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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
And
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.7095 & 7096/M/2025
Assessment Year: 2019-20 & 2020-21

Pinkydevi Mahendrakumar Jain, Flat No. 1604, 16th Floor, Central Avenue Bldg, Dr. D B Marg, Mumbai Central, Mumbai – 400008. **PAN – ADDPJ7620.**	Vs.	**Central Circle 4(2) ACIT Assistant Commissioner of Income Tax,** Kautilya Bhawan, C41-43, Avenue 3, near Videsh Bhavan, G Block BKC, Gilban Area, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra 400051.
(Appellant)		(Respondent)

ITA No.7097 & 7098/M/2025
Assessment Year: 2019-20 & 2020-21

Pushpa Vikas Jain, 101, Floor -1, Sukhsagar Apartment, Dr. D.B. Bhadkamkar Marg, Plot 249, B1, Ganjawala Compound, Mumbai Central, Mumbai, Maharashtra – 400008. **PAN – ALPPJ7907F.**	Vs.	**Central Circle 4(2) ACIT Assistant Commissioner of Income Tax,** Kautilya Bhawan, C41-43, Avenue 3, near Videsh Bhavan, G Block BKC, Gilban Area, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra 400051.
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Vimal Punmiya, CA
Revenue by : Shri R A Dhyani, (CIT DR)

Date of Hearing : 29.01.2026
Date of Pronouncement : 12.02.2026

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

These appeals have been preferred by the Assessee against the composite orders dated 22.08.2025 and 13.08.2025 qua Pinkydevi Mahendrakumar Jain and Pushpa Vikas Jain respectively, impugned herein, passed by Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2019-20 and 2020-21.

2. As these appeals under consideration are having involved identical facts and issues, except variation in amounts and therefore, for the sake of brevity and convenience, the same were heard together and are being disposed of by this composite order by taking into consideration **ITA No. 7095/M/2025** as the lead case, the result thereof shall apply *mutatis mutandis* to all the appeals under consideration.

3. Coming to **ITA No. 7095/M/2025**, it is observed that, on the basis of search and seizure operation conducted under section 132 of the Act in the case of the Rubberwala Group, wherein the premises of M/s. Rubberwala Housing and Infrastructure Limited (RHIL) and its Promoter and Director Shri Tabrej Shaikh, and key employee Mr. Imran Ansari, were also searched. During the search operation at the premises of Mr. Ansari, one 12 GB pen drive containing Excel sheets was retrieved from his possession. Further, the statement of Mr. Ansari was also recorded, wherein he admitted that RHIL had also received consideration amounts in cash from buyers of shops in Platinum Mall, over and above the consideration received or receivable through cheque or online modes.

4. Thus, the Assessing Officer, by issuing notice dated 13.03.2023 under section 153C of the Act, initiated the assessment proceedings under the provisions of Section 153C, which ultimately resulted in making an addition of **₹5,00,000/-** allegedly being cash paid during the assessment year under consideration for purchase of Shop No. 145, 4th floor of Platinum Mall, over or above total consideration of Rs.19,19,925/- fixed in the Agreement for Sale/ Sale deed.

5. The Assessee, being aggrieved, preferred first appeal before the Ld. Commissioner challenging the aforesaid addition and the assessment order dated 21.03.2024 passed under section 153C passed by the Assessing Officer, on various grounds including legal in nature, however, failed to get any relief, as the Ld. Commissioner dismissed the appeal by affirming the aforesaid addition on legal as well as on merits and thus, the Assessee being aggrieved, has preferred the instant appeal.

6. The Assessee controverted the findings of the authorities below, whereas the Ld. DR supported the same.

7. We have heard the parties and perused the material available on record. We observe that various Hon'ble Co-ordinate Benches of the Tribunal have elaborately dealt with the identical addition made in the identical facts and circumstances, the same search and seizure operation, recovery of the same pen drive and excel sheet, same statement of Mr. Ansari, and on the same fact that RHIL has declared income @ 8% of the undisclosed income qua cash component, as involved in this case and ultimately deleted such addition, by respective orders. For brevity and ready reference, conclusion drawn by co-ordinate Bench in the case of **Veena Hiralal**

Mehta Vs. DCIT Central Circle 4(2) {ITA No.5492 & 5493/M/2025 decided on 06-02-2026} is reproduced herein as under: -

" **18.** Heard the parties and perused the material available on record. From the assessment order, it clearly appears that the Assessing Officer made the addition mainly on the basis of the pen drive recovered from the premises of Mr. Ansari, the statement of Mr. Ansari wherein he admitted receipt of the cash component by the company, and the statement of the Director of the RHIL Group wherein he admitted statement made and the Excel sheet prepared by Mr. Ansari as true and offered income 8% of the cash amounts/component, as unaccounted receipts.

19. The Assessee, at the outset, had submitted that in the assessment order, it nowhere appears "as to what material and/or which Excel sheet the addition has been made". Further, the Assessing Officer made the addition without confronting the incriminating material and/or without providing any opportunity of cross-examination of the witnesses, whose statements were mainly relied upon by the Assessing Officer. Even otherwise there is no independent material available on record to substantiate the addition made and affirmed by the authorities below.

20. On the contrary, the Ld. DR submitted that the assessee was provided with the show-cause notice dated 17.01.2024 along with the relevant details and documents. Further, in the satisfaction note, all the details are mentioned and communicated to the assessee, which also contains the Excel sheets, detailing the shop number, area, level, total amount, etc.. Further there is direct evidence for making the addition, such as statement of MR. Ansari, excel sheets, pen drive and a fact that Director of RHIL has offered income @ 8% of the unaccounted cash component and therefore, the orders passed by the authorities below cannot be faulted with.

21. We have given thoughtful consideration to the peculiar facts and circumstances of the case and rival claims of the parties. Admittedly, during the search and seizure operation carried out in the premises of Rubberwala Group and Mr. Ansari or otherwise from the Assessee, no cash voucher, receipt, ledger or document signed by the Assessee and incriminating material directly connected with the Assessee, was ever found. Whereas, the Assessee specifically claimed

before the Assessing Officer that she has not made any cash payment for the purchase of the shops purchased by her.

22. Even otherwise, the Assessee had purchased the shop/property under consideration for a consideration/value, more than the value determined by the Stamp Duty Valuation Authority. Further, the Assessing Officer also failed to brought on record any comparable case in the same shopping mall, so as to ascertain the actual rate of transactions made .

23. Thus, in the aforesaid facts and circumstances, as no incriminating material directly connected with the assessee, such as cash voucher, receipt, ledger or any document signed by the Assessee, was ever found during the search or post-search proceedings, either from the Rubberwala Group or Mr. Ansari, whose statement has been made the foundation for making the addition, in that eventuality, the onus shifts upon the Revenue Department to substantiate/corroborate the evidence collected during the search proceedings and to offer an opportunity for confrontation or cross-examination of the witnesses, whose statements were relied upon, while making the addition. Which the Revenue failed to substantiate the evidence collected and also failed to give any opportunity of cross examinations of the witnesses whose statements were relied on and/or made a foundation for making the addition.

24. We further observe that identical shops in same " Shopping Mall i.e. Platinum Mall " were also purchased by various other Assessees, wherein in their cases as well, identical additions were made, and therefore their cases travelled upto the Hon'ble Coordinate Benches of the Tribunal, who dealt with the cases in detail in the context of the same search and seizure operation, same pen drive, same statements and same offering of income at the rate of 8% on the unaccounted cash components by the Director of the RHIL Group.

25. The Hon'ble co-ordinate Bench of the Tribunal in Rajesh Jain v. DCIT (ITA Nos. 3842 &Ors/2023, ITAT Mumbai, order dated 26-11-2024), also dealt with identical addition made on the basis of third-party statements and pen drive and excel entries, allegedly recovered from the same search and seizure operation as involved in this case and ultimately deleted the identical addition by observing as under: -

"16. We heard Ld D.R and perused the record. We notice that the AO has made the addition on the basis of evidence found in the premises of third party and also on the basis of deposition made by the employee of the third party. No corroborative material was brought on record to support the statement so given, which is mandatory when the assessee denies any such payment. Further, the AO also did not provide opportunity of cross examination to the assessee, even after the said request was made by the assessee. Under these set of facts, we are of the view that the impugned addition of Rs.18,64,200/- cannot be sustained. In this regard, we may take support from the decision rendered by SMC bench of Mumbai Tribunal in the case of Naren Premchang Nagda vs. ITO (IT Appeal No.3265/Mum/2015 dated 08-07-2016), wherein an identical issue was decided as under: -

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17. We also notice that the AO did not provide opportunity to cross examine the persons from Rubberwala group, on whose statements the AO had placed reliance upon. The Hon'ble Supreme Court has held in the case of Andaman Timber Industries vs. Commissioner of Central Excise (2015)(62 taxmann.com 3)(SC) that not providing opportunity to cross examine is a serious flaw and it will make the order nullity, as it amounts to violation of principle of natural justice. We are of the view that the above said decision of Hon'ble Supreme Court shall apply to the facts of the present case.

18.…………………………………………………………………………………
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19. In view of the foregoing discussions, we are of the view that the addition of Rs.18,64,200/- made by the AO cannot be sustained. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete this addition."

26. The Hon'ble co-ordinate Bench of the Tribunal in *Pravin Khetaramm Purohit (or Parveen Kheta Ram) vs. DCIT (ITA*

Nos. 4742 to 4744/M/2025, decided on 15.10.2025) also dealt with identical addition based on the same search and seizure and material recovered and statements recorded and ultimately deleted the identical addition by observing and holding as under:

> "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.
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> 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'.
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> 20.In the case of CIT Vs. Odeon Builders Pvt. ltd. (418ITR 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 20 party renders the addition/disallowance bad in law'.
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> 21. In the case of H.R. Mehta v/s Assistant Commissioner of Income-tax, Mumbai 72 taxmann.com110 (Bombay) wherein it was held as under:
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>> 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 prepositions as discussed by us above, we direct the AO to delete the addition."

27. We further observe that the Tribunal in case of Heena Dashrath Jhanglani ITA no.1665/Mum./2018 (Assessment Year: 2007–08) has also dealt with identical addition made on the basis of Pen drive recovered during the search and without any corroborative material qua alleged cash / on money and ultimately deleted the addition by observing and holding as under:

"10. I have considered rival submissions and perused material on record. Undisputedly, the genesis of the addition made of ` 42 lakh on account of alleged payment of on–money in cash towards purchase of a flat lies in a search and seizure operation conducted in case of Hiranandani Group and related persons. Though, in the assessment order the Assessing Officer has not discussed in detail the nature of incriminating material / evidence available on record to indicate payment of on–money in cash by the assessee to M/s. Crescendo Associates, however, from the show cause notice dated 4th March 2015, which is reproduced by the Assessing Officer in the assessment order, it appears that the incriminating materials are in the form of pen drive found and seized from the residence of one of the employees of Hiranandani Group and a statement recorded under section 132(4) of the Act from Shri Niranjan Hiranandani, Director and Promoter of the Group, wherein, the details of onmoney paid by buyers / prospective buyers to Hiranandani Group concerns are

mentioned and further, in the statement recorded under section 132(4) of the Act on 14th March 2014, Shri Niranjan Hiranandani, has admitted receipt of on–money in cash towards sale of flats / shops. Thus, it is clear that except these two pieces of evidences the Assessing Officer had no other evidence on record which demonstrates that the assessee had paid on–money in cash for purchase of the flat. It is further relevant to observe, from the assessment stage itself the assessee has requested the Assessing Officer to provide him with all adverse materials and full text of the statement recorded under section 132(4) of the Act from Shri Niranjan Hiranandani. The assessee had also requested the Assessing Officer for allowing her to cross–examine Shri Niranjan Hiranandani and other parties whose statements were relied upon. Apparently, this request of the assessee was not acceded 16 4742, 4743 & 4744/Mum/2025 Pravin Khetaramm Purohit to by the Assessing Officer. When the assessee took up the aforesaid issue before the first appellate authority, the learned Commissioner (Appeals) in letter dated 18th July 2016, had clearly directed the Assessing Officer to provide the assessee all adverse materials / documentary evidences available with him indicating payment of on–money. However, on a perusal of the remand report dated 23th June 2017, a copy of which is at Page–53 of the paper book, it is very much clear that the Assessing Officer has completely avoided the issue and there is no mention whether the assessee was provided with all the adverse material and if, not so, whether he has provided them to the assessee as per the directions of the learned Commissioner (Appeals). Thus, from the aforesaid facts, it is patent and obvious that the addition of ` 42 lakh made on account of on–money payment in cash is without complying with the primary and fundamental requirement of rules of natural justice. It is well settled proposition of law that if the Assessing Officer intends to utilize any adverse material for deciding an issue against the assessee he is required to not only confront such adverse materials to the assessee but also offer him a reasonable opportunity to rebut / contradict the contents of the adverse material. Further, the assessment order reveals that the Assessing Officer has heavily relied upon the statement recorded from Shri Niranjan Hiranandani, for making the disputed addition. However, it is the allegation of the assessee, which prima–facie appears to

be correct, that the Assessing Officer has not provided the full text of such statement recorded and has also not allowed the assessee an opportunity to cross–examine Shri Niranjan Hiranandani, and other persons whose statements were relied upon. This, in my view, is in gross violation of rules of natural justice and against the basic principle of law. In this context, I may refer to the decision of the Tribunal, Mumbai Bench, in Nikhil Vinod Agarwal (supra). Thus, for the aforesaid reason, the addition made cannot be sustained.

11. Even otherwise also, the addition made is unsustainable because of the following reasons. As discussed earlier in the order, the basis for addition on account of on–money is the information contained in the pen drive found during the search and seizure operation and the statement recorded under section 132(4) of the Act. As regards the information contained in the pen drive, it is the contention of the assessee that the 17 4742, 4743 & 4744/Mum/2025 Pravin Khetaramm Purohit said pen drive was not found from the possession of the assessee but in course of search and seizure operation conducted in case of a third party. Therefore, in absence of further corroborative evidence to establish that the contents of the pen drive are correct and authentic to the extent that the assessee paid on–money in cash, no addition can be made under section 69B of the Act. Further contention of the assessee is that in the statement recorded under section 132(4) of the Act, Shi Niranjan Hirandani has not made any reference to the assessee, therefore, in absence of any other corroborative evidence to establish that assessee has paid on–money in cash, no addition can be made. I find substantial merit in the aforesaid submissions of the assessee. In my view, neither the information contained in the pen drive nor the statement recorded under section 132(4) of the Act from Shri Niranjan Hiranandani are enough to conclusively establish the factum of payment of on–money by the assessee. At best, they can raise a doubt or suspicion against the conduct of the assessee triggering further enquiry / investigation to find out and bring on record the relevant fact and material to conclusively prove the payment of on–money by the assessee over and above the declared sale consideration. Apparently, the Assessing Officer has failed to bring any such evidence / material on record to

prove the payment of on– money by the assessee. More so, when the assessee from the very beginning has stoutly denied payment of on–money in cash."

28. We further observe that the Hon'ble Co-ordinate Bench of the Tribunal consisting both of us, in the case of *Deputy Commissioner of Income Tax vs. Dhiren Shah [2025] 180 Taxmann.com 370 (Mumbai – Trib.), in ITA No. 4294/M/2024, decided on 27.10.2025*, has also dealt with an identical addition made on the basis of allegation of cash paid over and above the sale value of an immovable property having been paid through banking channel and ultimately affirmed the order of the Ld. CIT(A) by dismissing the appeal of the Revenue by observing and holding as under:-

"7. We have carefully perused the records and have also taken note of the rival submissions. We are of the considered view that there is no authenticity of the impugned screenshot which does not bear any signature of government authority. It appears to be a rough calculation only. Moreover, we find that the AO has also not brought on record any comparable case of the said locality so as to ascertain the actual rates of transactions made. The market rate adopted by the AO is contrary the Stamp Duty rate which is government fixed rate of the property under consideration that has been brushed aside by the AO without finding any infirmity in the same. Moreover, no investigation has been made with the Registration office/Stamp Duty authorities in this regard but he made the addition of such a huge sum without making any effort to corroborate his findings. The WhatsApp chat/post is nothing more than rough working communication between buyer's son and his accountant. It does not specifically mention either the name of the assessee or even the impugned property transaction. The assessee was searched by the Department. However, no corroborative evidence of receipt of any cash over and above the disclosed amount has been brought on record by the AO.

7.1 The AO has placed considerable reliance on the digital evidence in the form of chats. However, we find that the order is completely silent on whether the requirements of section 65B of the India Evidence Act, 1972 have been satisfied or not since the provisions require that to be admissible, they must be accompanied with a valid certificate under section 65B(4). Mere screenshots or forwarded chats have no evidentiary value since they are susceptible to tampering or fabrication. Unless the source

devise is produced or section 65B certificate is produced, such chats cannot be relied upon.

7.2 In view of the discussion above, we hold that the addition made by the AO is based more on conjectures and surmises rather than on concrete evidence. Therefore, we do not find any infirmity in the appellate order deleting the addition made. Consequently, all the grounds of appeal which are interlinked to each other are hereby dismissed.

8. In the result, the appeal of the Revenue is dismissed.

29. We reiterate that the identical addition has elaborately been dealt with by the Hon'ble Coordinate Benches of the Tribunal in the cases referred to above, which is otherwise unsustainable on the aforesaid analyzation made by us independently specific to the effect that no incriminating material directly connected with the assessee, such as cash voucher, receipt, ledger or any document signed by the Assessee, was ever found during the search or post-search proceedings, either from the Rubberwala Group or Mr. Ansari, whose statement has been made the foundation for making the addition, and thus in that eventuality, the onus shifts upon the Revenue Department to substantiate/corroborate the evidence collected during the search proceedings and to offer an opportunity for confrontation or cross-examination of the witnesses, whose statements were relied upon, while making the addition. The AO though provided the relevant material collected during the search proceedings but in the Assessment order nowhere mentioned such material/documents, except as referred to above such as pen derive, excel sheet and statement of Mr. Ansari etc.. The AO also failed to substantiate the evidence collected and give any opportunity of cross examinations of the witnesses, whose statements were relied on and/or made a foundation for making the addition without considering peculiar fact that the Assessee otherwise has purchased the Shop/property under consideration on a consideration/value, which is otherwise more than the stamp duty value, as determined by the Stamp Duty Valuation Authority. Further, the Assessing Officer also failed to brought on record any comparable case in the same shopping mall, so as to ascertain the actual rate of transactions made. Thus, in cumulative effects, **the addition under consideration is deleted by allowing the appeal i.e. ITA No. 5492/M/2025 filed by the Assessee."**

8. As the facts and circumstances involved in this case for making and sustaining the addition, are not deviated from the aforesaid cases and thus, on the aforesaid analyzations and respectfully following the said decisions, the addition under consideration is unsustainable, and therefore, we do not have any hesitation in deleting the same. **Resultantly, the addition under consideration is deleted by allowing ITA No.7095/M/2025**.

9. In view of our decision in **ITA No.7095/M/2025,** all the appeals under consideration, stand allowed.

Order pronounced in the open court on 12.02.2026.

Sd/- **(PRABHASH SHANKAR)** **ACCOUNTANT MEMBER**	**SD/-** **(NARENDER KUMAR CHOUDHRY)** **JUDICIAL MEMBER**

Tarun Kushwaha
Sr. Private Secretary.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.