

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, AHMEDABAD**

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**SMT.SUCHITRA KAMBLE, JUDICIAL MEMBER**

**IT(SS)A No.39, 40 and 278/AHD/2019**  
**Assessment Year :2013-14, 2015-16 and 2016-17**

Padmavati Housing Corporation 45, Bombay Shopping Centre Race Course Road Vadodara 390 007 Gujarat. PAN : AADFP 7918 B	Vs.	DCIT, Cent.Cir.2 Vadodara.
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/(Respondent)</b>
Assesseeby :	Shri K.P. Singh, CA	
Revenue by :	Shri Pooja Parekh, Sr.DR	

सुनवाई की तारीख/**Date of Hearing** : **05/01/2023**  
घोषणा की तारीख /**Date of Pronouncement:** **06/01/2022**

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

Present three appeals have been filed by the assessee against common order passed by the ld. Commissioner of Income-Tax(Appeals)-12, Ahmedabad [hereinafter referred to as "Ld.CIT(A)"] under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) dated 10.12.2018 pertaining to the above three assessment years.

2. It was common ground that the issue involved in all the appeals was similar, arising in identical backdrop of facts. Therefore, all three appeals were taken up together for hearing and are being disposed by a common consolidated order.

3. Ld.counsel for the assessee at the outset stated that the sole challenge to the order of the Id.CIT(A) in the present appeals was against confirmation of addition made to the income of the assessee on account of alleged on-money received by the assessee from its business of real estate development. He drew our attention to the grounds raised by the assessee in all three appeals as under:

*1. On the facts, and in the circumstances of the case, the Commissioner of Income Tax (Appeals) -12, Ahmedabad (referred to as CIT (Appeals)) erred in determining the total income of the appellant company at –*

**Asst.Year. 2013-14**

*Rs.33,53,680/- as against total income of Rs.3,08,680/- disclosed by the appellant.*

*.  
. .*

**Asst.Year. 2015-16**

*Rs.1,57,19,060/- as against total income of Rs.21,69,060/- disclosed by the appellant.*

*.  
. .*

**Asst.Year. 2016-17**

*Rs.48,33,160/- as against total income of Rs.14,32,160/- disclosed by the appellant or*

*2. On the facts and circumstances of the case as well as law on the subject, the learned CIT (Appeals) has erred in confirming the action of the Assessing Officer for making an addition of alleged cash receipt of -*

**Asst.Year. 2013-14**

*Rs.30,45,000/-*

**Asst.Year. 2015-16**

*Rs.1,35,50,000/-*

**Asst.Year. 2016-17**

*Rs.3,01,000/-*

*u/s. 68 of the Act on account of "onmoney" received without appreciating the fact that no any corroborative evidence was placed on record by the Ld. AO.*

*3. It is therefore prayed that the above addition made by assessing Officer and confirmed by learned CIT (Appeals) may please be deleted.*

4. The ld.counsel for the assessee, pleaded that his solitary prayer on the issue was that the addition on account of alleged on-money received by the assessee be restricted to the profit element embedded in the same which he prayed to be taken at 15% or whatever the Bench considers fit and in support of his pleadings, besides relying on various judicial decisions, he contended that it is common knowledge that the entire amount received in cash is not in the nature of income, and major portion of it is also expended in cash. He further pointed out that as per the facts of the case before us, component of the on-money received was almost 50% or more of the amounts booked on account of sale of the property in the books of accounts of the assessee and by no stretch of logic or imagination such a huge amount, almost 50% of the total sale consideration of the property accounted for, could be said to be the profit element in real estate transaction. He further contended that the properties sold were too small in size to have such a large margin of profit element.

5. The ld.DR, on the other hand, vehemently objected to this plea of the assessee stating that the documents and the facts and circumstances revealed clearly that assessee had received on-money on sale of the property in the course of business and there was nothing to demonstrate any expenditure incurred out of the same by the assessee. That accordingly there was no reason to accede to this request of the ld.counsel for the assessee at all.

6. We have heard both the parties. Before proceeding to adjudicate the issue, we shall first bring out the relevant facts as drawn in para 3 to 3.2 of the consolidated order passed by the Id.CIT(A) in the present case as under:

**“Facts of the case**

3. The appellant is a partnership firm engaged in the business of construction and developing of housing projects. A search action u/s 132 of the IT Act. was conducted in Akshar Group of cases on 22/09/2015 which included M/s Padmavati Housing Corporation where survey u/s 133A was also carried out. During the course of search certain incriminating documents were found and seized from the premises of Shri Mukesh J Shah. Accordingly proceedings u/s 153C were initiated in the case of the appellant. In response to notice issued on 06/04/2017 the appellant furnished return of income for A.Y. 2013-14 on 18/05/2017 declaring total income of Rs.3,08,680/-, same as that declared in the return of income filed u/s 139(1) on 30/09/2014. In pursuance of notices u/s 143(2) and 142(1), the AR of the appellant filed the details and explanations. During the period of search A.Ys. (A.Ys. 2010-11 to 2016-17) the appellant had undertaken a housing project called "New Mont Villa" at Gotri, Vadodara which is a scheme of 20 luxurious bungalows.

3.1 During the survey proceedings .at the business premises of M/s Padmavati Housing Corporation (herein after referred to as PHC) some registers/loose papers were found and impounded as Annexure A3 which pertained to the bookings of bungalows made in New Mont Villa project. The AO noted that Pages 4, 5, 6 and 7 of Annexure A3 are an index containing details of each bungalow with built-up area name of buyer and amount in rupees. The scanned image is at page 3 of the assessment order. On verification of loose papers inventorised from the premises of M/s. Rekvina Laboratories Ltd. as Annexure BF1 Page No. 33 it was seen that the page reflected the details of cheque and cash against some of the bungalow owners in New Mont Villa. The scanned image is at page 4 of the assessment order. The contents of these pages are tabulated at pages 5 and 6 of the assessment order. On the verification of the same, the AO found that the contents of the page very clearly show that on-money has been received by the firm in the project. The details of transaction related to bungalow No. A-20 as appearing in the register Annexure A3 reproduced at page 6 of the assessment order showed that the appellant firm made the sale agreement for Rs.29,41,000/- vide its sale deed dated 17/08/2012 and construction agreement for Rs.11,40,000/-. Against this total amount of Rs.40,55,000/- the register showed amount of Rs.80,00,000/- (the relevant page is

*reproduced at page 7 of the assessment order). Accordingly the appellant was show caused to explain the difference of such amounts and why the difference should not be added to its total income. It was submitted by the appellant that the differences in the sale price as per register Annexure A3 and page 33 of Annexure BF1 and sales and construction agreement were because some of the customers had altered the structure of the bungalows on their own and there were certain incidents related to construction and interior undertaking by the customers. The AO did not find the explanation acceptable as the appellant's submission was not supported by documentary evidences. The AO arrived at difference of Rs.33,00,000/- received as on-money in the context of bungalow No. A20 relevant to A.Y. 2013-14 and added the amount while determining the assessed total income of Rs.36,08,680/-.*

*3.2 Similarly for the A.Y. 2015-16 the AO arrived at the difference of Rs.1,44,75,000/- as on-money for 8 bungalows (C1, C6, B7, B8, C12, C16, C17 and A19) and total income was determined at Rs. 1,66,44,060/- against returned income of Rs.21,69,060/- and for A.Y. 2016-17 the AO arrived at the difference of Rs.39,94,000/- as on-money for 4 bungalows (C2, C5, C11 and A21) and the total income was determined at Rs.49,60,160/- against returned income of Rs.14,32,160/-."*

7. The ld.counsel for the assessee has not challenged the addition made on account of on-money received on sale of property in the course of business carried on by the assessee and his only plea is vis-à-vis restricting the addition to the profit element embedded in the same. We shall now proceed to examine whether there is any merit in this contention of the ld.counsel for the assessee.

The contention of the ld.counsel for the assessee before us in support of his claim is that the on-money received was a substantial percentage of the total sale proceeds booked by the assessee of the properties sold, being upto 50% of the same, and if the on-money is treated entirely as income of the assessee, GP/NP of the assessee would be 50% and more of the turnover of the assessee, which is highly improbable in this line of business. In this regard, he has also drawn our attention to the fact that only bungalows were sold by the assessee which were small in size of 1700 sq.meters odd, i.e

approx.. 160 sq. meters and there was absolutely no scope for making such huge profit on sale of the said bungalows .That it was a highly improbable proposition and if the addition was sustained to the extent of entire on-money received on sale, it would be highly unjustified. In this regard, he drew our attention to the table reproduced at page no.11 of the CIT(A) order which listed the various bungalows sold by the assessee during three years on which the assessee was found to have received on money, giving details of their sizes, of their built-up area and amount for which sale of these bungalows was actually booked by the assessee, and the on-money which was treated by the Revenue to have been received by the assessee on the basis of the documents found during the course of search, as under:

No.CIT(A)-12/Abd/376,377,378/CC-2/17-18

A.Ys.2013-14,2015-16, 2016-17

Pednavati Housing Corporation

TABLE A

Sr. No.	Type	No.	Land Area	Built-Up area	Name of Purchaser	Amount as per Books of a/c (A)	Amount as per A-3 page 4, 5, 6 & 7 (B)	Amount as per customer ledger in A-3 (C)	Amount as per BF-1 Page 33 (D)	Cash Received as per BF-1 Page 33 (E)	Item/s of addition as per A.O. (in Rs.)
<b>Addition in A.Y. 2013-14</b>											
1	A	20	1401	2350	Ajay S Atti	4055000	8000000	7100000	7100000	3300000	3300000
<b>Total addition by the AO in A.Y. 2013-14</b>											<b>3300000</b>
<b>Addition in A.Y. 2015-16</b>											
1	C	1	1515	1726	Raksha Mittal Zaveri	5600000	7000000	5600000	7000000	1400000	1400000
2	C	6	1003	1726	Sarojben Barot	3500000	7200000	3500000	5450000	1950000	1950000
3	B	7	1144	2079	Amul Pandya	8210600	7200000	5400000	No Detail on Page	The customer has accepted to have paid Rs. 30 lakhs in cash	3000000
5	C	12	1000	1726	Shibu Varghese	4000000	6000000	4000000	5700000	1700000	1700000
6	C	16	1235	1726	Kandarp Jaysankar Pandey	4500000	6200000	4500000	11500000	1700000	1700000
7	C	17	1314	1726	Prakash Subhania	4650000	6200000	4500000	1000000	1550000	1550000
8	A	19	1407	2350	Prakash Subhania	4900000	8000000	4900000	8050000	3100000	3100000
<b>Total addition by the AO in A.Y. 2015-16</b>											<b>14400000</b>
<b>Addition in A.Y. 2016-17</b>											
1	C	2	930	1726	Jagdish Parmar	4500000	6000000	6351000	No Detail on Page	No Detail on Page	1851000
2	C	5	930	1726	Anrudh Malwana	6650000	7200000	7800000	No Detail on Page	No Detail on Page	1150000
3	C	11	1060	1726	Ashish Ranadive	5100000	6000000	5100000	5500000	400000	400000
4	A	21	1741	2350	Pariyosh Jaiswal	7777777	8000000	7600000	7600000	93000	93000
<b>Total addition by the AO in A.Y. 2016-17</b>											<b>3494000</b>

8. Considering the above admitted facts, it is clear that the factual contentions made by the ld.counsel of the assessee with respect to the on-money received appears to be correct. The table reveals and as contended by the ld.counsel for the assessee before us also that, on-money components on the sale of these bungalows approximated on an average more than 50% of the price at which bungalows were booked as sold. Also the built up area of the bungalows sold approximates 160 sq. metres. Having noted these facts, we agree that it is highly improbable in this line of business to make profits upto the extent of 50% or more of the turnover that too on sale of such small sized properties. Even the Ld.DR was unable to enlighten us with statistics showing otherwise. We therefore agree with the ld.counsel for the assessee that making addition of the entire on-money received by the assessee would not be justified. Though we are of the view that the onus is on the assessee to show what expenses have been incurred by it in cash, which have also remained unexplained, but at the same time noting the fact that bungalows sold by the assessee were not hi-end properties, but small sized bungalows the component of the on-money received on the same @ 50% of the booked price is on a palpably very high side. We are of the view that in the light of the facts and circumstances, as noted above by us, it would be just and reasonable to restrict the addition to the extent of profit element embedded in this transaction only. The AO is directed to restrict the addition by estimating GP on the on money receipts, at the higher of the rate in this line of business or as agreed to by him before us @ 15% thereof.

We may add here that our above decision may not be treated as precedent in any other case having been rendered in the peculiar facts and circumstances of the case demonstrated before us by the ld.counsel for the assessee.

9. In view of the above, all three appeals of the assessee are partly allowed in the above terms.

**Order pronounced in the Court on 6<sup>TH</sup> January, 2023 at Ahmedabad.**

*Sd/-*  
**(SUCHITRA R. KAMBLE)**  
**JUDICIAL MEMBER**

*Sd/-*  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad, dated 06/01/2023