

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 4753/MUM/2025 (AY : 2011-12)
(Physical hearing)

Mr. Indrajit Mahendra Khona 11/B, Angelica, Cosmos Lounge, Manpada, Thane (West), Maharashtra – 400610. [PAN No. AACPK1630L]	Vs	ITO, Ward-1(4), Thane Room No. 11, B Wing, 6 th Floor, Ashar I.T. Park, Road No. 16-Z, WagleIndl. Estate, Thane, Maharashtra-400604.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri G.C. Lalka, CA
Revenue by	Shri B. Laxmikanth, Sr. DR
Date of institution of appeal	28.07.2025
Date of hearing	28.01.2026
Date of pronouncement	28.01.2026

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the assessment order of Id. CIT(A)/ADDL/JCIT(A), Bhubaneswar dated 08.07.2025 for Assessment Year (A.Y.) 2011-12. The assessee has raised the following grounds of appeal:

"1. The CIT(A) erred in upholding the order of the Assessing Officer wherein he erred in making an addition of Rs.5,25,000/- under section 68 of the Income Tax Act, 1961 on the alleged ground that the appellant had paid On Money of the said amount to the builder for purchase of flat, which was only based on the Statement of the builder recorded. He has done so without considering the supportive documents and judgements relied upon.

2. The appellant craves to add, alter and/or delete any of the aforesaid ground or grounds of appeal on or before the date of final hearing."

2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that case of assessee was reopened on the basis of certain evidence collected by investigation wing in search action carried out on Cosmos Builder of Mumbai.

It was also case of assessing officer (AO) that during the search action statement of certain key person of Cosmos Group was allegedly recorded. The assessee purchased a Flat No. 11/B for Cosmos Group for a total consideration of Rs. 44.28 lakh. The assessee has not paid anything in addition to the consideration recorded on registered agreement to sale. Copy of agreement to sale is placed on record. The assessing officer on the basis of statement of key person of builder made addition of Rs. 5.75 lakh on account of on-money. The said key person neither named the assessee nor the flat of assessee was mentioned nor any incriminating or supporting evidence was referred or relied by assessing officer while making addition. Absolutely, there is no basis for arriving at the figure of such addition. The Id. AR of the assessee carried me through various questions and answers referred and recorded by AO while framing assessment order. While referring question no. 11 and answer thereto, as mentioned at page no. 6 of assessment order, the Id. AR of the assessee invited my attention wherein Manish Gyanchand Mehta in his statement has stated that "*there is no fix ratio of cash element. It depends upon the customer profile. According to me, generally the cash component in the sale of approximately 10-15 lacs is accepted per flat*". The Id. AR of the assessee submits that neither the name of assessee was taken nor the flat no purchased by assessee was identified. Thus, the addition of on-money is without any basis, based on surmises and conjecture. To support his submission, the Id. AR of the assessee relied upon the following decision:

- PCIT vs Nitin Cylinders Ltd. (ITA No. 1040 of 2018)

- Aarti Sudarshan Soni vs ITO (ITA No. 3233/M/2024)
- CIT vs Odeon Builders Pvt. Ltd. (Civil Appeal Nos. 9604-9605 of 2018)
- Jitendra Udaylal Jain vs NFAC (ITA No. 2042/M/2023)
- CBDT Circular F. No. 286/2/2003-IT (Inv.) dated 10th March, 2003

3. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the Revenue supported the order of lower authorities. The Id. Sr. DR for the Revenue submits that in search action, certain incriminating evidence disclosing receipt of 'on-money' was found. The incriminating material is supported by the statement of Directors of Cosmos Group. The excel sheet was found containing the details of on-money. From the statement of key person of Cosmos Group. It is crystal clear that there is payment of on-money by the buyers of various unit in Cosmos Group. Admittedly, the assessee is one of the buyer. Thus, the addition made by AO is based on evidence, which is supported with the statement of director of Cosmos Group.
4. In short rejoinder submission, the Id. AR of the assessee submits that there is no independent investigation carried out by the assessing officer, there is no corroborative evidence on record to suggest that assessee made any on-money, the alleged excel sheet has not been referred or relied by assessing officer. No addition can be made solely on statement of third person.
5. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. I have also deliberated on various case laws relied by Id. AR of the assessee. I find that assessing officer made addition of on-money of Rs. 5,75,000/- simply by referring the statement of Manish Gyanchand Mehta. I have carefully perused his statement. On perusal of his statement, I find that he has vaguely that

generally cash component in the sale of flat is accepted ranging from Rs. 10-15 lacs. There is no other evidence on record either in the form of any calculation/ working or in the form of alleged excel sheet as stated by Id. Sr. DR. No independent investigation is carried out by AO except relying on the statement of key person of Cosmos Group. I find that CBDT in its instruction No. F. 286/98/2013-IT dated 18.12.2014 clarified that instead of getting disclosure of income in the search and survey by the departmental officer focus should be on gathering evidence instead of obtaining admission of undisclosed income under coercion / undue influence.

6. I find that Hon'ble Jurisdictional High Court in PCIT vs Nitin Cylinders Ltd. in 2024: BHC-OS:1847-DB while affirming the order of Tribunal held that when entire order of assessing officer is based merely on statement of director of assessee without summoning or adducing additional / supplementary evidence of any other person corroborative the allegation of department regarding bogus payment made by assessee and dismissed the appeal of Revenue. Similarly, the co-ordinate bench of Mumbai Tribunal in Arti Sudarshan Soni Vs ITO (supra) while considering the similar addition based on statement recording during the survey held that AO has not conducted any independent inquiry to substantiate that assessee has made the alleged on-money. Hon'ble Apex Court in CIT vs Odeon Builders Pvt. Ltd. (supra) also held that when the disallowance was based solely on third party information, which was not subjected to further scrutiny, the addition is not sustainable. Thus, in view of the aforesaid, factual and legal discussion, I find that there is no basis for making addition solely on third party information without being

any corroborative addition. There is no reference in the assessment order as to how, the AO arrived at the figure of Rs. 5,75,000/-. Hence, the addition made by assessing officer is deleted. In the result, grounds of appeal raised by assessee is allowed.

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

Order pronounced in the open Court on 28/01/2026.

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

MUMBAI, Dated: 28/01/2026
Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai