

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA Nos.871 to 873/PUN/2024
Assessment Years : 2017-18 to & 2019-20

Meenamani Ganga Builder LLP San Mahu Complex, Office N5, Bund Garden Road, Opp. Poona Club, Pune – 411001	Vs.	ACIT, Central Circle 2(3), Pune
PAN: AAUFM6455H		
(Appellant)		(Respondent)

Assessee by : Shri Neelesh Khandelwal
Department by : Shri Amol Kharnar CIT-DR

Date of hearing : 12-11-2024
Date of pronouncement : 07-02-2025

ORDER

PER R. K. PANDA, VP :

The above three appeals filed by the assessee are directed against the common order dated 26.02.2024 of the Ld. CIT(A), Pune-12 relating to assessment years 2017-18 to 2019-20 respectively. Since identical grounds have been raised by the assessee in all these appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

2. First we take up ITA No.871/PUN/2024 for assessment year 2017-18 as the lead case.

3. Facts of the case, in brief, are that the assessee is a firm engaged in business of real estate. It filed its original return of income on 13.02.2018 declaring total income of Rs.20,09,000/-. A search action u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was conducted on 10.01.2019 in the case of the assessee. In response to the notice u/s 153A(a) of the Act issued on 07.10.2019, the assessee filed its return of income on 18.10.2019 declaring total income at Rs.20,09,000/- which was the income returned earlier. Statutory notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee, in response to which the assessee filed the requisite details from time to time as called for by the Assessing Officer.

4. During the course of assessment proceedings, the Assessing Officer noted that search action u/s 132 of the Act was conducted in the case of M/s. Meenamani Ganga Builder LLP as a part of search action in Goel Ganga Group on 10.01.2019. During the course of search action various incriminating documents in the form of loose papers were found and seized from the office premises of M/s. Meenamani Ganga Builders LLP. When these documents were correlated with entries found in other documents and registered deeds, it became evident that the assessee firm was involved in accepting on-money in cash for booking/selling of flats/shops. The Assessing Officer narrated the findings of the search action which is as under:

“3.1 Findings during search action:

A search and seizure action 132 of the IT Act was conducted in the case of Meenamani Ganga Builder LLP as a part of search action in Goel Ganga Group on 10/01/2019. During the course of search action various incriminating

documents in the form of loose papers were found and seized from the office premise of M/s Meenamani Ganga Builders LLP, San Mahu complex Bund Garden road, Pune- 411001. When these documents were correlated with entries found in other documents and registered deed, it becomes evident that the assessee firm has involved in accepting on-money in cash for booking/selling of flats/shops. The findings of the search are discussed below for sake of clearness, as under.

(i)The modus of receiving on-money by the Goel Ganga Group is same in all the entities and concerns. The customers, who are interested in giving on money in cash are given two booking forms. One booking form for consideration in cheque, which is actual form and kept permanently in the file of the customer. The other booking form is filled for cash component and is temporarily kept in the file of the customer. Entire portion of cash is received prior to execution of sale deed. After sale deed is executed, the second booking form is removed from the file of the customer and destroyed.

(ii)During the course of search action at the office of premises of Assessee at Ground floor, 5, San Mahu Complex, Bund Garden Road, Pune; various incriminating documents evidencing on-money received by the assessee on account of flat/shops sold were seized. During the course of search action, statement of Shri Shirish Bhanudas Ranpise was recorded where he along with sales team confirmed modus of operating and receiving on money in cash in booking of flats/shops. Shri Shirish Bhanudas Ranpise in reply to Q. No. 10 of his statement dated 10/01/2019 at the office of M/s Meenamani Ganga Builders LLP, San Mahu Complex, Bund Garden Road, Pune 411001 confirmed that after completion of documentation process, the other booking forms of cash component is removed from file and destroyed.

Q. 10. As you have explained the two booking forms could be found in few files only and majority of the files have not any such booking forms except only one form showing the agreement amount only and the other booking form showing the cash component over and above the agreement price could not be traced. Please produce all such booking forms in respect of all the tenaments of the project.

Ans. As I have already told you that this is the process of documentation. However, from majority of files the other booking forms are missing which you have requested to produce. The other booking forms cannot be found in all files as the same are being destroyed from time to time after the process of completion of transactions and in some of files the same was left to be removed and therefore it was found.”

5. However, the Assessing Officer noted that in response to the notice u/s 153A of the Act, the assessee has not offered the on-money in the income tax return

filed. Therefore, he asked the assessee to explain as to why the addition should not be made on account of receipt of such on-money and also why it should not be extrapolated for the remaining flats / shops.

6. The assessee submitted that it has not accepted any on-money against the sale of its units in the said project. It was submitted that the documents on the basis of which it has been alleged that on-money is being accepted by the assessee are merely booking forms made by the sales representatives of the assessee at various times representing various negotiations entered into with the customers. Such draft booking forms cannot be equated with evidence of acceptance of on-money by the assessee. Further, no such document evidencing any such on-money was found. It was submitted that the booking forms which were purported to be represented the amounts taken by the assessee in cash also contain calculations of GST, stamp duty, etc. which do not fit within the contours of any logical act if the same would have been accepted in cash. It was also argued that no valuables or any cash was found during the course of search to establish that the assessee has received any on-money.

7. Without prejudice to the above, it was submitted that even if it is presumed that the assessee has received any on-money on sale of shops, the addition can be restricted only to those amounts for which the evidences have been found during the course of search. It was again reiterated that during the course of search in the case of the assessee nothing was unearthed to prove that the assessee has been

earning unaccounted money consistently. Further, nothing has been brought on record of any corresponding assets or expenses that were undisclosed so that the proposed extrapolation can be substantiated.

8. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He noted that the booking forms as well as the statement of Shri Shirish Bhanudas Ranpise recorded during the course of search proceedings itself are sufficient evidence to prove that the assessee has received cash. The Assessing Officer rejected the submissions of the assessee by recording as under:

“5.1 Evidences of on-money:

The vide 2.3 to 2.5 of its submission, Assessee has stated that merely on the basis of booking forms assessee cannot be alleged that on-money was accepted. Further no such document found and seized during the search action that could prove that cash has been accepted by the assessee. In this context it is stated that the booking Forms as well as the statement of Shri Shirish Bhanudas Ranpise recorded during the search proceedings, itself is the sufficient evidence to prove the assessee has received cash. There is no rule set in the law or by any Courts, specifying such documents requiring for establishing on-money or any other issues. Evidence could be oral or documentary. A piece of paper, statements, could be evidence. Even digital data such as whatsapp chat, e-mail, etc have been accepted by the various Court to be evidence. Here in the case under consideration, both documentary in the form of Booking Forms as well as oral evidence in the form of statement are available. The statement of Shri Shirish B. Ranpise was not vague but it was very specific that the cash has been received. Shri Ranpise has not only accepted the cash has been received, but clearly gave the description of all transactions appearing on the Form. The details of documents and the findings thereon are as under:

(a) During the course of survey action, statements of Shri Shirish Bhanudas Ranpise, Sales Manager was recorded u/s 131 of the Income-tax Act, 1961 and agreed by the sales team. In his statement, Shri Shirish Bhanudas Ranpise accepted that cash component was accepted in booking of flats. In reply to Q. No. 08 of his statement, when page no 72 of his diary (seized as Bundle No. 01) dated 03/06/2017 was shown to him. He explained its contents that shop of saleable area of 860 sq. ft. in Ganga Fernhill was sold

on agreement value at Rs. 6400/- per sq. ft. and over & above this, Rs. 39.62 lakh was received in cash @ Rs. 4607 per sq ft. So the effective rate of sale is Rs. 11007/- per sq ft. Scanned copy of page No. 72 is reproduced below for ready reference:

Q8. Now I am showing you the entries made on the page dated 03/06/2017 of the said diary. You are requested to explain the contents in detail.

Ans. The entries made on the said page dated 03/06/2017 was made in the hand writing of Shri Piyush Alimchandani who is also involved in negotiation of sales in respect of some of the shops of Ganga Fernhill and Ganga Florentina. I have consulted with him and the contents is being explained accordingly. The working is in respect of one of the shop having salable area of 860 sq. ft. in Ganga Fernhill the dealing of which was negotiated by Mr. Piyush Alimchandani. He has confirmed that the rate @ 6400 has been finalized for agreement and all the necessary taxes and other liabilities are worked out accordingly. The amount of Rs. 39.62 lakh has been received by Shri Annuj Goel in cash over and above the agreement price Rs.4607 per sq. ft. The actual rate is therefore worked out to Rs.11007 per sq ft. which has been arrived after final negotiation.

(b) In the same way, Shri Shirish Bhanudas Rangise shown and explained the file of customer Shri Ramesh kumar Chhatraram Choudhary here the actual final negotiated price was Rs 10200/- per sq ft of sale area 695 sq ft of Shop No. B-09 in project Ganga Femhill. Undri Pune. The agreement was executed at Rs: 3700/- per sq ft and the balance amount of Rs. 6500/- per sq was received in cash over and above agreement to sale. Further, he explained that it is written in pencil that Rs.13.5 lakhs has been received and for balance payment, time has been granted. Booking form of Mr. Rameshkumar C. Choudhary and relevant part of statement of Mr. Ranpise are reproduced here below:

.....

(c) Shri Shirish Bhanudas Ranpise, Sales Manager submitted the details of differences in booking and agreement values in whose cases two booking forms were found. This was submitted along with his statement. Copy of the said differences was tabulated and made part of the statement of Mr. Ranpise. The same is produced for reference.

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Explanation of the details of cash component submitted by Shri Shirish Bhanudas Ranpise, Sales Manager, on the basis of two forms found in the files of the customers during the course of search action, as under:

(i) in sale of Shop No. B-09 of Ganga Fernhill, the area of the shop is 695 sq ft. As per page no. 5 of bundle no 10 booking form-1, the agreement value is shown as Rs.25,71,500 at the rate of Rs.3700/- per sq ft. & agreement to sale is also executed on same amount. As per page no. 13 of bundle no 10 Booking form-2 found in the same file, the cash amount of Rs.45,17,500/- at the rate of Rs.6500/- is mentioned, which is taken in cash over and above the amount of Rs.25,71,500/- shown in agreement to sale. It is explained in detail at above para.

(ii) In sale of Shop No. D-04 of Ganga Fernhill, the carpet area of the shop is 380 sq ft as per page no. 4 of seized Bundle no 4 and agreement amount mentioned here is Rs.44,75,700/-, Page No. 6 of seized bundle no. 3, here agreement value mentioned is Rs. 56,84,000/- so total cost comes to Rs.1,01,59,700/-. Agreement has been executed for Rs.55,04,000/- so cash component in this deal comes to Rs.43,25,600/-, which is taken in cash over and above the agreement amount of Rs.55,04,000/- shown in agreement to sale.

(iii) In sale of Shop No. D-05 of Ganga Fernhill, the carpet area of the shop is 307 sq ft. as per page no. 4 of seized bundle no. 11 and agreement amount mentioned here is Rs.35,76,600/-, Page No. 6 of seized bundle no.11, here agreement value mentioned is Rs.45,32,000/- so total cost comes to Rs.81,08,600/-. Agreement has been executed for Rs.43,52,000/- so cash component in this deal comes to Rs. 37,56,600/-, which is taken in cash over and above the agreement amount of Rs. 43,52,000/- shown in agreement to sale.

(vi) In sale of Shop No. D-07 of Ganga Fernhill, the carpet area of the shop is 307 sq ft. as per page no. 4 of seized bundle no. 2 agreement amount mentioned here is Rs. 44,75,700/-, Page No. 6 of seized bundle no. 2, here agreement value mentioned is Rs. 56,84,000/- so total cost comes to Rs. 1.01 59.700/- Agreement has been executed for Rs. 55,04,000/- so cash component in this deal comes to Rs. 46,55,700/-, which is taken in cash over and above the agreement amount of Rs. 55,04,000/- shown in agreement to sale.

5.2 The noting on the booking form (seized as page no. 8 of bundle no.01) clearly shows the calculation of the sale consideration by applying rate 11007 per sq.ft which was subdivided into Rs.6,400/- and Rs.4607/- for calculation of consideration for agreement to sale & charges applicable thereon and on-money against the shop, respectively. Accordingly, agreement value of had been worked out to Rs.61,91,131/- by taking into consideration of Rs.6400/- per Sq.ft and on-money component of the shop was worked out to Rs.39.62 lacs @ Rs.4607/- per Sq.ft. The noting on the page clearly shows the bifurcation per sq. ft rate into two parts- rate first is on which agreement of the property has been executed and second is calculation of cash component as on-money. Similarly noting could be seen from the other documents seized during the search.

5.3 Further, it is evident from the statement of Shirish Bhanudas Ranpise (Sales Manager in Meenamani Ganga Builder LLP) that he has not only admitted the receipt of on-money by the assessee Firm but also has explained them in detail thereof. Further, these documents contained the details of areas of the shops, total consideration, accounted consideration and on-money receipts for the sale/booking of the shops. It may be mentioned that the rates per square feet (for recorded payments) as stated on the seized documents tallied with the rates mentioned in the sale deeds.

5.4 Therefore, the evidence found cannot be said as merely booking form but also an incriminating evidence which clearly proves that the assessee has received on-money on sale of shops in its project "Gariga Fernhill". Further the assessee has not produced any document which is contrary to the data found in those forms. There is a legal presumption u/s. 114(e) of the evidence act that the proceeding or the finding in the order are deemed to be correct unless contrary is proved otherwise. The assessee has never denied of the incriminating evidences found from his premises and the consideration worked out on it. His only contention is that those forms were only draft booking form. But once it is proved that the document was in possession of assessee then, in terms of provisions of Section 132(4)(a) r.w.s. 292C of the IT Act, a presumption arises that the contents of the impounded/seized documents are true. Thus, the presumption that the Assessee has received on-money cannot be denied. The presumptions u/s. 292C are that the document belongs to the persons from whose possession and control it was found. The second presumption is that the contents of such documents are true. The following case laws are relied in above proposition: true. The following support of above proposition :

(1) Surendra M. Khandhar [2009] 224 CTR 409 (Bombay):

The Hon'ble Bombay High Court has held that "Where Xerox copy of document seized from Assessee was not denied the same showed advancement of certain sums to one 'C' and two signatories of said document were also not denied by Assessee and as the document was seized from Assessee's control, presumption under section 132(4A) and 292C was clearly applicable"

(ii) CIT Vs. Naresh Kumar Aggarwala, [2011] 9 taxmann.com 249 (Delhi):

The Hon'ble Delhi High Court has held that, there was a presumption raised under section 132(4A) on seizure of fax message and it was upon assessee to rebut that presumption by offering a plausible explanation."

9. Relying on various decisions, the Assessing Officer made addition of Rs.45,17,500/- to the total income of the assessee. Similarly, for assessment year 2019-20, he made addition of Rs.1,30,68,000/-.

10. The Assessing Officer further noted that the seized documents as well as the statement of sales manager show that the assessee has received on-money on sale of 4 shops. Since the evidences of on-money taken by the assessee were found related to 4 shops (total 13 shops were sold by the assessee till 31.03.2019), the Assessing Officer held that the probability of acceptance of on-money on other shops sold by the assessee cannot be ruled out. According to him, it is not possible that the assessee would accept the on-money in one shop and cannot accept in the neighbor shop. Rejecting the various explanations given by the assessee and following the decision of the Pune Bench of the Tribunal in the case of Golani Brothers (2000) 75 ITD 1, the Assessing Officer held that 80% of the consideration as per the registered sale deed can reasonably be estimated as on-money since the consideration received as per the sale deeds varies from shop to shop. The relevant observations of the Assessing Officer read as under:

“6.3 Calculation of on-money:

The evidences of on-money are found with respect to following shops details of which are as below:

<i>Sr No</i>	<i>Name</i>	<i>On money</i>	<i>Consideration as per registered deed</i>	<i>% of on money vis-à-vis consideration as per registered deed</i>	<i>Date of registry</i>	<i>AY</i>
<i>1</i>	<i>Ramesh Kumar Choudhary</i>	<i>45,17,500</i>	<i>Rs.27,26,500</i>	<i>165</i>	<i>30/12/2016</i>	<i>2017-18</i>

2	1. Nitin B Handel 2. Devyani N Handel	46,55,700	Rs.56,84,000	82	27/07/2018	2019-20
3	1. Nitin B Handel 2. Devyani N Handel	37,56,600	Rs.45,32,000	82	27/07/2018	2019-20
4	1. Nitin B Handel 2. Devyani N Handel	46,55,700	Rs.55,04,000	84	27/07/2018	2019-20

From the above table, it can be seen that percentage on on-money accepted by Assessee with the consideration shown in registered deed varies from shop to shop. Therefore, to meet the end of justice and considering the facts of case, it is assumed that Assessee accepting 80% of on-money compare to consideration shown in registered deed. Considering the same, the on-money portion is determined as below:

For AY 2017-18:

Sr No	Shop no	Consideration as per registered deed	Date of registry	On-money
1	B-7	50,20,500	10/03/2017	40,16,400
2	D-1	29,48,500	15/12/2016	26,58,500
3	D-2	33,37,000	15/12/2016	26,69,700
4	D-3	17,27,500	15/12/2016	13,82,000
5	C-5	29,69,750	30/03/2017	23,75,800
6	B-8	27,26,500	28/11/2016	21,81,200
7	B-6	27,96,00	01/03/2017	22,36,800
			Total	1,75,20,700

11. The Assessing Officer accordingly made the addition of Rs.1,75,20,700/- as on-money received on account of sale of shops. Similarly for assessment year 2018-19 the Assessing Officer made addition of such on-money at Rs.1,49,74,500/- and for assessment year 2019-20, he made addition of Rs.206,27,925/- on account of such on-money.

12. Before the Ld. CIT(A) / NFAC the assessee made elaborate submissions. It was submitted that the various booking forms referred to by the Assessing Officer for making the addition merely represents the various negotiations that have taken place between the sales representatives and the customers till the final deed is concluded. It was submitted that while negotiating with the customers the sales representatives prepare preliminary booking forms capturing such initial negotiations. Thereafter, various negotiations and discussions and changes take place and the final price is only finalized by the director i.e. the partner of the assessee. So far as the sale of shop Nos.D-04, D-07 and D-05 are concerned, it was argued that both the booking forms in respect of sale of such shops found were the draft booking forms. The final booking forms for the aforementioned shops which were impounded during the course of search action as page No.8 of Bundle No.2, page No.8 of Bundle No.3 and page No.8 of Bundle No.11 contain signature of the Director / partner against the final rate at which the agreement has been entered into. It was argued that the Assessing Officer has merely relied on the draft booking forms impounded during the course of search action with an intention of making additions and has willfully ignored the final booking forms which were also impounded. It was argued that a perusal of the booking forms show that GST, stamp duty, etc. have been calculated on all the booking forms impounded, if it is accepted that one of the booking forms pertain to alleged on-money being accepted by the assessee, then there is no logic of levying GST/stamp duty, etc. on the said alleged on-money. It was accordingly argued that the contention of the Assessing Officer regarding one of the booking forms pertaining

to on-money is completely baseless. It was argued that the Assessing Officer has completely disregarded the business practicalities existing in the case of the assessee. The following details were produced before the Ld. CIT(A) / NFAC to show that the rates are disproportionately high as compared to the rates at which all the other units are sold by the assessee as well as the rates quoted by the projects being developed in the vicinity of the assessee:

<i>Sr. No.</i>	<i>Shop No.</i>	<i>Area (in sq.ft.)</i>	<i>Total consideration as per Ld. AO(INR)</i>	<i>Selling rate per sq.ft.</i>
<i>1</i>	<i>B09</i>	<i>463.32</i>	<i>70,35,000</i>	<i>15,184</i>
<i>2</i>	<i>D04</i>	<i>376.09</i>	<i>1,01,59,700</i>	<i>27,014</i>
<i>3</i>	<i>D05</i>	<i>331.83</i>	<i>81,08,000</i>	<i>24,424</i>
<i>4</i>	<i>D07</i>	<i>376.27</i>	<i>1,01,59,700</i>	<i>26,991</i>

13. Similar arguments were made for other shops. It was further submitted that in his statement recorded u/s 132(4) of the Act, Shri Annuj Goel, partner of the assessee firm had completely denied the receipt of any on-money. Since Shri Annuj Goel is the final decision making authority and once he has denied to have received any on-money, no addition could have been made in absence of any corroborative evidence and merely based on the statement of Shri Shirish Ranpise recorded u/s 132(1). Various decisions were also brought to the notice of the Ld. CIT(A) / NFAC to the proposition that in absence of corroborative material and in absence of any enquiry made from the buyers of the flats, addition cannot be made in the hands of the assessee on account of any on-money received.

14. Without prejudice to the above, it was submitted that if it is held that the assessee is indulged in acceptance of on-money, then the entire amount cannot be added to the total income of the assessee and only a percentage of profit should be added. It was also submitted that the difference in the two booking forms can be added and not the entire amount.

15. However, the Ld. CIT(A) / NFAC was not satisfied with the arguments advanced by the assessee and upheld both the additions made by the Assessing Officer by observing as under:

“5.8 I have considered the facts of the case, assessment order, the submissions made by the appellant along with the judicial pronouncements relied upon by the appellant. During the course of search/survey proceedings, the search/survey team had collected the evidence and impounded the various incriminating documents/diaries as under:

1) During the course of survey action, statements of Shri Shirish Bhanudas Ranpise, Sales Manager was recorded u/s 131 of the Income-tax Act, 1961 and agreed by the sales team. In his statement, Shri Shirish Bhanudas Ranpise accepted that cash component was accepted in booking of flats. In reply to Q. No. 08 of his statement, when page no 72 of his diary (seized as Bundle No. 01) dated 03/06/2017 was shown to him, he explained its contents that shop of saleable area of 860 sq. ft. in Ganga Fernhill was sold on agreement value at Rs. 6400/- per sq. ft. and over and above this, Rs.39.62 lakh was received in cash @ Rs. 4607 per sq ft. So the effective rate of sale is Rs. 11007/- per sq ft. Scanned copy of page No. 72 is reproduced below for ready reference.

.....

Q-8, Now I am showing you the entries made on the page dated 03/06/2017 of the Said diary. You are requested to explain the contents in detail.

Ans. The entries made on the said page dated 03/06/2017 was made in the hand writing of Shri Piyush Alimchandani who is also involved in negotiation of sales in respect of some of the shops of Ganga Fernhill and Ganga Florentine, I have consulted with Mm and the contents is being explained accordingly. The working is in respect of one of the shop having saleable area of 860 sq ft. in Ganga Fernhill, the dealing of which was

negotiated by Mr. Piyush Alamchandani has confirmed that the rate # 6400 has been finalised for agreement and all the necessary taxes and Other liabilities are worked out accordingly. The amount of Rs. 39,62 lakh has been received by Shri Annuj Gael in cash over and above the agreement price Rs 46L>7 per sq. ft. The actual rate is therefore worked out to Rs, 11007 per sq ft. which has been arrived after final negotiation.

ii) In the same way, Shri Shirish Bhanudas Ranpise showed and explained the file of customer Shri Ramesh kumar Chhatraram Choudhary where the actual final negotiated price was Rs 10200/- per sq ft of sale area 695 sq ft of Shop No. B-09 in project Ganga Fernhill, Undri, Pune. The agreement was executed at Rs. 3700/- per sq ft and the balance amount of Rs. 6500/- per sq was received in cash over and above agreement to sale. Further, he explained that it is written in pencil that Rs.13.5 lakhs has been received and for balance payment, time has been granted. Booking form of Mr. Rameshkumar C. Choudhary and relevant part of statement of Mr. Ranpise are reproduced hereunder.

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Q.9 It is observed that the price quoted in respect of shops at Ganga Fernhill is around Rs. 13500 per sq. ft. of salable area and in the above case the same was finalized around Rs. 11007 per sq. ft. of salable area. However, the agreements were being executed on very low rate. Please make comments in details on the treatment given to difference amount of actual amount received and agreement value, along with the position of the other projects. Please also state in detail about the process of documentation and the documentation on record in respect of the final negotiated price on which the actual sale has taken place.

Ans. I would like to submit that all the negotiations of the actual sale price and the price as per agreements is decided by the directors and the customers and being a head of sales and marketing I have to play my role accordingly, blow I am showing you the file of Shri Rameshkumar Chhatraram Choudhary to explain the documentation record in respect of final sale consideration negotiated and executed. The actual final negotiated price is @ Rs. 10200 per sq. ft of salable area (696 sq. ft) out of which the agreement has been executed @ Rs.3700 per sq. ft. and the balance amount Rs. 6500 per sq. ft of salable area is the cash component received over and above the agreement value. There are two booking forms in this file one is showing the rate @ Rs.3700 on which the agreement has been executed and the other is showing the rate @ Rs 6500 which is cash component over and above the agreement price. Further it is noted in the pencil that Rs. 13.5 lakh has been received and for the balance payment time has been given. This booking was made in October 2016. Similar is tire position in respect of other client files of the project Ganga Fernhill and Ganga Florentina. The quoted price in respect of Ganga Florentina is around Rs.15000/-.

Q. 10. As you have explained the two booking forms could be found in few files only and majority of the files have not any such booking forms except only one form showing the agreement amount only and the other booking form showing the cash component over and above the agreement price could not be traced. Please produce all such booking forms in respect of all the tenements of the project.

Ans As I have already told you that this is the process of documentation. However, from majority of files the other booking forms are missing which you have requested to produce. The other booking forms cannot be found in all files as the same are being destroyed from time to time after the process of

iii) Shri Shirish Bhanudas Ranpise, Sales Manager submitted the details of differences in booking and agreement values in those cases where two booking forms were found. This was submitted along with his statement. Copy of the said differences was tabulated and made part of the statement of Shri Ranpise. The same is reproduced for ready reference.

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Explanation of the details of cash component submitted by Shri Shirish Bhanudas Ranpise, Sales Manager, on the basis of two forms found in the files of the customers during the course of search action, as under.

(a) In sale of Shop No. B-09 of Ganga Fernhill, the area of the shop is 695 sq ft. As per page no. 5 of bundle no 10 booking form-1, the agreement value is shown as Rs. 25,71,500 at the rate of Rs. 3700/- per sq ft. & agreement to sale is also executed on same amount. As per page no. 13 of bundle no 10 Booking form-2 found in the same file, the cash amount of Rs 45,17,500/- at the rate of Rs. 6500/- is mentioned, which is taken in cash over and above the amount of Rs. 25,71,500/- shown in agreement to sale. It is explained in detail at above para.

(b) In sale of Shop No. D-04 of Ganga Fernhill, the carpet area of the shop is 380 sq ft. as per page no. 4 of seized Bundle no 4 and agreement amount mentioned here is Rs. 44,75,700/-. Page No. 6 of seized bundle no. 3, here agreement value mentioned is Rs. 56,84,000/- so total cost comes to Rs. 1,01,59,700/-. Agreement has been executed for Rs. 55,04,000/- so cash component in this deal comes to Rs. 43,25,600/-, which is taken in cash over and above the agreement amount of Rs. 55,04,000/- shown in agreement to sale.

(c) In sale of Shop No. D-05 of Ganga Fernhill, the carpet area of the shop is 307 sq ft. as per page no. 4 of seized bundle no. 11 and agreement amount mentioned here is Rs. 35,76,600/-. Page No. 6 of seized bundle no. 11, here agreement value mentioned is Rs. 45,32,000/- so total cost comes

to Rs. 81,08,600/- Agreement has been executed for Rs. 43,52,000/- so cash component in this deal comes to Rs. 37,56,600/-, which is taken in cash over and above the agreement amount of Rs. 43,52,000/- shown in agreement to sale.

(d) In sale of Shop No. D-07 of Ganga Fernhill, the carpet area of the shop is 307 sq ft. as per page no. 4 of seized bundle no. 2 agreement amount mentioned here is Rs. 44,75,700/-. Page No. 6 of seized bundle no. 2, here agreement value mentioned is Rs. 56,84,000/- so total cost comes to Rs. 1,01,59,700/-. Agreement has been executed for Rs. 55,04,000/- so cash component in this deal comes to Rs. 46,55,700/-, which is taken in cash over and above the agreement amount of Rs. 55,04,000/- shown in agreement to sale.

5.9 In view of the above facts, it could be say that the addition made by the AO on account of on-money received, which is not recorded in books of accounts, on the basis of impounded materials. Further as regard extrapolation of on-money, the probability of acceptance of on-money on other flats sold by appellant couldn't be ruled out as it was not possible that appellant would accept the on- money in one flat and couldn't accept in the neighbor flat. This proposition of the AO is supported by the decision of jurisdictional Hon'ble ITAT, Pune Bench in the case of Golani Brothers (supra), wherein the Hon'ble Tribunal has upheld the action of the AO in assuming that assessee must have also received the 'on- money' in respect of the balance 67 shops sold during these years, when the material found and seized in search contained only a list of 201 shops in respect of which 'on-money' was received by the assessee. The appellant has tried to distinguish the case laws relied upon by the AO. However, the contention of the Appellant that during the case of the appellant the partners of the appellate have denied having received on money is nothing more than a feeble alibi. Also the contention of the appellant that and the statements of sales executives relied upon by the AO do not point out any modus operandi of accepting cash, is not found to be true. The sales executives have explained the modus operandi of accepting on money in depth. Accordingly, the view taken by the AO that the appellant has accepted on-money, which was not recorded in books of accounts is found to be correct and the action of the AO in determining the same to Rs. 2,20,38,200/- (Rs. 45,17,500+ Rs. 1,75,20,700) is hereby upheld for the year under consideration. Similarly, for AYs 2018-19 and 2019-20, the addition of 'on- money' income of Rs. 1,49,74,500/- and Rs. 3,36,95,925/-, respectively made in the hands of the appellant are also upheld. This ground of appeal is, therefore, dismissed."

16. Aggrieved with such order of the Ld. CIT(A) / NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

1. *On facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the First Appellate Authority erred in*

upholding the addition of Rs.2,20,38,200/- made by the Learned Assessing Officer ('Ld. AO') as on-money received by the Appellant. The addition sustained is unwarranted, unjustified, and contrary to the provisions and Scheme of the Act. The addition so made be deleted. The Appellant be granted just and proper relief in this respect.

2. *Without prejudice to Ground No. 1 and on facts and circumstances prevailing in the case and as per provisions and scheme of the Act, it be held that if any addition needs to be sustained then that should only be restricted to the Incriminating material found during the course of search proceedings. The addition made over and above such Incriminating material, being merely on the basis of estimations is unwarranted, unjustified and contrary to the provisions of the Act and therefore deserves to be deleted. It be held that the Appellant be granted just and proper relief in this respect.*
3. *Without prejudice to Ground No. 1 and 2 and on facts and circumstances prevailing in the case and as per provisions and scheme of the Act, it be held that the addition made by the Ld. AO and sustained by the First Appellate Authority is on a very high side. The same should be substantially reduced. The Appellant be granted just and proper relief in this respect.*
4. *The Appellant craves leave to alter, delete, modify, add or amend any ground of appeal.*

17. Identical grounds have been raised by the assessee for the other two years, which are as under:

ITA No.872/PUN/2024 (A.Y. 2018-19)

1. *On facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that, the First Appellate Authority erred in upholding the addition of Rs.1,49,74,500/- made by the Learned Assessing Officer ('Ld. AO') as on-money received by the Appellant. The addition sustained is unwarranted, unjustified, and contrary to the provisions and scheme of the Act. The addition so made be deleted. The Appellant be granted just and proper relief in this respect.*
2. *Without prejudice to Ground No. 1 and on facts and circumstances prevailing in the case and as per provisions and scheme of the Act, it be held that if any addition needs to be sustained then that should only be restricted to the incriminating material found during the course of search proceedings. The addition made over and above such incriminating material, being merely on the basis of estimations is unwarranted, unjustified and contrary to the provisions of the Act and therefore deserves*

to be deleted. It be held that the Appellant be granted just and proper relief in this respect.

3. *Without prejudice to Ground No. 1 and 2 and on facts and circumstances prevailing in the case and as per provisions and scheme of the Act, it be held that the addition made by the Ld. AO and sustained by the First Appellate Authority is on a very high side. The same should be substantially reduced. The Appellant be granted just and proper relief in this respect.*
4. *The Appellant craves leave to alter, delete, modify, add or Nil amend any ground of appeal.*

ITA No.873/PUN/2024 (A.Y.2019-20)

1. *On facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the First Appellate Authority erred in upholding the addition of Rs.3,36,95,925/- made by the Learned Assessing Officer ('Ld. AO") as on-money received by the Appellant. The addition sustained is unwarranted, unjustified, and contrary to the provisions and Scheme of the Act. The addition so made be deleted. The Appellant be granted just and proper relief in this respect.*
2. *Without prejudice to Ground No. 1 and on facts and circumstances prevailing in the case and as per provisions and scheme of the Act, it be held that if any addition needs to be sustained then that should only be restricted to the incriminating material found during the course of search proceedings. The addition made over and above such incriminating material, being merely on the basis of estimations is unwarranted, unjustified and contrary to the provisions of the Act and therefore deserves to be deleted. It be held that the Appellant be granted just and proper relief in this respect.*
3. *Without prejudice to Ground No. 1 and 2 and on facts and circumstances prevailing in the case and as per provisions and scheme of the Act, it be held that the addition made by the Ld. AO and sustained by the First Appellate Authority is on a very high side. The same should be substantially reduced. The Appellant be granted just and proper relief in this respect.*
4. *The Appellant craves leave to alter, delete, modify, add or amend any ground of appeal.*

18. The Ld. Counsel for the assessee strongly challenged the order of the Ld. CIT(A) / NFAC confirming the action of the Assessing Officer in making addition

on account of receipt of on-money and extrapolation of on-money for different years. Referring to page 64 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to question No.15 where Shri Annuj Umesh Goel, the partner of assessee firm, was shown the statement of Shri Shirish Bhanudas Ranpise recorded u/s 131 and Shri Annuj Goel has categorically stated that he does not agree with the statement given by Shri Shirish Bhanudas Ranpise. He has stated that there is no such procedure of his meeting with any customer as it is not possible to meet so many customers on daily basis. The Ld. Counsel for the assessee submitted that the same officer who has recorded the statement of Shri Shirish Bhanudas Ranpise has recorded the statement of Shri Annuj Goel. Referring to page 56 of the paper book, he drew the attention of the Bench to the reply given by Shri Shirish Bhanudas Ranpise in pursuance of question No.9 wherein he has categorically stated that all the negotiations of actual sale price and the price as per agreement are decided by the Director and the customers, and he being the head of sales and marketing, has to play his role accordingly. He submitted that the statement of Shri Shirish Bhanudas Ranpise was recorded u/s 131 and the provisions of section 132(4A) are not applicable to the assessee. The Revenue has not taken the statements of any of the buyers to prove that they have in fact given any on-money over and above what is mentioned in the registered sale deed.

19. Referring to page 66 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to a sample booking form and another booking

form placed at page 68 of the paper book for the same flat and the same buyer where the signature of the director is available. He submitted that a perusal of pages 66, 67, 68 and 69 of the paper book would show that some negotiations were going on. Further in the draft booking form the rate per square feet mentioned is 6500 whereas in the booking form where the signature of the director is mentioned the rate per square feet is 3700.

20. In his alternate submission, he submitted that 6500 includes 3700 and the Revenue authorities could not have made the entire amount as addition. Referring to the copy of the index of the sale deed placed at page 70 of the paper book, he submitted that the figures mentioned in the index tallies with page No.69 of the paper book, according to which, the agreement cost is Rs.25,71,500/-. He submitted that pages 71 to 90 of the paper book are only seized papers which contain the details of only two customers. Referring to page 74 of the paper book, he submitted that the brokerage of 3% has been mentioned on the basis of the agreement cost in respect of sale to Shri Nitin Handal and Devyani Handal as per booking form and the agreement cost is mentioned as Rs.56,84,000/-. However, in another booking form, the total agreement cost is mentioned as Rs.43,66,338/-. He submitted that no other evidence of receipt of any on-money has been found nor any assets or valuable or cash or any evidence of any expenditure incurred out of such on-money has been found. He accordingly submitted that merely based on the statement of sales person recorded u/s 131 of the Act, the Assessing Officer

could not have made any addition on account of on-money and extrapolation thereof.

21. Without prejudice to the above, the Ld. Counsel for the assessee submitted that the on-money, if any, can be confined to the documents seized from the premises of the assessee and it cannot be added for the entire project and the Assessing Officer could not have extrapolated the same. In yet another argument, the Ld. Counsel for the assessee submitted that only the gross profit element can be added and the entire amount cannot be added.

22. Referring to the decisions of Hon'ble Allahabad High Court in the cases of Dr. Roop vs. CIT (2012) 20 taxmann.com 205 (All) and Dr. V.S. Chauhan vs. DIT (Inv) (2011) 12 taxmann.com 230 (All), the Ld. Counsel for the assessee submitted that the Hon'ble High Court in the said cases has held that the exercise of power u/s 131(1A) is contemplated in a situation anterior to exercise of power under section 132.

23. Referring to the decision of Delhi Bench of the Tribunal in the case of Pradeep Kumar Sharma vs. DCIT (2021) 132 taxmann.com 41 (Delhi-Trib) and Bangalore Bench of the Tribunal in the case of DCIT vs. H. Omkarappa (HUF) vide ITA No.1634/Bang/2019, the Ld. Counsel for the assessee submitted that the Tribunal in the said cases has held that the additions could not be made merely on

the basis of statement recorded u/s 131 of the Act when no corroborative material is unearthed during search.

24. Referring to the decision of Pune Bench of the Tribunal in the case of Chander Mohan Mehta vs. ACIT (1999) 71 ITD 245 (Pune) and Mumbai Bench of the Tribunal in the case of DCIT vs. Kanakia Hospitality (P.) Ltd. (2019) 110 taxmann.com 4 (Mumbai-Trib.), the Ld. Counsel for the assessee submitted that the Tribunal in the said decisions has held that where the Assessing Officer relies upon statements or documents to corroborate the additions made, the said statement has to be read in totality and cannot be read in piece-meal.

25. Referring to the following decisions, the Ld. Counsel for the assessee submitted that no arbitrary addition to the income can be made based on the basis of dumb documents, loose papers containing scribbling, rough/vague notings, etc:

- i) *PCIT vs. Umesh Israni* (2019) 108 taxmann.com 437 (Bom)
- ii) *CIT vs. Vatika Landbase (P.) Ltd.* (2016) 67 taxmann.com 372 (Del)
- iii) *CIT vs. Vivek Aggarwal* (2015) 56 taxmann.com 7 (Del)
- iv) *PCIT vs. Ajanta Footcare (India) (P.) Ltd.* (2017) 84 taxman.com 109 (Cal)
- v) *CIT vs. Atam Valves (P.) Ltd.* (2009) 184 Taxman 6 (P&H)
- vi) *CIT vs. D.K. Gupta* (2008) 174 Taxman 476 (Del)
- vii) *Saaras Agro Industries vs. ACIT* (2022) 143 taxmann.com 319 (Indore-Trib.)
- viii) *Ms. Priyanka Chopra vs. DCIT* (2018) 94 taxmann.com 122 (Mumbai-Trib.)
- ix) *Nagarjuna Construction Co. Ltd. vs. DCIT* (2012) 23 taxmann.com 239 (Hyd.)
- x) *S.P. Goyal vs. DCIT* (2002) 82 ITD 85 (Mum.) (TM)

26. Referring to the following decisions, the Ld. Counsel for the assessee submitted that extrapolation has to be done on the basis of some cogent material found during the course of the search action:

- i) *CIT vs. C.J. Shah & Co (2001) 177 TAXMAN 577 (Bom)*
- ii) *Accord Properties vs. ACIT, vide ITA No.741/PN/2012*
- iii) *Fort Projects (P.) Ltd. vs DCIT (2013) 29 taxmann.com 84 (Kolkata – Trib.)*
- iv) *ACIT vs. M/s. Layer Exports Pvt. Ltd. vide ITA No.2986/Mum/2011*
- v) *DCIT vs. Royal Marwar Tobacco Product (P.) Ltd. (2009) 29 SOT 53 (Ahmedabad) (URO)*
- vi) *D.N. Kamani (HUF) vs. DCIT (1999) 70 ITD 77 (Pat.) (TM)*
- vii) *Samrat Beer Bar vs. ACIT (2000) 75 ITD 19 (Pune)(TM)*

27. Referring to the following decisions, the Ld. Counsel for the assessee submitted that addition of the alleged on-money being accepted by the assessee should be restricted to the profit element embedded in the alleged on-money received by the assessee:

- i) *CIT vs. President Industries (2002) 124 TAXMAN 654 (Guj)*
- ii) *CIT vs. Gurubachhan Singh J. Juneja (2008) 171 Taxman 406 (Guj)*
- iii) *Jyotichand Bhaichand Saraf & Son (P.) Ltd. vs. DCIT (2012) 26 taxmann.com 239 (Pune)*
- iv) *Kush Corporation vs. ACIT vide ITA No.357/Sur/2022*
- v) *CIT vs. Balchand Ajit Kumar (2004) 135 Taxman 180 (MP)*
- vi) *Madanlal Narendrakumar (HUF) vs. ACIT (2003) 131 TAXMAN 41 (Indore) (Mag.)*

28. He accordingly submitted that the addition made by the Assessing Officer and sustained by the Ld. CIT(A) be deleted.

29. The Ld. DR on the other hand strongly supported the order of the Ld. CIT(A) sustaining the addition made by the Assessing Officer. He submitted that the evidences were gathered during the course of search showing that the assessee

was indulging in receipt of on-money. The statement of the sales person Shri Shirish Bhanudas Ranpise was confronted to the director of the assessee firm and he has simply denied, which is only a bald denial. The assessee firm has never denied the evidences those were gathered. Referring to the decision of the Hon'ble Bombay High Court in the case of Harish Textile Engrs. Ltd. vs. DCIT (2015) 379 ITR 160 (Bom) he submitted that the extrapolation on the basis of loose papers found during the course of search was upheld by the Hon'ble Bombay High Court. Referring to the decision of the Hon'ble Supreme Court in the case of Pooran Mal vs. Director of Inspection (1974) 93 ITR 505 (SC) he submitted that the Hon'ble Supreme Court in the said decision has held that even if the search is invalid, the evidences found during the course of search can be utilized for making addition. He also relied on the decision of Hon'ble Delhi High Court in the case of Balwant Singh vs. Director of Inspection (1969) 71 ITR 550 (Del), according to which information gathered as a result of illegal search and seizure can be used subject to the value to be attached to it or its admissibility in accordance with law relating to evidence.

30. The Ld. Counsel for the assessee in his rejoinder submitted that in the case of Harish Textile Engrs. Ltd. vs. DCIT (supra) it was accepted by the assessee that it has received on-money, whereas in the instant case the director / partner of the assessee firm has completely denied the receipt of any on-money. He submitted that when the statement of Shri Shirish Bhanudas Ranpise was recorded u/s 131 of the Act and he has made certain statements, the same was not corroborated with

any evidence or any further enquiry from the buyers. Since nothing has been done, therefore, the said decision is not applicable.

31. So far as the two booking forms impounded for sale of the same flat are concerned, he submitted that other than Shri Shirish Bhanudas Ranpise, no other employee has stated that there are two forms prepared, one containing the on-money and the other one is as per the registered sale deed.

32. So far as the decision of the Hon'ble Supreme Court in the case of Pooran Mal vs. Director of Inspection (supra) is concerned, he submitted that there is no dispute to the fact that the evidences can be used but the same has to be corroborated. When the assessee has stated that the negotiations were going on and the final price is as per the form signed by the director and the brokerage has also been given on the final price, the lower authorities could not have brushed aside all these submissions and made the addition of on-money as well as extrapolation of the same, which is not justified.

33. 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 both sides. We have also considered the various decisions cited before us by both sides. We find the assessee is a firm engaged in business of real estate. During the course of search action u/s 132 of the Act conducted on 10.01.2019 certain loose papers were found and seized from the office premises of

the assessee. When these documents correlated with entries found in other documents and registered deed, it was noted that the assessee firm has involved in accepting on-money in cash for booking/selling of flats/shops. Further in the statement recorded u/s 131 of Shri Shirish Bhanudas Ranpise, sales manager, he had admitted that the cash component was accepted in the bookings of flats / shops. Since the assessee did not offer any income on account of such on-money received, the Assessing Officer in the order passed u/s 153A r.w.s. 143(3) made addition of Rs.45,17,500/- being the on-money received in respect of shop No.B-09 sold to Shri Ramesh Kumar Chaudhary. Since the assessee was indulging in receipt of on-money, the Assessing Officer held that the assessee must have received on-money on account of sale of various other shops during the year. Since the assessee has sold 4 more shops and the component of on-money varies from shop to shop as per the consideration shown in the registered sale deed, the Assessing Officer assumed that the assessee was accepting the on-money to the tune of 80% of the total consideration as mentioned in the registered sale deed. He, therefore, made addition of Rs.175,20,700/- to the total income of the assessee by extrapolating the same.

34. We find the Ld. CIT(A) / NFAC sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that no such on-money has been received by the assessee which was denied by the partner of the assessee firm in the statement recorded u/s 132(4). Further, no

statement of any of the buyers have been recorded either during the course of search or post search enquiries or during the course assessment proceedings. It is also his submission that no cash, jewellery or other valuables or entries containing any expenditure or any other asset was found during the course of search on account of receipt of such on-money. It is also his submission that the addition, if any, should be restricted to the documents found during the course of search and it cannot be extrapolated for other sales for which no evidence was found.

35. It is also his submission that only the gross profit element on account of receipt of such on-money at best can be added.

36. We find some force in the arguments of the Ld. Counsel for the assessee. A perusal of the statement recorded of Shri Anuj Goel u/s 132(4) of the Act on 12.01.2019, copy of which is placed in paper book at pages 59 to 65 shows that he has denied to have received any such on-money as stated by Shri Shirish Bhanudas Ranpise whose statement was recorded u/s 131 of the Act and no other query was put to him to confront the statement of Shri Ranpise. For the sake of clarity, we reproduce the entire statement recorded u/s 132(4) which reads as under:

“STATEMENT U/S. 132 (4) OF THE INCOME TAX 1961

Statement of Shri Annuj Umesh Goel s/o Shri late Umesh Sitaram Goel age 36 years R/o 701 & 702, Konark A Plus, Sopan Baug, Ghorpadi, Pune 411001 recorded u/s 132(4) of the I.T. Act 1961, during the course of search action u/s 132 in the case of Jaiprakash Sitaram Goel, Amit Jaiprakash Goel, Atul Jaiprakash Goel, Subhash Sitaram Goel, Umesh Sitaram Goel, Annuj Umesh Goel, Ankit Umesh Goel, Rajendra Sitaram Goel, Ammul Rajendra Goel, Goel Ganga India Pvt. Ltd., Goel Ganga Developers (India) Pvt. Ltd., Goel Nitron Construction, Goel Ganga Promoters, Goel Ganga Space LLP, Goel Eisha

Capitals, Goel Ganga Infrastructure and Real Estate Pvt. Ltd., Geeta Construction Pvt. Ltd., Ganga Housing Pvt. Ltd., Shree Balaji Realty, Shri Siddhivinayak Developers, Meenamani Ganga Builder LLP, Ganraj Homes LLP, Shree Balaji Associates, Goel Properties, Kappa Realtors LLP on 12/01/2019.

Statement commenced on 12/01/2019 at 08:30 PM.

OATH ADMINISTERED

"I swear in the name of God that I will speak truth, only truth and nothing but the truth. I further confirm that I have been made aware of the consequences of making a false statement under oath"

Before Me

Deponent

Sd/-
(Authorized Officer)

Sd/-
(Annuj Umesh Goel)

Q.1 Please identify yourself.

Ans. My name is Annuj Umesh Goel s/o Shri late Umesh Sitaram Goel age 36 years R/o 701 & 702, Konark A Plus, Sopan Baug, Ghorpadi, Pune

Sd/-
(Authorized Officer)

Sd/-
(Annuj Umesh Goel)

411001. My educational qualification is B.Com. My contact no. is 9922992255. I would also like to state that I am well versed in Hindi and English and I am comfortable in giving the statement in English language.

Q.2 Please confirm that oath has been administered to you and you are reminded that this statement is being recorded on oath and you have been made aware about the consequences of giving false statement on oath including penalties u/s 179 of IPC, sec 180 of IPC, sec 181 of IPC and sec 277A of the Income Tax Act.

Sec 179 of IPC: Refusing to answer question

Sec 180 of IPC: Refusing to sign the statement

Sec 181 of IPC: False statement on oath

Sec 277A of Income Tax Act, 1961: Enabling others to evade taxes.

Ans. I confirm that the oath has been duly administered and I have been made aware of the consequences of giving a false statement on oath.

Q.3 Please give details of your sources of Income?

Ans. I receive remuneration income and share of profit from my partnership firms. The quantum of remuneration is around Rs.50 lakhs every year. My PAN is AHCPG8733P. I have filed my last Return of Income for A.Y. 2017-18.

Q.4 Please provide the details of all the business concerns in which you or your family members have substantial interest and details of assets held by you.

Ans. I and my family members are basically engaged in the business of real estate construction. The details of various business concerns in which I or my family members have substantial interest is given as annexure 'A' to this

Sd/-
(Authorized Officer)

Sd/-
(Annuj Umesh Goel)

statement. The detail of assets held by me is given as annexure 'A1' to this statement.

Q.5 Please explain your work profile as a partner of M/s Meenamani Ganga Builder LLP.

Ans. I along with my brother Ankit Umesh Goel, am looking after whole and sole business activities of M/s Meenamani Ganga Builder LLP, with the help of my staffs. I would also like to state that I was also looking after the business activities of M/s. Shri Siddhivinayak Developers, Shree Balaji Associates and Shree Balaji Realty.

Q.6 Please state what type of Books of accounts and documents are maintained at this premise? Also provide details of all the concerns whose books of accounts are maintained at this premise.

Ans. At this premises, we maintain all the books and accounts of M/s Meenamani Ganga Builder LLP, M/s. Shri Siddhivinayak Developers, and Shree Balaji Realty. Apart from this, all the other documents related to bookings, project voucher and receipt are maintained at this office. Books of accounts are maintained in tally accounting software. Customer booking forms, demand and receipts from customers are maintained in ERP.

Q.7 Please give details of all the bank accounts maintained by you and your firms/company/proprietary concerns.

Ans. I am providing details of all bank account maintained by me and my brother Ankit Umesh Goel and all my firms as annexure 'B' to this statement.

Q.8 Please provide trial balance of all your firms in which you have substantial interest as on 10/01/2019.

Sd/-
(Authorized Officer)

Sd/-
(Annuj Umesh Goel)

Ans. I am providing you consolidated trial balance of all the firms in which I and my brother Shri Ankit Umesh Goel have substantial interest as annexure 'C' to this statement. As per this trial balance, total cash in hand is Rs.1,18,73,957/-.

Q.9 As per the trial balance submitted by you, it is showing cash balance position of Rs.1,18,73,957/- but cash found at this business premise i.e. 5, San Mahu Commercial Complex, Bund Garden Road, Pune 411001 is Rs.23,03,495/- only. Please explain the difference of Rs.95,70,462/-.

Ans. Rs.25,09,860/ has been found at my residence i.e. 701 & 702, Konark A Plus, Sopan Baug, Ghorpadi, Pune 411001. Remaining amount of Rs.70,60,602/-, I need to reconcile and will offer you explanation within one week's time.

Q.10. Please provide the details of Work in Progress (WIP) as on today of all your ongoing projects in which you are actively involved as partner/director/proprietor etc.

Ans. The status/position of the WIP of ongoing projects of all the firms controlled by me are as per the details given below:

Sr No	Name of Project	Name of the concern	WIP (Rs.)
01	Florentina	Shree Balaji Realty	143,02,41,160/-
02	Fernhill	Meenamani Ganga Builder LLP	40,47,63,526/-
03	Amber	Shri Developers Siddhivinayak	56,66,43,743/-
04	New Town	Shree Balaji Associates	73,01,40,193/-
Total			313,17,88,622/-

Sd/-
(Authorized Officer)

Sd/-
(Annuj Umesh Goel)

In support of this, I am submitting herewith balance sheet and profit & loss account as on today as annexure 'D' to this statement.

Q.11 On analysis of you're the position of WIP given by you above that it can be found that the total WIP in your case is Rs.329,22,50,849/-. Under the circumstance please explain which method of accounting is being followed by you for sales/revenue recognition.

Ans. I am following percentage completion method for sale/revenue recognition.

Q.12 Please provide project wise working of percentage completion method in regards to above mentioned four projects.

Ans. I am providing the details of percentage completion of projects as annexure 'E' to this statement.

Q.13 On verification of the working of percentage completion method applied by you, it is noticed that the total net profit to be recognized for all above four projects comes to Rs.4,23,00,549/-. Please comments.

Ans. Yes, I confirm that the total net profit to be recognized for FY 2018-19 is Rs.4,23,00,549/-. I am declaring herewith the same as additional income for FY 2018-19. The bifurcation of the above state declaration is:

Sr No.	Project	Firm Name	Financial Year	Additional income
01	Fernhill	Meenamani Ganga Builder LLP	2018-19	0

Sd/-
(Authorized Officer)

Sd/-
ccc(Annuj Umesh Goel)

02	Florentina	Shree Balaji Realty	2018-19	56,37,525/-
03	Amber	Shri Siddhivinayak Developers	2018-19	1,56,47,260/-
04	New Town	Shree Balaji Associates	2018-19	2,10,15,755/-
	Total			4,23,00,549/-

Q.14. Please identify Shri Shirish Bhanudas Ranpise?

Ans. Yes, I know Shri Shirish Bhanudas Ranpise. He is working as HOD (Head of the Department), sales and marketing in my office. He has responsibility to look after sales of the Goel Ganga Developments Group.

Q. 15. I am showing you statement of Shri Shirish Ranpise recorded under section 131 of the Income Tax Act 1961 on 10.01.2019. Please go through it and comment.

Ans: I have thoroughly gone through the statement of Shri Shirish Ranpise recorded under section 131 of the Income tax Act 1961 on 10.01.2019 and I do not agree with the statement given by Shri Shirish Bhanudas Ranpise. There is no such procedure of my meeting with any customer as it is not possible to meet so many customers on daily basis.

Q. 16. I am showing you working sheet prepared by Shri Shirish Ranpise (attached with his statement) on the basis of documents found and seized from your premises. Please confirm the same and explain the content of the same.

Ans: I have gone through above said sheet. As per the procedure of my company, we do not have or follow any such method of form Booking 1 and Form Booking 2. I also state that there is no such format in the way Shri Shirish has presented before you in his statement.

*Sd/-
(Authorized Officer)*

*Sd/-
(Annuj Umesh Goel)*

Q. 17 During the statement of Shri Shirish Ranpise, he stated that in every booking there are two Forms, one showing agreement value and another showing actual value of the Unit/flat/shop. He also provided one example of Shri Rameshkumar Chtraram Choudhary wherein he produced two different booking Forms which are seized. In this regard, please offer your comment.

Ans: As I mentioned above, there is no procedure of my company that follows any such method of form Booking 1 and Form Booking 2. Shri Ramesh C Choudhary may be one of my customer. But I never met him till date.

Do you want to say anything else?

Ans: Yes Sir. I once again confirm that I have voluntary declared amount of Rs.4,23,00,549/- as my additional income for FY 2018-19 relevant to AY 2019-20. I will pay due taxes their on within prescribed time limit as per law in presence.

*Sd/-
(Authorized Officer)*

*Sd/-
(Annuj Umesh Goel)*

VERIFICATION

"Whatever stated above is correct and true to the best of my knowledge and belief. The above statement has been given by me voluntarily in sound state of mind, without any coercion, threat, duress and undue influence. I confirm that I have gone through the statement, understood in and found that whatever stated by me has only been correctly recorded."

*Sd/-
(Authorized Officer)*

*Sd/-
(Annuj Umesh Goel)"*

37. A perusal of the statement so recorded shows that after denial of Shri Anuj Goel regarding the receipt of any on-money from any of the customers, no effort has been made by the Revenue to confront Shri Anuj Goel regarding the

discrepancies found between two forms. We further find none of the persons to whom the shops / flats were sold have ever been examined by the search party during the course of search or post-search enquiry or by the Assessing Officer during the course of assessment proceedings. It is also an admitted fact that nothing is brought on record to show that any of the buyer to whom the flats have been sold are related to the assessee.

38. We find the Hon'ble Madras High Court in the case of CIT vs. S. Khader Khan Son (supra) has held that section 133A of the Act does not empower any ITO to examine any person on oath. Therefore, the statement recorded u/s 133A of the Act has no evidentiary value and any admission made in such statement cannot be made the basis for addition.

39. We find the Hon'ble Kerala High Court in the case of Paul Mathews & Son vs. CIT (2003) 263 ITR 101 (Kar) has held that the provisions of section 133A of the Act does not empower any ITO to examine any person on oath and the statement recorded u/s 133A of the Act has no evidentiary value.

40. We find the Hon'ble Madras High Court in the case of CIT vs. P. Balasubramanian (2013) 354 ITR 116 (Mad) has held that the addition can be made on the basis of assessee's statement in survey only if it is supported by the relevant material to substantiate the same.

41. We find the Mumbai Bench of the Tribunal in the case of Smt. Madhu Gupta vs. DCIT (2006) 8 SOT 691 (Mum), has held that the statements which are not confronted to any of the partners of the assessee should not be considered as the basis for making addition.

42. However, at the same time it is also an admitted fact that certain booking forms were found containing two different figures in respect of shop Nos.B-09, D-04, D-05 and D-07, the details of which are given by the Assessing Officer and reproduced at para 7 of this order. As per this shop No.B-09 which was sold during the year shows the agreement value at Rs.25,17,500/- whereas the booking form so impounded from the premises of Shri Ranpise is Rs.45,17,500/-. On being a pointed query raised by the Bench, the Ld. Counsel for the assessee agreed for the addition of the difference. Thus, for assessment year 2017-18 in respect of shop No.B-09, the difference of Rs.20 lakh is added as receipt of on-money.

43. Since no such shop has been sold during the assessment year 2018-19 as mentioned by the Assessing Officer, therefore, there is no question of receipt of any on-money for the assessment year 2018-19. Thus, no addition is required to be made.

44. So far as the assessment year 2019-20 is concerned, the assessee has sold shop Nos.D-04, D-05 and D-07 and the agreement value as per booking forms differ from other booking forms. We find in respect of shop No.D-04, the agreement value is Rs.55,04,000/-, booking form -1 shows figure of Rs.44,75,700/-

and booking form-2 shows the figure of Rs.56,84,000/-. In our opinion, higher of the booking forms should be considered as the amount of consideration and after deducting the agreement value of Rs.55,04,000/- the difference of Rs.1,80,000/- has to be added in respect of shop No.D-04. Similarly, for shop No.D-05, the agreement value is Rs.43,52,000/- whereas booking form-1 shows the figure of Rs.35,76,600/- and booking form-2 shows the figure of Rs.45,32,000/-. Therefore, addition of Rs.1,80,000/- for Shop No.D-5 has to be made. Similarly, in respect of shop No.D-07, we find the higher of the booking forms shows the figure at Rs.56,84,000/- whereas the agreement value as per document shows the same at Rs.55,04,000/- and therefore, the difference of Rs.1,80,000/- should be added to the total income of the assessee as on-money.

45. Thus, for assessment year 2017-18 an amount of Rs.20 lakh has to be added whereas for assessment year 2019-20 the addition on account of on-money comes to Rs.5,40,000/-.

46. So far as the question of extrapolation for three assessment years is concerned, as stated earlier, neither the key person Shri Anuj Goel was confronted in his statement u/s 132(4) of the Act regarding the receipt of on-money nor any of the customers to whom the shops have been sold were either examined by the search party at the time of search or post-search enquiries nor any effort was made by the Assessing Officer to ascertain the sale of shops at higher price to the concerned buyers. It is also an admitted fact that no cash or valuables or any entry

relating to any other expenditure out of such on-money was found during the course of search. Under these circumstances, we are of the considered opinion that addition for all the 3 years by extrapolating is not justified.

47. So far as various decisions relied on by the Assessing Officer as well as the Ld. CIT(A) are concerned, the same, in our opinion, are not applicable to the facts of the present case. In the case of Surendra M. Khandhar (supra), the Hon'ble Bombay High Court has held that where Xerox copy of document seized from the assessee was not denied the same showed advancement of certain sums to one 'C' and two signatories of said document were also not denied by the assessee and as the document was seized from assessee's control, presumption under section 132(4A) and 292C was clearly applicable. However, in the present case, the managing partner of the assessee firm has denied to have received any such on-money and no further questions were asked either to the managing partner or to any of the customers to whom the flats / shops have been sold and who were identifiable.

48. We find in the case of CIT Vs. Naresh Kumar Aggarwala (supra), the Hon'ble Delhi High Court has held that, there was a presumption raised under section 132(4A) on seizure of fax message and it was upon assessee to rebut that presumption by offering a plausible explanation. However, as mentioned earlier, the statements of the employees in the instant case were recorded u/s 131 of the Act and not u/s 132(4A) of the Act. Further, the managing partner of the assessee

firm has completely denied to have received any on-money and neither he was confronted subsequently nor any of the customers who are identifiable were examined either by the Investigation Wing during the course of search or post-search enquiries or by the Assessing Officer at the time of assessment proceedings. So far as the decision of Hon'ble Bombay High Court in the case of Harish Textile Engrs. Ltd. vs. DCIT (supra) relied on by the Ld. CIT-DR is concerned, we find in that case the extrapolation on the basis of loose papers found during the course of search was upheld by the Hon'ble Bombay High Court. However, it is seen that the assessee in that case has accepted that it has received on-money whereas in the instant case the director / partner of the assessee firm has completely denied to have received any such on-money. Further, neither he was confronted subsequently nor any of the buyers / customers who are identifiable were examined/confronted either by the Investigation Wing during the course of search or post-search enquiries or by the Assessing Officer at the time of assessment proceedings. So far as the decision of Hon'ble Supreme Court in the case of Pooran Mal vs. Director of Inspection (supra) is concerned, there is absolutely no dispute to the fact that evidences can be used but the same has to be corroborated.

49. In view of the above discussion and in view of the decisions cited (supra), we are of the considered opinion that extrapolation cannot be made on account of receipt of on-money for sale of shops in respect of which no evidence was found during the course of search and no enquiry or investigation was conducted either by the search party during the course of search or post-search enquiries or by the

Assessing Officer during the course of assessment proceedings. Thus, the grounds raised by the assessee are partly allowed for all the three years.

50. In the result, all the three appeals filed by the assessee are partly allowed.

Order pronounced in the open Court on 7th February, 2025.

Sd/-

(ASTHA CHANDRA)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 7th February, 2025
GCVSR

Sd/-

(R. K. PANDA)
VICE PRESIDENT

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	17.12.2024		Sr. PS/PS
2	Draft placed before author	18.12.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
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
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			