

**IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 4479/MUM/2025  
Assessment Year: 2016-17**

Abdurrehman Shamsulhaq Bapu Room No.1, Andrew D'Mello Chawl, Marol Maroshi Road, Nr St. Lawrence School, Marol Andheri West, Mumbai – 400 059  (PAN: BZPPB2852J)	Vs.	ITO - 1(2)1, Kautilya Bhavan, BKC, Bandra (E), Mumbai
(Assessee)		(Respondent)

Present for:

Assessee : Shri Vimal Punmiya, CA  
Revenue : Shri Satya Pal Kumar, CIT DR

Date of Hearing : 11.11.2025  
Date of Pronouncement : 09.02.2026

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Id. Commissioner of Income Tax (Appeal), Mumbai, vide order no. ITBA/APL/S/250/2025-26/1076288431(1), dated 19.05.2025, passed against the assessment order by Id. Income-Tax Officer (IT), Ward-1(2)(1), Mumbai, u/s. 147 r.w.s 144C(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 21.04.222 for Assessment Year 2016-17.

2. Grounds taken by the assessee are reproduced as under:

*1) That the Hon CIT (A)-55, Mumbai erred in facts and at law in not deleting the addition of Rs. 33,29,486/- as per para 8.2.1 of his appellate order u/s. 250.*

*2) That Hon. CIT (A) has erred in mentioning that the explanation for addition of Rs. 33,29,486/- was not satisfactory.*

*3) That the Hon CIT (A) has erred in stating that the additions said addition be treated as addition u/s. 69 of Income Tax Act.*

*4) The Hon CIT (A) failed to consider the facts and documents presented during the proceedings.*

*5) That CIT (A) has also erred in confirming the interest and penalties under various sections of the Income Tax Act to the extent of confirming the above-mentioned additions.*

*6) Your assessee craves leave to add, delete, alter and/or amend any of the grounds of appeal.*

3. Brief facts of the case are that assessee did not file his return of income for the year under consideration. Case was re-opened u/s.147 on the basis of information gathered from ITBA AIMS Non-filer details. The AIR, CIB and TDS details revealed that assessee had undertaken transactions amounting to Rs.5,85,57,922/- during the year under consideration. Ld. Assessing Officer issued notice u/s.148 dated 27.03.2021 and in response to the said notice, assessee filed his return of income. A draft order u/s.144C(2) was passed on 04.03.2022 requesting the assessee to file either acceptance of this order or file objections of variations with Dispute Resolution Panel under intimation to the Assessing Officer within thirty days of receipt of the draft order. Since the assessee only filed his Return of income for the relevant assessment year and not complied with the statutory notices of the Department, the order u/s.144C(3) r.w.s. 147 was passed assessing total income at Rs.3,71,45,670/- after making certain additions/disallowances. Issue involved in the instant case is regarding the sources of purchase of two immovable properties, viz. office no. 603 and office no. 703, made by the assessee from Zahra Developers vide registered conveyance deeds dated 03.03.2016 and 05.03.2016, and further the difference between the agreement value and the stamp duty valuation of these two properties. As mentioned in para 7 of the

assessment order, the agreement value of each of these properties was Rs.1.5 crores, whereas their stamp duty valuation was Rs.2,92,78,960/- each. Therefore, assessee was asked to show-cause as to why the difference thereof amounting to total of Rs.2.85,57,920/- be not added u/s.56(2)(vii)(b) of the Act as income from other sources. Since assessee did not file any details in this regard, ld. Assessing Officer by quoting the provisions of section 56(2)(vii)(b) added the said difference of Rs.2,85,57,920/- as income from other sources.

3.1. Further, regarding the source of investment in the impugned properties, ld. Assessing Officer mentioned that assessee had furnished copies of some certificates of foreign inward remittances from Axis Bank, wherein the remittance was made to Zahra Developers. The same has been quantified at Rs.2,14,16,250/- which has been accepted by the ld. Assessing Officer as the source of payments to the said extent is explained. As assessee did not explain the balance amount of investment made of Rs.85,83,750/- (Total Rs.3,00,00,000/- as per the two registered agreements minus Rs.2,14,16,250/-), the said amount was added as unexplained investment u/s.69 of the Act. Against these additions, assessee filed appeal before the ld. CIT(A).

4. In the first appeal, addition made of Rs.2,85,57,920/- u/s.56(2)(vii)(b) on account of difference between the agreement value and the stamp duty valuation was deleted by the ld. CIT(A) considering merits of the case against which Revenue is not in appeal. On the other addition of Rs.85,83,750/- made u/s.69, ld. CIT(A) has given partial relief by deleting the amount of Rs.52,53,950/- and sustaining the balance of Rs.33,29,486/- by taking into account detailed explanations and submissions made by the assessee. For this balance sustenance of the addition so made, assessee is in appeal before the Tribunal.

5. Before us, Id. Counsel for the assessee contended that –
- i. Sustaining addition of Rs. 33,29,486/- by the Id. CIT(A) is wholly unjustified in facts and in law. The limited issue involved pertains to the allegation that this balance amount of the purchase consideration for Units 603 and 703 was not satisfactorily explained and therefore liable to be treated as unexplained investment under section 69.
  - ii. Finding of Id. CIT(A) is incorrect because the entire evidentiary record demonstrates that assessee has fully established the identity of the recipient, the genuineness of the transaction, and the source of the payment.
  - iii. Assessee had already explained before the lower authorities that while Rs. 2,66,70,514 was remitted through Foreign Inward Remittances, the remaining balance was payable at the time of receipt of the Occupation Certificate and was settled through payments made to the partner of the builder firm, Zahra Development, followed by internal adjustment in the builder's books.
  - iv. This explanation is supported by independent third-party documents that were already placed before the authorities and are compiled in the Paper Book.
  - v. The record includes a detailed statement of payments made by the assessee to Mr. Javed Abdul Kadar Shaikh, partner of Zahra Development. These payments, aggregating to Rs. 38,48,508/- cover not only the balance consideration of Rs. 33,29,486/- but also advance maintenance and development-related charges. The dates and amounts of these payments are fully corroborated through the bank statement of the partner, all of which form part of the Paper Book at page Nos.168 to 185.

vi. The details with respect to the aforesaid payments are as follows:

Date	Amount (Rs.)
03.01.2019	6,00,000
04.06.2019	4,00,000
09.07.2019	5,77,500
05.09.2019	1,50,000
14.11.2019	2,00,000
30.11.2019	1,00,000
29.01.2020	50,000
06.03.2020	1,00,000
13.03.2020	50,000
24.03.2020	50,000
09.05.2020	4,00,000
30.10.2020	50,000
31.10.2020	30,000
19.03.2021	4,83,008
08.05.2021	50,000
07.02.2022	80,000
08.03.2022	50,000
09.03.2022	50,000
14.03.2022	20,000
14.03.2022	50,000
14.03.2022	50,000
14.03.2022	50,000
13.10.2022	50,000
27.08.2023	18,000
12.12.2023	40,000
<b>Total</b>	<b>38,48,508</b>

- vii. Each payment is routed through proper banking channels, leaving no scope for suspicion regarding either the source or genuineness of the transaction. Importantly, the identity and capacity of the recipient stand conclusively established through the Partnership Deed of Zahra Development (PB-160 to 166), which clearly records that Mr. Javed Abdul Kadar Shaikh and Dr. Usman Agsar Khan are partners (share 50% each).
- viii. Once the person receiving the payment is a partner of the builder firm, payment to him is legally equivalent to payment to the firm itself. There is no contrary material on record to indicate that the partner was not authorised or that such payments were not recognised by the firm.
- ix. Further corroboration comes from the builder's own ledger account of the assessee (PB-167), where the builder has recorded adjustment of the assessee's balance through the partner's capital account.
- x. This is a crucial third-party document originating from the recipient's books and directly confirms that the firm recognised the assessee's payments through its partner.
- xi. The revenue cannot disregard such entries without any counter-evidence, especially when the entries directly match the pattern and manner in which the payments were made.
- xii. The final and most decisive document is the written confirmation dated 24.10.2023 issued by Zahra Development (PB-186). In this confirmation, the builder clearly states that the units were sold for total consideration of Rs. 3,00,00,000, that Rs. 2,66,70,514 had been received, and that the balance of Rs. 33,29,486 remained payable on receipt of the Occupation Certificate.
- xiii. This written confirmation is an unambiguous admission from the builder affirming the correctness of the assessee's explanation. It

establishes beyond dispute that the alleged "unexplained" amount was indeed part of the agreed commercial arrangement and recognised as such by the vendor. No authority can reject such direct, contemporaneous, third-party evidence without conducting any inquiry or producing rebuttal material.

- xiv. Despite availability of these comprehensive documents, the Id. CIT(A) rejected the explanation merely by observing that it was "not satisfactorily explained," without assigning any specific reasons and without addressing the material placed on record.
- xv. Ld. CIT(A) proceeded on an incorrect presumption that the builder had already received full consideration at the time of registration solely because the registered deeds record receipt of consideration. Such contractual recitals are standard for the purposes of registration and conveyance but do not prevent the parties from having commercial terms permitting payment of the final tranche upon completion or issuance of OC.
- xvi. Builder's ledger and written confirmation demonstrate the true position, and the revenue has produced no evidence to contradict the builder's own books. Therefore, the conclusion of Id. CIT(A) is factually incorrect and legally unsustainable. The requirements of section 69 are not fulfilled because for section 69 to apply, the revenue must show that the investment exists, that it is not recorded in the books of the assessee, and that the explanation is unsatisfactory. In the present case, the investment is fully recorded in the builder's books, acknowledged by the builder in writing, and evidenced by banking documents. The identity of the recipient, the genuineness of the transaction, and the source of the funds are all firmly established.
- xvii. In assessment of unexplained investment, the law has consistently held that when the recipient confirms receipt and

when the transaction is supported by banking records, the revenue cannot invoke section 69 based merely on assumptions. The department has not brought on record any evidence to dispute the builder's confirmation, the partnership deed, the ledger extracts, or the partner's bank statements. No enquiry was made with the builder, no adverse material was gathered, and no contrary finding was recorded. In absence of any rebuttal, the assessee's explanation must be accepted. Maintaining the addition despite overwhelming documentary evidence amounts to a perverse and arbitrary finding.

6. Assessee further contended that initial burden lies on the assessee to offer the explanation in respect of the concerned investment. In the present case, assessee has offered detailed explanation in regards to additions made by the ld. Assessing Officer. It is pertinent to note that ld. Assessing Officer has not disputed the fact that the total consideration for the property was Rs. 3,00,00,000/-. When the investment itself is accepted, and only the mode of payment is questioned, section 69 cannot be invoked. Ld. Assessing Officer neither summoned the builder under section 131 nor issued a notice under section 133(6). Also, no material indicating unaccounted consideration, cash flow, on-money, or suppressed facts has been brought on record. Assessee has placed strong reliance on the builder's confirmation which expressly states that the balance of Rs. 33,29,486/- was payable upon receipt of OC from BMC.

7. Ld. CIT DR placed reliance on the order of the authorities below who have based their finding on the basis of registered sale deed wherein it is stated that builder has received the entire amount of consideration from the assessee.

8. Having heard both the parties at length, we have perused the material placed on record. The only dispute in the present case relates to amount which was withheld by the assessee for making payment to the builder was on account of receipt of OC for the impugned two properties. Admittedly, total quantum of consideration for the impugned transaction is not in dispute. Further, assessee placed on record documents to establish payments made through the partner of the builder firm which have been duly accounted for by the builder firm in its books of account and confirmed subsequently by issue of letter in the regard. Copy of ledger account of the assessee in the books of the builder firm in this regard was also furnished before the ld. Assessing Officer. We have also perused the same and note that there are several journal entries passed towards this balance amount which remained pending for payment. The period during which these journal entries were passed range from 31.03.2019 to 31.03.2023, as reflected in the aforesaid ledger account.

8.1. On these set of facts, we find it appropriate to remit this specific issue for limited purpose of verification, back to the file of ld. Jurisdictional Assessing Officer (JAO) so as to ascertain when the OC was received and the journal entries were passed on account of payments made by the assessee to the partner of the builder firm. Once a satisfaction is arrived at in this regard, claim of the assessee be allowed, considering any further submission made by him to establish the factual position. Needless to say, reasonable opportunity of being heard be given to the assessee. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 09 February, 2026

Sd/-  
(Amit Shukla)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

*Dated: 09 February, 2026*

*MP, Sr.P.S.*

Copy to :

- 1 The Assessee
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai