

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: DR. BRR Kumar, Vice President
And Shri T. R. Senthil Kumar, Judicial Member**

**ITA No: 1813/Ahd/2025
Assessment Years: 2016-17**

Shri Saurin Shah Legal heir of Late Ashok Damodar Shah 52, Premier House-1, S.G. Highway, Opp. Gurudwara, Thaltej Circle, Ahmedabad-380054 PAN: AELPS4894M (Appellant)	Vs	The ACIT, Circle-4(1)(1), Ahmedabad (Respondent)
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Assessee Represented: Shri Rushin Patel, A.R.

Revenue Represented: Shri Kamal Deep Singh, Sr.D.R.

Date of hearing : 24-02-2026

Date of pronouncement : 25-02-2026

आदेश/ORDER

PER: T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the Assessee as against the exparte appellate order dated 26-08-2025 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the reassessment order passed under section 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2016-17.

2. Brief facts of the case is that the assessee is a lawyer by profession filed his Return of Income on 16-10-2016 declaring total income of Rs.37,52,940/-. The return was processed u/s. 143(1) of the Act accepting the returned income. Thereafter based on the information received for the insight portal of the Department, the assessee has purchased a residential unit in “Kalhaar Blues and Greens” project developed by M/s. Navratna Organisers and Developers Pvt. Ltd. (for short NODPL) and the assessee has paid on-money of Rs.57,55,000/-. Hence show cause notice was issued following which 148 notice was issued to the assessee on 15-04-2021.

2.1. In response, the assessee filed the same income as that of the original Return of Income. In the meanwhile, the assessee expired on 30-09-2022 and then his Son Shri Saurin Shah is impleaded as the Legal Heir and various notices issued to the Legal Heir. The Legal Heir submitted that his father as a co-owner of Unit No. 149 purchased alongwith Shri Lomesh A. Shah wherein Rs. 45,00,000/- paid by him. Addition made in his hand against which appeal is pending before Ld. CIT(A) and requested for sometime to get the details. The same was rejected by the A.O. and made addition on account of unexplained money being cash consideration of Rs.57,55,000/- on protective basis in the hands of the assessee.

3. Aggrieved against the reassessment order, assessee filed an appeal before Ld. CIT(A) which was also dismissed exparte.

4. Aggrieved against the appellate order, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The ld. CIT(Appeals) has erred in law and on facts of the case, in dismissing appeal ex-parte, without hearing the appellant.

2. The assessment order is passed in the name and on the PAN of a deceased assessee, and therefore, is bad in law.

3. The ld. AO erred in law and on facts of the case in making addition on protective basis of Rs.57,55,000/- u/s.69A on account of alleged on-money payment for purchase of property.

4. The appellant craves leave to add, amend or alter the grounds of appeal at the time of hearing, if need arise.

6. At the outset, Ld. Counsel for the assessee submitted that this issue of on-money paid to NODPL is considered by various decisions of this Tribunal as well as Hon'ble Gujarat High Court. Based on the same, the additions were deleted in the case of Ashokkumar Prahladbhai Patel vs. DCIT in ITA No. 1300/Ahd/2025 dated 01-01-2026. Following the same, the assessee appeal be allowed and the protective addition is liable to be deleted.

7. Per contra, Ld. Sr. D.R. appearing for the Revenue supported the order passed by the lower authorities and requested to confirm the same.

8. We have given our thoughtful consideration and perused the materials available on record. As rightly stated by the Ld. Counsel, Co-ordinate Bench of this Tribunal in the case of Munjal Mrugesh Jaykrishna in ITA No. 1793/Ahd/2024 dated 19-03-2025 considered the issue of reopening of assessment and on-money payment to NODPL during post search proceedings and held that the reassessment itself is bad in law. This decision was considered by another Co-ordinate Bench of this Tribunal in Ashokkumar Prahladbhai Patel (cited supra) wherein considered Jurisdictional High

Court Judgment in the case of Kaushik Nanubhai Majithia and thereby deleted the addition made by the Revenue by observing as follows:

7. We have considered the rival submissions. A copy of the reason recorded by the Assessing Officer has been brought on record in the paper-book filed by the assessee. It is found therefrom that the case of the assessee was reopened only on the basis of statement of one Shri Murlidhar Marutibhai Trivedi regarding receipt of on-money and the list of purchasers submitted by NODPL during the post search proceeding. In the reason, the Assessing Officer has not referred to any entry in the excel sheet wherein cash payment of Rs.78,75,000/- was mentioned for acquisition of the property by the assessee along with other three co owners. As rightly pointed out by the assessee, no evidence was found in the course of search regarding payment of any on-money by the assessee. Merely because NODPL had admitted in its settlement application that on-money was received by it, it does not establish that the assessee had paid on-money in respect of acquisition of property made by him.

8. The evidences found from NODPL on the basis of which the addition has been made, was examined by the Co-ordinate Bench of this Tribunal in the case of Munjal Mrugesh Jaykrishna in ITA No.1793/Ahd/2024 dated 19.03.2025. The finding given in the said order is found to be as under:

“7. The most important facts observed by us pertains to para No.9.1 to 9.4 of the assessment order.

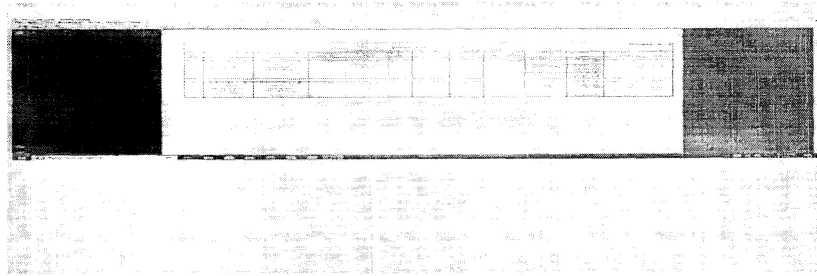
For the sake of ready reference and completeness, the said paragraphs are reproduced hereunder: -

9.1 As per assessee, the decoded is done by the Department is its own and the search party has not given any authenticity for it. However the amount stated in the above discussion is tallied with the un-coded figures, which are tallied each other.

The snip of the excel file named xrb000226.xls which is attached herein is as an reference.

On perusal of the excel file named xrb000226.xls, it is observed that in the excel file, the price of land per sq. yard is written by omitting one zero. In column "F", price of land per sq. yard is written by omitting one zero.

And as per assessee it is as under: -



In the pink color, the figure of amount is quoted at 37500 on 20.04.2013, it has been seen from the submission of the assessee that the amount of Rs.37,50,000/- has been paid on 25.11.2011. Hence, the plea of the assessee is cleared herewith. The amount paid by the assessee 37,50,000/- is quoted in computer entry is 37500. Thus, it is clear that the decoding has been made perfectly. The date of payment and related entries again and again are reproduced above with the payment of the assessee.

9.2 The statement asked by Shri Murlidhar Marutbhai Trivedi, the accountant of the said NODPL could not be provided as the statement is based on not only the information regarding the assessee only but another person's only and it is confidential lies with Investigation wing hence, it has not been provided to the assessee. However, the information received and as available with the assessee is incorporated in the assessment order above.

9.3 NODPL before ITSC has confessed that they have taken on-money out of sale of land and building thereon. It is confessed relevant to all the purchasers of the scheme whatever developed by it. The name of the assessee also inclusive thereon. It is not proper query from the assessee, for his individual, he has confessed before ITSC.

9.4 As regard the payment made in various years hence, the amount involved for this year is only for under question. However, it is brought to kind notice of the assessee that the purchase deed is executed in the in the year under consideration hence, the all transaction are covered under this year only.”

7.1 A detailed analysis of the relevant paragraphs from the assessment order reveals multiple inconsistencies and procedural lapses that render the addition unjustified.

7.2 Firstly, the decoding of figures has been done solely by the department without any independent verification, and the search party has not provided any authenticity for the same. This statement recorded on decoding has not been part of the assessment proceedings. The Revenue has relied on unverified and coded figures, which have been tallied against the un-coded figures without proper corroboration. Any statement recorded of the Directors or the employees relating to the material found in codes has not been brought on record. This raises serious doubts about the reliability of the figures used to make the addition. Since the authenticity of the decoded amounts is questionable, any conclusions drawn from them cannot be sustained.

7.3 Secondly, the records indicate that the payment details align with the submissions made by the assessee. It has been established that the amount of ₹37,50,000 was paid on 25.11.2011, as per the assessee's records, which match the decoded figures quoted in the assessment order. The repeated mention of these figures in the department's findings confirms that there is no discrepancy in the assessee's declaration of the payments. Hence, the plea of the assessee stands corroborated, and there is no ground for any addition on this account..

7.4 Thirdly, the statement made by Shri Murlidhar Maruthbhai Trivedi, the accountant of NODPL, has not been made available to the assessee. The assessment order itself acknowledges that this statement is based not only on information regarding the assessee but also on another person's details, which are confidential and lie within the Investigation Wing. Since this statement has not been shared with the assessee, reliance on it violates the principles of natural justice. Without providing the assessee an opportunity to cross-examine the statement or verify its contents, the department cannot use it as the basis for making an addition.

7.5 Furthermore, NODPL has confessed before ITSC that it collected on money from the sale of land and buildings. However, the admission was made in a general context regarding all purchasers of the scheme developed by NODPL. There is no specific mention or direct evidence linking the assessee to this alleged on-money transaction. In the absence of any concrete evidence that the assessee was involved in undisclosed transactions, making an addition solely on presumptions is unsustainable. Any such addition must be backed by clear, conclusive proof rather than general confessions made by third parties.”

9. On the basis of the above findings, the Co-ordinate Bench had held that no addition was called for on the basis of the evidences provided by NODPL. The Hon'ble Gujarat High Court in the case of Kaushik Nanubhai Majithia (supra) had observed on the evidences found from NODPL as under: -

“3. We find inherent fallacy in this submission, inasmuch as, there is no basis for conducting proceedings against the assessee merely for the fact that the developer had paid tax on the amount shown in the excel-sheet. There is no adjudication with regard to the payment, which was shown in the excel-sheet to the effect that the same was actually paid by the assessee to the developer. Even otherwise, the concurrent findings returned by the CITA and ITAT are that the document found from the premises of the third party namely excel-sheet, which is the basis of the proceedings was without any signature and there is no corroborative material to substantiate the said document. The nature of the document has not been explained by the Assessing Officer while proceeding against the assessee. The statements of the persons recorded during search with reference to the alleged, seized material, was not provided to the assessee and hence, the entire proceedings under Section 153C of the IT Act of 1961 stood vitiated.”

10. It is further found that the case of the other two co-owners Moulesh Ashokkumar Patel & Shilpaben Moulesh Patel was also reopened by the Department by issue of notice under section 148 of the Act for the A.Y. 2016-17. A copy of the assessment order passed in their cases have been brought on record in the paper-book and it is found therefrom that no addition for any on-money payment was made in their hands. When no addition was made in the case of other co-owners, the Revenue was correct in making the addition of payment of on-money in the hand of the assessee, on the basis of the same evidence.

11. In view of the above facts and also following the decision of Co-ordinate Bench of this Tribunal referred above, the addition of Rs.19,62,500/- made in the hands of the assessee on account of on money payment is deleted. The grounds taken by the assessee are allowed.”

8.1. Here in this case also, the additions made by the Revenue on account of payment of on-money, however restricted as a protective addition in the hands of the deceased assessee, since substantive addition was made in the hands of other co-owner. However there is no specific mention or direct evidence linking the assessee to the alleged on-money transaction made to NODPL. In the absence of any concrete evidence that the assessee was involved in undisclosed

transactions, making addition solely on presumption is unsustainable in law as held by the Jurisdictional High Court. Therefore, we have no hesitation in deleting the protective addition made in the hands of the deceased assessee.

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

Order pronounced in the open court on 25-02-2026

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT *True Copy*
Ahmedabad : Dated 25/02/2026

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद