

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos.7061 & 7062/Mum/2025
(Assessment Years: 2019-20 & 2020-21)

Ms. Sejal Paresh Chopra, 1206, 12 th Floor, Shaad Heights, 7 & 8, Kamathipura, Mumbai- 400 008	Vs.	Assistant Commissioner of Income Tax, Central Circle 4(2), Kautilya Bhawan, C 41-43, Avenue 3, Near Videsh Bhavan, G Block BKC, Gilban Area, Bandra Kurla Complex, Bandra East, Mumbai – 400 051
PAN: BBLPC4340L		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Vimal Punmiya, AR
Respondent by	:	Shri Vivek Perampurna, CIT-DR
Date of Hearing	:	17.02.2026
Date of Pronouncement	:	23.02.2026

ORDER

Per Kavitha Rajagopal, JM:

The captioned appeals are filed by the assessee, challenging the order of the Learned Commissioner of Income Tax [‘Ld. CIT(A)’ for short] passed u/s. 250 of the Income Tax Act, 1961 (‘the Act’) pertaining to the Assessment Year (‘A.Y.’ for short) 2019-20 & 2020-21. As the facts are identical, we hereby pass a consolidated order by taking ITA No.7061/M/2025 pertaining to A.Y. 2019-20 as the lead case.

2. The assessee has raised the following grounds of appeal:

“1.That the Ld. CIT(A) erred in law and on facts rejecting and keeping the additions of Rs.600000 under Section 69 of the Income tax Act, 1961 on the basis of search and seizure

action under Section 132 was carried out on the business group of the Builder, M/s. Rubberwala Housing & Infrastructure Ltd(RHIL) and on its one of Director and on residence of one key employee Mr. Imran Ansari. During the search, certain electronic data in the form of a pen drive was seized from the premises of third party being called as Key Employee. The pen drive allegedly contained certain excel sheets and files reflecting notings of transactions, including some entries that purportedly indicated receipt of cash (on money) from various customers including the appellant. Tax Implications including Interest and Penalty Rs.748981 Subsequently, the AO issued a notice under Section 142(1) / 153C to the appellant based on this information. The AO alleged that the appellant had made cash payment over and above the registered value for purchase of property from the Builder. However, the appellant categorically denied having made any cash payment and furnished complete details including registered sale agreement, bank statements showing payments by cheque, and other supporting records. Despite the appellant's explanation and the absence of any corroborative evidence, the AO proceeded to treat the alleged cash amount as unexplained investment under Section 69 and made an addition of Rs.600000 in the assessment order dated 15/03/2024.

The CIT(A) upheld the addition without proper appreciation of the facts and law, leading to the present appeal before the Hon'ble Appellate Tribunal.

2. That the AO and CIT(A) grossly erred in holding that the pen drive data seized from the third party constitutes incriminating material against the appellant without bringing any corroborative evidence or establishing any direct nexus between the appellant and such data. Addition u/s 69 cannot be made solely on third party pen drive data without corroboration. The entire basis of the addition rests on the alleged entries found in a pen drive seized from the builder. It is settled law that material seized from a third party cannot automatically be treated as evidence against another person unless it is proved that the material belongs to or pertains to such person. In the instant case, the AO has not established any nexus between the appellant and the alleged pen drive data. No independent evidence such as bank withdrawals, receipts, or statements from the appellant or builder substantiates the allegation of cash payment.

3. That the AO and CIT(A) failed to discharge the burden of proof required under no cash payment or on money was ever paid to the builder. The presumption under Section 132(4A) 2920 is available only in respect of documents or assets found in the possession or control of the person searched. In the present case, the search was conducted on the builder, not the appellant. Therefore, no presumption can be drawn that the contents of the pen drive represent true transactions relating to the appellant.

4. That the AO and CIT(A) authorities below failed to appreciate that the addition was made merely on suspicion, surmise and conjecture, without any tangible or direct of Natural Justice. The AO and CIT(A) relied on third party evidence without confronting the appellant with the material or providing any opportunity for cross examination of the builder or the investigating officer. This constitutes a serious breach of principles of natural justice, rendering the addition unsustainable. The Hon'ble Supreme Court and various High



Courts have consistently held that statements or documents used against an assessee without offering cross examination are inadmissible

5. That the learned CIT(A) failed to appreciate that the addition cannot be sustained when the seized pendrive was found from the possession of Third Party and no presumption under Section 132(4A) or 292C of the Act can be drawn in such a case

6. That the learned CIT(A) failed to comply with the requirements of Section 65B of the Indian Evidence Act for admissibility of electronic evidence, making the pen drive contents legally inadmissible as it is considered as a dumb document without corroborated. Failure to satisfy the evidentiary requirements under Section 65B of the Indian Evidence Act. Electronic data such as a pen drive or computer file is admissible evidence only when accompanied by a valid certificate under Section 65B(4) of the Evidence Act. In the present case, no such certification or forensic verification was produced by the AO, making the reliance on the pen drive data legally impermissible.

7. That the learned CIT(A) erred addition being based on unverified, untested and uncorroborated third party evidence is bad in law and deserves to be deleted. No corroborative or circumstantial evidence found. The appellant's bank records show that the entire purchase consideration was paid through banking channels as reflected in the registered sale deed. The department has not brought on record any evidence of cash withdrawal, flow of funds, or admission by the appellant that cash was paid. In the absence of corroboration, the addition fails.

8. That The Ld. CIT(A), had failed to discharge the Burden of Proof, the burden of proof under Section 69 lies entirely on the Revenue to demonstrate that the investment was actually made and that it remains unexplained. Mere suspicion or inference from third party material is insufficient. The AO failed to demonstrate how the alleged entries correlate with any actual cash outflow by the appellant as there were no Receipts found at Builders premises and also there were no Physical cash monies found in the premises of Key Employee and also at Builders.

9. That the CIT(A) have erred in dismissing the Appeal by merely relying on the AO Findings and ignored various factors like as raised in Point No.6 of Ground of Appeal filed with CIT(A) Whether that Key Employee was in Employment with the Builder Ground of Appeal filed with CIT(A), the proper procedure was followed for issuing and was having proper appointment letter, also as raised in Point No. 8, 6 of the Satisfaction, and also Point No. 9 of Ground of Appeal filed with CIT(A), that as per information provided by that Key Employee the Parking Space was allotted to Appellant, whereas there is no mention about parking space allotted to appellant in Sales Deed.

10. That CIT(A) have erred in dismissing the Appeal as the Section 153C read as follows:

(1) Notwithstanding anything contained in section 139, section 147, section 148, section



149, section 151 and section 153, where the Assessing Officer is satisfied that, (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to or (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub section (1) of section 153A

11. Legal position judicial.

The following case laws squarely support the appellant's case:

Heena Dashrath Jhanglani v. ITO (ITAT Mumbai, 2025) Deletion of on money addition where corroborative evidence was absent and opportunity for rebuttal was not granted.

Hindusthan Bawa Builders v. ACIT (ITAT Bangalore, 2024) Data in third party records cannot be used unless nexus with assessee proved.

ACIT v. Ramesh Kumar Mantri (ITAT Jaipur, 2022) - Addition solely on the basis of pen drive entries deleted as no corroboration or ownership was proved.

Shital Dhorda v. ITO (ITAT, 2025) - Uncorroborated pen drive data and statements not tested in cross examination cannot justify addition.

CIT v. S.M. Aggarwal (2007) 293 ITR 43 (Del) - Loose papers by themselves do not constitute evidence unless corroborated.

Common Cause (A Registered Society) v. Union of India (SC 2017) - Entries in third party diaries or digital media cannot be relied upon without independent evidence of transactions.

PRAYER

In view of the above submissions, it is respectfully prayed that this Hon'ble Tribunal may kindly

1. Delete the addition of Rs.600000 alongwith Interest and Penalty made under Section 69 for the assessment year 2019-20 and beg to quash the demand as no Cross Examination Opportunity was provided at any stage.

2 Hold that reliance on the pen drive seized from a third party is legally untenable without corroboration or confrontation.

3. Direct the CIT(A) to accept the consideration as per registered sale deed and banking records.

4. Pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case.”

3. Brief facts of the case are that the assessee is an individual and had filed her return of income dated 21.08.2019 declaring total income at Rs.5,62,990/-. Pursuant to a search and seizure action u/s 132 of the Act carried out in the group cases of M/s. Rubberwala Housing & Infrastructure Ltd. ('M/s. RHIL' for short) the Learned Assessing Officer ('AO' for short) issued notice u/s 153C of the Act dated 28.03.2023 which was duly issued and served upon the assessee, in response to which the assessee filed her return of income declaring total income at Rs.5,62,990/-. Notices u/s 143(2) & 142(1) were also issued and served upon the assessee. The Ld. AO observed that during the search and seizure action the promotor and director of M/s. RHIL Shri Tabresh Shaikh and a key employee of the said group Shri Imran Ansari had stated that in its project by name "Platinum Mall" various parties including the assessee had purchased the shops from M/s. RHIL and paid on money totaling to Rs.151,39,11,026/- which was treated as unaccounted receipt and subsequently offered the same as additional income @ 8% by M/s. RHIL. The assessee being one of the purchasers of shops from the said project was also assessed as to the nature and source of the said investment amounting to Rs.6,00,000/- made during the year under consideration. After duly considering the assessee's submission the Ld. AO passed the assessment order dated 15.03.2024 u/s 153C of the Act determining the total income at Rs.11,62,990/- after

making an addition of Rs.6,00,000/- as unexplained investment u/s 69 of the Act towards on money receipt alleged to have been paid to M/s. RHIL.

4. The assessee was in appeal before the first appellate authority who vide order dated 13/8/2025 upheld the addition made by the Ld. AO on similar ground as that of the Ld. AO.

5. The assessee is in appeal before us, challenging the order of the Ld. CIT(A) on the above mentioned grounds.

6. The Learned Authorised Representative ('Ld. AR' for short) for the assessee commenced his arguments stating that there was no seized material pertaining to the assessee and the Ld. AO merely relied on the material seized from the third party which did not establish any nexus with regard to the assessee. The Ld. AR further stated that the assessee has purchased the shop for a value much higher than the stamp duty value and all the payments were made through banking channels and no cash payment was made to the builder/promoter. The Ld. AR challenged the Ld. AO's jurisdiction for invoking section 153C of the Act in the absence of any incriminating material pertaining to the assessee. The Ld. AR also argued on the other grounds such as opportunity of cross examination was not given to the assessee and statements of third parties relied upon by the Ld. AO was also not furnished during the assessment proceedings. The Ld. AR submitted that on identical facts in the case of the same group entities the co-ordinate Benches have deleted the addition made in the hands of assessee with no change in facts and circumstances of the present case. The Ld. AR relied on a catena of decisions.



7. The Departmental Representative ('Ld. DR' for short), on the other hand, controverted the said fact and stated that during the search and seizure action the director and the key person of M/s. RHIL admitted to receiving on money from the parties who had purchased the shops from the project "Platinum Mall". The Ld. DR further stated that the said entity had also offered the same to tax thereby corroborating the fact that the parties who had purchased the shops from the said project had paid on money by cash. The Ld. DR relied on the order of the lower authorities.

8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has purchased shops from M/s. RHIL for a total sale consideration of Rs.17,14,650/- for which the assessee contends that the stamp duty value was Rs.14,57,082/- which is much lesser than the agreement value. The assessee denied that there was any cash payment made to the seller and that the Ld. AO without conducting proper enquiry had merely relied on the statement of the director and the key person of M/s. RHIL for making the impugned addition in the hands of the assessee. As there are various assessees who had purchased shops from the said group, the Tribunal on similar facts has deleted the addition by holding that there are no corroborative evidences for payment of on money for making addition in the hands of the assessee and there cannot be addition merely on the basis of third party information without bringing in any evidence qua the assessee for the relevant assessment year. As there are no changes in facts and circumstances of the decisions relied upon by the Ld. AR, we do not find any justification in deciding this issue against the assessee. The relevant extract of the decision of the co-ordinate Bench in the case of *Pravin Khetaram Purohit vs. DCIT in ITA*

No.4742/M/2025 & ors. order dated 15.10.2025 relied upon by the Ld. AR is cited hereinunder for ease of reference:

“8. We have heard the arguments for both the parties and have also perused the material placed on record, judgements cited before me and the orders passed by the revenue authorities. From the records, we noticed that the assessment was completed u/s 153C on account of the fact that a search and seizure action was conducted on 17.03.2021 on Rubberwala group. In search action, premises of M/s. Rubberwala Housing & Infrastructure Ltd (RHIL), its promoter and director-Shri Tabrez Shaikh, and a key employee of Rubberwala group Shri Imran Ansari, who was handling sale & registration of shops in “Platinum Mall” project of RHIL were covered. Among others, statement of these persons were recorded on oath on various dates during the course of search as well as post search proceedings. The employee of Rubberwala group confirmed that the cash has been collected from the respective buyers of the shops. However, on the other hand, the assessee denied payment of cash. We noticed that during the search a pendrive with the details of cash transactions with respect to Rubberwala group was found, which was confirmed through statement of Shri Imran Ansari recorded U/s 132(4) of the Act and on this basis, 153C order was framed and the same was upheld by the Ld.CIT(A).

9. We noticed that Ld. CIT(A) although referred the decision of the coordinate bench in case of Rajesh Jain on identical issue but misplace its reliance. After having gone through the basic facts of Rajesh Jain case which is mentioned by Ld. CIT(A) in its order and the same is reproduced as under:

5.1. On 17.03.2021, the residential premise of the assessee was also covered by way of search action u/s 132 of the IT Act, 1961. Search action was also initiated on Rubberwala group on 17.03.2021. In such action along with premises (offices/sites/others) of Rubberwala group entities, residences of various key persons including its promoter and director Shri Tabrez Shaikh, and Shri Imran Ansari - a key employee of Rubberwala group handling sale & registration of shops in “Platinum Mall” project of RHIL were covered under section 132 of the Act. Among others, statement of these persons were recorded on oath on various dates during search as well as post search proceedings.

5.2. During the action on Rubberwala Group, among other, residence (at 109, 2nd Floor, Prabhat Sadan, 109/120 RBC Marg, Agripada, Mumbai Central - 400011) of Shri Imran Ashfaque Ansari was covered under section 132 of the I.T. Act, 1961. His statement was also recorded on oath at his residence. Vide question no. 11 of the said statement dt. 17.03.2021, Shri Imran Ansari was questioned about his roles and responsibilities in M/s. Rubberwala Housing & Infrastructure Ltd (RHIL). In response, Shri Imran Ansari stated that he has been working with Rubberwala group of entities since 2010 and inter-alia handling sale and registration of the shops in “PlatinumMall” Project of M/s. Rubberwala Housing & Infrastructure Ltd (RHIL).

5.3. *Shri Imran Ansari in his response to question no. 13 & 14 of the said statement explained the complete procedure of the of the sale of shops in the “Platinum Mall” project. While explaining further about the price structure of the shops, Shri Imran Ansari in response to Q. no. 15 categorically revealed that the total price of the shops contains cash component and banking channel component, and these components are decided by Shri Tabrez Shaikh (Director/CMD of RHIL and Promoter of Rubberwala Group). On probing further, Shri Imran Ansari, in response to Q. no. 16, stated that these prices, as decided by Shri Tabrez Shaikh, are communicated to him orally. He also revealed in response to Q. no. 17 of the said statement that data related to shops is maintained by him in excel sheets. Corroborating to the fact that data is being maintained by Shri Imran Ansari in excel sheet, during search proceedings at the residence of Shri Imran Ansari, a 16GB Pendrive was retrieved from his possession. The said pen drive is accepted by Shri Imran Ansari belonging to him and he also accepted that this pen drive is containing data maintained for the sale of shops in Platinum Mall. Shri Imran Ansari explained that this data is prepared by him. Shri Imran Ansari’s this acceptance also corroborates with the fact that the said data was retrieved from the residential premises of Shri Imran Ansari and not from any office of Rubberwala Group.*

5.4. *It was ascertained that the data is being maintained by Shri Imran Ansari in an excel file namely “consolidated 1 2 3 balance”. In the said file sheets with different name viz “Master”, “Payment” and “Cheque” etc. are found to be maintained. It is also found out that in respect of the sale of shops in the said project, comprehensive data is being maintained in these excel sheets, and in this regard, it is important to mention that the sheet “Master” is so elaborate that the data in the said sheet is spread across 98 columns. Shri Imran Ansari has explained all 98 columns of “Master” sheet and such explanation of each and every column by Shri Imran Ansari further support the fact that the he was maintaining the said data and therefore could explain all these columns with relevance and purpose. Shri Imran Ansari in response to Question no. 22, 23 and 24, has explained in detail the meaning and relevant of each and every column. In column B, against the name of ‘Raj Bhai Jain’/‘Raj BhaiJain(I.S)’, total 27 shops have been entered. Further, these 27 shops are stated (by Shri Imran Ansari) to be booked by the assessee only. Also, ShriTabrez Ahmed Shaikh, Director and Promoter of the RHIL, while deposing statement during post search proceedings on 19.08.2021 categorically confirmed the admission made by Shri Imran Ansari, and has confirmed the data of the said excel to be true byconfirming facts stated by Shri Imran Ansari in his statement. It is also important to note here that the phone number mentioned above i.e., 9892196071 against all 27 shops, is of Shri Rajesh Jain.*

5.5. *Regarding the frequency of updating the said excel file/sheet, Shri Imran Ansari, in response to Q. no. 25, stated that this sheet is updated on the same day*



when a payment is received either in cash or cheque (or banking channel). The column A to AR of the sheet "Master" are stated to be updated till 16.03.2021 and other sheets of the said excel file are also stated to be updated till 16.03.2021. It is revealed in the above response that he takes the parties to ShriAbrar Ahmed (who during the search established to be a person handing cash for the Rubberwala Group). ShriAbrar Ahmed, after receiving the cash confirms to Shri Imran Ansari who update the diaries and the said excel file. Such detailed mechanism in place further upholds the facts stated by Shri Imran Ansari on oath. It is also important to note here that Shri Imran Ansari also used to call and follow up with the buyers on the numbers saved in his data. As aforementioned, the number, for the shops for which the assessee has paid the cash component, is mentioned as 9892196071, which is the assessee's own number. Thus, it makes clear that for the cash payment part, for all the above mentioned 27 shops, Shri Imran Ansari used to follow up with Shri Rajesh Jain/assessee only.....

10. We also noticed that the decision of the Coordinate Bench of ITAT in the case of Rajesh Jain in ITA No. 3842 & 3841 & ITA No. 3954, 3952, 3951 and 3950/Mum/2023 on the identical facts is reproduced herein below:

12. The appeal filed by the revenue for AY 2020-21 is with regard to the relief granted by Ld CIT(A) holding that the cash payments relating to the shops purchased by others cannot be assessed in the hands of the assessee. The decision rendered by us in AY 2018-19 and 2019-20 on an identical issue on merits in the earlier paragraphs would apply in this year also. Following the same, we affirm the order passed by LdCIT(A) on this issue.

13. In the appeal filed by the assessee, the addition of alleged cash payment of Rs.18,64,200/- in respect of purchase of shop confirmed by Ld CIT(A) is being assailed.

14. We noticed earlier that the assessee had purchased a shop in the commercial premises developed by Rubberwala group. During the course of search conducted in their hands, incriminating documents containing details of cash collected on sale of various shops were found. The employee of Rubberwala group confirmed that the cash has been collected from the buyers of shops. However, the assessee denied payment of cash. However, the AO relied upon the materials found in the case of Rubberwala group and accordingly made addition of Rs.18,64,200/- in AY 2020-21. The LdCIT(A) also confirmed the same.

15. The Id A.R submitted that the addition was made on the basis of third party statement and documents found from the premises of third party. As per the deposition made by the employee of Rubberwala group, the buyers were given a diary, in which, the details of cash received were acknowledged. The Ld A.R submitted the search officials did not find any such diary with the assessee during the course of search operation conducted in his hands. Hence the statement so

given by the employee stands disproved. He submitted that the AO has simply relied upon third party statement without bringing any independent material to support the same. The AO also did not provide the opportunity of cross examination despite being asked by the assessee. Accordingly, by placing reliance on various case laws, the Ld A.R submitted that this addition should be deleted.

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:-

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.

11. From the above we find that the Coordinate bench has consider the same facts and rightly decided the issue in favour of the assessee and since the facts of the present case are also identical with the facts of Rajesh Jain's (supra) case, therefore the said decision will be application on the facts of the present case as well. Moreover, the assessee categorically denied having paid any amount in cash over and above the agreement value. The AO has neither confronted assessee with any of the material found during the search on Rubberwala group and even no evidence or seized document has been referred to where any name of the assessee has been explicitly mentioned on account of paying any 'on-money'.

12. Although it has been claimed in the order of assessment that the assessee had paid on money, but again no such statement has been confronted, neither the seized material /documents /pendrive was confronted to the assessee nor the copy of statement of Key person was confronted.

13. Therefore, in our view, the information if any found in the pendrive etc., cannot be considered as 'credible evidence', unless they have been corroborated with any other

evidence. Since the assessee was not provided with the adverse material, if any, based on which notice u/s 153 of the Act, was issued, in our view, it hampers the primary and fundamental requirement of natural justice.

14. As far as the information claimed in pendrive is concerned, the same was not found from the possession of the assessee but was found as per order of assessment, during the search and seizure conducted in the case of third party therefore, in the absence of corroborative evidence to establish that the contents of pendrive are correct and authenticated to the extent assessee paid 'onmoney' in cash, no addition can be made and even otherwise during the entire reassessment proceedings the veracity and reliability of the data recorded in the pendrive was not checked or tested. Therefore, in such a scenario no addition is warranted in the case of assessee. Reliance in this regard has been placed on the decision in case of Heena Dashrath Jhanglani ITA no.1665/Mum./2018 (Assessment Year : 2007-08) wherein the Coordinate Bench of ITAT had decided the issue in favour of assessee and the relevant portion is being reproduced herein below:

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 on-money 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 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 Niranjana 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 Niranjana 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 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 Niranjana 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 Niranjana 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. Notably, while dealing with a case involving similar nature of dispute concerning similar transaction with another concern of Hiranandani Group, the Tribunal in case of Shri Anil Jaggi v/s ACIT (supra) has held as under:–

15. *Reliance has also been placed in the case of Monika Anand Gupta I.T.A. No. 5561/Mum/2018 (A.Y. 2011-12) whereas coordinate bench held as under:*

6. I have heard both the parties and perused the record. I find that the addition for on-money payment has been done in this case without any corroborative material found from assessee. The addition is solely based upon some statement of the builder. Such additions are not sustainable on the touchstone of Hon'ble Supreme Court decision in the case of CIT vs P.V Kalyana sundasram 164 Taxman 78 (SC). Moreover there is nothing on record to suggest that so called electronic evidence collected by revenue at the builder's office is compliant with the requirement of section 65B of Evidence Act regarding admissibility of electronic evidence. Hence, I set aside the orders of the authority below and direct that the addition be deleted.

16. *In the case of Mrs. Mamta Sharad Gupta, ITA No.1553/M/2021 Assessment Year: 2011-12, wherein the coordinate bench has held as under:*

9. Since the sole issue raised in this appeal is covered by the order (supra) passed by the co-ordinate Bench of the Tribunal addition made in this case is not sustainable. Because the addition is made merely on the basis of statement made by one Mr. Suraj Parmar, one of the promoters of Cosmos Group under section 132(4) of the Act without any corroboration. Moreover, statement or any material seized during the course of search under section 132(4) of the Act can only be used against Mr. Suraj Parmar of Cosmos Group and not against the assessee without any corroboration. Excel sheet alleged to have been recovered from the office of builders is also not admissible being not proved under section 65 of the Evidence Act. So in view of the matter, addition made by the AO and sustained by the Ld. CIT(A) is not sustainable in the eyes of law, hence ordered to be deleted. Consequently, appeal filed by the assessee is allowed.

17. *For the above proposition, we place reliance upon the decision in the case of ITO Vs. Vinod Aggarwal, ITA No. 2573/Mum/2017, ITO Vs. Nikhil Vinod Aggarwal, ITA No. 2574/Mum/2017 Heena Dashrath Jhanglani Vs. ITO, ITA No.1665/M/2018, Padmashree Dr. D.Y. Patil University Vs. DCIT, ITA Nos. 3264 to 3268/Mum/2022.*

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.*

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'.

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 party renders the addition/disallowance bad in law'

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:

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 propositions as discussed by us above, we direct the AO to delete the addition, consequently these grounds raised by the assessee are allowed."

9. From the above observation, it is observed that the addition in the hands of the assessee was made merely on the basis of the statement recorded during search and seizure action in the case of M/s. RHIL group where the Ld. AO has failed to bring on record any evidence pertaining to the on money payment made by the assessee to the builder and the decisions relied upon by the co-ordinate Benches have reiterated the fact that the addition



cannot be made solely on the third party information without any corroborative evidences which is also further substantiated by the assessee's contention that opportunity of cross examination was not extended to the assessee where the Ld. AO has extensively relied on the statements of the third parties.

10. On the above factual matrix of the case, we deem it fit to allow the grounds of appeal raised by the assessee by respectfully following the decisions of the co-ordinate Benches on identical issue pertaining to the same group entity there being no change in the facts and circumstances as that of the present case in hand.

11. In the result, the appeal filed by the assessee is hereby allowed.

12. The finding given in this appeal will apply *mutatis mutandis* to other appeal i.e. ITA No.7062/M/2025 as well and hence the same is also hereby allowed.

13. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 23.02.2026

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

Mumbai; Dated: 23.02.2026

* Kishore, Sr. P.S.



Copy of the Order forwarded to:

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai