

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VP &  
MS PADMAVATHY S, AM**

**I.T.A. No. 5748/Mum/2025  
(Assessment Year: 2012-13)**

<b>Alpesh Chandulal Modi,</b> 1603, Rashmi Heights CHS Ltd. Dayabhai patel Road, Opp. M.W. Desai Hospital, Malad(East), Mumbai-400097. <b>PAN: AALPM3688H</b>	Vs.	<b>ITO, Ward-16(2)(1),</b> Room No. 441, 4 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
<b>Assessee)</b>		
<b>: Revenue)</b>		

**Assessee by** : Shri Nitesh Joshi & Shri Gautam  
Thacker, AR

**Revenue by** : Shri Surendra Mohan, Sr. DR

**Date of Hearing** : 20.11.2025

**Date of Pronouncement** : 02.12.2025

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 05.09.2025 for Assessment Years (AY) 2012-13. The assessee raised the following grounds of appeal:

*“The following grounds are submitted, each without prejudice to the others:*

- 1) On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) ["CIT(A)"], National Faceless Appeal Centre (NFAC), erred in confirming the addition of Rs. 66,56,000/- made by the Learned Assessing Officer ("AO") as income from other sources by relying solely on an unverified third-party declaration, without any corroborative documentary evidence, while disregarding the detailed submissions and judicial precedents placed on record by the Appellant.*
- 2) On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in sustaining the addition of Rs. 266,56,000/- on the basis of loose sheets/dumb documents found at a third party's premises, ignoring the fact that the concerned third party had subsequently retracted the alleged declaration statement.*
- 3) On the facts and in the circumstances of the case and in law, the Learned CIT(A) failed to appreciate that, during cross-examination, the person who had earlier given the declaration categorically confirmed that no cash (on-money) was ever received from the Appellant or on his behalf in respect of the purchase of the flat by Appellant.*
- 4) On the facts and in the circumstances of the case and in law, the Learned CIT(A) failed to appreciate that the statutory presumption under section 292C of the Act applies only to the person from whose possession the material is found. As admittedly no such material was found or seized from the Appellant's premises, no part of the alleged material could justifiably be considered as income in the hands of the Appellant.*
- 5) On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in dismissing the ground that the approval under section 151 of the Act, granted by the Joint Commissioner of Income Tax, Range 16(2), Mumbai, for initiation of reassessment proceedings, was accorded in a purely mechanical manner, without due application of mind to the facts of the case.*
- 6) On the facts and in the circumstances of the case and in law, the Learned AO erred in framing the impugned reassessment order without satisfying the mandatory jurisdictional conditions laid down under sections 147 to 151 of the Act. Accordingly, the reopening under section 148 is bad in law, beyond jurisdiction, and the order passed under section 143(3) r.w.s. 147 of the Act is liable to be quashed.*

*7) The appellant craves leave to add, alter, amend, delete, or withdraw any of the above grounds or to raise additional grounds which may be necessary and advised from time to time.”*

2. The assessee is an individual and filed the return of income for AY 2012-13 on 18.09.2012 declaring total income of Rs. 9,96,201/-. A survey u/s. 133A of the Act was conducted at M/s Rashmi Infrastructure Developers Ltd. wherein evidences related to "On money" payments by various flat purchasers in the building "Rashmi Heights" was found. On the basis of the impounded documents and the statement of the Director of M/s Rashmi Infrastructure Developers Ltd., the AO reopened the assessment stating that the assessee has paid cash of Rs. 66,56,000/- towards purchase of flat no. 1603. In response to notice u/s. 148, the assessee submitted that the return filed on 18.09.2012 may be treated as the return filed in response to notice u/s. 148 of the Act. The Assessing Officer (AO) subsequently issued notices calling for details pertaining to the impugned transactions from the assessee. The assessee submitted that the impounded document basis which it is alleged that the assessee has made cash payments is not shown to the assessee and that the said document does not belong to the assessee. The assessee further submitted that no cash payments have been made by him to the builder and that the entire consideration towards purchase of the flat is made through banking channels. The assessee also made a request for cross-examination of the party. The AO did not accept the submissions of the assessee and proceeded to make an addition of Rs. 66,56,000/- as Income from other sources stating that the assessee has not proved that cash has not been paid to the assessee. Aggrieved the assessee filed further appeal before the CIT(A). During the appellate proceedings the CIT(A) remanded to the AO for affording cross-examination of the seller of the property. The AO after the cross-examination submitted the remand report reiterating that the impounded material clearly indicate receipt of

"On money" in respect of flat no. 1603 purchased by the assessee. In rejoinder the assessee submitted that during cross-examination the director Shri Uma Shankar Saha clearly denied having received any cash from the assessee and therefore the addition cannot be sustained merely based on impounded document without any corroborative evidence. The CIT(A) however confirmed the addition made by the AO by holding that

*“The submissions of the assessee and the contentions of the Assessing Officer in the remand report have been carefully examined along with the assessment records. It is a matter of record that the addition of Rs. 66,56,000 has been made on the basis of seized loose sheets from the premises of M/s Rashmi Infrastructure Developers Ltd. and the statement of its Director, Shri Umashankar Saha, recorded during the course of survey. The impounded papers specifically mentioned Flat No. 1603, which directly corresponds to the property purchased by the assessee. Such contemporaneous documentary evidence cannot be brushed aside merely because it was not found from the possession of the assessee.*

*Although the assessee has produced the registered agreement, builder's receipts, and bank statements evidencing payment of the agreement value through banking channels, these documents only establish the recorded consideration. They do not rule out the possibility of parallel cash payments. The presumption under section 292C attaches to the seized material, and the onus is on the assessee to disprove the contents of the documents. The assessee has failed to discharge this burden by bringing any independent evidence to establish that no cash payment was made.*

*During cross-examination, Shri Umashankar Saha attempted to dilute his earlier admission by stating that he did not recollect the details and subsequently retracted the statement. However, the retraction came after a considerable lapse of time and without any contemporaneous supporting material. Judicial pronouncements have consistently held that belated retractions carry little evidentiary value unless substantiated by credible material. In the present case, the original admission made at the time of survey, when read in conjunction with the seized papers clearly mentioning Flat No. 1603, constitutes credible evidence which cannot be disregarded.*

*The surrounding circumstances also lend support to the Assessing Officer's conclusion, as it is a matter of common knowledge, recognised in judicial*

*precedents, that unaccounted cash payments are prevalent in real estate transactions. The assessee has not furnished any material to controvert this position in so far as his own purchase is concerned.*

*In view of the above discussion, it is held that the Assessing Officer was justified in making the addition of Rs. 66,56,000 as unexplained on-money payment for purchase of Flat No. 1603. The reliance placed by the assessee on judicial precedents does not come to his aid, since in the present case the seized papers coupled with the original admission constitute sufficient corroborative evidence. Accordingly, Grounds No. 1 to 3 are dismissed.”*

3. The Id. AR submitted that the assessee bought flat no. 1603 in the building "Rashmi Height" during AY 2012-13 for a consideration which is more than the stamp duty valuation as on the date of purchase. The Id. AR further submitted that the basis for reopening the assessment and for making the impugned addition is merely based on loose paper impounded during the survey operation wherein an amount of Rs. 66,56,000/- is mentioned against the flat number of the assessee. The Id. AR also submitted that the lower authorities did not find any other corroborative evidence to support the allegation that the assessee has paid cash to the builder to the tune of the above stated amount towards the purchase of the flat. The Id. AR drew our attention to the reply given by Shri Uma Shankar Saha to the cross-examination by the assessee where he has stated as under:

*“Q.1 Shri Uma Shankar Saha, do you know me?*

*Ans. I don't know you and I have never met you before and today first time I am meeting you before the Assessing Officer.*

*Q2. Sh. Uma Shankar Saha, have you received any cash money from me or through any body on my behalf any time before for booking of flat no. 1603?*

*Ans. As I have never met you before. I have never received any cash money from you or your behalf.*

*Q.3 Sh Uma Shankar Saha, there is some working at the last of the said statement having dates and amounts wherein my name and flat no. 1603 is also mentioned. What do you have to state about it?*

*Ans, I cannot recollect any such working.”*

4. The ld. AR further drew our attention to the remand report of the AO (page 76 and 77 of PB) where the AO has clearly recorded the finding that Shri Saha has denied having received any cash from the assessee. The ld. AR also drew our attention to the fact that the statement originally made during survey proceedings are subsequently retracted by Shri Saha (page 80 to 83 of PB). Accordingly, the ld. AR argued that there is no basis for making the addition in the hands of the assessee towards alleged cash payments which are not supported by any evidence. The ld. AR submitted that the similar addition was made in the case of Jitesh Jitendra Sakidas vs. ITO (ITA No. 3112/Mum/2023 dated 27.02.2024) based on the same survey where the same loose sheet was impounded and the Co-ordinate Bench of the Tribunal has deleted the addition stating that without bringing any adverse material on record to substantiate the claim that the assessee has made a cash payment to the builder towards purchase of flat is not tenable. The ld. AR submitted that the facts in assessee's case being identical the decision of the Co-ordinate Bench is applicable to assessee's case also.

5. The ld. DR on the other hand submitted that in a real estate transaction, it is common practice that certain amount of consideration is paid in cash and therefore the AO based on the document impounded has made the addition. The ld. DR submitted that even though the builder has not confirmed the receipt of cash from the assessee, he has not denied receipt of cash from purchasers of the flat and has also offered the unaccounted consideration to tax during the course of survey. The ld. DR also submitted that the mere fact that the builder would not recognize the

assessee cannot mean that no "On money" transactions took place between the assessee and the builder more so when the document impounded reflects otherwise. Accordingly, the Id. DR supported the orders of the lower authorities.

6. We heard the parties and perused the material on record. The assessee vide agreement dated 03.08.2011 has purchased flat no. 1603 in the building "Rashmi Height" for a consideration of Rs. 67,00,000/- (page 29 to 45 of PB). The assessee made payment through banking channel and the copies of the evidences in this regard are placed in Paper Book from page 46 to 54. The contention of the revenue to make addition towards "On money" payments to the builder is the statement recorded from Shri Uma Shankar Saha, director of M/s Rashmi Infrastructure Developers Ltd. and the loose paper impounded during survey bearing the flat number purchased by the assessee against which an amount of Rs. 66,56,000/- is mentioned. It is relevant to notice that other than the statement and the loose paper the revenue did not bring any corroborative evidence to support the claim that the assessee has made the impugned payments to the builder. It is further relevant to take note of the below statement recorded from Shri Uma Shankar Saha during the course of survey –

*“Qu "Please go through the pages No. 15, 60, 61, 82, 86, 87, 89, 91 and 103 of the loose paper folder (Annexure A-1) containing pages 1-201 found and impounded during the course of survey proceedings of your Regent Chambers Office on 18.10.2013. Please explain the contents of the same as the noting appearing on these loose papers depicts the receipt of certain amount of cash on sale of certain flats pertaining to 'Rashmi Heights. Please go through the said noting and explain the same."*

*Ans: "I have gone through these pages. The summary of the said alleged receipts as appearing on the said loose papers is being tabulated hereunder:*

<u>Page No.</u>	<u>Flat No.</u>	<u>Amounts</u>
15	704 & 705	24,66,000/-
61	1006	67,00,000/-
61	105	47,50,000/-
61	104	37,64,000/-
61	1605	64,00,000/-
61	2201	43,00,000/-
61	102	50,00,000/-
61	2101	45,98,000/-
61	2106	1,11,22,000/-
61	1603	66,56,000/-
61	2204	44,00,000/-
61	102	24,00,000/-
82	1503	14,04,200/-
86	1202	5,00,000/-
87	1202	4,00,000/-
89	1602	9,80,000/-
89	802	17,03,500/-
89	1505	3,50,000/-
89	1602	15,00,000/-
89	1505	1,00,000/-
89	702	12,00,000/-
89	702	3,00,000/-
91	2102	17,50,000/-
86&89	801	9,00,000/-
87&89	802	2,25,000/-
103	905	11,01,000/-
		7,49,69,700/-
*Page 136 of Annexure A-5 impounded from the Site Office		

*I do admit that there are certain notings on the aforesaid loose papers denoting unaccounted cash receipts and there may have been certain cases where we may have taken part payment in cash to accommodate the buyer. However, I wish to state that all these notings do not depict merely cash receipts against sale of flats. A few of them could also be mere estimates. However I am presently not in a position to justify the said cash noting. Hence, I hereby offer the above sum of Rs. 7,49,69,700/-, being the sum of all these unaccounted cash notings, as tabulated above, as the additional income of M/s Rashmi Infrastructure Developers Ltd., towards the Tower*

*No. 1 of Rashmi Heights for the A.Y. 2013-14, being the year of completion of the Project and the year in which the income has been offered to tax.”*

7. From the perusal of the above statement, we notice that the director has only stated that all notings in the above list do not depict cash receipts against sale of flats and that few of them could be mere estimate. When the above statement is considered along with the reply of the director during cross-examination, we see merit in the submission of the Id. AR that there is nothing incriminating is found which warrants the addition made by the AO. We further notice that the sale consideration paid by the assessee is more than the stamp duty value of the flat and if the alleged cash payment is considered to be part of sale consideration then there is no logic that the assessee would have paid double the stamp duty value towards purchase more so without any material evidence to the contrary. We also notice that the Co-ordinate bench while considering an identical addition made in the case of Jitesh Jitendra Sakidas (supra) based on the same survey has held that

*“8. We have heard the parties and perused the material on record. The assessee vide agreement dated 25.12.2011 (page no. 21 to 40 of PB) has purchased flat no. 1006 in Rashmi Heights along with the another co-owner Mr. Sachin Jitendra Sakhidas for a total consideration of Rs. 65,00,000/- and the assessee has made payment including stamp duty on various dates to the tune of Rs. 32,57,115/- during the AY under consideration (page 9 of PB). The bank statements evidencing the payments made by the assessee to the builder is also part of the records (page 9 to 13 of PB). The contention of the Revenue is that the Director of M/s. Rashmi Infrastructure Developers Ltd. while confronted with the loose sheet bearing the flat number purchased by the assessee has replied stating that the notings in the sheet may have been unaccounted cash receipts received from buyers. It is relevant note here that the Director in the statement which is extracted in the earlier part of this order had stated that all the notings do not depict the cash receipts against the sale of flats and few of them could be mere estimates. Therefore, there is merit in the submission that nothing concrete coming out of this statement incriminating that the assessee has made the alleged cash payment towards purchase of the flat. It is further noticed that the other than statement recorded from the Director there is no other material which has been relied by the AO for drawing adverse inference against the assessee that*

*supports the allegation that the assessee has made cash payments towards purchase of flats. Though the AO has issued summons under section 131 of the Act, the Director did not appear before the AO and therefore the veracity of the statement could not be tested on the touch stone of cross-examination. Given this in our considered view In such a scenario, it would be unfair to rely only on the statement of the Director without any corroborative material showing that the assessee had paid cash of Rs.67,00,000/- over and above the sale consideration of Rs.65,00,000/-. In this regard reliance is placed on the decision of the Hon'ble Supreme Court in the case of CIT vs S. Khader Khan Son ([2012] (352 ITR 480) (SC)). It is also noticed that the assessee has purchased the flat for a consideration which is more than the stamp duty value of Rs.64,09,575 (page 22 of paper book) and that the addition of Rs.67,00,000 over and above the stamp duty value without any material evidence does not bear any logic. In view of the above discussion and considering all the facts and after perusing the materials on record, we are of the view that the AO is not correct in making the addition of Rs.67,00,000 merely based on the statement recorded from the Director and without bringing any adverse material on record to substantiate the claim that the assessee has made a cash payment to the builder towards purchase of the flat. Accordingly, we hold that the addition of Rs.67,00,000 is not tenable and be deleted."*

8. Considering that the facts in assessee's case being identical, we are of the view that addition made merely based on the statement recorded (which is subsequently retracted) without any corroborative evidence to substantiate that the assessee has paid any cash to the builder cannot be sustained. Accordingly we hold that the addition made by the AO is liable to be deleted.

9. In result, appeal of the assessee is allowed.

*Order pronounced in the open court on 02-12-2025.*

**Sd/-**  
**(SAKTIJIT DEY)**  
**Vice-President**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent

3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**