

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

ITA No.6526/Mum/2025
(Assessment Year: 2019-20)

Dhiraj Solanki, A903, 9 th Floor Darshan Heights, Sitaram Poddar Marg Zaobawadi Kalbadevi, Mumbai – 400002	Vs.	DCIT, Central Circle 4(2), Mumbai - 400051
(Appellant)	:	(Respondent)
PAN NO. HKZPS 6690J		

Appellant by	:	Shri Bharat Kumar
Respondent by	:	Shri Umashankar Prasad, CIT- DR
(Appellant)		(Respondent)

Date of Hearing	:	04.02.2026
Date of Pronouncement	:	10.02.2026

ORDER

Per Saktijit Dey, Vice President:

This is an appeal by the assessee against an order dated 13.08.2025 of learned Commissioner of Income Tax (Appeal), [in short ‘CIT(A)’] Mumbai for the Assessment Year (A.Y.) 2019-20.

2. The dispute in the present appeal is confined to addition of an amount of Rs.52,40,950/- made under section (u/s.) 69 of the Income Tax Act, 1961 (in short the ‘Act’) on protective basis, representing alleged on money paid by the assessee in cash.

3. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, assessee filed his return of income on 17.08.2011, declaring total income of Rs.3,49,640/-. On 17.03.2021, a search and seizure operation u/s. 132 of the Act was carried out in case of Rubberwala Group and others. In course of search and seizure operation, certain incriminating material/information pertaining to the assessee were found. Based on such information/material, proceedings u/s. 153C of the Act were initiated in case of the assessee. In course of assessment proceeding, the Assessing Officer observed that during the search and seizure operation conducted in the premises of Rubberwala Housing & Infrastructure Ltd. and its promoter Director- Shri Tabrez Shaikh and a key employee of Rubberwala Group, Shri Imran Ansari, a pen drive containing excel sheet was found which contained the details of on money paid by various buyers in respect of shops purchased in the 'Platinum Mall' project.

4. Statements were recorded u/s. 132(4) of the Act from Shri Imran Ansari and Shri Tabrez Shaikh based on a seized materials. In the statement recorded, Shri Imran Ansari explaining the details of the transactions noted in the excel sheet, stated that it contained the agreement value of the shops floor and level wise by as also the actual price at which shops were sold. He stated, the agreement value is lower than the actual sale price and the differential amount (on-money) was received in cash from the buyers and handed over to Shri Tabrez Shaikh. Based on such statements, the Assessing Officer called upon the assessee to explain why the alleged on money paid of Rs.52,40,950/- should not be added to the income of the assessee. Though,

the assessee vehemently objected to the proposed addition, categorically stating that he had not paid on-money over and above the actual sale consideration paid as per the agreement, however the Assessing Officer was not convinced. He concluded that the assessee indeed had paid on-money in cash towards purchase of the shop. Since the alleged on money was added on substantive basis at the hands of another assessee, namely, Shri Praveen Jagdeesh Solanki, the Assessing Officer made the addition on protective basis at the hands of the assessee. Assessee contested the aforesaid addition in an appeal preferred before learned First Appellate Authority. However, the First Appellate Authority sustained the addition.

5. Before us, learned counsel appearing for the assessee submitted that the substantive addition made by the AO in case of Shri Praveen Jagdish Solanki has been deleted by the learned First Appellate Authority on merits. Hence, the protective addition made in case of the assessee cannot survive.

6. Per contra, learned Departmental Representative submitted that in course of search and seizure operation, credible evidence was found demonstrating payment of on money by various buyers including the assessee while purchasing shops in the 'Platinum Mall' developed by Rubberwala Group. He submitted, the content of the seized material was corroborated in the statements recorded from key persons of Rubberwala Group wherein they categorically admitted having received on money in cash in respect of shops sold. Thus, he submitted, the fact that the assessee had paid on money is established on record. He submitted, merely because, the

substantive addition has been deleted would not result in deletion of the protective addition. Rather, the protective addition made in case of the assessee would become substantive.

7. We have considered rival submissions and perused the materials on record. It is evident that the assessee jointly with his brother Shri Praveen Jagadish Solanki had purchased a shop in the 'Platinum Mall'. In course of search and seizure operation conducted in case of Rubberwala Group and more particularly in the residential premises of Shri Shri Imran Ansari, an employee of Rubberwala Group, a pen drive containing excel sheet was seized wherein, certain transactions relating to sale of shops in 'Platinum Mall' were reflected. In course of search and seizure operation, a statement was recorded from Shri Shri Imran Ansari wherein, while explaining the contents of the excel sheets he stated that the excel sheet contained the agreement value and the actual sale price of shops in the mall. He further explained that the difference between the agreement value and actual sale consideration were received in cash from the buyers.

8. It is observed, while explaining the modus operandi Shri Imran Ansari in response to Question No.26 had submitted that at the time of booking of shop the buyer is informed about the component of payment to be made in cash or through cheque. In case of cash payment Shri Imran Ansari verified the amount of cash to be accepted from the buyer and takes the buyer to Mr. Abrar Ahmad (cashier working in Rubberwala Housing and infrastructure Ltd. who received the cash from the

buyers. After receiving confirmation from Mr. Abrar Ahmad regarding the cash received, Shri Imran Ansari makes necessary entries in the diary given to the buyer at the time of booking of shop mentioning the cash amount along with date of payment and also puts his signature against each entry. Surprisingly, though, shops have been sold to number of buyers however not a single diary has been recovered from any of the buyers to demonstrate the fact that against the cash payment entries have been made in the diary and initialed by Shri Imran Ansari. In fact, except the pen drive containing the excel sheet, the AO has not referred to any other incriminating material.

9. Further in response to Question No.15, Shri Shri Imran Ansari has stated that the agreement value is lower than the actual sales consideration. A reference to the response of Shri Imran Ansari to Question No.15 reveals that it only contains the value/price of shops located at different levels. However, the seized material does not explicitly reveal payment of on money by buyers individually. Thus, when the assessee has categorically denied of having paid any cash, merely relying upon a third party statement and limited evidence seized from a third party, assessee cannot be accused of paying on-money in absence of any other corroborative evidence to demonstrate that the facts stated in the statement recorded from the key persons of Rubberwala Group and the excel sheets are authentic. In any case of the matter, in case of the present assessee, the Assessing Officer has made the addition on protective basis. Whereas, the substantive addition made in case of assessee's brother Shri Praveen Jagdish Solanki has been deleted by the very same First

Appellate Authority in order dated 18.11.2025 on merits after taking note of all relevant facts. Thus, when the substantive addition has been deleted on merit, the protective addition made at the hands of the assessee cannot survive. Accordingly, we delete the addition.

10. In the result, appeal is allowed.

Order pronounced in the open court on 10/02/2026.

Sd/-
(Makarand Vasant Mahadeokar)
Accountant Member

Sd/-
(Saktijit Dey)
Vice President

Mumbai; Dated : 10/02/2026

Aks/-

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai