt Ltd and M/s. Viraj Realty Pvt Ltd, therefore, the Assessing Officer rejected the objections raised by the assessee.

10. During the course of assessment proceedings the Assessing Officer further noted that Shri Karan R. Shah in his answer to question No.31 recorded u/s 132(4) of the Act on 24.04.2023 while explaining the entries of handwritten cash book had categorically stated that the credit entries with 'VR' notation represent different 'Viraj Group' entities like M/s VEPL, VRPL, etc. He had further stated that it also includes individuals, proprietorship concerns, firms and all other entities falling under Viraj Group and that credit entries with 'VR' notation represent cash of his group altogether. He further stated that any other entries that states "Karan", "Viraj" etc. also represent cash of his group. During the post search proceedings the assessee, in response to the queries raised by the Assessing Officer, submitted the basis for categorization of transactions of entries recorded in Handwritten Cash Book (HCB) based on seized documents identifying individual wise / entity wise / company-wise transactions. He, therefore, rejected the claim of the assessee that the documents found and seized from the premises of YO-1(1) and YO-2 of Viraj group are from the third party premises and not owned by the Viraj group entities.

11. The Assessing Officer observed that during the course of search action various incriminating documents and digital evidences were found and seized from the business premises situated at 4th Floor, Abhyankar Towers, M.G Road, Nashik (Party No.YO-01 of Viraj Group, marked by Search Team), office premises situated at 3rd Floor, Abhyankar Towers, MG Road, Nashik (Party No.YO-1(1) of Viraj Group, marked by Search Team) and office premises at Anandvalli, Behind Petrol Pump, Near Makaloo Hotel, Gangapur Road, Nashik (Party No. YO-2 of Viraj Group, marked by Search Team). The documents found and seized as per Party No.YO-2, Annexure-A, item Nos.1 to 13 are the handwritten cash books for FY 2012-13 to 2022-23 and item No.62 is digital data. These

seized documents record unaccounted daily cash transactions carried out by the entities of Viraj Group. During search it was found that the record of cash inflow and outflow was maintained in handwritten Cash Book in Gujarati vernacular and similar records of cash transactions were maintained in a Tally software (in English) in external Hard Drive, under file names 'V89' and 'CON'. These records relate to the entities namely, M/s. Viraj Estates Pvt. Ltd., M/s. Viraj Realty Pvt. Ltd., S/Shri Rajendra Rasiklal Shah, Vilas Rasiklal Shah, Karan Rajendra Shah and Viraj Vilas Shah. The handwritten cash book was maintained by Shri Rohit Manilal Shah, one of the directors in the assessee company at the directions of the members of Viraj family. This fact is admitted by Shri Rohit Manilal Shah in his sworn statement recorded u/s 132(4) of the Act on 23.04.2023. In addition to the statement of Shri Rohit Manilal Shah, statements of key employees of Viraj Group namely, S/Shri Akarsh R Kejriwal, Vaishal D Naik and Vedang V Naik were also recorded during search u/s 132 of the Act. The search team found and seized incriminating documents/ digital data supporting receipt of on money in cash, over and above the agreement value and various other transactions of accommodation entries, Cash Loans, other receipts etc. by the Viraj Group, which have remained out of the regular books of accounts. During post search proceedings, the entries made in the handwritten cash books, Tally Data in files V89 and 'CON' data found in Pendrives (found with the employees of Viraj Group) and data in loose chits were exported in Excel format/digitized as Digital Cash Book (DCB) to assist reading the entries having several narrations. The Digital Cash Book (DCB) was prepared during post search proceedings incorporating the contents of the found & seized documents. Copy of the DCB from 01.04.2013 to 31.03.2023, was submitted by the assessee during the assessment proceedings of AY 2022-23.

12. The Assessing Officer on analysis of the details in the digital cash book (DCB), noted that the quantum of transactions of different business nature, which were identified as unaccounted transactions of Viraj group carried out during assessment year 2014-15, have not been recorded in the regular books of account, the details of which are as under:

On Money	Particulars	Amount (in Rs.)
	'V89' Data	19,25,26,021/-
	Transactions to be accounted in the hands of assessee Company	7,21,81,100/-
Accommodation entries		16,03,28,286/-
Cash Loans		70,08,29,108/-
Other Receipts		40,80,678/-
Bank Withdrawals		28,33,87,923/-

13. He, therefore, confronted the assessee to explain the discrepancies in response to which the assessee filed a detailed explanation. The assessee raised certain doubts on the correctness, completeness and authenticity of the handwritten cash book stating that entries cannot be held to relate to the assessee. It was claimed that entries in Item No.20 relate to figures where assessee is either not a party or only a buyer. Similarly, the incriminating documents relating to on money, accommodation entry, cash loans, bank withdrawals, other receipts, unidentified transactions & others were not found from the premises owned by the assessee. Further, the assessee also requested the Assessing Officer to refer to the letter dated 28.07.2023 submitted by the assessee

through its director Shri Karan Rajendra Shah during the post search proceedings u/s 131(1A) where it was proposed to apply peak theory on the entire record of digital cash book to arrive at the taxable income in the hands of M/s. Viraj Estates Pvt Ld and M/s Viraj Realty Pvt Ltd.

14. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He noted from the digital cash book that there are 5568 (receipt and payment side) entries relating to previous year under consideration and out of the total list of entries, 100 receipt side entries considered under the category of on-money considered in the show cause notice has receipts from land / plot. The ownership of these survey numbers has been accepted by the assessee vide post search submissions dated 21.07.2023. The amount mentioned in those 100 entries comes to Rs.19,25,26,021/- which pertained to the land / plot on-money receipts which are sold during the year and remained to be offered to tax by the assessee. The Assessing Officer, therefore, made addition of Rs.19,25,26,021/- as "undisclosed business income".

15. In addition to the above, he noted that on-money of Rs.7,21,81,100/- has been received where no details as to survey number are provided by the assessee projecting them as third party entireis. However, these entries are found recorded in the handwritten cash book. He, therefore, proposed to add the same by rejecting the arguments advanced by the assessee to consider the same in the peak credit. He noted that 38 entries amounting to Rs.7,21,81,100/- pertained to the land / plot on-money receipts which are received during the year and remained to be offered to tax by the assessee. He, therefore, made addition of Rs.7,21,81,100/- being the on-money received by the assessee as "undisclosed business income".

16. The Assessing Officer further noted that there are another set of receipt side entries out of 5568 entries which comprise of accommodation entries, survey no, payments, stamp. VRI, V a/c and miscellaneous in cash. From the submission made by the assessee, he noted that the entries having narrations "VRI" contain entries that have payment side with almost matching amount. The assessee also submitted that entries marked asVR1 are internal cash movement of the group entities as the single handwritten cash book is maintained by the Viraj Group. It was further stated that the office provided figures of only the receipts without considering the payment side from the seized material which shows that the entries are repaid. The assessee requested that the payment side entries also be considered and income be arrived on peak credit method.

17. The Assessing Officer was satisfied with the arguments advanced by the assessee. He noted that the entries are contra in nature as the money receipts and payments are moving within the group on regular basis. Similar is the case with survey number payments. Since the assessee has also submitted correlation between the credit and debit entries, the Assessing Officer considered VR1, survey number payments, accommodations entries, Stamp, and other misc entries for computation of peak credit excluding entries of on money receipts and unexplained receipts and worked out the peak at Rs.7,41,39,862/-. The Assessing Officer accordingly made addition of peak credit by invoking the provisions of section 69A r.w.s. 115BBE of the Act.

18. So far as the receipts side entries relating to bank withdrawals are concerned, on being questioned by the Assessing Officer, the assessee furnished copies of bank statements showing the

corresponding entries. On verification of data, the Assessing Officer noted that there are further set of entries with narration V A/c which was classified under loans. During the post search proceedings, on closer look of entries with narration V A/c from the handwritten cash book he noted that there are mention of short names of individuals/entities on debit as well as credit side. He, therefore, asked the assessee to explain the entries with narration "V- A/c" along with identity of individuals/entities from whom these amounts are received/paid. He noted that these entries are recorded with specific names. However, the assessee failed to provide PAN & address of the parties and asked the department to provide the details. The assessee also reiterated the fact that the seized documents pertain to third party and these entries should be considered under peak credit for taxation.

19. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He observed that these entries are different in nature when compared to the other entries recorded in the handwritten cash book. Since these entries have name and amount written in receipt and payment side without any mention of survey number, RTGS or any other notation to consider them as on money receipts, he held the same to be loan entries or internal movement of cash within the Viraj Group. Since the assessee failed to explain the nature and purpose of inflow and outflow of funds which are marked with narration V A/c, the Assessing Officer treated the same as unexplained money in the hands of the assessee and made addition of the same to the total income of the assessee by invoking the provisions of section 69A r.w.s. 115BBE of the Act. He accordingly determined the total income of the assessee at Rs.74,12,67,186/- as against the returned income of Rs.9,22,52,410/-.

20. Before the Ld. CIT(A), the assessee raised various grounds both legal and on merit. However, the Ld. CIT(A) was not fully satisfied with the arguments advanced by the assessee. He dismissed the grounds relating to the legal and jurisdictional issues. He also rejected the assessee's contention that seized documents found from 3rd party premises cannot be the basis for addition in the hands of the assessee. The argument of the assessee that only a single unified peak credit must be determined by chronologically merging all transactions from the entire Handwritten Cash Book (HCB) and Digital Cash Book (DCB) was also not accepted by the Ld. CIT(A). He, however, agreed with the argument of the assessee that the entire amount of gross on-money receipts cannot be taxed as income and only the profit element embedded in the on-money only should be taxed. He held that the seized records evidences noting of expenses and in fact the handwritten cash book itself has noting of various expenses on the payment side which the Assessing Officer has completely ignored while taxing the gross amount of on-money receipts. After considering the submissions of the assessee and relying on various decisions, he held that the gross on-money receipt addition made by the Assessing Officer is not correct and considered 17% on sale of plots / land as reasonable and fair profit percentage to be applied to the gross amount of on-money received to arrive at the net profit. In other years where the Assessing Officer has made addition of on-money on account of sale of flats / shops, he directed the Assessing Officer to adopt 15% of such on-money as reasonable and fair profit percentage. Thus, he restricted the addition made on account of on- money to 17% in case of sale of plots / land totaling to Rs.26,47,07,121/- (i.e. Rs.19,25,26,021 + Rs.7,21,81,100). So far as the addition of Rs.7,41,39,862/- made by the Assessing Officer u/s 69A by applying peak theory is concerned, he sustained the addition. As regards the addition of Rs.31,07,47,793/- made by

the Assessing Officer in respect of 'V A/c' is concerned, he directed the Assessing Officer to restrict the same to Rs.24,24,01,500/- as per peak theory basis.

21. Before the Ld. CIT(A) the assessee also raised an additional ground without prejudice to all other grounds according to which the assessee should be allowed set off of undisclosed income / profit which has been separately taxed as on-money against the unexplained income assessed as peak credit income. However, the Ld. CIT(A) dismissed the same on the ground that the addition in respect of on-money has been restricted to the profit element and the gross amount of on-money addition made by the Assessing Officer was not accepted.

22. Similarly, he held that the peak credit income is taxed in respect of separate noting from the seized documents and the same has no corroboration or relevance to the on-money receipts and addition has been made thereof on profit basis. Thus, the addition confirmed in respect of profit earned from on-money receipts and in respect of peak credit have no connection and therefore cannot be allowed to be telescoped with each other. According to him, both are income / source of income and not application out of income / source so as to allow telescopic benefit. He, accordingly, rejected the additional ground raised before him.

23. Aggrieved with part relief granted by the Ld. CIT(A) the assessee as well the Revenue are in appeal by raising the following grounds:

> Grounds raised by the assessee in ITA No.3001/PUN/2025
>
> 1. The order of the learned Commissioner of Income Tax (Appeals) [CIT(A)] in so far as it is against the Appellant is contrary to the law, erroneous and unsustainable on the facts and in the circumstances of the case.
>
> 2. The learned CIT(A) erred in upholding the validity of the assessment order passed under Section 143(3) read with Section 147, despite the foundational order for the transfer of the case under Section 127(2), dated 21.07.2023, lacking a mandatory Document Identification Number (DIN), in violation of CBDT Circular No. 19/2019. The learned CIT(A) erred in not holding that the failure to follow the mandatory CBDT procedure renders all subsequent assessment proceedings by the Assessing Officer (AO) void ab initio.

3. Invalid Sanction/Approval under Section 151: The learned CIT(A) erred in holding the approval granted by the specified authority under Section 151 of the Income Tax Act, 1961, as valid, despite the approval being mechanical and perfunctory without independent application of mind to the reasons recorded by the AO.

4. The learned CIT(A) further erred in law and on facts in sustaining the reassessment proceedings by incorrectly interpreting the definition and requirement of an 'asset' under the Explanation to Section 149(1)(b) of the Act.

4.1. The learned CIT(A) erred in holding that "cash in hand" evidenced merely by entries in seized cash books automatically constitutes a qualifying 'asset' for the purpose of invoking the extended limitation period under Section 149(1)(b).

4.2. The lower authorities erred by deeming the entire quantum of transactions (on-money and accommodation entries) as an 'asset' without demonstrating the existence of a real, tangible, and identifiable existing asset as strictly required by the statute.

5. The learned CIT(A) erred in not applying the mandatory faceless mechanism notified under Section 151A read with Section 144B to the issuance of all notices under Section 148, as required by law.

6. The mandatory approval under Section 148B was given mechanically and without application of mind, failing to follow jurisdictional High Court precedents, making the entire assessment order invalid and void ab initio.

7. The learned CIT(A) erred in sustaining additions based solely on original, retracted statements, without addressing the authenticity, possession, and consistency of the core material they relate to (HCB, V89/CON files).

8. The learned CIT(A) erred in applying the statutory presumption of truth under Section 132(4A) or Section 292C to seized materials (Tally files "V89" and "CON") that were not found or seized from the appellant's possession or control, but from third-party premises.

9. The learned CIT(A) erred in sustaining additions related to alleged on-

money/accommodation entries without the department definitively establishing the movement of cash, identifying the ultimate recipient of funds, or providing corroborative evidence of actual transactions.

10. The learned CIT(A) erred in holding that all statements were recorded without duress, mental stress, or that signatures constituted valid, independent statements under Section 132(4) when the seized materials were not examined by the deponents during statement recording.

11. The learned CIT(A) erred in law and on facts by applying the principle "when part is true the whole is also true" to validate the entirety of the seized documents (HCB, etc.) while ignoring significant factual discrepancies, such as the mismatch of Survey Numbers between the HCB and other seized materials, which undermines the reliability of the quantification of "on-money" receipts.

12. The learned CIT(A) erred in confirming additions based on unidentified entries/parties, incorrectly shifting the burden of proof onto the assessee to explain vague documents when departmental verification failed to establish a link

13. The learned CIT(A) erred by sustaining significant additions of alleged unaccounted income without a corresponding finding of any unaccounted asset, investment, or cash found in the possession of the assessee group during the search operation itself.

14. The learned CIT(A) erred in summarily dismissing statements recorded post-search under Section 131 from independent third parties who denied paying cash to the assessee, which contradict the AO's allegations.

15. The learned CIT(A) erred in law and on facts by adopting a selective approach to evidence, relying solely on seized material HCB not sourced from multiple data, and statements under Section 132(4) while summarily disregarding contradictory evidence provided by the appellant, including statements obtained under Section 131 and third-party affidavits.

16. The learned CIT(A) has erred in law and facts in the addition made on account of on-money on sale of plots/land to the extent of Rs.4,50,00,210/- for AY 2014-15 as business income of the appellant.

17. The learned CIT(A) erred in confirming the alleged receipt of Rs.26,47,07,121/- (totalling Rs.19,25,26,021/- and Rs.7,21,81,100/-) as on- money receipts. The learned CIT(A) erred in relying exclusively on the HCB/DCB data and arbitrarily ignoring substantial discrepancies and contradictions present within other seized materials (e.g., Annexure B- Party no. YO-01 A Loose Paper Bundle No. 20-hereinafter referred to as "Item No. 20")

18. The learned CIT(A) erred in law and on facts by sustaining the alleged receipts of Rs.7,21,81,100/- related to properties allegedly not owned by the assessee company. incorrectly placing the burden on the appellant to prove a negative rather than requiring the Revenue to provide corroborative evidence of receipt of "on-money" by the appellant.

19. The learned CIT(A) erred in law and on facts by arbitrarily determining the net profit rate at an excessive 17% of the unaccounted cash receipts without sufficient justification or comparable data specific to the real estate business.

20. The learned CIT(A) erred in law and facts by estimating 17% of the alleged on-money receipts as income, while fundamentally failing to appreciate that the same Hand Written Cash Book (HCB) contained entries for payments made relating to the acquisition/development of the plots/lands during the year under consideration.

21. The learned CIT(A) erred in not accepting the actual profit earned by the assessee from the alleged unaccounted receipts made out of the sale of plots/lands, determined after meeting all expenses including payments for land purchases and other necessary development costs incurred for the sale of plots/lands during the year under consideration.

22. Without prejudice to the primary grounds, the learned CIT(A) erred in law and on facts by failing to compute the undisclosed income using the incremental peak credit method. Given that

third-party statements (u/s 131) and affidavits consistently denied making cash payments to the appellant, the lower authorities erred in treating the entire gross alleged on-money receipts as the appellant's own income subject to a flat profit rate addition, rather than calculating the peak unaccounted income derived from these disputed entries.

23. The learned CIT(A) failed to appreciate that the addition made by the Assessing Officer was based on the gross peak balance of unexplained credits/deposits, not the incremental peak balance. The observation in the appellate order that the AO added only the incremental peak is factually erroneous and requires rectification. The addition ought to be restricted solely to the incremental peak balance.

24. The learned CIT(A) failed to appreciate the settled legal position that a single, unified peak credit must be determined by chronologically merging all transactions from the entire handwritten/digital cash book to allow for maximum set-off of debits against credits, thereby avoiding artificial inflation of total undisclosed income

25. The learned CIT(A) erred in confirming the cumulative addition resulting from separate peaks of Rs.24,24,01,500/- without establishing a factual basis that the funds represented by each peak were entirely separate and distinct.

26. The learned CIT(A) erred in confirming the assessment of peak credit for the year under consideration without establishing the correct opening balance by failing to utilize the consolidated peak credit determined for the immediately preceding Assessment Year 2013-14 as a set-off.

27. The learned CIT(A) erred in adopting an inconsistent methodology for computing the peak credit in respect of 'V A/c' entries by failing to factor in the available opening cash balance, contrary to the method applied in the AO's initial peak calculation.

28. The learned AO and CIT(A) erred in assessing the peak credit amounts under Section 69A read with Section 115BBE of the Act (income from other sources/unexplained money). The appellant submits that all seized material relates to the assessee's own money, pertaining to unaccounted business transactions, and therefore, any addition should be correctly assessed under the head "Profits and Gains from Business or Profession.

29. The learned AO erred in failing to appreciate the genuine hardship caused by coercive recovery of the high-pitched, disputed demand. Given that substantive issues of jurisdiction and quantum are pending adjudication before the Hon'ble ITAT, the Appellant prays that all recovery actions be stayed pending litigation to secure the right of appeal.

30. The Appellant craves leave to add, amend, alter, delete, or modify any or all of the above grounds of appeal at any time before or during the hearing of the appeal, as may be deemed necessary and appropriate in the interest of justice.

PRAYER It is most humbly prayed that the Hon'ble Income Tax Appellate Tribunal may be pleased to quash the assessment order and further prayed to delete the addition of Rs.4,50,00,210/- towards net profit on on-money receipts, Rs.7,41,59,862/- towards addition of peak balance and Rs.24,24,01,500/- towards incremental peak relating to V-A/c entries made for the AY 2014-15 in the order of Commissioner of Income Tax, (Appeals).

Grounds raised by the Revenue in ITA No.3289/PUN/2025

1. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in restricting the addition on account of unaccounted on-money receipts to 17% of the such receipts, instead of confirming the entire unaccounted on-money receipts of Rs.26,47,07,121/- added by the Assessing Officer, despite the assessee having failed to establish, with evidence, any corresponding expenditure relatable to such receipts.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in restricting the addition on account of unaccounted on- money receipts to 17%, without appreciating the fact that the receipts of on-money in cash received by the assessee are over and above the registered sale consideration of plots/lands sold and thus the entire on- money should be assessed as such as undisclosed income rather than adopting estimation and reducing 83% as expenses, more so when the assessee already claimed expenditure in Profit and loss account which may amount to allowing double deduction for expenses.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition solely relying on the assessee's submission, without appreciating that assessee has already taken deduction for all the expenses in profit and loss account and on-money receipts are hidden income of assessee received over and above the recorded sales and thus allowing any expenses from these unaccounted income on estimated basis without any evidence for incurring such expenses is devoid of any rationale.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that only the profit element embedded in the unaccounted on-money receipts is taxable, ignoring the fact that the assessee did not discharge the onus cast upon it to prove the incurrence, nature, quantum and nexus of any expenditure, thereby justifying taxation of the entire unaccounted on-money receipts as income.

5. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in presuming and assuming the existence of unaccounted expenditure merely on general business considerations, despite the absence of any corroborative or quantifiable evidence on record.

6. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in estimating profit at 17% on unaccounted on-money receipts by relying upon the book profit ratios of the group entities and alleged industry averages, without establishing functional similarity or factual comparability with respect to unaccounted, cash-based transactions.

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying upon some judicial decisions for estimating profit on unaccounted receipts in an adhoc manner, without appreciating that the facts of those cases were materially distinguishable from the facts of the present case as-

(a) In the case of CIT v. President Industries (258 ITR 654-Guj.), the facts are that this case dealt with unaccounted sales where purchases were either recorded or inferable, whereas in the instant case of assessee, the on-money represents cash premium over and above recorded and registered sale consideration, and no cost component relatable to such receipts has been demonstrated.

(b) In the case of DCIT v. Panna Corporation (ITA No.323/325 of 2000 Gujarat High Court), the Hon'ble Court has inferred that some expenditure is inherently embedded in turnover, based on the facts of that case, whereas in the instant case of assessee, the assessee has not proved any such embedded expenditure, nor furnished any working or supporting evidence.

(c) In the cases of Anand Builders / Nalini V. Shah / Kishor Mohanlal Teliwala, these cases involved either admitted unaccounted expenditure based on evidence or corroborative material indicating cost components, whereas in the instant case of assessee, no such admission or corroboration exists.

(d) In the cases of Om Construction, Shahkar Developers, etc. (Settlement Commission cases), the facts are that orders of the Settlement Commission are based on compromise, voluntary disclosure and specific factual matrices, and are not binding precedents for regular assessment proceedings under the Act.

(e) In the cases of Prime Developers and similar ITAT decisions, the facts are that in. those cases, seized material specifically evidenced unaccounted expenditure, whereas in the instant case of assessee, the assessee failed to establish nexus, quantification or allocation of any such expenses against the on-money receipts taxed.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not relying upon the decision of the Hon'ble Jurisdictional Bombay High Court in the case of Ramesh Babulal Shah vs CIT (2015) 53 taxmann.com 277 (Bombay), wherein the Hon'ble Court affirmed that entire receipts are taxable without embarking upon any enquiry into profit margin, embedded income or allowable expenditure in such on-money receipts cases.

9. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not relying upon the decision of the Hon'ble ITAT, Pune in the case of Uday Jawahar Kotnis vs ITO, Ward-13(2), Pune in ITA No.01/PUN/2024, wherein the Hon'ble Tribunal explicitly held that in the absence of any cogent expenditure incurred for earning such on-money, the entire amount received was liable to be brought to tax in full, and when the assessee failed to discharge the burden of proof cast upon him.

10. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that if at all any evidences for expenses are produced for reducing from

unaccounted on-money receipts, it would only entail disallowance u/s 40A(3) as most of them would invariably be in cash and would also be violative of Section 269SS/Section 269ST and that is why the assessee has not produced the details and evidences for arriving at net on-money income, and under these facts and circumstances, assessing the net profit after allowing 83% as expenses without any evidence would render the provisions of sections 40A(3)/269SS/269ST into nullity and redundant and therefore such assumption of estimation of profit @17% in an arbitrary manner without any evidence would be antithetical to law.

11. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing a premium to tax evaders who do not account their income and expenses in a proper manner for obvious reasons, over an honest assessee who records all transactions in book, as had the assessee accounted its on-money receipts and cash expenses in its book properly, the expenses would have invariably been disallowed u/s 40A(3).

12. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that assuming the net on-money income as arrived at by estimating @ 17% on unaccounted on-money receipts as correct without corroborative and contemporaneous evidence would be playing into the hands of the assessee ignoring the position of law that would entail in view of the above grounds.

B. Addition of Rs.31,01,47,793 u/s 69A r.w.s. 115BBE

13. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing relief by restricting the addition to Rs.24,24,01,500/- out of the addition of Rs.31,01,47,793/- pertaining to entries in "V A/c", by applying the Peak Credit Theory taking into account "V Exp" also, when the assessee has not discharged its onus to prove the same by furnishing details of the parties from whom loans were taken in cash by giving their complete details and not furnished details of the entries in "V Exp".

14. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in granting the benefit of Peak Credit Theory despite the assessee failing to discharge the onus to explain the nature and source of such cash entries, including failure to furnish identity/ PAN/confirmations and genuineness of the persons reflected in the seized "V A/c" material and "V Exp", and further without establishing a verifiable nexus/chain showing circulation of the same funds (credits and debits with the same parties), making the application of peak factually unverifiable and legally untenable and thus the Ld. CIT(A) ought to have sustained the entire addition.

15. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in treating "V A/c" entries (cash loans/cash receipts) as transactions eligible for netting/peak along with "V Exp", whereas the Assessing Officer correctly assessed the same as "unexplained money" under section 69A, where in the absence of satisfactory explanation of nature and source, the gross credits are liable to be brought to tax, as held by the Hon'ble Kerala High Court in K.P. Abdul Majeed 109 taxmann.com 385 (Ker.).

16. On the facts and in the circumstances of the case and in law, the Ld. CIT(A), having rejected telescoping/set-off for want of nexus between alleged "on-money" and "V A/c" erred in simultaneously allowing multiple quantification reliefs (including profit-only taxation for on-money and peak-based restriction for "V A/c"), resulting in inconsistent relief without a common evidentiary foundation.

17. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition of Rs.31,01,47,793/- made under section 69A to Rs.24,24,01,500/- by applying peak credit theory to the unexplained cash receipts recorded in seized handwritten cash books/digital data, despite the assessee falling to demonstrate that the receipts and payments represented circulation of the same funds.

18. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in assuming 'the entries are in the nature of frequent receipts and payments indicating rotation of funds' and further assuming the payment entries ("V Exp") relate to cash loans advanced in rotation and further more assuming that "V Exp" relate to the "V A/c" only, when the assessee has not at all furnished any details on the payment entries ("V Exp") also as to what they actually represent, to whom the cash loans were given along with their names and addresses and income earned thereupon.

19. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the accounting and legal position that only when the assessee comes out clean furnishing details of all the receipts ("V A/c") and payment entries ("V Exp") with names and addresses of the parties, the benefit of Peak Credit Theory can be considered to the assessee if there is a case for source of part credits emerging from the rotation of funds.

20. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that the Assessing officer has already given benefit of Peak Credit Theory after due verification in respect of verifiable entries with regard to all the receipts ("V A/c") and payment entries ("V Exp") and addition u/s 69A was made in respect of only the unverifiable entries as narrated by the Assessing Officer logically in Paras 13.1 & 15 of the assessment order.

21. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in accepting the explanations such as internal circulation/repayment/contra entries and application of peak theory, which were either not raised or not substantiated before the Assessing Officer, without calling for verification, remand report or establishing factual nexus.

22. The appellant craves leave to add, alter, amend or modify any of the above grounds of appeal at or before the time of hearing.

24. In ground of appeal No.1 the assessee has challenged the validity of assessment proceedings due to foundational jurisdictional defect as the notice u/s 143(2) of the Act is dated 28.06.2023, copy of which is placed at pages 310 to 312 of the paper book volume-2 whereas the PCIT-8, Mumbai vide letter No.PCIT- 8/143(2)/2023-24/800 has granted approval on 21.06.2023. He submitted that this

is in violation of CBDT circular. Referring to para 4 of assessment order he submitted that the Assessing Officer has acknowledged that the assessee questioned the jurisdiction of the Assessing Officer for issuance of notice u/s 143(2) of the Act. He submitted that the Ld. CIT(A) has erroneously dismissed the assessee's grievance by concluding that no prejudice was caused despite the Assessing Officer disposing of objections against the reopening after issuance of notice u/s 143(2) of the Act. He submitted that the assessee challenged the validity of notice u/s 143(2) of the Act for the impugned assessment year since no new facts are required for fresh investigation. He submitted that the dates of the revised proposal i.e. 28.10.2024, the approval purportedly dated 14.10.2024 and the notice dated 12.11.2024 are part of the Department's own record.

25. Referring to the decision of the Hon'ble Supreme Court in the case of NTPC Ltd. vs CIT reported in 229 ITR 383 (SC) he submitted that the Hon'ble Supreme Court in the said decision has held that the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. He submitted that the Assessing Officer in the instant case has failed to secure the mandatory prior administrative approval from the Pr.CIT / Pr.DIT as explicitly required by the CBDT circular which is binding on the Revenue. So far as the argument of the Ld. DR that an e-mail approval might exist is concerned, he submitted that it is a matter of pure conjecture, unsupported by the Revenue's own official record. He submitted that the statutory prior approval is a formal, quasi-judicial act and cannot be inferred from hypothetical digital correspondence that contradicts the physical letter. Relying on various other decisions, he submitted that the jurisdiction is not a matter of consent or waiver. A jurisdictional defect is not a mere procedural irregularity but a fundamental void that goes to the very root of the matter. So far as the reliance on the provisions of section 292B and 292BB by the Ld. DR is concerned, he submitted that the same is fundamentally misplaced and legally unsustainable. Relying on various other decisions, he submitted that the entire assessment proceedings being not in accordance with law is a nullity and therefore, all the assessment orders be quashed.

26. The Ld. DR on the other hand submitted that this ground was never raised in Form No.36 nor taken before the Ld. CIT(A) and no additional ground has been raised by the assessee in writing. Only during the course of hearing, the Ld. Counsel for the assessee submitted the copy of letter dated 14.10.2024 which was signed by the ITO(Hq)(Central) for the Pr.CIT(Central), Nagpur and was addressed to ACIT, Central Circle-1, Nashik conveying prior administrative approval for issuance of notice u/s 143(2) in cases where the assessee had filed return in response to notice u/s 148 of the Act. He submitted that the Ld. Counsel for the assessee, on the basis of stamp dated 14.11.2024 on the letter, has claimed that the approval for issuance of notice u/s 143(2) was received in the office of ACIT, Central Circle 1, Nashik i.e. the Assessing Officer of the assessee is dated 14.11.2024 but the notice u/s 143(2) of the Act was issued prior to 14.11.2024. He submitted that first of all this is purely a factual ground and not a legal ground as it contains that the approval for issuing notices was given after notices u/s 143(2).

27. Referring to the decision of the Hon'ble jurisdictional High Court in the case of Ultratech Cement Ltd. reported in (2017) 81 taxmann.com 74 (Bom) he submitted that the Hon'ble High Court in the said decision has held that an additional ground relating to claim of deduction u/s 80IA

could not be permitted to be raised if necessary evidence that the assessee was entitled to claim was not on record and the assessee had no reason to satisfy appellate authority that ground now raised was bonafide and the same could not have been raised earlier for good reasons.

28. Referring to the decision of the Hon'ble Bombay High Court in the case of Veena Estate (P) Ltd reported in (2024) 461 ITR 483 (Bom), he submitted that the Hon'ble High Court in the said decision has held that an alleged defect in notice issued to assessee under section 271(1) (c) read with section 274 in regard to which assessee had never raised an objection from very inception could not be permitted to raise it in appeal before High Court in absence of any prejudice being caused. Such an issue cannot be directly raised before the Tribunal.

29. The Ld. CIT-DR submitted that the letter dated 14.10.2024 claimed to have been received in the office of the Assessing Officer on 14.11.2024 was never presented before the Ld. CIT(A), therefore, it constitutes an additional evidence. Without prejudice to the above, the Ld. CIT-DR referring to the letter of the DCIT addressed to the CIT, ITAT, Pune, copy of which is placed in the paper book, submitted that it had been clarified that the notice u/s 143(2) of the Act was issued only after receiving the requisite administrative approval. Therefore, the prior approval of the Pr.CIT was obtained before issuance of notice u/s 143(2) of the Act. Therefore, the contention of the assessee regarding the post-facto approval is misplaced as not acceptable.

30. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in ground of appeal No.1 has challenged the validity of assessment proceedings on the ground that the notice u/s 143(2) of the Act was issued before obtaining the approval of the concerned PCIT. However, it has been clarified by the Addl. CIT that since the Assessing Officer and the Range Head office are located at Nashik while the Pr.CIT's office is in Nagpur, therefore, most correspondences for regular day-to-day functions are carried out through official email. However, for proper record maintenance, the same correspondence is also dispatched through post. It has been clarified that the correspondence regarding the approval for issuing notice was received by the Assessing Officer on 11.11.2024 which is prior to the issuance of notice u/s 143(2) of the Act. The screenshot has also been placed by the Revenue in the paper book. It has further been mentioned that the administrative approval dated 10.06.2024 for issue of notice u/s 143(2) of the Act was received by the office of the Assessing Officer on 14.06.2024 and the notice u/s 143(2) was dated 21.06.2024. Therefore, we do not find any merit in the argument of the Ld. Counsel for the assessee that the assessment is void ab initio on account of issue of notice u/s 143(2) of the Act before obtaining the administrative approval of the Pr.CIT. Consequently, the ground challenging the validity of the assessment as per ground No.1 is dismissed.

31. After hearing both sides we find ground No.1 raised in assessment years 2017-18, 2020-21 and ground Nos.3 to 3.3 in assessment year 2022-23 and ground Nos.3 to 3.2 in assessment year 2023-24 are similar to ground No.1 raised in assessment year 2014-15. In the preceding paragraphs, we have already decided the issue raised in ground No.1 and dismissed the same. Following similar reasonings, we dismiss ground No.1 raised in assessment years 2017-18, 2020-21 and ground Nos.3

to 3.3 in assessment year 2022-23 and ground Nos.3 to 3.2 in assessment year 2023-24.

32. Ground of appeal Nos.2 and 5 raised by the assessee are not pressed by the Ld. Counsel for the assessee for which the Ld. DR has no objection. Accordingly, the same are dismissed as 'not pressed'.

33. Ground of appeal No.3 relates to the validity of sanction / approval u/s 151 of the Act. The Ld. Counsel for the assessee submitted that the approval granted by the Pr. CIT on 31.03.2024, copy of which is placed at pages 1124 to 1125 of the paper book volume - 4, is a legally nullity as it was obtained through active suppression of material facts. He submitted that the entire proposal for sanction hinges on the statements recorded u/s 132(4) of the Act from Shri Rohit Shah and Shri Karan Shah. However, the record establishes a fatal timeline where the deponents filed formal retractions and affidavits on 22.03.2024 clarifying the true nature of the Tally entries. He submitted that the Assessing Officer sought approval on 30.03.2024 without disclosing these retractions to the Sanctioning Authority. Relying on various decisions, he submitted that an approval founded on a disavowed confession, where the disavowal is hidden from the superior authority, constitutes a colorable exercise of power and is void ab initio. For the above proposition he relied on the decision of the Hon'ble Supreme Court in the case of Chhugamal Rajpal v. S.P. Chaliha reported in (1971) 79 ITR 603 (SC). He submitted that the Assessing Officer's proposal for sanction was founded exclusively on the search time statements of Shri Rohit Shah and Karan Shah. However, the Assessing Officer willfully suppressed the fact that both deponents have formally retracted these statements via Affidavits dated 22.03.2024, copies of which are placed at pages 3643 to 3660 of the paper book volume-14 which is five days prior to the grant of sanction. Relying on various other decisions placed in the paper book he submitted that the invalid sanction / approval u/s 151 of the Act by the Pr. CIT vitiates the entire proceedings and therefore the same should be quashed.

34. The Ld. DR on the other hand submitted that a detailed note in Annexure-A was submitted by the Assessing Officer along with the prescribed format. In the note in Annexure-A, the Assessing Officer has referred to various seized records of Viraj group including that of the assessee which reveals that Viraj group including the assessee has earned substantial unaccounted income in the form of on-money on sale of plots, shops etc. Further, the documents found and seized including handwritten cash book etc also revealed that Viraj group including the assessee has taken and given loans in cash which are noted and identified as V A/c. The remarks of the specified authority clearly show that he has considered the note submitted by the Assessing Officer and noted that the prescribed format also contains recommendations of the supervisory authorities of the Assessing Officer such as range head and PCIT wherever applicable. Thus, it is only after considering the detailed note submitted by the Assessing Officer and the recommendations of the supervisory authority/authorities that the approval has been accorded by the specified authority. He submitted that nothing has been brought on record by the assessee to show that there was non-application of mind on the part of the specified authority.

35. Referring to the decision of the Hon'ble Delhi High Court in the case of Kelvinator of India Ltd. reported in 123 Taxman 433 (FB), he submitted that the Hon'ble High Court in the said decision has held that the provisions of 114(e) of the Indian Evidence Act, 1872 has drawn a presumption in the

income tax matter that all official actions were performed regularly unless controverted by the corroboratory evidence. Thus, in the instant case the onus is on the assessee to rebut that the specified authority while granting approval had not applied his mind.

36. Referring to the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Agroha Fincap Ltd. reported in (2025) 179 taxmann.com 185 (Del) he submitted that the Hon'ble Delhi High Court in the said decision has held that where the competent authority used the language 'Yes, I am convinced it is a fit case for reopening of assessment u/s 147 by issuing notice u/s 148', same would satisfy mandate of section 151. He accordingly submitted that the approval u/s 151 was given after due application of mind by the specified authority.

37. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Hon'ble Delhi High Court in the case of PCIT vs. Agroha Fincap Ltd. (supra) has held that where the competent authority used 'Yes, I am convinced it is a fit case for reopening of assessment u/s 147 by issuing notice u/s 148', same would satisfy mandate of section 151. The relevant observations of the Hon'ble High Court read as under:

> "20. So it must be held, that the language "Yes, I am convinced it is a fit case for re-opening the assessment u/s 147 by issuing notice u/s 148 satisfies the mandate of Section 151A of the Act in this case. The Tribunal has clearly erred in not appreciating the above language used by the Competent Authority while granting approval. Hence, the impugned order dated 07.07.2023 passed by the ITAT allowing the appeal filed by the Respondent/Assessee is untenable and is liable to be set aside. We order accordingly. The substantial question of law is decided in favour of the Appellant/Revenue and against the Respondent/Assessee."

38. In view of the above decision of the Hon'ble Delhi High Court cited (supra) and in absence of any contrary material brought to our notice by the Ld. Counsel for the assessee that the specified authority has not applied his mind, we do not find any infirmity in the order of the Ld. CIT(A) upholding the sanction/approval u/s 151 of the Act. The ground No.3 raised by the assessee is accordingly dismissed.

39. After hearing both sides we find ground No.3 raised in assessment years 2017-18 and 2020-21 are similar to ground No.3 raised in assessment year 2014-

15. In the preceding paragraphs, we have already decided the issue raised in ground No.3 and dismissed the same. Following similar reasonings, we dismiss ground No.3 raised in assessment years 2017-18 and 2020-21.

40. In ground of appeal No.4 the assessee has challenged the order of the Ld. CIT(A) in sustaining the re-assessment proceedings. The Ld. Counsel for the assessee submitted that the condition for issuing notice beyond 3 years is that the Assessing Officer should be in possession of the books of account or other documents or evidence which reveal that the income chargeable to tax has escaped

the assessment and represented in the form of an asset. However, the sanction granted u/s 151 of the Act for extended period is based on fundamental misrepresentation of facts. To satisfy the asset requirement under the Explanation to section 149(1)(b) the Assessing Officer and the sanctioning authority categorized the seized entries as loans taken and loan given. However, a perusal of the approval record reveals that the Assessing Officer has only quantified the receipt side entries. By failing to specify the loan given (asset) amounts, the Assessing Officer has admitted that there is no identifiable asset exceeding Rs.50 lakhs. Therefore, the jurisdiction could not have been assumed on a hypothetical asset which the Assessing Officer himself has failed to quantify in the reasons recorded. He submitted that on-money receipts are not assets. Further in some cases the assessee is the buyer and therefore, the assessee could not have received any on-money.

41. Referring to the provisions of section 2(12A) of the Income Tax Act, 1961 he submitted that books of account are those which are maintained in the regular course of business. Therefore, the seized rough jottings from a third party premises do not automatically constitute a qualifying 'asset' for the purpose of invoking the extended limitation period u/s 149(1)(b). Further, the Revenue has selectively relied on the receipt side of the seized Tally / Registers (V89/CON) while willfully ignoring the payment side documented within the same files.

42. Referring to the decision of the Hon'ble Supreme Court in the case of Chhugamal Rajpal vs. S.P. Chaliha reported in (1971) 79 ITR 603 (SC), he submitted that if the material facts like retractions are suppressed, the sanction is a colorable exercise of power. He accordingly submitted that the sanction u/s 151 of the Act is vitiated by suppression and misrepresentation.

43. The Ld. DR on the other hand submitted that as per Explanation to section 149(1)(b), the 'asset' is meant to include immovable property being land or building or both, shares and security, loans and advances, deposits in bank account. Therefore, it is clear that the definition of asset is inclusive definition. An asset represents an economic resource, either immovable or movable having value. As per common parlance, cash in hand is also construed as asset of the assessee. He submitted that the assessee in the instant case has earned on-money on sale of flats, land etc as also the noting in the handwritten cash book and other records found and seized show unaccounted receipts. These are nothing but assets in the hands of the assessee. In his alternate argument, he submitted that the handwritten cash book will fall within the purview of income represented in the form of an entry or entries in the books of account. He accordingly submitted that the conditions for invoking section 147 r.w.s. 149(1)(b) of the Act were complied in the case of the assessee.

44. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the provisions of section 149(1)(b) of the Act read as under:

> "149(1) No notice under section 148 shall be issued for the relevant assessment year,--
>
> (a).....

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of--

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion;

or

(iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more."

45. Since the Assessing Officer in the instant case has in his possession the books of account or other documents or evidence which reveal that the income chargeable to tax represented in the form of an entry or entries in the books of account which has escaped assessment amounts to or is likely to amount to Rs.50 lakhs or more, therefore, this ground raised by the assessee is liable to be dismissed. We accordingly dismiss the ground No.4 raised by the assessee.

46. In ground of appeal No.6, the assessee has challenged the mechanical approval given u/s 148B.

47. The Ld. Counsel for the assessee submitted that the assessment order is void ab initio as the mandatory prior approval was granted mechanically and in total contravention of binding jurisdictional precedents u/s 148B and CBDT order u/s 119 dated 15.07.2022. He submitted that the record reveals a fatal contradiction between the premises on which section 151 sanction was obtained and the eventual basis on which the assessment was concluded. He submitted that the Revenue is legally barred from reopening the assessment unless the escaped income was represented in the form of an "asset" exceeding Rs.50 lakhs. To overcome this statutory hurdle, the Assessing Officer and the Addl. CIT represented to the DGIT(Inv) that the seized material contained entries of loans taken as well as given with the latter specifically qualifying as an 'asset' under the Explanation to section 149(1)(b) of the Act. Accordingly the DGIT was induced to grant the 10 year extended jurisdiction. However, the final assessment order proves that the Assessing Officer performed a complete volte-face regarding the nature of these very same entries. While the sanctioning authority was told that the entries were assets (loans given) to gain jurisdiction, the Assessing Officer in the final order at paragraphs 15.1 admits that while the 'V A/c' entries show both receipt and payment sides, however he has chosen to ignore the payment side entirely. Instead of treating the loans given, he treated the gross receipts as unexplained money u/s 69A of the Act. He submitted that the Revenue cannot treat a document as a loan given to satisfy the asset test for reopening and then simultaneously treat the same document as a pure receipt to ignore the outgoing and inflate the tax demand. Relying on various decisions he submitted that the mandatory approval u/s 148B and CBDT order u/s 119 dated 15.07.2022 are vitiated by total lack of independent application of mind.

48. The Ld. DR on the other hand submitted that whether the approving authority has applied his mind before approving the order is a question of fact and not law. This ground was never raised by the assessee before the Ld. CIT(A). Therefore, this ground should not be allowed to be raised before the Tribunal for the first time. Without prejudice to the above, he submitted that nothing has been brought on record to demonstrate that the approval u/s 148B of the Act was given mechanically and without application of mind.

49. Referring to the decision of the Hon'ble Delhi High Court in the case of Kelvinator of India Ltd. (supra), he submitted that the Hon'ble High Court in the said decision has held that the provisions of section 114(e) of the Indian Evidence Act, 1872 has drawn a presumption in the income tax matter that all official actions were performed regularly unless controverted by the corroboratory evidence. Therefore, the onus is on the assessee in the instant case to rebut that the Addl. CIT while granting approval had not applied his mind.

50. Referring to the decision of the Delhi Bench of the Tribunal in the case of Kailash Gahlot vs. DCIT vide ITA No.3431/Del/2023 order dated 24.10.2025, he submitted that the Tribunal, relying on the decision of Hon'ble Supreme Court in the case of State of Bihar vs. PP Sharma reported in AIR 1991 SC 1260 and various other decisions, has held that even in cases where the sanction order does not demonstrate the independent perusal of material and does not carry recital of reasons, in view of the statutory presumption u/s 114(e) of the Indian Evidence Act, 1872 if it is established that all the relevant material were duly put up for perusal before the authority, then the sanction cannot be considered as vitiated. He accordingly submitted that this ground raised by the assessee should be dismissed.

51. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. The grievance of the assessee in the instant case is that the mandatory approval u/s 148B of the Act was given mechanically and without application of mind. A perusal of the record shows that this ground was never raised before the Ld. CIT(A). Further, it is also not a legal issue and requires verification of facts from the record. Therefore, at the threshold itself this ground is not admitted for adjudication. Even otherwise also, nothing has been placed on record to suggest that the Assessing Officer or Addl. CIT did not go through the relevant seized material and other material available in their possession or records including the approvals. Therefore, we do not find any merit in the allegation of the assessee of non-application of mind by the Assessing Officer or the Addl. CIT in absence of any evidence before us. Ground No.6 raised by the assessee is accordingly dismissed.

52. After hearing both sides we find ground No.6 raised in assessment year 2017-18, ground No.5 in assessment year 2020-21 and ground No.4 in assessment years 2022-23 and 2023-24 are similar to ground No.6 raised in assessment year 2014-15. In the preceding paragraphs, we have already decided the issue raised in ground No.6 and dismissed the same. Following similar reasonings, we dismiss ground No.6 raised in assessment year 2017-18, ground No.5 in assessment year 2020-21.

53. Ground of appeal No.7, 10 and 15 relate to the evidentiary value of statements u/s 132(4) of the Act.

54. The Ld. Counsel for the assessee submitted that according to the Assessing Officer the statements recorded u/s 132(4) of the Act from Shri Karan Rajendra Shah and Shri Rohit Manilal Shah were not mere confessions but were detailed explanations of the Handwritten Cash Books (HCB) and digital V89/CON files found in their possession. The Assessing Officer finds that these statements are admissible as evidence because the deponents specifically explained the modus operandi of the group such as the practice of removing two zeros from figures in the Tally data to mask the actual cash value. The Assessing Officer rejected the plea of retraction, duress or mental stress finding that the statements were recorded in presence of multiple family members and directors who also signed the depositions in acceptance of the facts. Further, according to him, the statement recorded on oath during a search has high evidentiary value and a self serving retraction made after a significant lapse of time, is an afterthought. He submitted that the statement recorded u/s 132(4) of the Act which according to the Assessing Officer has high evidentiary value are nothing but confessionary statements made under duress and mental stress. He submitted that the recording process was unusual and embarrassing as family members were forced to sign Shri Karan Shah's statement as muted spectators without being administered their own oaths. He submitted that the author of HCB Shri Rohit Shah is computer illiterate and could not have maintained or explained Tally software operations. Further there were certain internal contradictions in the depositions. He submitted that the core documents were never actually produced or seen by Shri Karan Shah and other signatories of the statement during the statement recording. Further, the HCB and V89/CON files are dumb documents because they lack PANs, addresses or any identifying particulars of the parties. Therefore, without corroborative evidence such as third party confirmations, buyer's affidavits or the recovery of actual physical cash these rough notings cannot be treated as speaking documents. He submitted that the Assessing Officer has relied heavily on third party statements while denying the assessee's request for cross-examination. He submitted that the Ld. CIT(A)'s findings are fundamentally perverse as he relied on a circular logic that treats a post-search confession as contemporaneous evidence. He submitted that the Ld. CIT(A) has completely ignored the submission of the assessee regarding the technical impossibility and internal contradictions of the deponents. He submitted that the Revenue's reliance on the statements of Shri Rohit Shah and Shri Karan Shah recorded nearly 60 days after the search is legally unsustainable. Relying on various decisions he submitted that in absence of any corroborative evidence and the failure of the search narrative, the addition sustained by the Ld. CIT(A) should be deleted.

55. The Ld. DR on the other hand heavily relied on the order of the Ld. CIT(A).

56. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. Since the so-called third party evidences as argued by the Ld. Counsel for the assessee have already been held to be belonging to the assessee in the subsequent paragraphs i.e. para 61 of the impugned order, therefore, this ground raised by the assessee is dismissed.

57. In ground of appeal No.8 the assessee has challenged the order of the Ld. CIT(A) in confirming the addition made by the Assessing Officer based on material seized from the third party premises.

58. The Ld. Counsel for the assessee submitted that the primary incriminating documents were seized from the third party premises at Flat No.06, Dattaraj Parj, Anadavalli, Nashik which were neither owned nor controlled by the assessee and furnished affidavits of the owner of the premises. He submitted that the statements recorded during the search u/s 132(4) of the Act on which heavy reliance has been placed moving a case against the assessee are unreliable and have subsequently been retracted within the stipulated time. Further the seized documents were never actually produced or seen by Shri Karan Shah, director of the assessee and other signatories of the statement during the statement recording. He submitted that the statutory presumption u/s 292C of the Act could not be invoked because the material consisted of dumb handwritten jottings and V89/CON Tally data that lacked identifiable particulars like PANs or addresses. He submitted that the Assessing Officer while passing the assessment orders held that the Handwritten Cash Book and V89 files are dumb documents because they lack PANs, addresses or any identifying particulars of the parties. Therefore, without corroborative evidence such as third party confirmations, buyer's affidavits or the recovery of actual physical cash these rough notings cannot be treated as speaking documents. He submitted that in the instant case the buyers have categorically denied to have paid any on-money in the statements recorded u/s 131(1A) of the Act.

59. So far as the findings of the Assessing Officer that the author of the Cash Book Shri Rohit Manilal Shah confirmed that he maintained the records under the specific instructions of the Directors and held the keys of the premises is concerned, he submitted that Shri Rohit Manilal Shah subsequently furnished an affidavit dated 28.02.2024 retracting his sworn statement recorded during the search which was rejected by the Assessing Officer on the ground that all the affidavits are mere afterthought and against the facts which are already established during the search. Relying on various decisions and the circulars issued by the CBDT from time to time, he submitted that the Assessing Officer cannot simply ignore the affidavit and he must apply his mind, verify the contents and specifically discredit the evidence through enquiry u/s 131 or 133(6) of the Act before rejection. However, in the instant case the Assessing Officer has not conducted any such enquiry. Further the Revenue's refusal to verify the rent payments, electricity bills, or occupancy through the legal owners highlights a predetermined mind. He submitted that although the assessee has filed affidavits from the actual owners who categorically denied leasing the premises to the assessee company, the Assessing Officer without proof of corporate possession could not have used the material seized from these locations against the assessee. He submitted that the Ld. CIT(A) was not justified in upholding such action of the Assessing Officer. Further, the Revenue has deliberately suppressed the statements recorded u/s 131(1A) from 24 third parties who categorically denied to have made any on-money payment to the assessee. Therefore, by cherry picking receipts while suppressing 24 direct denials from the alleged payers the Assessing Officer acted in a manner that is arbitrary and contrary to the principles of natural justice. However, the Ld. CIT(A) without considering all these facts, upheld the action of the Assessing Officer. Therefore, the addition made should be deleted.

60. The Ld. DR on the other hand while supporting the order of the Ld. CIT(A) submitted that the Assessing Officer while dealing with this issue has given clear finding in the assessment order rejecting the submissions of the assessee. He had given a finding that though not owned by the assessee's group it was established during the search proceedings that the above two offices were in possession and control of the assessee group. The key persons and employees of the assessee group in their statements have confirmed that these premises were used by the assessee group as its offices. He submitted that the key of the premises at Anandvalli office was found with Shri Rohit M Shah during the search. The key persons and employees of the assessee group in their statements during the search have confirmed that the parallel books and other evidences related to unaccounted transactions belonged to the assessee group. He submitted that during the course of search it was noticed that the seized records including the handwritten cash book in Gujarati language also consists of noting in respect of withdrawals made from regular bank account of the Viraj group including the assessee. He submitted that when one part of the seized material is matching with the accounted transactions recorded in the books, therefore, it is logical inference that the other part would also belong to the assessee and its group. Thus, it is apparent that the seized documents / materials are related to the assessee and its group. He submitted that the assessee and the group during search and post-search proceedings had accepted and deciphered the seized documents and on-money receipts. The assessee helped in creation of the Digital Cash Book, has duly correlated noting / entries in seized records with the survey nos, names of the buyers, etc. Under these circumstances, the assessee cannot turnaround and contend that the seized documents do not relate to Viraj group as the two premises referred hereinabove are not owned by them. Merely because the ownership of the two premises referred hereinabove are of third parties, the possession and control thereof was exclusively with Viraj group and duly accepted by the key persons of the group during the course of search action and statement recorded u/s 132(4) of the Act. He accordingly submitted that the order of the Ld. CIT(A) be upheld.

61. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case during the course of assessment proceedings has objected before the Assessing Officer that no addition can be made on the basis of incriminating documents found from the third party premises i.e. the office premises at 3rd Floor, Abhyankar Tower, MG Road, Nashik and the office premises at Anandvalli, Behind Petrol Pump, Near Makaloo Hotel, Gangapur Road, Nashik. It was contended that these premises are neither owned by the assessee nor any of the entities of the Viraj group and therefore, the addition cannot be made on the basis of incriminating material found during the search at these premises which are third party premises. However, we find the Assessing Officer had categorically rejected these objections made by the assessee. He has held that the directors of the Viraj group of cases namely Shri Karan Rajendra Shah and a member of Viraj family and the key person who looks after overall administration work, accounts, financial transactions, banking etc. in his answers to Q.Nos.10, 11, 12, 30, 31 and 33 recorded on oath u/s 132(4) of the Act on 24.04.2023 has accepted that the premises YO-1(1) and YO-2 are rented by the Viraj group where books of account of Viraj group companies / entities are kept. Further, Shri Rohit Manilal Shah in his statement recorded u/s 132(4) of the Act had stated that the documents found from the premises YO-2 are related to the entities of the Viraj group and its key is handed over to him on instruction of Shri Karan R. Shah and

Shri Vilas R. Shah. Shri Rohit Manilal Shah, another key person had stated that the entries in the documents are entered on the instruction of Shri Karan Rajendra Shah and Shri Vilas Rasiklal Shah, directors and key persons of the entities of Viraj group. It is also an admitted fact that the seized documents found from the above two premises contain notings in respect of withdrawals made from the regular bank account of the Viraj group including the assessee. Since a part of the seized documents is matching with the accounted transactions recorded in the books of the assessee, therefore, we find merit in the argument of the Ld.CIT-DR that it is logical inference that the other part would also belong to the assessee and its group. Therefore, it is apparent that the seized documents / materials are related to the assessee and its group. We further find the assessee and the group during search and post-search proceedings had accepted and deciphered the seized documents and on-money receipts. The assessee had helped in creation of the Digital Cash Book (DCB), has duly correlated noting / entries in seized records with the survey nos, names of the buyers, etc. Under these circumstances, it cannot be accepted that the seized documents do not relate to Viraj group on the ground that the two premises referred hereinabove are not owned by them. Merely because the ownership of the two premises referred hereinabove are of third parties, the possession and control thereof was exclusively with Viraj group and duly accepted by the key persons of the group during the course of search action and statement recorded u/s 132(4) of the Act. We, therefore, do not find any infirmity in the order of the Ld. CIT(A) in upholding the action of the Assessing Officer in making various additions on the basis of the seized documents found from the above two premises. The ground No.8 is accordingly dismissed.

62. After hearing both sides we find ground No.8 raised in assessment year 2017-18, ground No.7 in assessment year 2020-21 and ground No.6 in assessment years 2022-23 and 2023-24 are similar to ground No.8 raised in assessment year 2014-15. In the preceding paragraphs, we have already decided the issue raised in ground No.8 and dismissed the same. Following similar reasonings, we dismiss ground No.8 raised in assessment year 2017-18, ground No.7 in assessment year 2020-21 and ground No.6 in assessment years 2022-23 and 2023-24.

63. All the remaining grounds raised by the assessee and the Revenue are relating to the partial relief granted by the Ld. CIT(A).

64. Grounds of appeal No.9, 11, 13, 15 and 21 relate to the on-money receipts on sale of plots, land and flats.

65. Grounds of appeal No.12, 13 and 18 relate to the partial relief granted by the Ld. CIT(A) out of addition of on-money relating to unidentified entities.

66. Grounds of appeal Nos.22 to 28 relate to 'V A/c' entries and the unified peak credit doctrine.

67. So far as the grounds of appeal No.9, 11, 13, 15 and 21 are concerned, the Ld. Counsel for the assessee submitted that the Assessing Officer in the assessment order observed that the seized handwritten cash book and digitized V89 data meticulously recorded specific cash receipts related to plot / land sales for five different years. While making these additions the Assessing Officer noted that the entries were corroborated by initial search statements and linked to specific survey

numbers. He, therefore, rejected the assessee's subsequent retractions and third party affidavits labeling them as mere afterthoughts. The Ld. Counsel for the assessee submitted that the Assessing Officer adopted a restrictive approach by accepting only the receipt side of the seized data while summarily disallowing the cash expenses recorded in the same documents. According to the Assessing Officer, since these receipts were not routed through the regular books of account, he held that they must be taxed as undisclosed business income in the year of receipt regardless of the assessee's standard revenue recognition methods.

68. The Ld. Counsel for the assessee submitted that the additions could not have been made until the projects were completed under the 'Project Completion Method'. Further, the Assessing Officer also denied any deduction for alleged cash expenses against these receipts citing the assessee's failure to provide verifiable details such as the names, PANs, or addresses of the payees. He submitted that the Ld. CIT(A) upheld the action of the Assessing Officer relying on incriminating seized material specifically the Handwritten Cash Book (HCB) and the Digital Cash Book (DCB) over the assessee's regular books and third party affidavits. He, however, held that the Assessing Officer has erroneously ignored the payment side entries in the HCB which evidenced the expenses. He, therefore, relying on the decision of the Hon'ble Bombay High Court in the case of Hariram Bhambhani and Golani Brothers and various other decisions held that only the profit element is taxable. After analyzing the group's weighted average profit ratios and considering the assessee's plea regarding the distorting effect of high government compensation in regular books, an arbitrary profit rate of 17% was applied to the quantified receipts. So far as the sale of flats / shops are concerned, the Ld. CIT(A) directed the Assessing Officer to estimate the profit @ 15%. Thus, he granted partial relief to the assessee.

69. The Ld. Counsel for the assessee submitted that the part approach of the Ld. CIT(A) is erroneous. He reiterated that the search at Flat No.06, Anandvalli does not belong to the assessee and therefore, incriminating material found from the said premises could not have been used against the assessee. Secondly, the seized material including the handwritten cash book and V89/CON are dumb documents since these records lack PANs, addresses or identifiable particulars and are riddled with internal perversities. He submitted that handwritten cash book records the assessee as a receiver of cash in transactions whereas registered public deeds prove the assessee was actually the buyer. Therefore, it is a logical impossibility for a purchaser to receive on-money from themselves. He submitted that the Assessing Officer has cherry picked incriminating notations while deliberately ignoring the statements from 24 third party buyers whose statements were recorded u/s 131(1A) by the department and who categorically denied making any on-money payments to the assessee. Further, the denial of cross-examination and the failure to show the seized records to the assessee's representatives during the recording of their statements renders the alleged admissions legally void. He submitted that the Ld. CIT(A)'s findings are fundamentally perverse as they replace factual evidence with suspicion and the test of human probability. He submitted that V89 Tally file and the CON digital records do not constitute books of account u/s 2(12A) of the Act. Despite alleging cash flows exceeding Rs.138 crores, the Revenue failed to recover a single rupee of matching physical cash, bullion, jewellery, unexplained assets or signed vouchers during the search.

70. Referring to the decision of the Hon'ble Supreme Court in the case of State of Kerala vs. KT Shadulli and Nalla Kandy Yusuf, he submitted that the Hon'ble Supreme Court in the said decision has recognized that the author of a seized document might record fictitious transactions out of business rivalry or a desire to embarrass the assessee. By refusing to examine the author of these documents or confront the parties of the assessee with the specific contents, the Assessing Officer acted on a pre-determined conclusion. Therefore, the seized material which lacks complete dates, recipient names or the nature of the transactions remains a dumb document that fails the test of section 132(4A).

71. Relying on various pages of the paper book, he submitted that the registration records prove that the assessee was the buyer in 14 specific entries yet the HCB fictitiously treats the assessee as the seller which is a logical and legal impossibility. Similarly the handwritten cash book records 13 entries involving properties not owned by the assessee as per public records, therefore, it is impossible for a a non-owner to receive sale premiums. He submitted that in 37 instances the HCB records buyer 'A' as the party whereas registered public documents prove buyer 'B' executed the transaction stripping the HCB of any evidentiary reliability. Similarly, the handwritten cash book lists 62 entries for which no corresponding transaction exists in the registration records proving the entries are purely speculative or unrelated. He submitted that if the Revenue's theory is that when part is true, the whole is also true, then they must equally accept the inverse legal necessity. He submitted that when a significant part is proved to be factually and legally impossible, the integrity of the whole is destroyed.

72. Referring to the decision of the Hon'ble Bombay High Court in the case of CIT vs. Lavanya Land Pvt Ltd reported in (2017) 83 taxmann.com 161 (Bom) and the decision of the Hon'ble Supreme Court in the case of PCIT vs. Krutika Land (P) Ltd reported in (2019) 103 taxmann.com 9 (SC), he submitted that it has been held in these decisions that where the Revenue fails to bring on record a single statement from a buyer to substantiate that extra cash has changed hands, the addition cannot be sustained. Referring to the decision of Hon'ble Supreme Court in the case of CBI vs. V.C. Shukla he submitted that if a document is proven to be false or impossible in its description of the core nature of a transaction i.e. buyer and seller in the instant case, it loses its character as a "speaking document"

73. He submitted that by cherry picking receipts while ignoring sworn disavowals and denying the assessee the right to cross-examination, the Assessing Officer has rendered the order a nullity. He accordingly submitted that the assessment order should be quashed due to the jurisdiction nullity and delete the addition sustained by the Ld. CIT(A) and thereby dismiss the appeal filed by the Revenue.

74. So far as the grounds of appeal No.12, 13 and 18 are concerned, the Ld. Counsel for the assessee submitted that the additions for alleged on-money receipts totaling to about Rs.22 crores across the five relevant assessment years out of which an amount of Rs.7.21 crore for assessment year 2014-15 are based entirely on surmises and conjunctures. Referring to para 12.9.1 of assessment order, he submitted that the Assessing Officer himself has admitted that these specific entries lacked details regarding survey numbers of identifying entries. However, instead of discharging the mandatory

burden of proof to identify the right person for taxation the Assessing Officer arbitrarily attributed these receipts to the assessee solely by virtue of its status as the flagship company of Viraj group. He submitted that on the basis of the Revenue's own findings, the so-called HCB does not belong to nor is it shown to pertain to M/s Viraj Estate Pvt Ltd. or to any identified entity of the Viraj group for the relevant assessment years. It is at best an anonymous group level loose compilation. He submitted that although the assessee before the Ld. CIT(A) made elaborate submissions, however, the Ld. CIT(A) concurred with the Assessing Officer to tax these in the hands of the assessee. He submitted that taxing @ 17% of the receipt is fundamentally perverse and legally unsustainable since these are predicated on dumb documents that lacks even a shred of corroborative evidence. Further, the Ld. CIT(A) fundamentally erred by attempting to split the difference. Although he has correctly recognized the existence of expenses he failed to address the threshold question of identity. Reiterating his earlier submissions, he submitted that it is highly impossible that the assessee was receiving on-money for properties on dates when the registered deeds prove that the assessee was actually the purchaser. He submitted that when the properties are neither owned nor bought or sold during the year under consideration, the same cannot give a rise to receiving any on-money. Relying on various decisions, he submitted that the entire addition should be deleted.

75. So far as the grounds of appeal No.22 to 28 are concerned, the Ld. Counsel for the assessee submitted that the Assessing Officer in the assessment order while discussing the issue of 'V A/c' entries in handwritten cash book observed that these transactions are distinct in nature because they lacked specific notations like RTGS or Survey number and featured the names of various individuals and entities on both debit and credit sides. While the assessee proposed that these entries be treated under the peak credit method as having been owned up, the Assessing Officer found that the assessee failed to discharge the primary onus of proving the identity and creditworthiness of these parties by not providing PANs or addresses. He held that in absence of evidence regarding the nature and purpose of these inflows and outflows, 'V A/c' entries could not be categorized as internal cash movements or contra entries. He, therefore, treated the entire receipt side sum as unexplained money u/s 69A r.w.s. 115BBE.

76. He submitted that although the assessee before the Ld. CIT(A) challenged the addition stating that the 'V A/c' entries in the handwritten cash books are dumb documents that lack any clinching evidence or corroborative nexus to the assessee, the Ld. CIT(A) upheld the Assessing Officer's view that the seized records are true and correct explicitly rejecting the assessee's contention that these are dumb documents. He noted that the Assessing Officer had classified the 'V A/c' entries as cash loans and made a gross addition of the receipt side because the assessee failed to provide the PANs and addresses of the parties thereby justifying the Assessing Officer's classification of these funds as the assessee's own money. He however held that the Assessing Officer cannot pick and choose only the receipt side of the entries. According to him since the records showed frequent receipts and payments indicating a rotation of funds and since the Assessing Officer himself has treated these as the assessee's own money as per section 69A of the Act, therefore, the Ld. CIT(A), relying on various decisions, ruled that the principles of peak credit must logically apply to avoid double taxation. Relying on various decisions, he held that where both debits and credits are unexplained, they must be set off against each other and only the highest 'peak' can be considered as undisclosed income.

77. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) erred in maintaining two different and distinct computations, one for 'V A/c' entries and another for 'VR1, survey number payments, stamp and accommodation entries despite both categories originating from the exact same Handwritten Cash Book. He submitted that if a single seized document is identified as a cash book recording the rotation of funds, the peak credit theory must be applied to the document as a whole. Further the Ld. CIT(A) did not adjudicate upon the assessee's specific plea for inclusion of the opening peak balance from assessment year 2013-14 in the computation for assessment year 2014-15. He submitted that there is no justification as to why 'V A/c' entries are treated under a separate 'peak' from 'VR1' entries or why both are treated as distinct from the on-money business receipts when all entries are recorded chronologically in the same document. Therefore, in a search based assessment, the character of a cash book is immutable. If the HCB is the primary evidence for unrecorded business receipts (on-money), then any unexplained 'V A/c' or VR1 entries within that same book are inherently part of the same business cash flow. He submitted that the handwritten / digital cash book for the years under appeal contains 25,541 entries in all receipts and payments but only a fraction of these have been selectively mined for gross additions. When the Assessing Officer has proceeded to grant the benefit of peak credit to 25,318 receipt and payment entries, therefore, he is not justified to selectively consider the remaining entries specifically 100 unveriable entries, 308 land / plot entries and 338 construction entries to be taxed as gross on-money income and there is no justification to separately invoke section 69A in respect of 370 receipt entries. He submitted that it is legally impermissible to acknowledge a circulating fund for 25318 entries of the document while denying that same rotational reality to the remaining 746 entries.

78. Referring to paras 9.4 and 12.8 of the assessment order, the Ld. Counsel for the assessee submitted that the Assessing Officer has categorically recorded in para 9.4 that the digital cash book notes a contemporaneous common pool of movement of cash in Viraj group. Similarly, in para 12.8 the Assessing Officer notes that DCB shows that there are series of transactions of debit and credit.

79. The Ld. Counsel for the assessee submitted that a single, unified peak computation that consolidates all categories of the Handwritten Cash Book (HCB) including on-money, V A/c and VR1 entries should be adopted. He submitted that the character of the HCB as a singular, chronological digital cash book is immutable, it is a solitary pool of rotating liquidity. Since the Assessing Officer herself has observed in para 12.8 of the assessment order that "The perusal of DCB shows that there are series of transactions of debit and credit," therefore, by segregating these into artificial silos, the Revenue has ignored the commercial reality that a business operates from a common cash chest. He submitted that if the HCB is the primary evidence for unrecorded business receipts, then every entry within that same document whether labelled as a loan, a stamp duty payment or a sale receipt is intrinsically part of the same revolving business cash flow. Therefore, to avoid the multiple taxation of the same underlying capital, the Peak Credit Method must be applied to the HCB in its entirety.

80. The Ld. Counsel for the assessee without prejudice to the primary contention that the HCB / DCB is a dumb document lacking evidentiary value submitted that the characterization of on-money receipts as the assessee's own undisclosed income was based exclusively on the verification of survey numbers provided in the assessee's letter dated 21.07.2023. He submitted that when the Assessing

Officer categorically records in para 12.9 of the assessment order that the ownership of these survey nos. is accepted by the assessee vide post search submissions dated 21.07.2023, therefore, the Revenue cannot logically and legally estopped from claiming in para 12.5 that the corresponding payment side entries in the same letter and document are unverifiable. He submitted that under the principle of mutuality of evidence, the Revenue cannot 'blow hot and cold' by treating a document as a speaking record for the purpose of taxation but as a 'dumb record' for the purpose of relief.

81. So far as the various decisions relied on by the Ld. CIT-DR are concerned, he submitted that all these decisions are distinguishable and are not applicable to the facts of the present case.

82. Relying on various decisions placed in the case law compilation, he submitted that where a continuous, chronological record of both receipts and payments exists, then the Hon'ble Courts have consistently held that the net 'peak' or profit element is the only taxable component as taxing the gross receipts would amount to a penalty, not an assessment of income. He submitted that the Ld. CIT(A) in para 23.9 of his order has held that once these entries are treated and considered as the assessee's own money for making addition, it is relevant to consider both the receipt and payment side and he has also held that the principle of peak theory is applicable. However, although the Revenue has filed an appeal against the order of the Ld. CIT(A), however, the Revenue has not challenged this finding of the Ld. CIT(A). Therefore, once the Revenue has accepted the status for V A/c category, the Revenue cannot bifurcate the on-money transactions and both sides of the cycle must be integrated into the Unified Peak computation to prevent a perverse and lopsided assessment of real income.

83. So far as the grounds of appeal No.9, 11, 13, 15 and 21 are concerned, the Ld. DR while supporting the order of the Assessing Officer submitted that during the course of assessment proceedings various incriminating documents / evidences were found and one of the most important pieces of evidence was the Handwritten Cash Book (HCB) in Gujarati by Shri Rohit M Shah, one of the directors of the company which was found and seized from the office premises of Flat No.06, Anandvalli, behind petrol pump, Near Makaloo Hotel, Gangapur Road, Nashik. He submitted that during the course of assessment proceedings the assessee group had provided the list of survey numbers, details of buyers and other missing data. On the basis of this data i.e. DCB and submissions of the assessee group, the Assessing Officer identified on-money charged by the assessee for the relevant assessment years. He has clearly identified the seller, buyer, project / survey number and the amount of on-money received by the assessee. Based on various incriminating material seized and post search enquiries, the Assessing Officer had made addition of Rs.26,47,07,121/-. However, the Ld. CIT(A) held that the entire amount of gross on-money receipt cannot be taxed as income and the only profit element embedded in the on-money should be taxed. He submitted that the Ld. CIT(A) has allowed up to 85% of the on-money receipt as expenses. The Ld. CIT(A) has essentially allowed the assessee to deduct the same expenses twice i.e. once in the regular books and again as an estimation against the unaccounted cash income.

84. So far as various decisions relied on by the Ld. CIT(A) are concerned, he submitted that those decisions are distinguishable and not applicable to the facts of the present case. All those cases relate to the manufacturing concerns or selling firms to support the proposition that only profit

element in the on-money should be taxed. However, in the instant case the on-money in real estate is the cash premium for the same asset that has already been sold through a registered deed. There is no purchase component to on-money and it is pure profit derived from market value exceeding the circle rate or registered value. He submitted that the assessee cannot claim a second presumptive layer of cost against this incremental receipt without demonstrating (a) what specific additional costs were incurred to earn the on-money and (b) that such costs are not already claimed in the accounted books.

85. The Ld. CIT-DR submitted that it is the settled proposition of law that for claiming any expenditure as genuine business expenditure the onus is always on the assessee to satisfy the Income Tax Authority with necessary evidence to substantiate that the expenditure has been incurred wholly and exclusively for the purpose of business. This is particularly so when the claims are based on facts which are exclusively within the knowledge of the assessee. Referring to the provisions of section 106 of the Indian Evidence Act, 1872, he submitted that as per the said provisions when a fact is especially within a person's exclusive knowledge the burden of proving that fact is upon him. Since the Ld. CIT(A) in the instant case has allowed up to 85% of the expenses out of on-money without appreciating the fact that the assessee has failed to discharge the onus cast on him to substantiate that the expenditure has been incurred wholly and exclusively for the purpose of business, he is not justified in estimating the income @ 17% from land and plots and 15% on flats and shops out of the on-money. He submitted that the assessee in the instant case has admittedly did not furnish verifiable particulars of the alleged expenditure such as names, PANs, addresses of payees, the nature of services, confirmation, supporting primary evidence or even a transaction-wise correlation between on-money receipts and expenditure to show that such expenditure was incurred wholly and exclusively for earning the receipts. He submitted that the assessee had deciphered the incriminating material found during the search particularly the handwritten cash book, Tally data such as files V89, CON, etc, therefore, it was the assessee who should have corroborated the on-money receipts with the buyers, survey number, entities of Viraj group who received the on-money etc and the corresponding expenditure.

86. Referring to the decision of Hon'ble Bombay High Court in the case of Harish Textile Engrs. Ltd vs. DCIT reported in (2015) 379 ITR 160 (Bom), he submitted that the Hon'ble Bombay High Court in the said decision has not allowed the expenditure claimed on the basis of notings on the loose papers when the assessee failed to provide the details of nature of expenditure, name and identity of the recipients etc. Referring to para 6(e) of the said decision of Hon'ble Bombay High Court, he drew the attention of the Bench to the same which reads as under:

> "We find that before the expenditure can be allowed as deduction under section 37, the expenditure should have in fact been incurred and that also wholly and exclusively for the purposes of business. The Assessing Officer, on detailed examination of the facts, has held that the assessee was unable to establish that payments had in fact been made. This is on the basis that the identity of the recipients and their addresses is not forthcoming nor is the identity of the persons, who made the payment of such huge amounts, is forthcoming. Besides the loose papers do not indicate clearly whether or not the money has been paid. The

documents indicated seeking of funds and/or reimbursement of funds. This, by itself, cannot establish that the money has been actually expended. The assessment order also records the fact that the appellant had also not produced the individuals who had made said payments and/or produced their details. If the person alleged to have made payments were produced, the cross examination would have possibly thrown light on the genuineness of such claims."

87. Referring to the decision of the Hon'ble Orissa High Court in the case of Tarini Terpuline Productions vs. CIT reported in (2002) 124 Taxman 876 (Orissa), he submitted that the Hon'ble High Court in the said decision has held that secret commission paid to agents cannot be allowed when the assessee declined to disclose identities of agents or correlate payments with orders procured or sales effected.

88. Referring to the decision of the Mumbai Bench of the Tribunal in the case of D.B. Taraporevala Sons & Co. (P.) Ltd reported in (2005) 1 SOT 123 (Mum), he submitted that the Mumbai Bench of the Tribunal in the said decision has held that in absence of basic details that to whom secret commission was paid in respect of which sale those amounts were paid, such expenditure could not be said to have been incurred wholly and exclusively for the purposes of assessee's business and therefore, the entire expenditure claimed by the assessee on account of secret commission was to be disallowed u/s 37(1) of the Act. He accordingly submitted that the Ld. CIT(A) was not justified in allowing the deduction of unverifiable expenses to the extent of 85% of gross on-money receipts.

89. The Ld. CIT-DR in his another plank of argument submitted that the expenditure which the assessee claimed on the basis of seized material was expenditure in cash. Such expenditure would have to withstand the test of provisions of section 37, section 40A(3) and section 269SS / 269ST. Since the assessee in the instant case did not disclose the nature of expenditure as they would have fallen foul of section 40A(3) and section 269SS / 269ST, the Ld. CIT(A) was not justified in estimating such income @ 15% instead of 100% of the on-money receipts. Relying on various other decisions placed in the case law compilation, the Ld. CIT-DR submitted that the order of the Ld. CIT(A) be set aside and the order of the Assessing Officer taxing the entire on-money be restored.

90. So far as the argument of the Ld. Counsel for the assessee that the additions related to on-money have been made based on uncorroborated or retracted statements is concerned, he submitted that the Assessing Officer in the instant case has based his findings on the basis of statements of two key members of the group companies Shri Karan Shah and Shri Rohit Shah. He submitted that Shri Rohit M Shah in his statement recorded u/s 132(4) of the Act on 23.04.2023 has accepted and explained the unaccounted transactions in Handwritten Cash Book and tally data containing files V89 and CON were accepted and acknowledged by another key members of Viraj group i.e. Shri Karan Rajendra Shah. He submitted that Shri Karan Rajendra Shah was key person who was not only closely related to the other key members but also was looking after the day to day financial and administrative matters of the group. Further, the statement recorded of Shri Karan Shah on 24.04.2023 has been signed by all the other members of the group i.e. Shri Rajendra Rasiklal Shah, Vilas Rasiklal Shah and Viraj Vilas Shah. He submitted that the various employees and key members of the group have corroborated the version of Shri Rohit M Shah.

91. So far as the argument of the Ld. Counsel for the assessee that the statements were recorded under pressure and duress is concerned, he submitted that the assessee failed to bring any evidence on record to show that the statements recorded were under duress. He submitted that the group is financially strong group which has wherewithal to take legal recourse in real time against any unfair practice by the Department. However, there is no such evidence. He submitted that the search was conducted u/s 132 of the Act on 20.04.2023. The statements of Shri Karan Shah and Shri Rohit Shah were recorded on 23rd and 24th April, 2023. The statement of Shri Karan R Shah recorded on 23.06.2023 i.e. is almost 60 days later. In his statement Shri Karan Shah had once again corroborated the statement of Shri Rohit Shah which was recorded on 23.04.2023. Therefore, the statement given on 23rd and 24th April, 2023 were not given under any pressure.

92. So far as retraction of the statement is concerned, he submitted that these were not only delayed but also lacked substance. There is no evidence to such retraction. He submitted that the onus lies on the persons retracting the statement. The assessee in the instant case has failed to bring on record any fact to substantiate his allegations that the statements were given under coercion, threat or under pressure. Relying on the order of the Ld. CIT(A), he submitted that he has adjudicated these issues by giving cogent reasons and therefore the arguments advanced by the Ld. Counsel for the assessee has no merit.

93. So far as the contention of the Ld. Counsel for the assessee that there is contradiction in the material found in HCB / DCB and item No.20 found at YO- 1(1) is concerned, he submitted that there is no contradiction between the HCB / DCB and item No.20. The Assessing Officer has referred to digital cash book prepared by the Viraj group on the basis of various incriminating documents seized including handwritten cash book in Gujarati and other loose papers. The on-money receipts and other cash transactions are considered on the basis of the handwritten cash book which shows correct noting of all the cash transactions including on-money receipts. Once the entries are found in the handwritten cash book which is the actual noting and basis of cash transactions and therefore, irrespective of whether corresponding entries are found in another seized records or not, the handwritten cash book is rightly considered for quantifying the on- money receipt.

94. So far as the contention of the Ld. Counsel for the assessee that the buyers who had purchased the land / plots / shops in question have given affidavits which prove that they had not paid any on-money and therefore, the addition on account of on-money is not justifiable is concerned, he submitted that no buyer will admit to paying any on-money as it would expose them to tax consequences. Therefore, these third party affidavits have no value when confronted with overwhelming evidence of on-money payment being accepted. Further, Shri Rohit M Shah in his statement recorded u/s 132(4) of the Act had explained the nature of each entry recorded in the handwritten cash book even explaining the details as to where these cash books were kept and how he would go there each day to record the cash entries and tear away the rough slips. Although such statement was recorded subsequently, however, all these affidavits were afterthought. Relying on various decisions, he submitted that the Ld. CIT(A) is not justified in restricting the addition of on-money to 15% on flats / shops and 17% on plots / lands.

95. So far as the addition u/s 69A of the Act on account of V A/c is concerned, he submitted that on verification of data by the Assessing Officer from the DCB it was found that apart from the entries for on-money, there are further set of entries with narration V A/c. During the post search findings, these entries were classified under the loans. The Assessing Officer noted that in these entries with narration V A/c from the handwritten cash book, there was mention of short names of individuals / entities on debit as well as credit side. Although all these entries are recorded with specific names, however, the assessee failed to provide PAN and addresses of the parties and asked the department to provide the details. Since the assessee failed to explain the nature and purpose of inflow and outflow of funds which are marked with narration V A/c, the Assessing Officer treated these entries as unexplained money in the hands of the assessee and added u/s 69A r.w.s. 115BBE of the Act. However, the Ld. CIT(A) held that the Assessing Officer has considered only the receipt side of the entries under 'V A/c and has altogether ignored the entries noted on the payment side under 'V A/c' as also 'V Exp'. Considering the submissions of the assessee, he directed the Assessing Officer to make addition by applying the peak credit theory. He submitted that when the assessee failed to provide PANs and addresses of the parties although these entries are recorded with specific names, therefore, the Ld. CIT(A) erred in restricting addition pertaining to entries in 'V A/c' by applying the Peak Credit Theory and taking into account 'V Exp' when the assessee has not discharged its onus to prove the same by furnishing the details of the parties from whom loans were taken in cash. He submitted that the Ld. CIT(A) did not consider the fact that the benefit of peak credit was allowed to the assessee without establishing a verifiable nexus / chain showing circulation of the same funds. Therefore, the application of peak was rendered factually unverifiable and legally untenable. The Ld. CIT(A) should have sustained the entire addition. He submitted that the Assessing Officer in the instant case has already given the benefit of 'peak credit' to the assessee after due verification in respect of verifiable entries. However, the addition u/s 69A was made in respect of only the unverifiable entries as narrated by the Assessing Officer. He submitted that the Ld. CIT(A) has rejected the telescoping / set off for want of nexus between the alleged on-money and V A/c. However, at the same time, he erred in simultaneously allowing multiple quantification reliefs resulting in inconsistent relief without a common evidentiary foundation. He is not justified in accepting the explanation such as internal circulation / repayment / contra entries and application of peak theory which were either not raised or not substantiated before the Assessing Officer without calling for verification / remand report or establishing factual nexus.

96. So far as the addition u/s 69A on account of VR1 entries is concerned, he submitted that apart from the entries for on-money and entries with narration V A/c, there were other entries having narrations VR1, survey numbers, accommodation entries, stamp and other miscellaneous entries. These VR1 survey number, accommodation entries etc had payment side with almost matching amount. The Assessing Officer took these entries for computation of peak credit. However, the Ld. CIT(A) after giving detailed finding has upheld the addition made by the Assessing Officer and dismissed the appeal of the assessee. Therefore, the same should be upheld. He accordingly submitted that the addition made by the Assessing Officer on account of on-money, VR1 etc entries on the basis of peak credit u/s 69A and V A/c entries u/s 69A should be upheld and the grounds raised by the assessee be dismissed and the grounds raised by the Revenue be allowed. He also relied on the following decisions:

i) CIT vs. Hynoup Food & Oil Ind. (P) Ltd reported in 150 Taxman 194 (Guj)

ii) CIT vs. Sai Metal Works reported in 11 taxmann.com 61 (P&H)

iii) M.G. Pictures (Madras) Ltd. vs. ACIT reported in 263 ITR 83 (Mad)

iv) M.G. Pictures (Madras) Ltd. vs. ACIT reported in 373 ITR 39 (SC)

v) Pranam Foundations vs. ACIT reported in 313 ITR 286 (Mad)

vi) Gwalior Road Lines vs. CIT reported in 234 ITR 230 (MP)

vii) CIT vs. Vishwanath Sharma reported in 316 ITR 419

viii) CIT vs. Neelavathi reported in 322 ITR 643 (Kar)

ix) J.K. Panthaki & Co. vs. ITO reported in 246 CTR 59 (Kar)

97. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find a search and seizure action u/s 132 of the Act was carried out in the case of Viraj group of cases on 20.04.2023 during which the office of the assessee company along with residence of the directors were covered. Simultaneously the office premises at 3rd Floor, Abhyankar Tower, MG Road, Nashik and the office premises at Flat No.06 Anandvalli, Behind Petrol Pump, Near Makaloo Hotel, Gangapur Road, Nashik were also covered. During the search action various incriminating documents and digital evidences were found and seized from the business premises situated at 3rd Floor, Abhyankar Tower, MG Road, Nashik and at Flat No.06 Anandvalli, Behind Petrol Pump, Near Makaloo Hotel, Gangapur Road, Nashik. These documents, according to the Revenue, are unaccounted tally cash transactions carried out by the assessee group. It was found that the record of cash inflow and outflow was maintained in Handwritten Cash Book (HCB) in Gujarati vernacular language and similar records of cash transactions were maintained in a Tally software (in English) in external Hard Drive, under file names 'V89' and 'CON'. During the post search enquiries the incriminating documents, digital data maintained in software under the title V89 and CON and Pendrives were analyzed quantifying the transactions and categorizing them based on their nature as on-money, accommodation entries, cash loans, bank withdrawals and other receipts which were not part of the regular audited books of account. Accordingly, Digital Cash Book (DCB) was prepared during the post search proceedings incorporating the contents found and seized documents.

98. We find the Assessing Officer, on the basis of seized documents and the submissions of the assessee from time to time, made addition of Rs.19,25,26,021/- being on-money received by the assessee from sale of lands and plots in respect of 100 entries pertaining to the assessment year 2014-15 which are sold during the year and which remained to be offered to tax. Similarly, he added an amount of Rs.7,21,81,100/- in respect of on-money in case of 38 entries pertaining to the sale of

land/plot for which no details such as survey number etc were prepared by the assessee. The Assessing Officer further noted that, apart from the on-money receipts, there are another set of receipts side of entries out of 556 entries which comprises of accommodation entries, survey number payments, stamp, VR1, V A/c and miscellaneous. Applying the theory of peak credit, the Assessing Officer made addition of Rs.7,41,39,862/- u/s 69A of the Act. Apart from the above, the Assessing Officer, on the basis of entries with narration V A/c from the handwritten cash book, which mentions the short names of individuals/entities and contains both debit as well as credit side entries, made addition of Rs.31,01,47,793/- on the ground that the assessee failed to provide identity of the persons, PANs, complete names and addresses, nature and purpose.

99. We find in appeal the Ld. CIT(A) directed the Assessing Officer to restrict the addition on account of on-money to 17% as reasonable net profit in respect of sale of plot / land (Rs.19,25,26,021/- + Rs.7,21,81,100/-). In subsequent years where the Assessing Officer has made on-money addition on account of sale of flats / shops he directed the Assessing Officer to adopt 15% as reasonable net profit. In so far as the addition of Rs.7,41,39,862/- made by the Assessing Officer u/s 69A by applying peak theory is concerned, he sustained the addition. So far as the addition of Rs.31,01,47,793/- made by the Assessing Officer in respect of V A/c is concerned, he directed the Assessing Officer to restrict the same to Rs.24,24,01,500/- as per peak theory basis.

100. It is the submission of the Ld. Counsel for the assessee that the Handwritten Cash Book (HCB) is the only evidence on the basis of which various additions have been made. However, despite search and post search enquiries, there is no independent corroboration of any witness and there was no physical recovery of any cash or bullion or jewellery or any other valuable asset. Similarly, no registered sale documents were found disclosing the cash transactions. It is his submission that in certain cases, additions have been made by the Assessing Officer on account of receipt of on-money where the assessee is a buyer and not the seller as per registered sale deeds and therefore it is improbable that a buyer will receive on-money for buying flats / shops / land / plots etc. Further, the statements recorded by the Revenue u/s 131(1A) in respect of 24 persons categorically show that they have not paid any on-money. However, the order of the Assessing Officer as well as the Ld. CIT(A) is silent on this aspect. Therefore, no addition is called for. It is his submission that the Assessing Officer, despite of admitting that the Digital Cash Book (DCB) is a compendium of common pool and contains series of transactions both credit and debit has gone for segregation of the accounts instead of adopting a Unified Common Peak which is not justified. It is also his submission that the seized documents should be read as a whole and the Revenue cannot cherry pick the items which suit them and ignore the other items.

101. It is the submission of the Ld. CIT-DR that when the seized documents contain unaccounted on-money receipts, the entire on-money should have been added and the Ld. CIT(A) is not justified in restricting the same to 17% for land / plots and 15% for flats / shops. It is his submission that the Ld. CIT(A) out of the total amount of on-money has allowed up to 85% as expenses which essentially allows the assessee to deduct the same expenses twice i.e. once in the regular books and again as an estimation against the unaccounted cash income. According to him, the on-money is not merely separate turnover stream requiring further cost deduction. It is an incremental realization which unless proved otherwise represents incremental profit. Since the assessee in the instant case has not

discharged the onus cast on it, therefore, the entire amount should be added. It is also his submission that for claiming any expenditure as an allowable expenditure, the onus is always on the assessee to discharge the burden. However, the assessee in the instant case has not discharged that burden. Therefore, no expenditure out of such unaccounted money should be allowed.

102. So far as the order of the Ld. CIT(A) in granting relief by applying the Peak Credit Theory to V A/c is concerned, he submitted that the same is not at all justified since the assessee failed to explain the details appearing in the payment side of the HCB / DCB. So far as VR1 entries are concerned, he referred to the order of the Ld. CIT(A) and justified the same.

103. In the light of the findings of the Assessing Officer, order of the Ld. CIT(A) and arguments of both the sides as well as the detailed written synopsis filed, we proceed to decide the issue as under:

104. A perusal of the assessment order shows that the Assessing Officer in the instant case has explicitly admitted that the DCB is a compendium of common pool of movement of cash in the Viraj group. In para 9.4 of the assessment order the Assessing Officer categorically records that the digital cash book is a "compendium of common pool of movement of cash in the Viraj group". The relevant observations of the Assessing Officer at para 9.4 of the assessment order read as under:

> "9.4 The DCB has entries on both sides, receipts and expenditure. The entries in the handwritten cashbook were stated to be maintained since the year 2008 and contain transactions of debit and credit that are kept outside the regular books of account as has emerged during search. As discussed earlier, handwritten cashbooks are seized from FY 2012-13 onwards. As is evident from the discussion, DCB is a record of monetary transactions of all the entities of the Viraj Group. In a way, it can be regarded as a compendium of common pool of movement of cash in the Viraj group. It contains entries of cash for the group, as the names of companies and individuals are not identifiable in the cash book as to whom the on money receipts, or other receipts or for that matter the expenses recorded belong and therefore, it poses challenge to impute the income of a particular entity of Viraj Group."

(emphasis supplied by us)

105. Similarly we find at para 12.8 of the assessment order, the Assessing Officer has applied peak theory principle to 25,318 entries and in appeal the Ld. CIT(A) allowed peak credit for another 3,483 V A/c entries. However, he has treated some other entries from the exact same pages as isolated gross receipts to make the addition. In our opinion, once the cash enters a common cash pool it should not be physically separated. We therefore find merit in the submissions of the Ld. Counsel for the assessee that it is mathematically and logically impossible to maintain one common pool of cash to compute separate and fragmented peak and the Assessing Officer's own terminology mandates a unified consolidation.

106. A perusal of the reasons for reopening the assessment u/s 147 / 149(1)(b) for assessment years 2015-16 and 2017-18 shows that the Revenue, to assume jurisdiction over time barred years, has

treated the V expenses (payment side) entries as tangible assets (loans given) exceeding Rs.50 lakhs. We find the Assessing Officer in para 7.1 vide letter dated 02.09.2024 addressed to the assessee while supplying information / documents, copy of which is placed at page 7513 to 7523 at page 6 of his letter has mentioned as under:

> "7.1 The case of the assessee is covered under clause (b) of section 149(1) of the income Tax Act. 1961. The relevant portion of the said section is reproduced hereunder:
>
> (b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of-
>
> (i) an asset,
>
> (ii) expenditure in respect of a transaction or in relation to an event or occasion or
>
> (iii) an entry or entries in the books of account which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more Further, the explanation to section 149(1)(b) is reproduced as follows:
>
> Explanation-For the purposes of clause (b) of this subsection, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.
>
> Thus the definition of 'asset as mentioned in explanation to section 149(1)(b) is inclusive in nature and on-money and other receipts received in cash is also represented by cash in hand which falls under the category of 'asset'.
>
> Further as per the cash loans, it is seen that there are entries of loan taken as well as given. The loan falls in the categories of the 'asset'.
>
> Also, the accommodation entries are in the form of cheque received and cash given or vice-versa. As the cheque entries are related to books of accounts, these are fall under the category of 'an entry or entries in the books of account'."
>
> (emphasis supplied)

107. Therefore, we find force in the argument of the Ld. Counsel for the assessee that once having secured the legal jurisdiction to reopen the assessment entirely on the premise that these payment side entries are real, verifiable cash outflows, the Revenue in our opinion is legally estopped from claiming that these payments are unverifiable or fictitious during the computation phase to deny the set off against the receipts. The Revenue, in our opinion, cannot approbate and reprobate.

108. We find the Assessing Officer segregated the alleged on-money entries to tax them on a gross basis assuming that they were unrecorded receipts from third party buyers of land / flats. However, during post search enquiries the officers of the department have examined the following 24 persons as submitted by the Ld. Counsel for the assessee in the paper book who have categorically denied to have made any payment of on-money, the details of which are as under:

109. However, we find the orders of the Assessing Officer as well as the Ld. CIT(A) are silent on this aspect. We therefore find merit in the argument of the Ld. Counsel for the assessee that once the probe conducted by the Revenue proved that these persons / parties did not pay any cash or any on-money, the receipts legally cannot be classified as external business on-money. Consequently, they default to the exact same legal status as the V A/c entries i.e. the assessee's own unexplained funds. Since both are the assessee's own money rotating in the same book, therefore, they must be merged into the same peak.

110. A perusal of the assessment order shows that huge amounts have been added by the Assessing Officer on the basis of seized documents that the assessee has received huge on-money on account of sale of plots / land / flats / shops. However, a perusal of the assessment order nowhere shows that there is any corroborating evidence of actual cash changing hands. We find the Hon'ble Bombay High Court in the case of CIT vs. Lavanya Land Pvt Ltd (supra) has held that addition on the basis of mere seized entries without corroboration of actual cash changing hands are invalid. The Hon'ble High Court while dismissing the appeal filed by the Revenue at para 21 of the order has observed as under:

> "21. Thereafter, in paragraph 20, the Tribunal considered the merits and once again, at great length. The particular argument revolving around the statement of Dilip Dherai and his answer to question No. 24 was also considered in paragraph 21 of the impugned order. Then, in paragraph 22, the Tribunal refers to the additions made under Section 69C. After reproducing Section 69C and adverting to the fact that Dilip Dherai has retracted his statement, the Tribunal arrived at the conclusion that merely on the strength of the alleged admission in the statement of Dilip Dherai, the additions could not have been made. The concurrent findings of fact would demonstrate that the essential ingredients of Section 69C of the IT Act enabling the additions were not satisfied. This is not a case of 'no explanation'. Rather, the Tribunal concluded that the allegations made by the authorities are not supported by actual cash passing hands. The entire decision is based on the seized documents and no material has been referred which would conclusively show that huge amounts revealed from the seized documents are transferred from one side to another. In that regard, the Tribunal found that the Revenue did not bring on record a single statement of the vendors of the land in different villages. None of the sellers has been examined to substantiate the claim of the Revenue that extra cash has actually changed hands. It is in these circumstances that the Tribunal found that on both counts, namely, the legal issue, as also merits, the additions cannot be sustained. Eventually, the Tribunal held in paragraph 25 (page 188) as under:

"25. A perusal of the balance sheet of the assessee show that the authorized, issued and subscribed paid up capital is at Rs. One lakh and the assessee had not done any business during the year under consideration. With such a small corpus and no business activity, nor any has been brought on record by the Revenue, it is not acceptable that the company may have incurred such huge expenditure outside its books of account. Further in his entire assessment order, the AO himself has pointed out time and again different persons, who are alleged, to have made cash payments. Even on that count, the additions cannot be sustained in the hands of the assessee. In our considerate view, there being no evidence to support the Revenue's case that a huge figure, whatever be its quantum, over and above the figure booked in the records and accounts changed hands between the parties, no addition could therefore be made u/s. 69C of the Act to the income of the assessee. Considering the entire facts brought on record, we have no hesitation to hold that even on merits, no addition could be sustained.

22. We do not think that this case is any different from the one considered by the Division Bench in the case of M/s. Arpit Land Pvt. Ltd. and M/s. Ambit Reality Pvt. Ltd. The Assessment Year in the case of M/s. Arpit Land Pvt. Ltd. was 2008- 09 and in the case of M/s. Ambit Reality Pvt. Ltd., it was 2007-08. The controversy was identical. The Division Bench, having concluded that no substantial question of law arises for consideration in the Appeals by the Revenue in the case of identical land transactions of two assessees involved in Income Tax Appeal Nos. 83 of 2014 and 150 of 2014, then, a different conclusion is not possible. We do not think that the shift in the stand of the Revenue carries its case any further. We are of the opinion that the Revenue has rightly been faulted for its approach by the Tribunal. The above are pure findings of fact and consistent with the material placed on record. Thus, the jurisdiction and vesting in the Assessing Officer could have been exercised and the satisfaction in that regard was enough, are not matters which can be decided in the further appellate jurisdiction of this Court. It is not possible for us to reappraise and reappreciate the factual findings. The finding that Section 153C was not attracted and its invocation was bad in law is not based just on an interpretation of Section 153C but after holding that the ingredients of the same were not satisfied in the present case. That is an exercise carried out by the Tribunal as a last fact finding authority. Therefore, the finding is a mixed one. There is no substantial question of law arising from such an order and which alternatively considers the merits of the case as well."

111. We find in the present case no evidence has been brought on record by the Revenue to prove that huge amount of cash has changed hands. Although the Revenue examined 24 persons as mentioned above u/s 131(1A), however, none of them have stated to have paid any such cash to the assessee. We, therefore, find merit in the arguments of the Ld. Counsel for the assessee that the classification of these entries by the Assessing Officer as third party on-money is not justified and has to be treated as the assessee's rotating cash within the same common pool ledger and therefore, should be consolidated into a unified common peak.

112. We further find the Ld. CIT(A) at para 23.9 of his order has given a finding that the entries are in the nature of frequent receipts and payments indicating the rotation of funds and therefore, principle of peak theory is applicable. The relevant observations of the Ld. CIT(A) at para 23.9 of the order read as under:

> "23.9 The only contention of the appellant remain here is that the AO has considered only the receipt side of the entries under V a/c and has altogether ignored the entries noted on the payment side under 'V a/c' as also 'V Exp' and further contended that since the AO has treated and considered these entries as appellant own money as unexplained money, peak credit theory be applied for making addition and tax accordingly. I have duly considered this contention of the appellant and I am inclined to accept the same. I have gone through the seized records as also excel format DCB and I find that entries under head V a/c.' are seen both in receipts as well as payment side and further entries are noted under 'V Exp' on payment side and these entries are altogether ignored by the AO while making addition in the hands of the appellant. On one hand, the AO has treated and considered these noting / entries as appellant own money for want of details of PAN, address, etc. of the parties stated therein and on the other hand, has only considered the receipt side of the noting / entries, which is not correct and contrary to the stand taken by the AO in respect of third category of entries as stated hereinabove for which the AO has made addition on peak credit basis. The entries under heading 'V a/c.' on both receipts and payments appears to be cash loan transactions, however, the onus lies on the appellant to prove the same by furnishing details of the parties from whom loans are taken in cash, if any, by giving their complete details, which the appellant has failed to provide and even the seized records do not contain any further records of these parties whose only names are mentioned in the seized records Hence, the AO has correctly held these as appellant 'own money'. However, the fact remains that these entries are found both on receipt and payment side and also includes entries on payment side under head 'V Exp', which also relate to the entries under 'V a/c'. Hence, I am of the view that once these entries are treated and considered as appellant own money for making addition, it is relevant to consider both the receipt and payment side Since these entries are in nature of loan entries and has been rightly considered by the AO as "own money and the entries are in the nature of frequent receipts and payments indicating rotation of funds, principle of peak theory is applicable in this case. The computation of undisclosed income on the basis of peak credit theory has been accepted by various courts and tribunals. In the case of Om Prakash Agrawal Vs. ACIT (ITA Nos. 721 to 726/JP/2015 dated 24/11/2016, the Hon'ble Jaipur ITAT has observed as under on the issue of peak credit principle "The basic idea behind the peak credit theory is to avoid double addition and to bring only the actual income of the assessee to suffer tax, where there are a large number of unexplained credit and debit entries. It is well established law in this regard that where the debit and credit both are unexplained the credit and debit entries have to be set off against each other to the extent possible and only the peak of credit (negative or positive) can be considered as undisclosed."

(emphasis supplied by us)

113. Even the Assessing Officer at para 13.1 of the order has also accepted the doctrine of common pool and granted peak credit to the vast majority of entries (25,318) acknowledging them as running account. The relevant observations of the Assessing Officer read as under:

> "13.1 The submissions are perused and the entries having narrations VRI are also checked on sample test check basis from the handwritten cash book, and it is found that the entries are contra in nature as the money receipts and payments are moving within the group on regular basis. Similar is the case with survey no payments. Assessee has also submitted correlation between the credit and debit entries. Accordingly, VR1, survey no. payments accommodations entries, Stamp, and other misc entries are taken for computation of peak credit excluding entries of on money receipts and unexplained receipts (V a/c). The peak is worked out at Rs.7,41,59,862/-. The working of the peak is kept on record and the same is added to the returned income as unexplained money u/s 69A r.w.s. 115BBE of the Act. Penalty u/s 271(1)(c) of the Act is hereby initiated for furnishing of inaccurate particulars of Rs.7,41,59,862/-."

114. Since the Revenue in the instant case has not challenged the finding of the Ld. CIT(A) that these funds are the assessee's own funds rotating in a cycle and the Assessing Officer has explicitly accepted that the seized documents constitute a single, common cash book and has granted peak credit for the vast majority of the entries (approximately 97%), therefore, we find merit in the arguments of the Ld. Counsel for the assessee that taxing the gross receipts out of accepted common pool is not correct and violates the doctrine of real income. The only possible theory to tax the real income in our opinion is to go for peak theory.

115. We further find the Revenue as per ground of appeal No.15 has relied on the decision of the Hon'ble Kerala High Court in the case of K.P. Abdul Majeed reported in 414 ITR 531 (Ker). We find the Revenue has relied on this decision to argue that since the assessee failed to provide the PANs, addresses and identities of the parties in V A/c entries, transactions are unverifiable and therefore the gross receipts must be taxed u/s 69A without the benefit of peak credit. However, a perusal of the decision shows that the Hon'ble High Court while dealing with an identical issue has explicitly held that even in total absence of third party details or destination addresses, the incremental peak credit is legally correct method of addition. The Hon'ble High Court upheld the decision of the Tribunal to consolidate all ledgers / accounts into one unified peak rather than treating them separately. The relevant observations of the Hon'ble High Court read as under:

> "14. The question of law raised by the assessee is as to whether the credit found in the Bank account could be taken as undisclosed investment or cash credit especially when the books of accounts referred to in Section 68,69 and 69A are that of the assessee. Here there was absolutely no books of accounts maintained by the assessee; admittedly. In fact, we revisit the fact that when notice was issued to the assessee, he refused to file a return. Despite the overwhelming evidence unearthed regarding the

inextricable link the assessee had with the various accounts maintained in the name of bogus partnership firms, the assessee refused to acknowledge the same. The assessee maintained a stoic silence insofar as the source of the amounts deposited in the accounts as also the destination of the said amounts. It is in such circumstances, the Tribunal accepted the addition made on the basis of the peak credit in the subject years.

15. The Tribunal found that the assessee had failed to discharge the initial burden of proof as required under Section 68, 69 and 69A and hence the addition made in the name of the assessee under the above provision was justified. The peak credit as determined in the subject year represented the funds available with the assessee; was the finding of the Tribunal. The Tribunal also held that the deduction could have been made for an outgoing in the form of expenses and investments and the balance amounts should be considered as funds available in the hands of the assessee as income taxable under the Act. We cannot but observe that since there is no explanation offered as to the source or destination of the amounts which came into the bank account there is no illegality in making addition of the peak credit. Of course the same has to be confined to the peak credit in the respective years and not on each of the accounts. This is the only concession possible on the assertion of the Department that the deposits were for money laundering. The destination of the amounts which were deposited and later withdrawn having not been disclosed or substantiated; it is not reasonable to assume that the entire amounts would have been disbursed, with only the commission appropriated. Virtue among thieves is an adage which cannot be imported, as a principle, to statutory assessment of income to tax.

16. Money laundering can also be for oneself and there can be no presumption that it is for others, especially when the assessee refuses to divulge the details of the persons to whom the money was distributed. When the assessee contested the proceedings with a stout denial and nothing more; the various accounts being found to have been opened and operated on behalf of the assessee, the entire deposits therein has to be treated as his income. One Assessing Officer for a solitary Assessment Year did just that. However, the Department having not filed an appeal from the order reversing it and maintaining that at incremental peak credit; we would not interfere. In the other years the Assessing Officer himself adopted the peak credit in each year, which again was modified to incremental peak credit. Despite our above observations, we find no way in the present appeal to import these principles into the assessment impugned. Nor is it warranted in an appeal under Section 260A filed by the assessee. But we find the adoption of incremental peak credit as income to be quite a plausible view, presuming at least that, to be the income of the assessee.

17. The assessee cannot dissociate himself from the various accounts in view of the overwhelming evidence unearthed by the Department connecting him to the various accounts maintained in the Centurion Bank, Kozhikode Branch and the depositions

> of the various witnesses summoned. Despite the fact that the Enforcement Directorate had found the assessee to be a hawala operator or money launderer, we find the assessment under sections 68, 69 and 69A of the incremental peak credit of the respective years, in the subject assessment years, taken from all the accounts to be perfectly in order. There can be a reasonable assumption that the incremental credit would be the income of the assessee, the remittances being found in favour of the assessee and the disbursal not having been proved or even admitted."

116. A perusal of the above finding of Hon'ble High Court in fact supports the case of the assessee for applying peak theory.

117. We further find the Assessing Officer in the instant case has attempted to artificially segregate the DCB into different silos i.e. on-money, V A/c, VR1 etc and granted peak to one silo and taxed the others on gross basis. Once the Assessing Officer established in para 9.4 of the order that DCB represents a "common pool of movement of cash" the Assessing Officer has considered the expenses a single unified cash chest. We find merit in the argument of the Ld. Counsel for the assessee that it is physically and logically impossible for the assessee to pay an unrecorded V Exp strictly out of a V A/c receipt while keeping an on-money receipt quarantined in the corner of the same safe. Any outflow from a common pool is funded by the aggregate liquidity of that pool. Therefore, segregating entries by narration to deny peak credit in our opinion is not justified.

118. A perusal of the assessment order shows that despite the Assessing Officer's own observation in para 9.4 that the Digital Cash Book (DCB) did not specify entity names and posed a challenge to impute the income of a particular entity, still the Assessing Officer made a conscious and substantive decision to assess both the vast majority of the peak entries (25,318) and the entire V A/c and on-money on gross addition basis in the hands of the flagship company Viraj Estates Pvt Ltd. The Assessing Officer consciously chose not to assess these amounts in the hands of the individual directors or other sister concerns. The explicit statutory language of section 69A mandates that an addition can only be made if the assessee is found to be the owner of the money. By invoking section 69A to tax the V A/c and on- money entries in the hands of Viraj Estates Pvt Ltd, the Revenue has issued a binding statutory declaration that Viraj Estates Pvt Ltd is the absolute owner of this entire common pool of funds. We therefore find merit in the arguments of the Ld. Counsel for the assessee that the Revenue cannot claim Viraj Estates Pvt Ltd as the owner of funds for the purpose of taxing receipts but claim the funds belong to someone else or a different entity / director to deny the corresponding payment set offs in the unified peak.

119. We find the Hon'ble Supreme Court in the case of CIT vs. Excel Industries Ltd reported in 358 ITR 295 (SC) and in the case of Radhasoami Satsang vs. CIT reported in 193 ITR 321 (SC) has held that the Revenue is bound by the doctrine of consistency. The department cannot "blow hot and cold." We further find merit in the argument of the Ld. Counsel for the assessee that having pierced the group's structure to consolidate the gross liabilities of the entire unrecorded cash pool into the flagship company, the Revenue is legally estopped from fragmenting the computational benefits (the Unified Peak) among different entities or directors. Further, a single physical cash box (the DCB) cannot have its rotational peak assessed in one entity while its gross deposits are assessed in another

since the Assessing Officer assumed jurisdiction over the entirety of the DCB's rotational cash in the hands of Viraj Estates Pvt. Ltd. Therefore, the Unified Common Peak must legally crystallize entirely in the hands of this specific assessee.

120. We further find the HCB / DCB is not a series of disconnected transactions but it is a single chronological record containing 25,541 entries. The Assessing Officer has already accepted peak credit treatment for 25,318 entries which in substance means that the Revenue has acknowledged the rotational nature of the document for almost the entire set of entries. Once that factual position is accepted, the remaining entries in our opinion cannot be artificially carved out and treated on a different footing merely to inflate the addition. The Revenue in our opinion cannot rely on the payment side of the same document to treat certain entries as loans, advances, or reopening material and then deny the very same payment entries when the assessee seeks corresponding set-off for peak computation. In our opinion, if the document is treated as reliable enough to justify reopening and addition, it must also be treated as reliable for giving full credit to the circulating outflows recorded in the same document. The Revenue cannot call an entry a "Verifiable Asset" for the purpose of getting jurisdiction u/s 149, and then call the same entry "Unverifiable Fiction" when the Assessee asks for a peak set-off.

121. A perusal of the assessment order shows that the Assessing Officer has made certain additions on the ground that the assessee has received on-money in 14 specific instances. However, the Ld. Counsel for the assessee has filed the following details with evidence to substantiate that the assessee has not sold the property but in fact has purchased the properties i.e. it is a buyer:

122. We find force in the arguments of the Ld. Counsel for the assessee that it is legally and logically impossible to purchase and receive premium from himself. Since this is a registered public record, the order of the Assessing Officer to make addition on the ground that the assessee has paid on-money for sale of land is not correct.

123. Similarly we find additions have been made on account of on-money received by the assessee for properties sold whereas the Ld. Counsel for the assessee filed the following details with evidence to substantiate that the assessee is not the owner of the following properties:

124. We further find although the Assessing Officer in the instant case has made certain additions on the ground that the assessee has received on-money on certain transactions which are not recorded in the books of account, however, the Ld. Counsel for the assessee filed the following details which are the entries in HCB to substantiate that no corresponding transactions in official registration records has taken place for the period under consideration:

125. We further find from the details filed by the assessee that in case of the following list of property entries in HCB, where the buyer name does not match with the registration details:

126. Similarly, while explaining the individual cases the Ld. Counsel for the assessee filed the following details to substantiate that the following properties have been treated as sold on which on-money has been received whereas infact these are the properties purchased by them as buyer

and they are not the sellers:

127. The Ld. Counsel for the assessee filed the following details to substantiate that in case of the following properties the entries of which are found in HCB, the buyer name does not match with the registration details:

128. He also filed the following list of entries in the HCB to substantiate that no corresponding transactions has taken place in the official registration records for the period under consideration:

129. He also filed the following details with evidence to show that the list of entries in HCB where the assessee is not the owner:

130. In view of the above and in the light of our discussion in the preceding paragraphs and following the legal principles regarding the rotation of funds, we find no justification for the artificial segregation of entries emanating from the singular seized cash books i.e. HCB / DCB. The only scientific method to be applied in such a situation is to apply the theory of peak credit. Therefore, the additions sustained on gross basis by the Assessing Officer which have been partially sustained on estimate basis by the Ld. CIT(A) @ 17% for plots / lands and 15% for flats and shops for different years are directed to be deleted. Similarly, the addition made by the Assessing Officer u/s 69A which have been partly sustained by the Ld. CIT(A) is also directed to be deleted. The Assessing Officer is directed to recompute the income strictly by applying the unified peak credit method as directed below:

> 1) The Assessing Officer shall prepare a single unified and chronologically sequenced cash ledger incorporating all the entries found in the seized DCB / HCB for the year under consideration. This single ledger must amalgamate all the entries previously adopted by the Assessing Officer for peak computation together with the remaining entries specifically including the 'V A/c' and 'V Exp' entries, the unidentified entries and all alleged on-money receipt and payment entries relating to plots, lands, flats and shops. No entry shall be excluded or maintained in a separate pool.
>
> 2) The unified common peak must legally crystalize entirely in the hands of the present assessee which according to the Revenue is the flagship company. No separate addition on the basis of the entries found in the DCB / HCB is to be made in the hands of any of the entities / individuals of the Viraj group and the entire peak addition is to be made in the hands of the present assessee i.e. Viraj Estates (P) Ltd.
>
> 3) Since the seized HCB is a continuous record containing entries prior to the assessment years in question, therefore, the Assessing Officer is directed to compute the peak balance as on the last date of assessment year 2013-14. This closing peak of assessment year 2013-14 shall be brought forward and applied as opening peak balance for the computation of peak for assessment year 2014-15.

4) The Assessing Officer shall calculate the running daily cash balance by using the single consolidated ledger. The peak credit for any given assessment year shall be the highest unexplained possible balance reached during the specific financial year.

5) To prevent double taxation of the same rotating funds, the Assessing Officer shall tax only the incremental peak of that particular year.

6) Since all entries are now directed to be subsumed within the unified peak computation, the Assessing Officer is explicitly directed to delete all separate additions made u/s 69A regarding the 'V A/c' entries as well as all additions made on gross basis which has been estimated by the Ld. CIT(A) at 17% for plots and land and 15% for flats / shops on alleged on-

money receipt. The separate peak computed by the Assessing Officer/the Ld. CIT(A) is directed to be deleted in view of the unified peak theory discussed above.

131. Accordingly, the Assessing Officer shall compute the peak credit for every year in the manner in which he has already calculated the peak himself for about 97% of the entries. Needless to say the Assessing Officer shall give due opportunity of being heard to the assessee while computing the peak for each year. The grounds raised by the assessee are accordingly partly allowed for statistical purposes and the grounds raised by the Revenue are dismissed.

132. Identical grounds have been raised by the assessee in the remaining appeals. Accordingly, all the appeals filed by the assessee are partly allowed for statistical purposes and all the appeals filed by the Revenue are dismissed.

133. In the result, all the appeals filed by the assessee are partly allowed for statistical purposes and all the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on 27th May, 2026.

Sd/-	Sd/-
(VINAY BHAMORE)	(R. K. PANDA)
JUDICIAL MEMBER	VICE PRESIDENT

Pune; Dated : 27 May, 2026
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GCVSR

Gajjala Chinna Venkata Subba Reddy

Digitally signed by Gajjala Chinna Venkata Subba Reddy
Date: 2026.05.27 18:37:39 +05'30'

/Copy of the Order is forwarded to:

1. / The Appellant;

2. / The Respondent

3. The concerned Pr.CIT, Pune

4. DR, ITAT, 'B' Bench, Pune

5. / Guard file.

/ BY ORDER, // True Copy // Assistant Registrar , / ITAT, Pune S.No. Details Date Initials Designation 1 Draft dictated on 11.05.2026 Sr. PS/PS 2 Draft placed before author Sr. PS/PS Draft proposed & placed before the 3 JM/AM Second Member Draft discussed/approved by Second 4 AM/AM Member 5 Approved Draft comes to the Sr. PS/PS Sr. PS/PS 6 Kept for pronouncement on Sr. PS/PS 7 Date of uploading of Order Sr. PS/PS 8 File sent to Bench Clerk Sr. PS/PS Date on which the file goes to the Office Superintendent 10 Date on which file goes to the A.R. 11 Date of Dispatch of order