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

BEFORE SHRI VIKRAM SINGH YADAV, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA Nos.5629, 5633 & 5634/Mum/2025
(Assessment Years: 2017-18, 2018-19 & 2019-20)

Mr. Dinesh Jawaraji Parihar, 203, 2nd Floor, Tiranga Bldg., B Wing, Kamathipura 2nd Lane, Kamathipura, Mumbai – 400 008	Vs.	**Assistant Commissioner of Income Tax,** Central Circle-4(2), Mumbai
PAN:ARJPP2808B		
(**Appellant**)	:	(**Respondent**)

Assessee by	:	Ms. Rutuja Pawar, AR
Respondent by	:	Shri Umashankar Prasad, CIT-DR

Date of Hearing	:	28.01.2026
Date of Pronouncement	:	24.02.2026

O R D E R

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) 2017-18, 2018-19 & 2019-20. As the facts are identical, we hereby pass a consolidated order by taking ITA No.5629/M/2025 pertaining to A.Y. 2017-18 as the lead case.

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

"1) That on the facts and in the circumstances of the case of the appellant and in law Ld. CIT(A) -52, Mumbai has erred in upholding the addition levied by Assessing Officer of Rs.2,00,000/- u/s. 69 of the Act.

2) That on the facts and in the circumstances of the case of the appellant and in law Ld. CIT(A) -52, Mumbai has erred in ignoring that fact that there is no incriminating material unearthed by Assessing Officer in case of the appellant u/s. 153C of the Act.

3) That on the facts and in the circumstances of the case of the appellant and in law Ld. CIT(A) -52, Mumbai has erred in considering the fact that the Assessing Officer had no jurisdiction and no material for re-opening u/s. 153C of the Act for A.Y. 2017-18.

4) That on the facts and in the circumstances of the case of the appellant and in law Ld. CIT(A) -52, Mumbai has erred in ignoring the fact that no satisfaction note has been received to the appellant from his Jurisdictional Assessing Officer as prescribed u/s. 153C of the Act.

5) That on the facts and in the circumstances of the case of the appellant and in law Ld. CIT(A) -52, Mumbai has erred in not considering the fact that the Assessing Officer has made the impugned addition u/s. 69 of the Act solely on the basis of statements of Mr. Imran Ansari and Mr. Tabrez Shaikh, without any corroborative evidence.

6) That on the facts and in the circumstances of the case of the appellant and in law Ld. CIT(A) -52, Mumbai has erred in ignoring the fact that the Assessing Officer has made an arbitrary bifurcation of the sum of Rs. 12,86,338/-without assigning any cogent reasoning, findings, or evidentiary basis for such allocation.

7) That on the facts and in the circumstances of the case of the appellant and in law Ld. CIT(A) -52, Mumbai has erred in ignoring the fact that the appellant has purchased the Shop No. 96 at 'Platinum Mall' being developed by M/s. Rubberwala Housing & Infrastructure Ltd. by way of an purchase agreement in A.Y. 2021-22.

8) That on the facts and in the circumstances of the case of the appellant and in law Ld. CIT(A) -52, Mumbai has ignored the fact that the Assessing Officer has grossly failed to abide the CBDT Circular bearing F No. 286/98/2013-IT (Inv. II) dated 18.12.2014.

9) That the impugned order being contrary to law, evidence, and facts of the case may kindly be set aside, amended, and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.

10) That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.

11) That the appellant craves leave to reserve to himself the right to add, to alter or amend any of the grounds of appeal before or at the end of the hearing and to produce such further evidence, documents, and papers as may be necessary."

3. Brief facts of the case are that the assessee is an individual and had filed his return of income dated 17.09.2017 declaring total income at Rs.3,27,360/-. 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 29.03.2023 which was duly issued and served upon the assessee, in response to which the assessee filed his return of income declaring total income at Rs.3,27,360/-. 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.2,00,000/- made during the year under consideration along with other payments made in the subsequent years aggregating to Rs.12,86,338/-. After duly considering the assessee's submission the Ld. AO passed the assessment order dated 22.03.2024 u/s 153C of the Act determining the total income at Rs.5,27,360/- after making an addition of Rs.2,00,000/- 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 13.08.2025 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 her 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 as per 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.12,86,338/-. 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 Khetaramm 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.*
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> *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).*
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> *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 diariesand 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 ld 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 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 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. 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, Padmashrree 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 prepositions 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 appeals in ITA Nos.5633 & 5634/M/2025 as well and hence the same are also hereby allowed.

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

Order pronounced in the open court on 24.02.2026

Sd/-	**Sd/-**
(VIKRAM SINGH YADAV)	**(KAVITHA RAJAGOPAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated: 24.02.2026

* 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