

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

ITA No. 6540/Mum/2025
(Assessment year: 2021-22)

Kulsum Aaqib Memon, 1201, Park view, 25 Mehraj Sethi Marg, Agripada, Mumbai-400008 PAN: CBYPM9748Q	vs	The Deputy Commissioner of Income Tax, Central Circle 4(2), Mumbai Kautilya Bhawan, G Block BKC, Bandra Kurla Complex, Mumbai 400051
APPELLANT		RESPONDENT

Assessee by : Shri Rakesh Joshi,
Respondent by : Shri Ritesh Misra (CIT DR)

Date of hearing : 16/12/2025
Date of pronouncement : 06/01/2026

ORDER

Per: Anikesh Banerjee (JM):

1. The instant appeal of the assessee filed against the order of the Id. Commissioner of Income Tax (Appeal)-52, Mumbai [for brevity the "Id. CIT(A)"], order passed under section 250 of the Income Tax Act 1961 (for brevity 'the Act') for assessment year 2021-22, date of order 13.09.2025. The impugned order emanated from the order of the Id. Deputy Commissioner of Income Tax, C.C.-4(2)

Mumbai (for brevity the “Id. AO”) order passed under section 143(3) r.w.s. 153C of the Act.

2. The brief facts of the case are that the assessee filed the return by declaring total income amount to Rs.7,97,970/-. Further search and seizure action under section 132 was carried out on 17.03.2021 at “Rubberwala Group” and others. During the search action, the search party covered that the assessee purchased shop in “Platinum Mall building, Girgaon Mumbai” and amount of Rs.5,00,000/- was paid in cash on acquisition of property. It was also found that the cash was paid during the assessment year 2021-22 amounting to Rs.5,00,000/-. Then the notice under section 153C was initiated and the assessment was completed with addition of Rs.5,00,000/- with the total income of the assessee under section 69 of the Act. The aggrieved assessee filed an appeal before the Id. CIT(A) and stated that the assessee had not transacted any cash amount during the A.Y. 2021-22. The assessee stated that two shops bearing no 204 & 215 were purchased in financial year 2021-22 related assessment year 2022-23 with payment of Rs.21,17,700/- from “Rubberwala Group” whereas the market value of the property was Rs.12,80,192/-. Id. CIT(A) upheld the impugned assessment order. Being aggrieved assessee filed an appeal before us.

3. The Id. AR argued and filed a paper book which containing page no.1 to 109 which is placed on record. The Id. AR contended that the during this impugned assessment year the assessee had not made any transactions with the said “Rubberwala Group”, the searched person. The entire addition was made on basis of third party statement. The assessee purchased two shops in AY 2022-23 and the transaction was made through banking channel. Even the said shops was purchased amount to Rs.21,17,700/- whereas the market value of the said

property was lower than the purchase value. The Id. AR invited our attention in **APB page 14** where the confirmation letter dated 03/02/2024 of the seller of the shops, "Rubberwala Housing and Infrastructure Ltd" is duly annexed which is reproduced as below.

*"To,
Kulsum Aaqib Memon,
1201 Park View, 25 Mehraj Sethi Marg Agripada,
Mumbai - 400 008
PAN: CBYPM9748Q*

Dear Madam,

*Sub: -Clarification letter
Ref: - Your Letter dated 31/01/2024*

With reference to your letter dated 31/01/2024 regarding clarification of Shops/ Office Units purchased, we would like to clarify and confirm as under:

We could like to confirm that no Shops / office units have been sold to you within the period AY 2015-16 to AY 2021-22. Further we would like to state that no payments have ever been received from you during the said period.

You have purchased Shops No. 204 & 215 on second floor vide agreement dated 14/07/2022 i.e in the F.Y 2022-23. First payment against the booking of the said Shop was received via cheque no. 143221 dated 24/06/2022 amount Rs. 1,00,000/- & cheque no. 143080 dated 24/06/2022 amount Rs. 1,00,000/-.

With regards to query, we would like to clarify that we have not received any payments from you in cash. Furthermore, we would like to categorically deny and state that no statements under oath have been given before the income tax departments under oath have been given before the income tax department particularly against you. we would also like to categorically deny that any statements have been given wherein it has been accepted by us that we have received any cash payments from you.

We hope this clarifies the actual position of transaction.

*Thanking you
Yours faithfully*

For Rubberwala Housing & Infrastructure Ltd.”

4. The Id. AR further contended that the registered agreement for purchased of shop/gala no.204 and 215 are duly annexed in APB page 15 to 104 where it is specifically mentioned that the assessee has purchased the said property in assessment year 2022-23. Further no reasonable opportunity was allowed assessee for handing over the documents relied by the Id. AO and no cross verification even allowed to the assessee in favor of is argument. The Ld. AR further contended that the very same issue stands adjudicated in favour of the assessee by the Coordinate Bench of the ITAT, Mumbai, A-Bench in the case of Akhraj Pukhraj Chopra vs. DCIT, ITA No.5553 and 5555/Mum/2025 date of pronouncement dated 12.11.2025. The relevant findings contained in pages 13 and 14 of the said order are reproduced hereunder.

“18. From the records we also noticed that no statement was provided to the assessee, and none of the persons, whose statements were relied upon were produced for cross-examination. Even the extract of the statement mentioned in the assessment order does not indicate the name of the assessee.

19. Apart, the AO during the course of assessment also failed to provide the opportunity to cross examine of the witnesses, whose statements were relied upon by the revenue which resulted in 'breach of principles of natural justice'. In this regard, reliance is being placed upon the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. CCE reported in (2015)281 CTR 241 (SC) wherein it has been held that 'failure to give the assessee the opportunity to cross examine witness, whose statements are relied upon, results in breach of principles of Natural Justice. It is a serious flaw which renders the order a nullity'.

20. In the case of CIT Vs. Odeon Builders Pvt. Ltd. (418 ITR 315), it was held that the 'addition/disallowance made solely on third party information without subjecting it to

further scrutiny and denying the opportunity of cross examination of the third party renders the addition/disallowance bad in law'.

21. In the case of H.R. Mehta v/s Assistant Commissioner of Income-tax, Mumbai 72 taxmann.com 110 (Bombay) wherein it was held as under

In the light of the fact that the money was advanced apparently by the account payee cheque and was repaid vide account payee cheque the least that the Assessing Officer should have done was to grant an opportunity to the assessee to meet the case against him by providing the material sought to be used against him in arriving before passing the order of assessment. This not having been done, the denial of such opportunity goes to root of the matter and strikes at the very foundation of the assessment and, therefore, renders the orders passed by the Commissioner (Appeals) and the Tribunal vulnerable. The assessee was bound to be provided with the material used against him apart from being permitting him to cross examine the deponents whose statements were relied upon by him. Despite the request seeking an opportunity to cross examine the deponents and furnish the assessee with copies of statements and disclose material, these were denied to him. 22. Taking into consideration the entire facts and circumstances and legal propositions as discussed by us above, we direct the AO to delete the addition, consequently these grounds raised by the assessee are allowed.

ITA No. 4743 & 4744/Mum/2025, A.Y 2018-19 & 2020-21

23. As the facts and circumstances in these appeals are identical to ITA No. 4742/Mum/2025 for the A.Y 2017-18 (except variance in figures) and the decision rendered in above paragraph would apply mutatis mutandis for these appeals also. Accordingly, the grounds of appeal of the present appeals also stands allowed. In the result, all the appeals filed by the assessee stands allowed.

6. On comparison of fact of present case, we do not find any material difference, therefore, respectfully following the same, the ground no. 2 & 3 of the appeal are allowed.”

5. The Id. DR argued and stated that the assessee's manager Shri Abrar Ahmad after receiving cash confirmed to Shri Imran Ansari who updated the

diaries and the excel file. So there is a proper basis for the cash transaction in between the assessee and the promoter. The Id. DR stands in favor of the order of revenue authorities. The Ld. DR relied on the impugned assessment order paragraph no.7 to 9.2 which is reproduced as below.

7. Accordingly, vide combined (for all relevant years on the issue) show cause notice dt. 18.03.2024, the assessee was asked to explain as to why the following amounts should not be treated as an unexplained investment under section 69 and treated for tax accordingly.

Sr. No	Financial Year	Assessment Year	Amount of investment
1	2014-15	2015-16	-
2	2015-16	2016-17	-
3	2016-17	2017-18	-
4	2017-18	2018-19	-
5	2018-19	2019-20	-
6	2019-20	2020-21	-
7	2020-21	2021-22	5,00,000
Total			5,00,000

8. In response to the above show cause notice the assessee submits that she had not paid any cash to the said builder/developer.
9. The submission filed by the assessee is considered but not found to be acceptable on the following grounds:
- 9.1 As already discussed in detail above, Shri Imran Ansari a key employee of Rubberwala group, who was handling sale & registration of shops in "Platinum Mall" accepted that he had maintained the excel sheet in which details of every person who paid cash in respect to purchase of cash was mentioned.
- 9.2 Further, the promoter and Director of RHIL Group- Shri Tabrez Shaikh accepted to take cash from individual for sale of Shop in Platinum Mall and also offered 8% of

the said cash as unaccounted receipts in his statement recorded u/s. 131 of the Income Tax Act, 1961 on 19/08/2021.”

6. We have heard the rival submissions and perused the material available on record. We note that the assessee purchased two shops bearing Nos. 204 and 215 during the assessment year 2022–23 for a total consideration of Rs.21,17,700/-. The impugned addition was confirmed by the Ld. AO solely on the basis of an Excel sheet found during the course of search proceedings. It is observed that the searched person had, during the search, declared profit on alleged undisclosed cash transactions at the rate of 8%. On the basis of such declaration, the Ld. AO proceeded to make an addition of Rs.5,00,000/- on the presumption that a cash transaction had taken place between the assessee and the promoter. However, on careful examination of the record, we find that the said promoter, vide letter dated 03.02.2024, categorically denied having entered into any cash transaction with the assessee during the year under consideration. Thus, there exists a clear contradiction with respect to the alleged cash transaction. The assessee has also consistently denied any such cash payment and has contended that the purchase was not made during the impugned assessment year. We further observe that the facts of the present case are identical to those considered by the Coordinate Bench in the case of **Akhraj Pukhraj Chopra** (supra). No independent or corroborative evidence has been brought on record by the revenue to substantiate the allegation of cash transaction against the assessee.

In view of the above, we hold that the addition made by the Ld. AO is arbitrary and unsustainable in law. Accordingly, the impugned appellate order is set aside and the addition of Rs.5,00,000/- is hereby deleted. Since the assessee's appeal

has been decided on merits, the legal issues raised are rendered academic in nature and are, therefore, left open.

7. In the result, the appeal of the assessee being **ITA No.6540/Mum/2025** is allowed.

Order pronounced in the open court on 06th day of January 2026.

Sd/-

(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 06/01/2026
SAUMYA

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
JODHPUR
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI