आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी', अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

समक्ष श्री एन.एस.सैनी, लेखा सदस्य **एवं** श्री कुल भारत, न्यायिक सदस्य ।

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER And SHRI KUL BHARAT, JUDICIAL MEMBER

Sl. No(s)	IT(ss)A No(s) Nos.	Block Period	Appeal(s) by Appellant vs. Respondent	
			Appellant	Respondent
1.	314/Ahd/2002	AY 1990-91 to AY 1999-2000 and period upto 29/10/1999	The Dy.CIT Central Circle-I, Surat (Revenue)	M/s.Ohm Developers C/o.Asutosh P.Nanavaty, Nanavaty & Associates A/18, 3rd Floor Narayan Chambers Ashram Road Ahmedabad-380009 PAN: AAAFO4652 Q (Assessee)
2.	320/Ahd/2002	-do-	M/s.Ohm Developers	Revenue
3.	321/Ahd/2002	-do-	M/s. Organisers Kadwa Patidar Wadi, Sardar Bridge Adajan Road,Surat PAN:AAFO 5736 D	Revenue

Revenue by :	Shri T.P.Krishnakumar, CIT-DR
Assessee by :	Ms.Urvashi Shodhan with Shri A.P.Nanavaty, ARs

सुनवाई की तारीख / **Date of Hearing**	10/04/2015
घोषणा की तारीख /**Date of Pronouncement**	08/05/2015

आदेश / O R D E R

PER SHRI KUL BHARAT, JUDICIAL MEMBER :

This bunch of three appeals; one appeal by the Revenue and the other two appeals by different Assessees have been filed pertaining to block assessment period AYs 1990-91 to 1999-2000 and upto 29/10/1999. Since common issues and facts are involved in these appeals, (arising out of separate two orders passed by the ld.CIT(A)-II, Ahmedabad both dated 24/09/2002), these were heard together and are being disposed of by way of this consolidated order for the sake of convenience.

2. This is second round of litigation. In the earlier round, both the Revenue and the Assessee had filed against had filed against two separate orders of the Tribunal dated 17/10/2008 (in Revenue's appeal) & 12/11/2003 (in Assessee's appeals) in IT(ss)A No.314/Ahd/2002 and IT(ss)A Nos.320 & 321/Ahd/2002 respectively appeals before the Hon'ble Gujarat High Court registered at Tax Appeal Nos.214 of 2004, 215 of 2004 and 692 of 2009. The Hon'ble Juirisdictional Gujarat High Court was pleased to quash and set aside the orders and remitted the appeals before this Tribunal vide oral judgement dated 12/08/2014 for decision afresh in accordance with law. In respect of the appeals of the

assessee, the Registry of this Tribunal reconstructed the file and fixed for hearing the appeals accordingly. However, in respect of the Revenue's appeal in IT(ss)A No.314/Ahd/2002, the original file was placed before this Tribunal.

3. In Revenue's appeal, i.e.(IT(ss)A No.314/Ahd/2012), the Revenue has raised the following grounds of appeal:-

> *1. On the facts and in the circumstances of the case and in law, the learned CIT(A), Ahmedabad has erred in reducing the undisclosed income worked out at Rs.3,08,01,600/-, as per the seized materials and as admitted by the working partner of the assessee firm, Shri Sunil H. Desai, to Rs.2,29,20,847/-.*
>
> *2. On the facts and circumstances of the case and in law, the learned CIT(A) ought to have upheld the order of the AO.*
>
> *3. It is, therefore, prayed that the order of the CIT(A) be set aside and that of the AO be restored to the above extent.*

3.1 In Assessees' appeals; i.e. IT(SS)A Nos.320 & 321/Ahd/2002 for block period AYs 1990-91 to 1999-2000 upto 29.10.1999, the Assessees have raised the following grounds of appeals in its respective appeals:-

(a) <u>IT(SS)A No.320/Ahd/2002 (in the case of M/s.Ohm Developers)</u>

> *1) The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the addition to the tune of Rs.2,18,34,648/- on account of profit alleged to have been earned by the appellant firm from construction and sale of flats at Chandan Park Apartments, City Light Road, Surat.*

2) The learned Commissioner of Income Tax (Appeals) erred in law and on facts in upholding the time barred assessment order passed by the learned Assessing Officer.

3) It is, therefore, prayed that the above addition be deleted and the time barred order be quashed as invalid and void ab-initio.

4) The appellant prays for granting such other relief as may be deemed just and proper by your Honours considering the factual and legal aspects of the case of the appellant.

5) The Appellant craves leave to add, amend, alter, delete, substitute or modify any or all of the Grounds of Grounds of Appeal.

(b) IT(SS)A No.321/Ahd/2002 (in the case of M/s.Ohm Organizers)

1) The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the addition to the tune of Rs.1,65,89,696/- on account of profit alleged to have been earned by the appellant firm from construction and sale of flats/shops at Yogi Complex Apartments, New Rander Road, Surat.

2) The learned Commissioner of Income Tax (Appeals) erred in law and on facts in upholding the time barred assessment order passed by the learned Assessing Officer.

3) It is, therefore, prayed that the above addition be deleted and the time barred order be quashed as invalid and void ab-initio.

4) The appellant prays for granting such other relief as may be deemed just and proper by your Honours considering the factual and legal aspects of the case of the appellant.

5) The Appellant craves leave to add, amend, alter, delete, substitute or modify any or all of the Grounds of Grounds of Appeal.

3.2. Brief facts upto the stage of the ld.CIT(A) as recorded in the impugned appellate order in the case of M/s.Ohm Developers are reproduced hereunder:-

"03. Brief facts of the case are that the appellant firm is engaged in the business of construction activities. A search under section 132 of the Act took place on 29.10.1999 at the business and residential premises of the appellant which was concluded on 03.11.1999.

The appellant filed a return disclosing undisclosed income of Rs.10,86,199/- on 17.02.2000 in response to notice under section 158 BC of the Act. The appellant constructed a residential complex namely Chandan Park, City Light Road, Surat during the period relevant to block assessment. The appellant received 'on money' of Rs.5,39,63,889/- which was detected during the search through an independent and exclusive evidence. The receipt of 'on money' and income of Rs.3,08,01,600/- was admitted by the working partner during a statement on oath under section 132(4) of the Act. However, the appellant retracted from the statement on oath and truth of the seized material while declaring undisclosed income of Rs.10,86,199/- only through the block return. The glaring phenomenon of the appellant's case is that no return of income was ever filed though business of construction was being carried on since financial year 1996-97. During the post search period the appellant has shifted a stand that income is disclosed on accrual basis.

05. The main issue is regarding receipt of 'on money' which has been accepted by the appellant. Annexures B-2/25 and B-2/26 seized from the site office of M/s.Chandan Park at City Light, Surat are actual

ledger of the flat holders which contain the details of payments received upto 31.03.1999. Annexure B-2/26 reflects the receipt of payments from 01.04.99 to the date of search. Shri Ketan O.Der admitted in a statement on oath that the total sale consideration of flats in Chandan Park is Rs.7,88,02,178/- which included both 'on money' and official price where as the document price is at Rs.2,48,38,289/- only, thus difference of both at Rs.5,39,63,889/- is the 'on money'. Shri Ketan O. Der identified the flat holders and accepted the veracity of details contained in the said documents.

3.3. The ld.CIT(A) had partly allowed the appeal of the assessee. While partly allowing the appeal, the ld.CIT(A) directed the AO to adopt the Net Profit at Rs.2,29,20,847/- and after allowing the benefit of undisclosed income of Rs.10,86,199/- in the block returns, take the total undisclosed income at Rs.2,18,34,648/- and accordingly charge tax. Now, both the Revenue and the Assessee are in appeals before us.

4. In Assessee's appeal the issues to be decided are whether the definitions of transfer as embodied in section 2(47) and section 269UA(f) of the Act would be applicable or not and what should be the correct year of taxing the receipt of 'on money' and recorded consideration. However, the only effective ground in the Revenue's appeal is against reducing the undisclosed income. The ld.CIT-DR submitted that the ld.CIT(A) is not justified in reducing the addition. He submitted that the AO has observed that the assessee had received 'on money' of Rs.5,39,63,889/-. Working partner of the assessee-firm accepted the

receipt of this 'on money' and admitted income during the course of search of Rs.3,08,01,600/-. However, against this undisclosed income, the assessee had filed only undisclosed income of Rs.10,86,199/-, mainly on the basis that the sale-deed or possession was not handed over to the flat owners till the date of search in all cases. He submitted that on the basis of the seized material and the statement of the partner on the said seized paper, the undisclosed income was determined at Rs.3,08,01,600/-. The ld.CIT-DR submitted that in earlier round of litigation, this Tribunal had held that in view of section 2(47) of the Act, effective transfer is taken place and the assessee has received the net profit of Rs.2,29,20,849/-. He placed reliance on the assessment order.

4.1. On the contrary, ld.Sr.counsel for the assessee submitted that the controversy in all these appeals is with regard to the fact whether the sale consideration received by the assessee can be subjected to tax in the year under appeal and/or otherwise same is to be taxed as declared by the assessee on the basis of registration of the sale-deed. He submitted that there is no dispute with regard to the fact that the assessee has declared 'on money' more than the 'on money' declared during the course of search. He submitted that there is no dispute with regard to the fact that the assessee is engaged in the business of purchase of land and construction, therefore the flats are shown as stock-in-trade. He

submitted that the assessee has treated the flats as stock-in-trade and not as capital asset, therefore the provisions of section 2(47) of the Act would not be applicable in the case of the assessee. He submitted that the issue is squarely covered in favour of the assessee by the decision of Coordinate Bench (ITAT "D" Bench Ahmedabad) in the case of ITO vs. Shri Siddharth S.Patel passed in ITA Nos.1852 & 1853/Ahd/2003 for AYs 1997-98 & 1998-99, dated 23/04/2010. The ld.Sr.counsel for the assessee also placed on record the Chart showing the total area sold, recorded consideration received, 'on money' received and total sale consideration received. He pointed out that as per this Chart, the assessee has declared upto 29/10/1999 sales of 32,050 sq.ft., official consideration received is Rs.44,87,102/-, 'on money' consideration of Rs.99,01,675/- and total consideration of Rs.1,39,88,777/-. In respect of AY 2000-01 total sq.ft. area sold is 33,715 and recorded sale consideration amount of Rs.49,65,000/-, 'on money' consideration is Rs.94,17,237/- and total consideration is of Rs.1,43,82,237/-. Similarly, for AYs 2001-02, 2002-03, 2003-04, 2004-05 & 2006-07 the entire receipts received by the assessee both recorded in the books of accounts and 'on money' has been offered for tax. He submitted that the only controversy is whether the receipts so offered for taxation is to be offered during the block period or the same has to be spread as per the sale-deed executed. He submitted that the Hon'ble Gujarat High Court in the case

of CIT vs. Ashaland Corporation reported at 133 ITR 55(Guj.) has held that unless the title of the assessee was extinguished, the title of the purchaser could not arise. Both could not be the exclusive owners of the same property at the same time. So long as the assessee continued to be the owner, it could not be said that his title was divested and that the sale had resulted in any profit to him. He submitted that the Hon'ble Gujarat High Court in the case of CIT vs. Motilal C.Patel & Co. reported at 173 ITR 666(Guj.) has held that the only right which the agreement for sale conferred was the right to obtain another document, namely, the sale deed. He submitted that the Hon'ble High Court further held that it was only on the completion of the sale that the amounts which the assessee had received in Samvat year 2027 and the balance of the sale price which it had received in Samvat year 2028 became the profit of the assessee. He submitted that in the case in hand the facts are identical, therefore in the light of the ratio laid down in the decision of the Coordinate Bench in ITA Nos.1852 & 1853/Ahd/2003 and in the judgement of Hon'ble Gujarat High Court in the case(s) of CIT vs. Ashaland Corporation(surpa) and CIT vs. Motilal C.Patel & Co.(supra), the ld.CIT(A) was not justified in taking the undisclosed income at Rs.2,18,34,648/-.

5. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the ld.CIT(A) has decided this issue as under:-

> *"10. I have carefully considered the submissions made by the appellant and also gone into the merits of addition on account of undisclosed income. The appellant has totally retracted from the statement recorded on oath during search regard the profit from construction business and taken an altogether different stand that income in the block return has been shown as per the actual sale of flats based on execution of sale deed. However, in the face of plethora of seized documents containing minute details of income and expenditure, the appellant cannot get away so easily. The Assessing Officer has worked out net profit at Rs.2,61,78,438/- at page 28 of the assessment order. Shri Sunil Desai, partner admitted estimated profit from Rs.2,08,65,000/- to Rs.3,08,01,600/- on the basis of cost of construction involved. Shri Ketan O.Der admitted receipt of on money at Rs.5,39,63,889/- in a statement under section 132(4) of the Act. Shri Shantilal Patel, partner admitted profit of Rs.2,29,20,847/- on the basis of Annexure BS-1/11. The figures contained in income expenditure statement reproduced in para 6 above cannot be imaginary and also the appellant cannot brush aside the same by calling it a solitary paper prepared by the partner for some other purpose. The judicial pronouncement relied upon by the appellant are not helpful because i) these are not delivered in the case of block assessment, (ii) the appellant has been found in possession of 'on money' as evidenced by seized material which was not there in both the judgements and (iii) it is a case of glare tax evasion when the appellant is caught with the supporting evidence and it is not the case of applying definition of 'transaction' and (iv) the appellant has admitted certain income under section 132(4) of the Act. However, looking to the objections raised by the appellant that cost of construction worked out by the partner was not Rs.500/- per sq.ft. But Rs.450/- per sq.ft. And the Assessing Officer adopted Rs.3,08,01,600/- instead of Rs.2,08,65,000/-. The appellant cannot treat the amount of sales which has gone into his pocket just a booking*

amount now when through out the search proceedings the partners admitted the correctness of profit worked out in the seized documents. The chart prepared by the appellant is as per hi own convenience and does not reflect true picture of state of affairs of the business. Under these circumstances I would direct the Assessing Officer to adopt net profit at Rs.2,29,20,847/- and after allowing the benefit or undisclosed income of Rs.10,86,199/- in the block return, take the total undisclosed income at Rs.2,18,34,648/- and accordingly charge tax."

5.1. The contention of the ld.Sr.counsel for the assessee is that the income should not have been taxed in the year under appeal as the assessee is engaged in the business of purchase and sale of the land. The assessee has treated the flats as stock-in-trade and the advance received from the buyers as advances. It is also the contention of the assessee that the provision of section 2(47) of the Act would not be applicable in the case in hand. Reliance is placed on the decision of the Coordinate Bench in the case of ITO vs. Shri Siddharth S.Patel passed in ITA Nos.1852 & 1853/Ahd/2003(supra), wherein the Hon'ble Bench has held as under:-

"12. We have heard both the sides and perused material placed before us. We find that the issue under consideration is covered by the following the decisions of the jurisdictional High Court:

i) CIT Vs. Motilal C. Patel & Co., 173 ITR 666 (Guj) in which the relevant observations of the Hon'ble Court is as under:

> *"That after correctly appreciating the position in law and holding that the only right which the agreement for sale*

conferred was the right to obtain another document, namely, the sale deed, the Tribunal fell into an error in reaching the conclusion that the amount of Rs.66,066 which the assessee had received in Samvat year 2027, represented its income earned in that year. The amount which the assessee received in Samvat year 2027 was only an advance and would become profits in its hands only on completion of sale in favour of the society. It was only on completion of the sale that the amounts which the assessee had received in Samvat year 2027 and the balance of the sale price which it had received in Samvat year 2028 became the profit of the assessee. "

ii) CIT Vs. Ashaland Corporation, 133 ITR 55 (Guj) wherein the following has been held:

"i) that the assessee received a total sum of Rs. 2,13,772 in advance towards the sale price of the land which it had agreed to sell to the society, but the receipt could not be considered to be its income. The business of the assessee was to purchase and sell land. Unless the title of the assessee was extinguished, the title of the purchaser could not arise. Both could not be the exclusive owners of the same property at the same time. So long as the assessee continued to be the owner, it could not be said that his title was divested and that the sale had resulted in any profit to him. "

5.2. The ld.Sr.counsel for the assessee has also placed reliance on the decision of Coordinate Bench (ITAT "C" Bench Ahmedabad) in the case of M/s.D.R. Construction vs. ITO in ITA No.2735/Ahd/2010 for AY 2008-09, dated 08/04/2011. The Hon'ble Coordinate Bench in paras-14 and 15 of its order has held as under:-

"14. Once what is to be taxed is 'on money' then it has to be examined when can it be taxed. Whether it can be taxed in Asst. Year 2008-09 on the basis of statement of Shri Ravi Khandelwal alone? In our considered view the statement that on money is income is a generic form of saying receipt as income and not in the sense of true interpretation of the term 'income' as per I.T. Act. 'On money' as such cannot be taxed alone unless it is proved that all the expenditure incurred on the project was recorded in the books of account and 'on money' component was over and above the receipts recorded in the books. No such evidence has been furnished. To the contrary it is undisputed position that out of this on money assessee has incurred various expenditure/investment. Therefore, 'on money' as such and as a whole cannot be taxed over and above the income accruing on the basis of entries recorded in the books of account. From this it follows that 'on money' has to be treated as revenue receipt and not purely income. The explanation of the Id. AR in this regard has to be accepted which is also supported by the statement of Shri Ravi Khandelwal when read as a whole. Thus Rs. 10 crores as such cannot be income separately taxable taking it in isolation of expenditure incurred by the assessee against such receipt. Therefore, both 'on money' as well as expenditure/investment has to be separately accounted for/added to the declared receipts and declared expenditure/investment as per books to work out total income accrued to the assessee and total expenditure/investment incurred by it.

15. The next issue comes as to when the income out of such receipt would accrue to the assessee. In our considered view receipt of 'on money' is part and parcel of money received on sale of flats by cheque. The amount received by cheque before actually transferring the flats to the purchasers will be in the nature of advance and cannot be said to have accrued to the assessee. Assessee has incurred expenditure/investment in the project in various years but income to it will accrue only when flats are sold to the buyers. Advance money received by the assessee can never be his income. It would only be a liability shown in the balance sheet as advances from the customers and will be adjusted against the sale proceeds of the flats when flats are

transferred to the purchasers. Therefore, accrual of income to the assessee will not arise on the date when it receives cheque or cash against sale on flats but will arise when flats are transferred to the buyers. Till then it will only be an advance. We notice that assessee has booked the flats from Asst.Year 2008-09 on wards and received advances by way of cheque. It has also received advance in cash which is now declared as 'on money' in the statement given by Shri Ravi Khandelwal. In a chart given before us by the assessee, names of the prospective buyers and their PANs have also been given and also the date of booking. There were 122 such buyers and from whom 'on money' in cash to the extent of Rs.10 crores is stated to be received. The outstanding amount against them is also shown. The area of the premises booked, rate at which it is booked and the date of booking all fall in the FY 2006-07 and 2007-08. But as per certificate of the auditor whose contents are referred to above, assessee has sold total 149 units in FY 2009-10 and 55 units in FY 2010-11 upto 15-03-2011. It has shown to have adjusted a sum of Rs.4,18,68,899/- out of Rs.10 crores against sale of 149 flats/shops and of Rs.1,82,09,630/- against sale of 55 flats/shops. The revenue is accordingly recognized only when flats/shops are sold and, therefore, both cheque portion/cash portion being the 'on money' would accrue to the assessee in the year when flats/shops are sold. Therefore, in no way sum of Rs.10 crores as a whole can be taxed in Asst.Year 2008-09 on the basis of expenditure as deemed income u/s.69C."

5.3. Further, the Hon'ble Tribunal held as under:-

"17. There cannot be two opinions on the proposition that the sale of immovable property to purchaser would be complete on actual conveyance of the title. In K.C. Pal Chowdhury vs. CIT (1962) 46 ITR 01 (Cal.) it is held even where there is an agreement for sale and delivery of possession and full consideration was paid but sale deed was executed on later date then title would pass when sale deed was executed. Capital gains would accrue at that point of time. However, after insertion of section 53A in Transfer of Property Act and clause (v) in section 2(47) the position of law has changed and capital gains

would accrue on payment of full consideration and handing over of the possession. In Meccane Industries Ltd. vs. CIT (2002) 254 ITR 175 (Mad.) Hon. Madras High Court held that capital gain would accrue in the year in which sale deed was executed. Hon.Andhra Pradesh High Court in CIT vs. Nawab Mahmood Jung Bahadur (1988) 172 ITR 592 held that capital gain would arise on transfer of asset liable to be taxed for the year in which transfer took place. Hon.Gujart High Court in CIT vs. Mormasji Mancharji Vaid (2001) 250 ITR 542 (Guj) held that transfer of immovable property is effected on the date o execution of transfer deed and registration of transfer deed is effected from the date of execution. From these authorities it follows that there should be an immovable property in existence and transfer deed is executed which is later registered. Thus capital gain would accrue or arise only when transfer deed is executed. In the present case assessee is dealing in several immovable property i.e. flats and shops which he has constructed. A single flat is a capital asset for the purchaser but for the assessee all the flats together constitute stock-in-trade. As assessee is dealing in capital asset, as stock-in-trade, the basic principle of accrual of income will remain the same i.e. profit on sale of flat will accrue to the assessee when flat is in existence and the same is transferred to the purchaser through the transfer deed. The profit would arise to the assessee only on execution of transfer deed which may be registered in the same year or may be in the subsequent year. Hon.Supreme Court had occasion to consider the concept of accrual or arising of income in the case of E.D. Sassoon & Co.Ltd. & Ors. vs. CIT (19154) 26 ITR 27 (SC) wherein it is held that there is no difficulty in understanding what is receipt. It conveys a clear and definite meaning and there cannot be any expression which makes its meaning plain then the word "receiving" itself. The words accrual/arise are not defined in the Act. Accruing is synonymous with arising in the sense of springing as a natural growth or a result. "Accrual" would indicate a sense of growing up by way of addition or increase or as an accession or addition while arise would mean coming into existence or notice or presenting itself. "Accrual" connotes an intangible growth while arise a tangible shape so as to be receivable. From these concepts it follows that accrual is anterior in point of time than arise. Point of taxability in

the context of transfer of an immovable property would be the moment when transfer deed is executed and at that moment profit to the assessee would accrue and a right of the assessee to receive consideration for such transfer would arise. Prior to this, when assessee having no right accrued or arose as there was no transfer of any asset with the meaning of section 2(47) of the Act. Whatever the assessee had from the prospective buyer would only be a liability and the liability as such cannot be treated as income as no such income accrued or arose to the assessee. Merely receiving a sum for future purchase of an immovable property cannot be a sale consideration even within the meaning of section 53A of Transfer of Property Act as property being not in existence. The possession thereof cannot be give to the prospective buyers and, therefore, the sum received for being adjusted against sale consideration will continue to carry the character of advance only and a liability in the books of the assessee. Merely because such receipt is not declared or recorded in the books of account will not change the character which has to be decided in the light of the purpose for which it is given. Further such receipt (on money in the present case) cannot be discussed from other part of receipt through banking channels as both are integral part of sale consideration. If the amount given by cheque carries the character as an advance against sale consideration then 'on money' in cash will also carry the same character. Both types of receipts i.e. receipt through cheques and receipt through cash as 'on money' will arise as income to the assessee as soon as transfer of immovable property is executed and not before, or possession thereof is handed over and for this it is necessary that such immovable property should be in existence. Therefore, we are of the considered that 'on money' received by the assessee did not have the character of income but was only an advance like the one received through cheque. Both will become part of the sale consideration to the assessee simultaneously on either handing over the possession of the flats or on execution of transfer deed whichever happens earlier.

18. Thus on the basis of above judgments we hold that advance money received either by way of cheque or by way of cash will partake the character of taxable income when registered sale deed of the flats is

executed in subsequent years. As a result, the sum of Rs.10 crores will not taxable in Asst.Year 2008-09. The appeal of assessee is accordingly allowed."

5.4. In the case in hand, the admitted position is that during the course of search, certain documents were seized. On the basis of the documents, the AO observed that the total price related to the sale of flats was Rs.7,88,02,178/- against the documented price of Rs.2,48,38,289/-. The AO observed that on the statement taken on oath of Shri Shantilal Patel admitted that the receipts contain net profit of Rs.2,29,20,847/-. Before the AO, the explanation of the assessee was that substantial amount of the sale consideration was pending for collection. Before the AO, in response to the notice issued, the assessee submitted that total sale consideration is Rs.1,39,88,777/- only rather than Rs.7,53,83,326/- as entered in the assessee's working (Rs.7,88,02,178/-) is the total receipt as per annexure B-2/25 and B-02/26. The assessee objected to the addition on the ground that even though the sale consideration of the project was received, the income has not accrued as sale deed has not been signed or possession in respect of flats has not been handed over. The assessee relied on the judgements of Hon'ble Gujarat High Court in the case(s) of CIT vs. Asha Land Corporation (133 ITR 55)[Guj], CIT vs. Shah Doshi & Co. (133 ITR 23)[Guj.], Chdambaram Chettiar vs. CIT (4 ITR 309)[Mad.] and Kunjemat & Sons vs. CIT (9 ITR 359)[All.]. The AO in para-10 of the assessment order computed the total undisclosed income

for the block period at Rs.2,61,78,438/-. However, the AO opted to adopt the undisclosed income on the basis of the statement on oath of one Shri Sunil H.Desai being higher of the two figures. The contention of the assessee is that the entire receipts have been disclosed and declared in the income-tax return in the subsequent years. It is the contention of the assessee that against the total sale consideration adopted by the AO at Rs.7,88,02,178/-, the assessee had disclosed the sale consideration at Rs.8,68,55,671/- and the taxes on such income has been paid. Therefore, the assessee cannot be subjected to double taxation.

6. The undisputed facts emerged from the above discussion is that the assessee is engaged in the business of construction. The assessee has been showing the flats in question as stock-in-trade, therefore in view of the decision of the Coordinate Bench rendered in the case of ITO vs. Shri Siddharth S.Patel in ITA Nos.1852 & 1853/Ahd/2003(supra). The provisions of section 2(47) would not be applicable. The assessee has disclosed the 'on money' in the return of income in the year in which the sale-deed was executed. The Revenue has not rebutted this contention. Therefore, in the light of the judgement of Hon'ble Gujarat High Court rendered in the case of CIT vs. Motilal C.Patel and Co. reported at 173 ITR 666 (Guj.), such amount can be subjected to tax when sale-deed is actually executed. Since the Hon'ble Gujarat High Court has held that

the amount would become for the assessment year in which the sale transaction is completed. In the case in hand, it is not disputed that sale-deeds were executed in the year subsequent to the year under appeal. Therefore, in view of the binding precedent, we are of the considered view that the authorities below were not justified in taxing the amount including 'on money' during the year under appeal. Further, the assessee has submitted that it has offered for tax the amount including 'on money' in the year whenever sale-deed was executed. This fact is also not controverted by the Revenue by placing any contrary material on record. Therefore, the AO is hereby directed to verify whether the assessee has offered for taxing the amount as its income in the year when the sale-deed was executed. If it is found that the assessee has offered the amount in the year in which the sale-deed was executed, then the AO would delete the addition made in this year. We are conscious of the fact that this Tribunal had taken a contrary view, since now the decision of the Coordinate Bench in the case of ITO vs. Shri Siddharth S.Patel in ITA Nos.1852 & 1853/Ahd/2003 is brought to our notice and no distinguishing fact is pointed out by the ld.Sr.D.R. In the light of the above discussion, the appeal of the assessee (in the case of M/s.Ohm Developers) is allowed for statistical purposes in the terms as indicated hereinabove.

7. Now, we take up the Revenue's appeal in IT(ss)(A No.314/Ahd/2002.

7.1. The respective representatives of the parties have adopted the arguments as were made in assessee's appeal in IT(ss)A No.320/Ahd/2002(supra). The ld.CIT-DR submitted that the ld.CIT(A) was not justified in reducing the addition.

7.2. We have heard the rival contentions and perused the material available on record. We find that the ld.CIT(A) has given finding in para-10 of his order, which is reproduced hereunder:-

> *"10. I have carefully considered the submissions made by the appellant and also gone into the merits of addition on account of undisclosed income. The appellant has totally retracted from the statement recorded on oath during search regard the profit from construction business and taken an altogether different stand that income in the block return has been shown as per the actual sale of flats based on execution of sale deed. However, in the face of plethora of seized documents containing minute details of income and expenditure, the appellant cannot get away so easily. The Assessing Officer has worked out net profit at Rs.2,61,78,438/- at page 28 of the assessment order. Shri Sunil Desai, partner admitted estimated profit from Rs.2,08,65,000/- to Rs.3,08,01,600/- on the basis of cost of construction involved. Shri Ketan O.Der admitted receipt of on money at Rs.5,39,63,889/- in a statement under section 132(4) of the Act. Shri Shantilal Patel, partner admitted profit of Rs.2,29,20,847/- on the basis of Annexure BS-1/11. The figures contained in income expenditure statement reproduced in para 6 above cannot be imaginary and also the appellant cannot brush aside the same by calling it a solitary paper prepared by the partner for some other purpose. The judicial pronouncement relied upon by the appellant are not helpful because i)*

these are not delivered in the case of block assessment, (ii) the appellant has been found in possession of 'on money' as evidenced by seized material which was not there in both the judgements and (iii) it is a case of glare tax evasion when the appellant is caught with the supporting evidence and it is not the case of applying definition of 'transaction' and (iv) the appellant has admitted certain income under section 132(4) of the Act. However, looking to the objections raised by the appellant that cost of construction worked out by the partner was not Rs.500/- per sq.ft. But Rs.450/- per sq.ft. And the Assessing Officer adopted Rs.3,08,01,600/- instead of Rs.2,08,65,000/-. The appellant cannot treat the amount of sales which has gone into his pocket just a booking amount now when through out the search proceedings the partners admitted the correctness of profit worked out in the seized documents. The chart prepared by the appellant is as per hi own convenience and does not reflect true picture of state of affairs of the business. Under these circumstances I would direct the Assessing Officer to adopt net profit at Rs.2,29,20,847/- and after allowing the benefit or undisclosed income of Rs.10,86,199/- in the block return, take the total undisclosed income at Rs.2,18,34,648/- and accordingly charge tax."

7.3. It is not disputed that the AO adopted the maximum figure of net profit on the basis of statement of Shri Sunil Desai partner of assessee-firm, however, the ld.CIT(A) adopted the figure declared by Shri Ketan O.Der another partner. Both the authorities have based their findings on the basis of the statement of partners, without any other corroborative evidence. However, in respect of taxability of this figure we have already decided the Assessee's appeal in IT(ss)A No.320/Ahd/2002 (supra). Therefore, the AO is directed to compute the taxable income in accordance with the direction given in IT(SS)A No.320/Ahd/2002 (supra). Hence, the ground of the Revenue's appeal is dismissed.

8. Now, we take up the Assessee's appeal (in the case of M/s.Ohm Organisers) in IT(ss)A No.321/Ahd/2002.

8.1. The respective representatives of the of the parties have adopted the arguments as were made in assessee's appeal in IT(ss)A No.320/Ahd/2002(supra).

8.2. We heard both the parties. The issues are similar to the issues in assessee's appeal No.IT(ss)A No.320/Ahd/2002 in the case of M/s.Ohm Developers, wherein we have allowed the appeal of the assessee for statistical purposes, by observing as under:-

> *"6. The undisputed facts emerged from the above discussion is that the assessee is engaged in the business of construction. The assessee has been showing the flats in question as stock-in-trade, therefore in view of the decision of the Coordinate Bench rendered in the case of ITO vs. Shri Siddharth S.Patel in ITA Nos.1852 & 1853/Ahd/2003(supra). The provisions of section 2(47) would not be applicable. The assessee has disclosed the 'on money' in the return of income in the year in which the sale-deed was executed. The Revenue has not rebutted this contention. Therefore, in the light of the judgement of Hon'ble Gujarat High Court rendered in the case of CIT vs. Motilal C.Patel and Co. reported at 173 ITR 666 (Guj.), such amount can be subjected to tax when sale-deed is actually executed. Since the Hon'ble Gujarat High Court has held that the amount would become for the assessment year in which the sale transaction is completed. In the case in hand, it is not disputed that sale-deeds were executed in the year subsequent to the year under appeal. Therefore, in view of the binding precedent, we are of the considered view that the authorities below were not justified in taxing the amount including 'on money' during the year under appeal. Further, the assessee has submitted that it has offered for tax the amount including 'on money' in the year whenever sale-deed was executed. This fact is also not controverted by the Revenue by placing any contrary material on record. Therefore, the AO is hereby directed to verify whether the assessee has offered for taxing the amount as its income in the year when the sale-deed was*

executed. If it is found that the assessee has offered the amount in the year in which the sale-deed was executed, then the AO would delete the addition made in this year. We are conscious of the fact that this Tribunal had taken a contrary view, since now the decision of the Coordinate Bench in the case of ITO vs. Shri Siddharth S.Patel in ITA Nos.1852 & 1853/Ahd/2003 is brought to our notice and no distinguishing fact is pointed out by the ld.Sr.D.R. In the light of the above discussion, the appeal of the assessee (in the case of M/s.Ohm Developers) is allowed for statistical purposes in the terms as indicated hereinabove."

8.3. Since the facts and issues are identical to the case of M/s.Ohm Developers(supra), we, for the same reasoning, allow the appeal of the assessee (M/s.Ohm Organisers) for statistical purposes in the terms as indicated hereinabove.

9. In the combined result, the appeal of the Revenue is dismissed, whereas Assessees' appeals are allowed for statistical purposes.

Order pronounced in the Court on Friday, the 8th day of May, 2015 at Ahmedabad.

Sd/-	*Sd/-*
(एन.एस.सैनी)	(कुल भारत)
लेखा सदस्य	न्यायिक सदस्य
(N.S. SAINI)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 08/ 05 /2015
टी.सी.नायर, व.नि.स./*T.C. NAIR, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-II, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad