

आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

BEFORE SHRI PAWAN SINGH, JM &
SHRI ARUN KHODPIA, AM

I.T.A. No. 7021/Mum/2025
(Assessment Year: 2017-18)

I.T.A. No. 7023/Mum/2025
(Assessment Year: 2018-19)

I.T.A. No. 7022/Mum/2025
(Assessment Year: 2019-20)

Bipin Futarmal Jain, 901/A Navkar Darshan Ulster Road, Byculla (East), Mumbai - 400027 PAN: ACYPJ7069E	Vs.	DCIT, CC-4(2), Room No. 419, 4 th Floor, Kautilya Bhavan, Mumbai-400051
Assessee -अपीलार्थी / Appellant	:	Revenue - प्रत्यर्थी / Respondent

Assessee by : Shri Prashant Gjhumare, Adv.
Revenue by : Shri Vivek Perampurna, CIT-DR
Date of Hearing : 14.12.2025
Date of Pronouncement : 19.01.2026

ORDER

Per Arun Khodpia, AM:

These appeals are preferred by assessee to assail the separate orders of Commissioner of Income Tax Appeals-52, Mumbai (for short “The Ld. CIT(A)”), all dated 01.09.2025, for the assessment years (AY) 2017-18, 2018-

19 and 2019-20, arises from assessment orders passed u/s 153C of Income Tax Act, 1961 (for short “The Act”), all dated 10.03.2024, by Assistant Commissioner of Income Tax Act, Central Circle 4(2), Mumbai (for short “the Ld. AO”).

2. Ground of appeal, facts, circumstances and controversies involved, in all the above three appeals of same assessee are at parity, thus, are heard together and decided by this common order.

3. **ITA 7021/MUM/2025 for AY 2017-18** has been taken-up as **the lead case** to deliberate upon for adjudication, wherein based on discussion, submissions and observations, the decision, being on identical and interconnected facts (except quantum involved), would apply *mutatis mutandis* to remaining two appeals for AY 2018-19 and 2019-20.

4. The grounds of appeal for the lead case are as under:

“1. THE ORDER IS BAD IN LAW, ILLEGAL AND WITHOUT JURISDICTION

1.1 In the facts and the circumstances of the case, and in law, the appellate order u/s 250 of the Income-tax Act, 1961 [‘the Act’] framed and passed on 01.09.2025 by the Commissioner of Income-tax (Appeals)-52, Mumbai [Ld. CIT (A)] is bad in law, illegal and without jurisdiction, as the same is framed in breach of the statutory provisions of the Act and the scheme and as otherwise also is not in accordance with the law.

1.2 Without prejudice to the generality of the above, the appellate order so passed is bad in law, illegal and void as the same is arbitrary and perverse.

2. VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

2.1 *In the facts and the circumstances of the case, and in law, the appellate order so framed is bad in law and illegal, as the same is framed in breach of the principles of Natural Justice.*

2.2 *Without prejudice to the generality of the above ground. in the facts and the circumstances of the case, the Ld. CIT (A) erred in -*

- (i) not granting proper, sufficient, reasonable and fair opportunity of being heard to the Appellant while passing the appellate order,*
- (ii) not granting an opportunity of personal hearing*

WITHOUT PREJUDICE TO THE ABOVE:

3. ASSESSMENT U/S 153 BAD IN LAW AND WITHOUT JURISDICTION

3.1 *In the facts and the circumstances of the case, and in law, the assessment framed us 153 C of the Act is bad, illegal and void, as-*

- (i) The necessary preconditions for initiating and completion thereof were not complied with; and*
- (ii) The order was passed in gross breach of the principles of natural justice.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE:

4. ADDITION OF RS. 6,00,000/- AS ALLEGED UNEXPLAINED INVESTMENT UNDER SECTION 69 OF THE ACT

4.1 *It is submitted that, in the facts and circumstances of the case and in law, the CIT(A) erred in confirming the action of the A.O. in making an addition of Rs. 6,00,000/-us 69 of the Act as alleged unexplained investment, being alleged cash paid for purchase of shop.*

4.2 *While doing so, the Ld. CIT(A) erred in-*

- (i) Basing his action only on surmises, suspicion and conjecture,*
- (ii) Taking into account irrelevant and extraneous considerations, and*
- (iii) Ignoring relevant material and considerations as submitted by the Appellant.*

4.3 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.”*

5. Concisely stated, the return of income for AY 2017-18 was filed on 29.03.2018 by declaring total income at Rs. 13,75,820/-. Further, a search and seizure action u/s 132 of Act was carried out on 17.03.2021 on Rubberwala Group and others, wherein it is revealed that the assessee had purchased shop in Platinum Mall Building, Girgaon, Mumbai and an amount of Rs. 82,36,800/- was paid in cash for acquisition of the property. This prompted the Ld. AO to initiate proceedings u/s 153C of the Act. Issue queried from the assessee during the assessment proceedings, response made, after deliberations Ld. AO decided that Rs. 6,00,000/-, Rs. 44,43,300/- and Rs. 37,93,500/- are paid by the assessee in cash towards the acquisition of property, which the assessee was unable to explain or rebut to the information surfaced during the search. Accordingly, additions are made treating the aforesaid amounts in the hands of assessee treating the same as unaccounted / unexplained investment u/s 69 of the Act.

6. Being aggrieved, assessee preferred an appeal before the Ld. CIT(A), but with no success, the appeal of assessee has been dismissed by confirming the additions made by the Ld. AO.

7. Again aggrieved, assessee carried the matter before ITAT, under consideration in the present matters.

8. At the outset, Ld. Authorized Representative of the assessee (for short "Ld. AR"), submitted that, the case of assessee is amongst many cases which

have decided by the ITAT Mumbai benches in various cases, wherein on identical facts, the issue qua the payment of on-money for acquisition of property in Platinum Mall of Rubberwala Group, on the basis of material surfaced during the search in Rubberwala group had examined and decided. Ld. AR further added that the issue has been decided in favour of the assessee on various prepositions for which a written submission has been furnished, extracted as under:

“Proposition 1-

Material (excel sheet) obtained during search on Rubberwala Group and the statements of Mr. Imran Ansari and Mr. Tabrez Shaikh cannot be made basis of addition against the shop purchasers, including the Assessee Mr. Bipin Futarmal Jain in the absence of independent corroborative evidence to establish factum of actual payment of alleged on-money in the form of cash. Such material / statement cannot be considered "credible evidence" unless supported by independent corroborative evidence.

Relevant Cases -

Akhraj Pukhraj Chopra v. DCIT Central Circle-4(2), Mumbai -
[ITA No. 5553/MUM/2025] & [ITA No. 5555/MUM/2025]

(ii) Bharat Solanki v. DCIT Central Circle-4(2), Mumbai -
[ITA Nos. 6523 to 6525/MUM/2025]

(iii) Bhavana Vikram Jain v. ACIT Central Circle-4(2), Mumbai
-[ITA No.6363/MUM/2025] & [ITA No.6364/MUM/2025]

(iv) Kulsum Aaqib Memon v. DCIT Central Circle-4(2), Mumbai –
[ITA No. 6540/Mum/2025]

Proposition 2.1-

No addition can be made in the hands of the Assessee as no opportunity of cross examination of Mr. Imran Ansari and Mr. Tabrez Shaikh was provided to the

Assessee. Without cross examination, mere furnishing of extracts of statements or excel sheet and pen drive through show cause notice does not by itself satisfy the requirement of natural justice, where such material and statements are sought to be used adversely against an assessee and the assessee.

Relevant Cases -

(i) Akhraj Pukhraj Chopra v. DCIT Central Circle-4(2), Mumbai-

[ITA No. 5553/MUM/2025] & [ITA No. 5555/MUM/2025]

(ii) Bharat Solanki v. DCIT Central Circle-4(2), Mumbai-

[ITA Nos. 6523 to 6525/MUM/2025]

(iii) Bhavana Vikram Jain v. ACIT Central Circle-4(2), Mumbai –

[ITA No.6363/MUM/2025] & [ITA No.6364/MUM/2025]

(iv) Kulsum Aaqib Memon v. DCIT Central Circle-4(2), Mumbai-

[ITA No. 6540/Mum/2025]

Proposition 2.2-

An interpretation that cross-examination is necessary only where the third-party statement is the "sole basis" of the addition is incorrect.

Relevant Cases -

(i) Bharat Solanki v. DCIT Central Circle-4(2), Mumbai -

[ITA Nos. 6523 to 6525/MUM/2025]

Proposition 2.3-

Hon'ble Supreme Court in the case of **Kishinchand Chellaram v. CIT [(1980) 125 ITR 713(SC)]** has unequivocally held that any material collected behind the back of the assessee, if proposed to be used against him, must be subjected to an opportunity of rebuttal in a meaningful manner, which necessarily includes cross-examination where facts are disputed.

Relevant Cases -

(i) Bharat Solanki v. DCIT Central Circle-4(2), Mumbai-

[ITA Nos. 6523 to 6525/MUM/2025]

Proposition 3-

Material gathered and statements recorded during search can be used only against the searched party and not against a third party, especially in the absence of independent corroborative evidence establishing the factum of payment of alleged on-money by the Assessee. The disclosure by the developer may explain the source of its own funds, but it does not dispense with the burden on the Revenue to prove the assessee's investment or expenditure.

Relevant Cases -

(i) Akhraj Pukhraj Chopra v. DCIT Central Circle-4(2), Mumbai-

[ITA No. 5553/MUM/2025] & [ITA No. 5555/MUM/2025]

(ii) Bharat Solanki v. DCIT Central Circle-4(2), Mumbai-

[ITA Nos. 6523 to 6525/MUM/2025]

(iii) Bhavana Vikram Jain v. ACIT Central Circle-4(2), Mumbai -

[ITA No.6363/MUM/2025] & [ITA No.6364/MUM/2025]

Proposition 4-

Neither the information contained in the pen drive nor the statement recorded under section 132(4) of the Act of Mr. Imran Ansari and Mr. Tabrez Shaikh are enough to conclusively establish the factum of payment of on-money by the assessee. At best, they may raise a doubt or suspicion triggering further enquiry/investigation to find out and bring on record necessary material to conclusively prove the factum of payment of on-money by the Assessee over and above the declared purchase consideration. Evidently, the A.O. has failed to bring any such evidence / material on record to prove the payment of on-money by the Assessee.

Relevant Cases -

(i) Akhraj Pukhraj Chopra v. DCIT Central Circle-4(2), Mumbai –

[ITA No. 5553/MUM/2025] & [ITA No. 5555/MUM/2025]

(ii) Bharat Solanki v. DCIT Central Circle-4(2), Mumbai -

[ITA Nos. 6523 to 6525/MUM/2025]

iii) Bhavana Vikram Jain v. ACIT Central Circle-4(2), Mumbai-

[ITA No.6363/MUM/2025] & [ITA No.6364/MUM/2025]

Proposition 5-

Since none of the statements recorded during search on the Rubberwala group find even mention/reference of the name of the Assessee, the addition made by A.O. in the hands of the Assessee cannot be sustained solely on the basis of the contents of the alleged excel sheet or statements of the employee / developer, especially in the absence of any independent corroborative evidences of actual payment of cash in the form of on-money.

Relevant Cases-

(i) Akhraj Pukhraj Chopra v. DCIT Central Circle-4(2), Mumbai-
[ITA No. 5553/MUM/2025] & [ITA No. 5555/MUM/2025]

(ii) Bharat Solanki v. DCIT Central Circle 4(2), Mumbai -
[ITA Nos. 6523 to 6525/MUM/2025]

(iii) Bhavana Vikram Jain v. ACIT Central Circle-4(2), Mumbai-
[ITA No.6363/MUM/2025] & [ITA No.6364/MUM/2025]

(iv) Kulsum Aaqib Memon v. DCIT Central Circle-4(2), Mumbai -
[ITA No. 6540/Mum/2025]

Proposition 6 -

Since the alleged material/documents / pendrive seized during search on the builder Rubberwala group was never confronted to the Assessee during the proceeding carried u/s. 153C of the Act, the additions made by A.O. in the hands of the Assessee cannot be sustained.

Relevant Cases -

(i) Akhraj Pukhraj Chopra v. DCIT Central Circle-4(2), Mumbai-
[ITA No. 5553/MUM/2025] & [ITA No. 5555/MUM/2025]

(ii) **Bharat Solanki v. DCIT Central Circle-4(2), Mumbai-**
[ITA Nos. 6523 to 6525/MUM/2025]

(iii) **Bhavana Vikram Jain v. ACTT Central Circle-4(2), Mumbai**
-[ITA No.6363/MUM/2025] & [ITA No.6364/MUM/2025]

Proposition 7-

Mr. Imran Ansari in his answer to question No. 13 of the statement dated 17.03.2021 stated that a diary was provided to the Customers for recording details of cash received from them. During search on one of the customers Mr. Rajesh Jain, no such diary or any other document was obtained from him. Similarly, in the case of the Assessee Mr. Bipin Jain, no such diary or receipt or any document establishing acknowledgement of the alleged cash given by him has been brought on record by the A.O. Naturally, the statement of Mr. Ansari loses its evidentiary value under such circumstances.

Relevant Cases -

(i) **Bharat Solanki v. DCIT Central Circle-4(2), Mumbai -**

[ITA Nos. 6523 to 6525/MUM/2025]

Proposition 8-

The promoter of Rubberwala Group has denied accepting cash and has categorically admitted that entire payment was received through banking channel from the Assessee- Mr. Bipin Jain. Considering the clear contradiction in the alleged statement recorded during search and clarification given by the promoter vide letter dated 10/01/2026, especially since no independent or corroborative evidence has been brought on record by the revenue to substantiate the allegation of cash transaction against the assessee, the additions made by A.O. ought to be deleted.

Relevant Cases -

(i) **Kulsum Aaqib Memon v. DCIT Central Circle-4(2), Mumbai -**

[ITA No. 6540/Mum/2025]

In the facts of this case, Hon'ble Tribunal took note of the letter dated 03/02/2024 provided by the promoter denying acceptance of cash and categorically admitting that entire payment was received through banking channel from the assessee - Kulsum Aaqib Memon.”

9. Based on aforesaid submissions, Ld AR contented that the issues in present appeals are identical to issues in case of various assessee's affected from the subject search on Rubberwala Group. In sum and substance the additions in the hands of assessee cannot sustained for following reasons:

- i Statement of the Key persons of Rubberwala Group was the sole basis for making additions, without any corroborative evidence to support the same. Even copy of such statements are not provided to the assessee.
- ii assessee was not provided the opportunity to cross examine the persons whose statements were relied upon
- iii Neither the information collected in pen drive containing excel sheets (having mention of the name of assessee) nor the statements recorded u/s 132 (having no mention of the name of assessee) are conclusive evidence to establish the factum of payment of on money. AO failed to bring any evidence /material on record to prove the payment of on-money. Such material was not confronted to the assessee.
- iv The averment by Mr. Imran Ansari of Rubberwala group, fails as, the diary for cash payment, as stated by him could not be brought on record by the Ld. AO to establish the alleged payment of cash.
- v The Promoters of Rubberwala group, denied to have received cash from the assessee.

10. All the aforesaid contentions are supported with orders of the tribunal in cases referred to supra.

11. Per contra, Ld. Sr. DR representing the revenue vehemently supported the orders of revenue authorities.

12. We have considered the rival submissions, perused the material on record and decisions cited to support the facts. Admittedly, the issue in present appeal squarely covered by the decisions of ITAT Mumbai in various cases quoted (supra), which was not contested by the revenue by any contrary submissions. Further, no fact, material or decision to contradict the aforesaid decisions in similar matters could be brought on records by the revenue, we thus *de hors* any material distinction in the facts and circumstances of the present matter, do not have any reason to decide the present appeals differently. The appeal of assessee therefore is allowed, with the direction to Ld. AO to delete the addition made u/s 69 of the Act.

13. Legal contentions, if any which are not argued / pressed by the Ld. AR, have been rendered as infructuous and dismissed.

14. In result the appeal of assessee in **ITA 7021/MUM/2025** for **AY 2017-18**, stands allowed.

15. Following our observations and findings in **ITA 7021/MUM/2025 for AY 2017-18**, the appeals for **AY 2018-19** and **AY 2019-20** in **ITA 7022 & 7023/MUM/2025** are also allowed, being assailed with identical contentions on similar facts and circumstances.

16. In combined result all the three captioned appeal of the assessee are **allowed**, in terms of our aforesaid observations.

Order pronounced in the open court on 19-01-2026.

Sd/-
(PAWAN SINGH)
Judicial Member

Mumbai, Dated : 19-01-2026.

**SK, Sr. PS*

Sd/-
(ARUN KHODPIA)
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