

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.5952/Mum/2025  
(Assessment Year :2024-25)**

Tanishq Builders C-102, 1 <sup>st</sup> Floor The Palms, Chittaranjan Nagar Vidya CHS, Rajawadi Ghatkopar East Mumbai- 400 077	Vs.	The Assistant Commissioner of Income Tax, Central Circle 2(3), Mumbai
<b>PAN/GIR No.AADFT4647D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.8105/Mum/2025  
(Assessment Year :2024-25)**

The Assistant Commissioner of Income Tax, Central Circle 2(3), Mumbai	Vs.	Tanishq Builders C-102, 1 <sup>st</sup> Floor The Palms, Chittaranjan Nagar Vidya CHS, Rajawadi Ghatkopar East Mumbai- 400 077
<b>PAN/GIR No.AADFT4647D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Upvan Gupta
Revenue by	Shri Ritesh Misra, CIT DR
<b>Date of Hearing</b>	<b>17/02/2026</b>
<b>Date of Pronouncement</b>	<b>20/02/2026</b>

**आदेश / O R D E R****PER AMIT SHUKLA (J.M):**

The present cross appeals arise from the order dated 15.09.2025 passed by the Ld. Commissioner of Income-tax (Appeals)-48, Mumbai for A.Y. 2024-25, emanating from the reassessment framed under section 147 read with section 143(3) of the Income-tax Act, 1961 (“the Act”). The appeals are cross in nature, founded upon the same appellate order and the same evidentiary base, albeit assailing the same in different directions; accordingly, they are taken up together and are being dealt with by this consolidated order.

2. The sole substantive dispute, around which the entire lis pivots, relates to the addition on account of alleged “on-money” receipts in respect of a real estate project named “Palatina” situated at Ghatkopar, Mumbai, the same having been treated by the Assessing Officer as unexplained money under section 69A of the Act, founded predominantly on certain materials stated to have been seized from a third-party real estate broker, namely Shri Rajesh Gandhi. Thus, the controversy is not merely about a computation or arithmetical working, but about the very evidentiary legitimacy of fastening alleged cash receipts upon the assessee on the strength of third-party records, statements,

and digital extracts, and the consequential characterisation of such receipts in law.

3. The assessee is a partnership firm engaged in building construction and development and is developing a real estate project named “Palatina” at Ghatkopar, Mumbai, in which M/s Goshar Alliance LLP holds a 51% ownership stake. The assessee e-filed its belated return of income under section 139 of the Act on 10.08.2024 declaring total loss at Rs. (-) 58,37,315/-. The assessee follows the Percentage Completion Method (PCM) for recognising its income and has stated that since the milestones for revenue recognition (25% completion) were not met in A.Y. 2024–25, no income from the project was offered to tax in its return of income. The return position, the accounting method claimed to be consistently followed, and the assertion that revenue recognition threshold was not crossed, are all part of the assessee’s foundational stand even at the stage of assessment and thereafter in appellate proceedings.

4. A search and seizure action under section 132 of the Act was carried out on 19.01.2024 in the cases of Ajmera Group and Goshar Group, covering their business premises, residential premises and key managerial persons. The search, as recorded, continued for several days. In the course of the

same coordinated action, a search was simultaneously conducted at the premises of Shri Rajesh Gandhi, a real estate broker operating through his proprietorship concern styled “Rajesh Gandhi Realtors”, who was stated to be associated with the marketing and facilitation of bookings in the project “Palatina”. It is material to record that the Revenue’s case does not originate from any seizure at the premises of the assessee-firm but is constructed substantially upon what was found in the possession of this broker during the search conducted on 19.01.2024 and the days immediately succeeding. Thus, chronologically and evidentially, the foundation of the addition traces its origin to the search at the broker’s premises and the statement recorded from him.

5. During the course of search at the premises of Shri Rajesh Gandhi on 19.01.2024 and thereafter, statement of Shri Rajesh Gandhi was recorded under section 132(4) of the Act. In the said statement, he acknowledged that he was in contact with Shri Pankaj Goshar and Shri Chetan Patel, partners of Tanishq Builders, in connection with the sale of flats in the project “Palatina”. He further stated that he was entitled to 2% commission on sales facilitated by him and that in case there was a channel partner, 1% commission would be passed on. The Revenue relies upon this portion of

statement to establish his proximity to the transaction chain and his alleged involvement in the booking and negotiation process. The relevant portion of the statement is reproduced hereunder:

**Q.16** Kindly elaborate how you came into contact with Goshar Group and the persons you interact regularly with for the activities transactions pertaining to the said group.

**Ans.** Madam, I came to know they were starting a project named "Palatina" in Ghatkopar. So I visited the office of Goshar group in the BKC office. There I met Shri Pankaj Goshar where it was agreed that I can sell their flats for 2 % commission and in case there is a channel partner, then to pass on 1% commission to them. I am in contact with Shri Pankaj Goshar (Mob: 9191999999) and Shri Chetan Patel (Mob: 9820122509) who are partners of Tanishq Builders which is developing the Palatina project in Ghatkopar East.

**Q.17** Please specify the rate at which the flats are sold in Palatina.

**Ans.** Madam, sale price of Palatina flats is 27500 per square-foot.

6. During the same search proceedings, certain handwritten loose papers were found and seized from the premises of Shri Rajesh Gandhi. These loose sheets, according to the Revenue, contained handwritten entries indicating flat numbers, area, rate per square foot, agreement value and certain figures alleged to represent cash components. The Assessing Officer has treated these sheets as primary documentary evidence of receipt of on-money by the developer. The evidentiary mapping adopted in the assessment order suggests that each loose sheet entry was correlated with specific flat numbers in the project and

compared with agreement values to compute the alleged differential amount treated as cash component. The relevant loose sheets are reproduced hereunder:

$$\begin{array}{r}
 2154 \rightarrow \\
 + 1733 \rightarrow \\
 \hline
 3887 \times 7500 = 29152 \\
 + \text{Parking} = 7500 \\
 \hline
 36652 \quad (2)
 \end{array}$$
  

$3887 \times 20000 = 77740$	10%
9.57 @ 5%	85.57
9.57 @ 6%	
Registration	100 = 60
Other charges	800
Society maintenance @ 15%	

$  \begin{array}{r}  2154 \times 22500 = 59235 \quad (4) \\  + \text{Parking} = 6000 \\  \hline  65235 \\  \text{Due} - 2154 + 20000 = 43860 \\  \hline  22155  \end{array}  $	$  \begin{array}{r}  1733 \times 27500 = 4765750 \quad (3) \\  + \text{Parking} = 15000 \\  \hline  4915750 \\  \text{Due} - 1733 + 20000 = 3466000 \\  \hline  1449750  \end{array}  $
$  \begin{array}{r}  43860.000 \\  2554.800 - \text{st.dubt @ 6\%} \\  2154.000 - 9.57 @ 5\% \\  10.000 - \text{Registration} \\  400.000 - \text{Society charges} \\  \hline  45258.800 \\  + 22155.000 \\  \hline  70413.800  \end{array}  $	$  \begin{array}{r}  3466000 \\  2077.600 - \text{st.dubt @ 6\%} \\  1733.000 - 9.57 @ 5\% \\  10.000 - \text{Registration} \\  400.000 - \text{Society charges} \\  \hline  3891260 \\  + 1449750 \\  \hline  5341010  \end{array}  $

7. In his statement recorded on oath during the search, Shri Rajesh Gandhi is stated to have admitted that the seized loose sheets pertained to the project "Palatina" and that the





This amount is actually Rs. 20,00,000/- respectively as explained in answer to previous question. The total sum of Rs. 20,00,000/- has been paid in cash by Shri Ketan Kumar Doshi to M/s Tanishq Builder on account of purchase of flat No. 1101 on 25.11.2023.

Such sheet/note is prepared to keep the evidence of date wise cash payment/out of books payment made by purchases to builder. In this sheet signature of builder/representative of builder who receives the cash is taken and it is destroyed once the registration of flat/shop is completed. In the instant cash it is safely preserved because the registration of agreement is not completed yet.

8. In addition to physical loose sheets, digital evidence was also found during search. A white coloured 256 GB iPhone 14 was seized from Shri Rajesh Gandhi. From this device, WhatsApp conversations and images were extracted, which, according to the Revenue, contained discussions regarding flat bookings, rates and images of handwritten sheets reflecting transaction details. The names of certain buyers such as Vijay Omji Nogja, Ketanbhai Doshi and Dhirubhai Mavani are stated to appear in these chats. The Assessing Officer has treated these chats as corroborative electronic evidence linking the broker's handwritten notes to specific buyers and transactions.

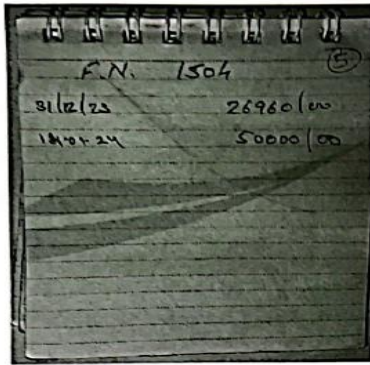
9. Further, from the cabin of Shri Rajesh Gandhi, certain loose paper sheets maintained in coded format were found and seized. The Revenue's case proceeds on the basis that the coded format indicates concealment intent and that the code was explained by the broker in his statement. These sheets allegedly contained details of on-money receipts in coded form. The Assessing Officer has relied upon the broker's

decoding to read these sheets as structured records of cash receipts.

10. During the search proceedings, a spiral pocket diary titled "JSW SHOPPE" was also found. According to the statement of Shri Rajesh Gandhi, this diary contained date-wise records of cash receipts relating to specific flats in project "Palatina", namely flat nos. 1203, 1204, 1403, 1503 and 1504. He is stated to have explained that after receipt of cash, signatures of builder or representative were taken and that such sheets were ordinarily destroyed after registration; however, since registration was not completed in certain cases, the sheets were retained. The Assessing Officer has relied upon this narrative to assert that the diary entries were contemporaneous acknowledgements of cash receipt. The relevant diary pages and statement portion are reproduced hereunder:

Q.19 I am showing you small spiral pocket diary namely-'JSW SHOPPE' inventoried as per page 1 to 5 of Annexure-A-2. The same is reproduced hereunder.

<table border="1"> <tbody> <tr> <td>F.N. 1203</td> <td>101200/00</td> </tr> <tr> <td>515123</td> <td>0</td> </tr> <tr> <td>F.N. 1203</td> <td>30960/00</td> </tr> <tr> <td>615123</td> <td>0</td> </tr> <tr> <td></td> <td>131960/00</td> </tr> </tbody> </table>	F.N. 1203	101200/00	515123	0	F.N. 1203	30960/00	615123	0		131960/00	<table border="1"> <tbody> <tr> <td>F.N. 1403</td> <td>19240/00</td> </tr> <tr> <td>615123</td> <td>0</td> </tr> <tr> <td>F.N. 1403</td> <td>60000/00</td> </tr> <tr> <td>3015123</td> <td>0</td> </tr> <tr> <td>F.N. 1403</td> <td>52920/00</td> </tr> <tr> <td>0516123</td> <td>0</td> </tr> <tr> <td></td> <td>131960/00</td> </tr> </tbody> </table>	F.N. 1403	19240/00	615123	0	F.N. 1403	60000/00	3015123	0	F.N. 1403	52920/00	0516123	0		131960/00				
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Please explain the contents and modus operandi in relation to preparation of this Pocket book.

**Ans.** Madam, in this diary cash transactions in relation to sale of various flats in 'Palatina' project has been written. Page No.1 contains the transaction in relation to Flat No.-1203. The amount mentioned on this page is 101200|00 on 05.05.23 and Rs. 30760|00 on 06.05.23 which is totaling to Rs. 131960|00. The transactions mentioned on this page is double digitally suppressed using the sign "|". It is actually Rs. 1,31,96,000/-paid by purchaser of flat No. 1203 to developer.

Page No.2 contains the transaction in relation to Flat No.-1403. The amount mentioned on this page is 19240|00 on 06.05.23, Rs. 60000|00 on 30.05.23, Rs. 52720|00 which is totalling to Rs. 131960|00. The transactions mentioned on this page is also double digitally suppressed using the sign "|". It is actually Rs. 1,31,96,000/-paid by purchaser of flat No. 1403 to developer.

Page No.-3 contains the transaction in relation to Flat No.-1204. The amount mentioned on this page is 7480|00 on 03.06.23, and Rs. 124480|00 on 18.07.23 which is totalling to Rs. 131960|00. The transactions mentioned on this page is double digitally suppressed. It is actually Rs. 1,31,96,000/-paid by purchaser of flat No. 1204 to developer.

Page No.-4 contains the transaction in relation to Flat No.-1503. The amount mentioned on this page is Rs. 520|00 on 18.07.23, Rs. 57200|00 on 19.07.2023, Rs. 51200|00 on 19.12.23, and Rs. 23040|00 on 31.12.23 which is totalling to Rs. 131960|00. The transactions mentioned on this page is double also digitally suppressed. It is actually Rs. 1,31,96,000/-paid by purchaser of flat No. 1503 to developer.

Page No.-5 contains the transaction in relation to Flat No.-1504. The amount mentioned on this page is Rs. 26960|00 on 31.12.23 and, Rs. 50200|00 on 14.01.2024 which is totalling to Rs. 76960|00 however the total is not written. The transactions mentioned on this page is also double digitally suppressed. It is actually Rs. 76,96,000/-paid by purchaser of flat No. 1504 to developer.

Just like the cards shown earlier, such notings/record in pocket notebooks is prepared to keep the evidence of date wise cash payment/out of books payment made

by purchasers to builder. In this sheet signature of builder/representative of builder who receives the cash is taken and it is destroyed once the registration of flat/shop is completed. In the instant cash it is safely preserved because the registration of agreement is not completed yet.

11. On the same date of search, a red and black coloured 32 GB Sandisk pen drive was found from the drawer of Shri Rajesh Gandhi. The pen drive contained an Excel workbook titled "Brokerage", and within it, a sheet named "Palatina". The said sheet contained tabulated details including buyer

names, flat numbers, area, agreement value and alleged cash component. The Assessing Officer has treated this sheet as a consolidated digital summary of the same transactions reflected in loose sheets and diary entries. The full contents of the sheet are reproduced hereunder:

Sr No	Name	Flat No	Area	@	Value	Amount Due	Others	Brok on Due	Brok on Other	Parkings	Parking Brok	Brok on Others	%	T.Brokerage	C.P	Share of C.P	Paid to CP	CP Balance	Comp Due	Comp Othrs	Company	Recd	Reg
	REFUGE	501																					
1	Lalitbhai Shah	502	2154	27500	₹ 5,92,35,000	₹ 4,30,80,000	₹ 1,61,55,000	₹ 8,61,600	₹ 3,23,100	4	₹ 1,20,000	₹ 4,43,100	2%	₹ 13,04,700					₹ 8,61,600	₹ 4,43,100	₹ 13,04,700		
2	Rajesh Damani	503	1406	27500	₹ 3,86,65,000	₹ 2,81,20,000	₹ 1,05,45,000	₹ 5,62,400	₹ 2,10,900	2	₹ 60,000	₹ 2,70,900	2%	₹ 8,33,300					₹ 5,62,400	₹ 2,70,900	₹ 8,33,300		
3		504	1406	27500	₹ 3,86,65,000	₹ 2,81,20,000	₹ 1,05,45,000	₹ 5,62,400	₹ 2,10,900	2	₹ 60,000	₹ 2,70,900	2%	₹ 8,33,300					₹ 5,62,400	₹ 2,70,900	₹ 8,33,300		
		601																					
		602																					
4	Sachin Bordia	603	1400	27500	₹ 3,85,00,000	₹ 2,80,00,000	₹ 1,05,00,000	₹ 5,60,000	₹ 2,10,000	2	₹ 60,000	₹ 2,70,000	2%	₹ 8,30,000	Sanam	₹ 4,15,000	₹ 1,35,000	₹ 2,80,000	₹ 2,80,000	₹ 1,35,000	₹ 4,15,000	₹ 1,35,000	Done
5	Prakash Doshi	604	1400	23300	₹ 3,26,20,000	₹ 1,76,20,000	₹ 1,50,00,000	₹ 3,52,400	₹ 3,00,000	2	₹ 0	₹ 3,00,000	3%	₹ 9,78,600	A Chheda D Chheda	₹ 3,26,200 ₹ 3,26,200	₹ 0 ₹ 0			₹ 3,26,200	₹ 3,26,200	₹ 3,26,200	Done
6	Nilesh Patel	703	1406	27500	₹ 3,86,65,000	₹ 3,86,65,000	₹ 0	₹ 7,73,300	₹ 0	3	₹ 90,000	₹ 90,000	2%	₹ 8,63,300					₹ 7,73,000	₹ 90,000	₹ 8,63,000		
7		704	1406	27500	₹ 3,86,65,000	₹ 3,86,65,000	₹ 0	₹ 7,73,300	₹ 0	3	₹ 90,000	₹ 90,000	2%	₹ 8,63,300					₹ 7,73,000	₹ 90,000	₹ 8,63,000		
		801																					
8	Pritesh Khamsara	802	1770	27500	₹ 4,86,75,000	₹ 3,54,00,000	₹ 1,32,75,000	₹ 7,08,000	₹ 2,85,500	3	₹ 90,000	₹ 3,55,500	2%	₹ 10,63,500					₹ 7,08,000	₹ 3,55,500	₹ 10,63,500	₹ 3,55,000	Done
9	Vishal Parekh	803	1400	27500	₹ 3,85,00,000	₹ 2,68,00,000	₹ 1,17,00,000	₹ 5,36,000	₹ 2,34,000	2	₹ 60,000	₹ 2,94,000	2%	₹ 8,30,000	Ambica	₹ 4,15,000	₹ 1,47,000	₹ 2,68,000	₹ 2,68,000	₹ 1,47,000	₹ 4,15,000	₹ 1,47,000	Done
10	Dhruvhai Mevani	804	1400	27500	₹ 3,85,00,000	₹ 3,85,00,000	₹ 0	₹ 7,70,000	₹ 0	2	₹ 60,000	₹ 60,000	2%	₹ 8,30,000	Ketan Passad	₹ 4,15,000	₹ 30,000	₹ 3,85,000	₹ 3,85,000	₹ 30,000	₹ 4,15,000	₹ 30,000	Done
11	Jatin Daisaria	901	1738	27500	₹ 4,77,95,000	₹ 4,77,95,000	₹ 0	₹ 9,55,900	₹ 0	2	₹ 60,000	₹ 60,000	2%	₹ 10,15,900	MAX	₹ 5,07,950	₹ 30,000	₹ 4,77,950	₹ 4,77,950	₹ 30,000	₹ 5,07,950	Done	
12		902	1776	27500	₹ 4,88,40,000	₹ 4,88,40,000	₹ 0	₹ 9,76,800	₹ 0	2	₹ 60,000	₹ 60,000	2%	₹ 10,36,800	***	₹ 5,18,400	₹ 30,000	₹ 4,88,400	₹ 4,88,400	₹ 30,000	₹ 5,18,400	Done	
13		903	1406	27500	₹ 3,86,65,000	₹ 3,86,65,000	₹ 0	₹ 7,73,300	₹ 0	2	₹ 60,000	₹ 60,000	2%	₹ 8,33,300	***	₹ 4,16,650	₹ 30,000	₹ 3,86,650	₹ 3,86,650	₹ 30,000	₹ 4,16,650	Done	
14		904	1406	27500	₹ 3,86,65,000	₹ 3,86,65,000	₹ 0	₹ 7,73,300	₹ 0	2	₹ 60,000	₹ 60,000	2%	₹ 8,33,300	***	₹ 4,16,650	₹ 30,000	₹ 3,86,650	₹ 3,86,650	₹ 30,000	₹ 4,16,650	Done	



Brokerage - Excel																							
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	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X
1	Name	Flat No	Area	@	Value	Amount Due	Others	Brok on Due	Brok on Other	Parkings	Parking Brok	Brok on Others	%	T.Brokerage	C.P	Share of C.P	Paid to CP	CP Balance	Comp Due	Comp Othrs	Company	Recd	Reg
70																							
71																							
72	Flats Sold Directly By Developer				PROPOSED									BROKERAGE NOT SURE									
73																							
74	Bandish Jasani	1002	1770	27500	₹ 4,86,75,000								1%	₹ 4,86,750									₹ 4,86,750
75	Jayesh Jasani	1102	1770	27500	₹ 4,86,75,000								1%	₹ 4,86,750									₹ 4,86,750
76	Harish Gada	1301	1733	27500	₹ 4,76,57,500								1%	₹ 4,76,575									₹ 4,76,575
77	Harish Gada	1302	1770	27500	₹ 4,86,75,000								1%	₹ 4,86,750									₹ 4,86,750
78	Ashit Kothari	1401	1733	27500	₹ 4,76,57,500								1%	₹ 4,76,575									₹ 4,76,575
79	Ashit Kothari	1402	1770	27500	₹ 4,86,75,000								1%	₹ 4,86,750									₹ 4,86,750
80	Chetan Jatakia	1502	1770	27500	₹ 4,86,75,000								1%	₹ 4,86,750									₹ 4,86,750
81	Nirav mehta	701	1738	27500	₹ 4,77,95,000								1%	₹ 4,77,950									₹ 4,77,950
82	Nirav Mehta	702	1776	27500	₹ 4,88,40,000								1%	₹ 4,88,400									₹ 4,88,400
83	Nimesh Kothari	1001	1733	27500	₹ 4,76,57,500								1%	₹ 4,76,575									₹ 4,76,575
84																							
85			17563		₹ 48,29,82,500									₹ 48,29,825									₹ 48,29,825
86																							
87																							
88																							
89	B WING																						
90																							
91	Pareesh Machchar	1703	833	25000	₹ 2,08,25,000								2%	₹ 4,16,500									₹ 4,16,500
92	Aakash Samobati	1704	833	25000	₹ 2,08,25,000								2%	₹ 4,16,500									₹ 4,16,500
93	Khushboo Tanna	1603	833	25000	₹ 2,08,25,000								2%	₹ 4,16,500									₹ 4,16,500
94	Manish Damani	1801	840	24250	₹ 2,03,70,000								2%	₹ 4,07,400									₹ 4,07,400
95	Manish Damani	1802	840	24250	₹ 2,03,70,000								2%	₹ 4,07,400									₹ 4,07,400
96	Manish Damani	1803	840	24250	₹ 2,03,70,000								2%	₹ 4,07,400									₹ 4,07,400
97	Manish Damani	1804	840	24250	₹ 2,03,70,000								2%	₹ 4,07,400									₹ 4,07,400
98	Jugal Patel	1903	840	25000	₹ 2,10,00,000								2%	₹ 4,20,000									₹ 4,20,000
99	Jugal Patel	1904	840	25000	₹ 2,10,00,000								2%	₹ 4,20,000									₹ 4,20,000
100	Ajay Atreya	1702	833	25000	₹ 2,08,25,000								2%	₹ 4,16,500									₹ 4,16,500
101																							
102			8372		₹ 20,67,80,000									₹ 41,35,600									₹ 41,35,600

12. In his statement recorded under section 132(4), Shri Rajesh Gandhi is stated to have admitted that the Excel sheet pertains to the sale records of flats and on-money/cash receipts in project “Palatina” and that it contained extensive details of buyers, flat numbers and cash receipts. The relevant portion of the statement is reproduced hereunder:

**Q.29 Please specify the meaning of the various columns of the excel sheet named "Brokerage", the screenshot of which has been reproduced in question no. 28 above and explain the content of the same:**

Sr. No.	Ques.	Ans.
1	<b>B (Name):</b>	This is the name of buyers in the Palatina Project of Tanishq Builders
2	<b>C (Flat no.):</b>	This is the flat number which has been purchased by the buyers
3	<b>D (Area):</b>	This is the area in square- feet of the flats purchased by buyers

4	<b>E(@):</b>	This is the rate (per square feet) at which the flat has been actually sold by the developer to the purchasers.
5	<b>F(Value):</b>	This is the total consideration amount actually to be paid by the buyer to the developer on the basis of total square feet of the flat.
6	<b>G(Amount Due):</b>	This is the total amount which is to be declared on the flat sale agreement and what is to be paid by the buyer to the developer via banking channel.
7	<b>H(Others):</b>	This is actually the difference in the cost of unit (per square feet wise) which is to be declared on the flat sale agreement as given in the previous column and the total consideration amount to be actually paid by the buyer to the developer on total area of flat. This is the cash component involved in the sale of units based on the area of the unit sold.
8	<b>I(Brok on Due):</b>	This is the brokerage on the agreement value to be declared on the flat sale agreement that is to be received by the brokers, including myself, via banking channels.
9	<b>J(Brok on Others):</b>	This is the brokerage on the value of cash component involved (on the total square feet of the flat) that is to be received by the brokers, including myself, in cash itself.
10	<b>K(Parking):</b>	This is the number of parkings purchased by the buyers along with the flat which are sold in cash.
11	<b>L(Parking Brokerage):</b>	This is the brokerage receivable on the sale of parkings which is to be received in cash.
12	<b>M(Brok on others):</b>	This is the sum total of cash brokerage receivable on the cash component on sale of flats including cash sale of car parking.
13	<b>N(%):</b>	This is the percentage of brokerage receivable on sale of unit and the sale of parking.
14	<b>O(T. Brokerage):</b>	This is total brokerage receivable on agreement value as well as cash component which is calculated on the actual sale price of the unit which is as per column F and the sale price of the parking.
15	<b>P(C.P.):</b>	This means Channel Partner i.e. other brokers/estate agents involved in the deal.
16	<b>Q(Share of C.P.):</b>	This is the total share of the channel partner in the total brokerage as explained for the column name T. Brokerage which includes cash as well as bank component.
17	<b>R(Paid to CP):</b>	The total cash brokerage was handed over to me from time to time and I have to hand over the share of cash due to the channel partners. This is the record of the same.
18	<b>S(CP Balance):</b>	This is the commission due to the channel partners as per the sale value on papers, other than that on the cash component of sales.
19	<b>T(Comp Due):</b>	I have used company (comp) in short to record entries pertaining to my proprietorship concern, Rajesh Gandhi Realtors. This column contains the amount of commission/brokerage on sale of flat calculated on the declared value on flat sale agreement due to be received by me.
20	<b>U(Comp Others):</b>	This contains the amount of commission/brokerage on sale of flat calculated on the cash component involved in flat sale

		(including parking sold in cash and square-foot difference on paper and actual sale) to be received by me.
21	<b>V(Company):</b>	This is the total commission/brokerage involved in the sale transactions brokered by me including the cash component and component declared on flat sale agreement.
22	<b>W(Recd):</b>	As explained by me in response to column named "Paid to CP", the total cash brokerage was handed over to me from time to time and I have to hand over the share of cash due to the channel partners. This column records my share of cash in the same.
23	<b>X(Reg):</b>	Done remark in this column means that the registration of the flat sale agreement has been done in these cases.

**Q.35 From the above worksheet "Palatina" in excel ("Brokerage") it can be seen that a total of 65 car parks have been sold in the deals for 29 flats brokered by you in the project Palatina. Kindly confirm the same and whether these sales were done by you. Please also specify cost of each car park charged to the customer and total cash generated via sale of car parkings in the said project for the specified number of flats.**

**Ans.** Madam, I confirm that a total of 65 car parks have been sold by me and my channel partners together in Palatina project against 29 flats sold by us in the said project. Rate of one car park in this project is 15 lakhs. Therefore, a total of 9.45 crores cash sale has been made in this project from sale of parking through me.

**Q.37 On the basis of your reply to the previous question, it is seen that total calculation (aggregate) for 29 flats of Palatina project of Tanishq Builders is given in row 68 of the excel sheet reproduced at question no. 28 above. Further, on perusal of the same it can be seen that total sale consideration receivable on the**

SVKedney  
21-1-24

19  
Gandhi  
(Deponent) 21-01-24

Kannanaroola  
(Authorised Officer) 21/01/2024

कांनिकरा नरुला, भा.स.से.  
KANNANAROOLOLA, I.R.S.  
वा.आ.प्र.का.वा.पु.व. (निवादी विभाग), इकाई-1, मुंबई  
Dy. Commissioner of Income Tax  
(Benami Prohibition), Unit-1, Mumbai

21/1/24

Statement of Shri. Rajesh J. Gandhi recorded on oath u/s.132(4) of the I.T. Act 1961 in the Case of Rajesh Jagmohandas Gandhi.

**sale of the above flats is Rs. 1,20,76,45,620/-, whereas the aggregate value to be declared on agreements is Rs. 98,58,98,500/- only. Kindly explain the difference.**

**Ans.** Madam, the balance between the two, i.e. Rs. 22,17,47,120/- is the cash component involved in sale of flats of Palatina Project from the buyers to the developer on account of the difference in sale consideration for the flat as against the sale consideration which is declared on the flat sale agreement.

**Q.38 Further, in response to the question number 35 above, you have confirmed the cash sale to the tune of Rs. 9,45,00,000/- in lieu of sale of parking through you in this project. Kindly confirm whether the said values Rs. 9,45,00,000/- is the cash component over and above of that of Rs. 22,17,47,120/- sated by you in answer to question number 37 above.**

**Ans.** Yes, madam, I confirm that cash component of Rs. 9,45,00,000/- for sale of parking in Palatina project through me is over and above that of Rs. 22,17,47,120/- as stated by me in answer to question no. 37 above.

**Q.30 Please offer your comments on various rows of the above-referred worksheet "Palatina" of the excel -Brokerage as it can be seen that the data in the said sheet is divided into various parts.**

**Ans.** Madam, the data in row number 5 to 60 is for the 29 flats sold by me in A wing of Palatina project of Tanishq Builders. The total of the data pertaining to the said 29 flats is given in row 68 of the referred excel sheet. The row 74 to 83 contain data of units to be sold directly by the developer and the figures mentioned therein are mere estimation. I do not have the exact data. Even the 1 percent brokerage mentioned there is just an estimation mentioned by me, however, I have not been promised any brokerage by the developer on the said flats. Thereafter 91 to 100 is the data for 10 flats sold by me in B wing of the said project. However, only a token amount has been booked in these 10 flats by banks. Nothing further has been done since certain permissions in this wing are yet to be received.

13. On 24.01.2024, the statement of Shri Rajesh Gandhi was confronted before Shri Pankaj Goshar. In his response, Shri Pankaj Goshar denied the allegation of receipt of on-money and stated that the broker's role was confined to introduction of clients and that transactions were recorded strictly as per agreement value. The relevant confrontation statement is reproduced hereunder:

***"Q.36 Please confirm that you are in a fit mental and physical state to continue this statement.***

*Ans Sir I confirm that I am in a fit mental and physical state to continue this statement.*

***Q.37 During the course of search proceedings u/s 132 of the Act; statement of Shri Rajesh Gandhi has***

**been recorded u/s 132(4) of the Act, at 603, Excel Plaza, behind Ambe Mata Temple, 90 feet road, Ghatkopar (East), Mumbai.**

**I am showing you the aforesaid statement which is also annexed to this statement assessee an Exhibit.**

**You are requested to take adequate time to read, peruse and understand the above statement. After reading, kindly confirm that you have read and understood the same and you are ready to depose the statement based on the contents of the statements shown to you.**

*Ans. Sir, I confirm that the copy of the statement of Shri Rajesh Gandhi has been shown to me and attached as an Exhibit to this statement.*

*I have taken adequate time and thoroughly read, perused, and understood the statement shown to me. I am ready to depose my statement.*

**Q.38 Please offer your comments on the statement of Shri Rajesh Gandhi in general and with specific reference to question numbers 17-48. In these specific questions, Shri Rajesh Gandhi has explained various papers, diaries, digital devices found at his premise which pertain to cash sales and brokerages paid in cash. He has confirmed cash sales of Rs 22.17 crores in cash sales, Rs. 9.45 crores of parking sales in cash and payment of Ra 43.36 lacs cash brokerage in relation to the project Palatina executed by Tanishq Builders. The cash so collected was handed over to Shri Chetan Patel, Partner of Tanishq Builders. Please comment.**

*Ans. Sir, Rajesh Gandhi has been assigned to a very limited role of looking for the prospective buyers for Palatina project. Whenever the buyer approaches him, he has to bring that buyer to our BKC office and the entire deal is discussed &*

*finalized by myself with buyer. Rajesh Gandhi has no power to discuss / quote the rate & payment terms. I do not have any control on how broker keeps the records. Brokerage due to Rajesh Gandhi is to be paid only after receiving full consideration from the buyers. Our transactions executed with buyers are recorded in books of accounts. Necessary ledger confirmation from buyers will be submitted within 10 days.*

**Q.39 In continuation of previous question, it is brought to your notice that statement of Shri Rajesh Gandhi has been recorded under oath u/s 132(4) of the Act, after explaining to him the various penal provisions of IPC and Income-tax Act, 1961. In view of this context, please confirm if you still deny the contents of his statement recorded on oath, in which he has explained the unaccounted cash sales in project Palatina.**

*Ans Sir, I do not agree to what is stated by Shri Rajesh Gandhi in his statement and deny in toto. According to me, to get rid of the search procedure in hasty manner, he may have recorded this statement.”*

14. On 29.01.2024, within five days of the original statement, Shri Rajesh Gandhi filed a notarised affidavit retracting his statement and alleging that it was recorded under pressure. He denied that the seized documents represented actual cash receipts by the builder. The retraction affidavit is reproduced hereunder:

**“AFFIDAVIT**

*I, Rajesh Jagmohandas Gandhi s/o Jagmohandas Vrajlal Gandhi aged 66 years, residing at Flat No. 702, A-Wing, Jeerawali Residency, Derasar Lane, Opp. Jain Temple,*

Ghatkopar East, Mumbai, Maharashtra 400 077 do hereby solemnly affirm as under:

An Income Tax search was conducted at my residence from the early morning (6 am onwards on 19 January 2024 which continued at my office also till about 10 pm on 24th January 2024. The search warrant in this regard was shown to me. I requested for independent Panchas to remain present, so that the search can be conducted in a proper manner. However, the said request was rejected and a Panch, Mr. Sayyad Firdoz who is working as a Driver of the Authorized Officer was shown as a Panch. Another Panch, Mr. Sandeep Kadam was a Bank Employee. In view of his employment, he was not present for the entire search, but was only present at the commencement and conclusion of the search. When my statements were recorded in between, none of the Panchas were present, I state that-

1. Since, the search was not conducted as per the norms laid down and also contrary to the Standard Operating Procedure being prescribed, the statements which are not correctly recorded as stated by me do not stand the test of evidence.

2. I further state that during the course of search, my statements were recorded every day at different times at my residence as well as at my office from 19 January 2024 to 24 January 2024. Though the Authorised Officers showed as if they had allowed me time to rest, the pressure mounted on me continued for a long period. This led to uncertainty and fear in mind and that led to my signing wherever they told me to sign. Prolonged search lasting for about 6 days was torturous. Further, whenever my statement did not suit or was not conducive to the Authorized Officers, they pressurized me to sign the statements as written by them which are contrary to the replies given by me. I, therefore, have to go back from my statements recorded between 19 January 2024 and 24 January 2024.

3. I had stated that I am only working as an Estate Agent for sale of properties being developed/constructed by various builders. I stated that a project namely "Palatina" was being developed by M/s. Tanishq Builders, of which Mr. Pankaj Goshar, was a Partner. Since, it was a new project, I had entered into certain terms of brokerage and sharing the brokerage with other sub-brokers.

4. I stated that in respect of the Palatina Project being developed by M/s Tanishq Builders, my role was only to lead the prospective buyers to the developer and I also stated that no-where my role encompassed the finalization of the rate and mode of payment. As this reply did not suit the requirement of the Authorized Officers recording my statements and their superiors, the Officers abused me and threatened of criminal complaint to be made against me by using their authority. Right at the starting of the recording my statements, I was shown certain provisions of law for criminal complaint against me to frighten me. The statements on Which my signature is taken contains many replies that are not the replies given by me as they are far away from facts.

5. I never stated that there is any cash payment involved in respect of sale of flats in Palatina. If my signed statements refer to my confirmation about cash involved in the sale transactions, then that statement is not my statement and I never stated about any cash involved in the sales.

6. I totally deny the fact of any cash transaction between buyers and sellers of the flats, I had acted only as a Broker. The interpretation as mentioned in the replies to the questions are false and far away from truth. I had explained that I have carried out only five transactions in Palatina and the others are merely my estimations. I was never a party to other transactions. My transactions were totally by cheque and no cash was involved. Moreover, I am aware that parking charges

are included in the consideration decided. Hence question of further charges for parking does not arise. This explanation was not recorded.

7. I had acted as a broker for sale of only 5 flats in the Project Palatina. The agreed rate between the parties was Rs. 27,500/- per sq. ft. inclusive of parking charges. The details of the 5 Flats sold through me are as below:

Sr No	Name of Flat Purchaser	Flat No.	Area of the Flat (A)	Agreement Value (B)	Rate per sq. ft. (BIA)
1	Jatin Valjibhai Daisaria & Harsha Jatin Daisaria	A-901	1738.00	4,77,95,000/-	27,500/-
2	Harsha Jatin Daisaria & Jatin Valjibhai Daisaria	A-902	1776.00	4,88,40,000/-	27,500/-
3	Harsha Jatin Daisaria	A-903	1406.00	3,86,65,000/-	27,500/-
4	Rohan Jatin Daisaria & Harsha Jatin Daisaria	A-904	1406.00	3,86,65,000/-	27,500/-
5	Hemal Rahul Vira & Rahul Mahendra Vira	A-1202	2455.00	6,75,12,500/-	27,500/-

Later, my clients learnt that the Developer was selling flats in Palatina at considerably lower rate compared to the rate at which the flats had been sold through me. When my above clients who had purchased the flats at higher rate came to know that the Developer was selling directly at lower rate, then, they were abusing me and felt cheated. To offset such humiliation and to convince my clients that the rate at which they had purchased these 5 flats were at par with what

*Developer was directly selling to others, I fabricated certain chits and created a false excel sheet on my computer with inflated figures. I had deliberately inflated the figures in this excel sheets/chits based on certain information available with me about the transactions executed directly by the Developers, and I deliberately added balance amount of cash to convince/satisfy my clients. In this manner, I arrived at the rate of Rs.27,500/- per sq. ft to show that all flats were sold at Rs.27,500/- per sq. ft. by the Developer (though Developer was directly selling the flats at or around Rs.20,000/- per sq ft. inclusive of car parking). Also, to inflate further, I even added parking charges on presumptive basis as if parking charges are separately charged by the Developer. This was written despite my knowledge that the sales consideration includes parking charges. IQ the slips prepared in my handwriting, I obtained initials of my staff. To appease my clients, I on presumptive basis estimated cash receipts and prepared a big excel chart as if those flats are sold through me only. Despite the Developer selling flats at lesser price, I decided to prepare these bogus charts/chits to demonstrate that the sale of flats are at Rs.27,500/- per sq ft. I confirm that except five flats sold through me as above, I am not involved in sale of any other flats. Various facts were repeatedly put and explained to the Authorized Officers but applying pressure tactics, they forced me to sign the statements which suited their requirements.*

8. *Just as I have stated above that there was no cash amount being exchanged with respect to Palatina Project, similarly, there was no cash transaction with regard to sale of offices through me in the project of Goldnest Spaces LLP. In this case also, my only role was that of introducing the buyers to Goldnest Spaces LLP. The actual rate for the sale of offices of Gold Nest is best known to the purchaser and seller.*

9. *At the first available opportunity and time, I am hereby withdrawing and retracting all my statements recorded by the Authorized Officers during the search which lasted for six days and during which tremendous pressure was exerted on me and*

*the correct facts stated by me were not recorded and I was forced to put my signatures on the statements.*

*10. I hereby place record the true and correct facts as above without any influence or any pressure and whatever is stated above is-truth and to the best of my knowledge and information and no incorrect facts are stated herein above. I am making this Affidavit to set right the facts that the developers and flat purchasers are not involved in any cash transactions and my notings related to the estimated, presumptive transactions were for the reasons as explained herein above.*

*Solemnly affirmed on 29 Jan 2024 January, 2024.*

*(Rajesh Jagmohandas Gandhi)*

15. Thereafter, based upon the seized materials and the statement of Shri Rajesh Gandhi, the Assessing Officer issued show cause notice dated 21.03.2025 proposing addition of Rs.22.17 crores towards alleged on-money on flats and Rs.9.45 crores towards alleged parking receipts.

16. The assessment order dated 17.04.2025 culminated in addition of Rs.11,59,21,060/- under section 69A on account of alleged on-money receipts, while no addition was made on parking component. The relevant portion of the assessment order including computation is reproduced hereunder:

*“7. Based on the discussion above and analysis of the contents mentioned in the above referred excel sheet, the summary of Cheque and Cash transactions made by the 16 buyers of the*

project "Palatina" who have registered their sale agreements, is summarised as under:

<i>Flat No</i>	<i>Name</i>	<i>Value</i>	<i>Amount Due</i>	<i>Others</i>	<i>Reg</i>
<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E (C-D)</i> <i>4</i>	<i>F</i>
		<i>Total Transaction Value (Cash + Cheque)</i>	<i>Agreement Value</i>	<i>Cash Amount</i>	
			<i>(Cheque)</i>	<i>(On-Money)</i>	
603	Sachin Bordia	3,85,00,000	2,80,00,000	1,05,00,000	Done
802	Pritesh Khamsera	4,86,75,000	3,54,00,000	1,32,75,000	Done
803	Vishal Parekh	3,85.00,000	2,68,00,000	1,17,00,000	Done
901	Jatin Daisaria	4,77.95,000	4,77,95,000	0	Done
902	Jatin Daisaria	4,88.40,000	4,88,40,000	0	Done
903	Jatin Daisaria	3,86,65,000	3,86.65,000	0	Done
904	Jatin Daisaria	3,86,65.000	3,86,65,000	0	Done

1003	Umesh Parekh	3,85.00,000	2,94,00,000	91,00,000	Done
1004	Shreyans Ambavi	3,85,00,000 91,00,000	2,94.00.000		Done

1103	Vijay Nogja	3,83,16,3 12	2,81,20,000	1,01,96,312	Done
1104	VijayNogja	3,83,16,3 12	2,81,20,000	1,01,96,312	Done
1202	Rahul Vira	6,75,12,5 00	6,75,12,500	0	Done
1203	Jenil Mehta	3,83,16,3 12	2,81,20,000	1,01,96,312	Done
1403	Abhay Mehta	3,83,16,3 12	2,81,20,000	1,01,96,312	Done
1404	Abhay Mehta	3,83,16,3 12	2,81,20,000	1,01,96,312	Done
1501	Sameer Ambavi	4,76,57,5 00	3,63,93,000	1,12,64,500	Done
		6833,91,5 60	56,74,70,500	11,59,21,06 0	

Thus based on the findings of the search, the evidence collected, and Rajesh Gandhi's statement recorded under Section 132(4), it has been observed that in the Assessment Year 2024-25, an amount of Rs. 11,59,21,060/- is the On-money received by the assessee in cash in respect of sale of 16 flats which were registered during the year under

consideration in the project 'Platina'. This amount remains unexplained and is, therefore, added to the assessee's income as unexplained Money under Section 69 A read with Section 115BBE of the Income Tax Act. Furthermore, the transaction entered into by the assessee with the various flat buyers are in violation of the provisions of Section 269SS of the Act.

Penalty proceedings are also initiated under Section 271AAC of the Act for the addition made under Section 69A of the Act.

8. The assessment of the assessee for the year under consideration is made as under -

**Computation of Total Income**

<i>Particulars</i>	<i>Amount (in Rs.)</i>
<i>Returned income/ loss</i>	<i>(-)58,37,315/-</i>
<i>Add u/s 69 A: As discussed in Para 7.1.</i>	<i>11,59,21,060/-</i>
<i>Total Assessed Income</i>	<i>11,59,21,060/-</i>

17. It is recorded that no incriminating material was found from the premises of the assessee during search proceedings. This fact is not disputed in the assessment order.

18. The Ld. Authorised Representative appearing on behalf of the assessee advanced elaborate submissions, both factual and legal, assailing the very substratum of the addition. At the outset, it was submitted that search proceedings were conducted at the premises of the assessee for several days contemporaneously with the search at the broker's premises,

yet no incriminating material whatsoever was found from the assessee's premises. It was emphasised that neither cash, nor bullion, nor any loose sheets, nor any digital records evidencing receipt of on-money were discovered during the course of search at the assessee's premises. According to the Ld. AR, this fact assumes foundational importance because the addition under section 69A is predicated on the assumption that the assessee was found to be the owner of unexplained money not recorded in its books. He submitted that where no such unexplained money was found in possession or control of the assessee, the statutory condition precedent for invoking section 69A is inherently absent.

19. It was further contended that the entire edifice of the addition rests upon materials seized from a third party, namely Shri Rajesh Gandhi, and upon his statement recorded under section 132(4). The Ld. AR submitted that a third-party document does not ipso facto become evidence against the assessee unless the Revenue establishes a legally sustainable nexus demonstrating that the document was authored, accepted, ratified or acted upon by the assessee. He submitted that the Assessing Officer has not demonstrated any handwriting of the assessee on the loose sheets, nor any signature of the assessee on the alleged cash acknowledgements, nor any contemporaneous entry in the

assessee's books corresponding to such alleged receipts. It was argued that the Revenue has attempted to transplant the broker's alleged records onto the assessee without bridging the evidentiary gap required in law.

20. With respect to the loose sheets and coded papers, the Ld. AR submitted that these are, at best, dumb documents, loose sheets not forming part of regular books of account. He emphasised that jurisprudence is well settled that loose papers, scribblings, rough notings and third-party sheets, in the absence of corroborative evidence, cannot be treated as substantive evidence of undisclosed income. He submitted that even if the broker, in his statement, purported to explain such sheets, such explanation cannot override the requirement of independent corroboration, particularly when the statement itself stands retracted. It was contended that the Assessing Officer has not carried out any forensic linkage, no handwriting verification, no confirmation from alleged buyers, and no tracing of cash movement to the assessee's accounts.

21. The Ld. AR further argued that the WhatsApp chats and Excel sheets allegedly extracted from the mobile device and pen drive suffer from similar infirmities. It was submitted that electronic evidence must satisfy the requirements of

authenticity and certification, and in absence of proper evidentiary compliance, such digital extracts cannot be mechanically relied upon. More importantly, he submitted that even assuming *arguendo* that such chats refer to negotiations, there is no proof of actual cash receipt by the assessee. Negotiation of higher rates or internal broker communications cannot be equated with receipt of unaccounted money by the developer.

22. The Ld. AR then addressed the statement recorded under section 132(4). He submitted that though statements recorded during search carry evidentiary value, such value is not absolute or immune from scrutiny. He pointed out that Shri Rajesh Gandhi filed a notarised affidavit retracting his statement within five days, alleging coercion and pressure during prolonged search proceedings. It was contended that once a statement is retracted, the burden shifts upon the Revenue to corroborate the contents thereof by independent evidence. According to the Ld. AR, in the present case, there is no independent corroboration no buyer confirmation, no cash trail, no bank deposit, no seizure of cash, and no documentary linkage found at the assessee's premises. Therefore, the retracted statement cannot, in isolation, sustain an addition of this magnitude.

23. The Ld. AR further submitted that the principles of natural justice were violated inasmuch as effective cross-examination of Shri Rajesh Gandhi was not afforded to the assessee. He submitted that where the addition is substantially based upon a third-party statement, denial of cross-examination renders the reliance legally infirm. It was argued that the confrontation of the broker's statement before Shri Pankaj Goshar on 24.01.2024 and the categorical denial recorded therein further weakens the Revenue's case.

24. The Ld. AR placed reliance upon the judgment of the Hon'ble Bombay High Court in the case of CIT vs Lavanya Land (P.) Ltd. to contend that in absence of evidence of actual cash changing hands and in absence of incriminating material found at the assessee's premises, addition cannot be sustained merely on the basis of third-party notings. The relevant portion relied upon is reproduced hereunder:

*"21. Thereafter, in paragraph 20, the Tribunal considered the merits and once again, at great length. The particular argument revolving around the statement of Dilip Dherai and his answer to question No. 24 was also considered in paragraph 21 of the impugned order. Then, in paragraph 22, the Tribunal refers to the additions made under Section 69C. After reproducing Section 69C and advertent to the fact that Dilip Dherai has retracted his statement, the Tribunal arrived at the conclusion that merely on the strength of the alleged admission in the statement of Dilip Dherai, the additions could not have been made. The concurrent findings of fact would demonstrate that*

*the essential ingredients of Section 69C of the IT Act enabling the additions were not satisfied. This is not a case of 'no explanation'. Rather, the Tribunal concluded that the allegations made by the authorities are not supported by actual cash passing hands. The entire decision is based on the seized documents and no material has been referred which would conclusively show that huge amounts revealed from the seized documents are transferred from one side to another. In that regard, the Tribunal found that the Revenue did not bring on record a single statement of the vendors of the land in different villages. None of the sellers has been examined to substantiate the claim of the Revenue that extra cash has actually changed hands. It is in these circumstances that the Tribunal found that on both counts, namely, the legal issue, as also merits, the additions cannot be sustained. Eventually, the Tribunal held in paragraph 25 (page 188) as under:*

*25. A perusal of the balance sheet of the assessee show that the authorized, issued and subscribed paid up capital is at Rs. One lakh and the assessee had not done any business during the year under consideration. With such a small corpus and no business activity, nor any has been brought on record by the Revenue, it is not acceptable that the company may have incurred such huge expenditure outside its books of account. Further in his entire assessment order, the AO himself has pointed out time and again different persons, who are alleged, to have made cash payments. Even on that count, the additions cannot be sustained in the hands of the assessee. In our considerate view, there being no evidence to support the Revenue's case that a huge figure, whatever be its quantum, over and above the figure booked in the records and accounts changed hands between the parties, no addition could therefore be made u/s. 69C of the Act to the income of the assessee. Considering the entire facts brought on record, we have no hesitation to hold that even on merits, no addition could be sustained.”*

25. He further relied upon the judgment of the Hon'ble Karnataka High Court in DCIT vs Sunil Kumar Sharma, affirmed by the Hon'ble Supreme Court, to contend that loose sheets do not constitute books of account and cannot form sole basis of addition. The relevant portion is reproduced hereunder:

*“It is established in law by the Hon'ble Apex Court that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. Following the law declared by the Hon'ble Apex Court, we are of the view that the action taken by the respondent/Revenue against the Assessee based on the material contained in the diaries/loose sheets, are contrary to the law declared by the Hon'ble Apex Court. In that view of the matter, impugned notices issued under section 153C of the Act, based on the loose sheets/diaries are contrary to law, which require to be set aside in these writ appeals, as the same are void and illegal.”*

26. Without prejudice, the Ld. AR submitted that even assuming arguendo that any such receipts existed, the method of accounting followed by the assessee is Percentage Completion Method and income, if any, could not have been taxed in the year under consideration without demonstrating that revenue recognition threshold was crossed. It was argued that the Assessing Officer has completely disregarded the accounting method consistently followed and accepted in earlier years.

27. Per contra, the Ld. Departmental Representative strongly supported the assessment order and submitted that the seized materials are not stray notings but are detailed, transaction-specific and internally consistent. He argued that the statement recorded under section 132(4) is a substantive piece of evidence and that the retraction affidavit is an afterthought intended to dilute the admission made during search. According to him, the loose sheets, coded papers, diary entries, WhatsApp chats and Excel workbook collectively form a chain of evidence demonstrating systematic receipt of cash components. He submitted that the Assessing Officer has undertaken correlation between agreement values and the figures appearing in seized documents, and that the cumulative effect of evidence justifies the addition.

28. The Ld. DR further contended that the Ld. CIT(A) erred in restricting the addition to profit element and that once receipt of on-money is established, the entire amount represents undisclosed income. He accordingly urged that the order of the Ld. CIT(A) be modified and the addition be sustained in full measure.

29. We have heard the rival submissions at length and with due circumspection, and we have carefully perused the entire material placed on record, including the seized loose papers,

coded sheets, the spiral pocket diary titled “JSW SHOPPE”, the extracts of WhatsApp conversations/images as relied upon, the Excel workbook titled “Brokerage” containing the sheet “Palatina”, the statement of Shri Rajesh Gandhi recorded under section 132(4), the confrontation statement of Shri Pankaj Goshar dated 24.01.2024, the retraction affidavit dated 29.01.2024, the show cause notice dated 21.03.2025, the assessment order dated 17.04.2025, and the impugned order of the Ld. CIT(A). The dispute before us is not a routine arithmetical contest between two computations; it raises foundational questions touching the very legitimacy of fastening an addition of alleged cash receipts upon an assessee on the strength of third-party records and a statement which stands retracted, without any independent corroboration, without any recovery from the assessee, and without any contemporaneous trail in the assessee’s own books or premises. In such matters, the Tribunal is not merely to count figures, but to examine whether the evidentiary architecture itself can bear the weight of the conclusion sought to be placed upon it; for if the foundation is infirm, no superstructure, however ingeniously reasoned, can be allowed to stand.

30. The evidentiary questions which arise, therefore, are multiple and interlocked: first, whether section 69A, which is

invoked by the Assessing Officer, can at all be attracted when no money, bullion, jewellery or other valuable article is found from the assessee and the entire allegation is inferential, built upon third-party documents; second, what is the probative worth of loose sheets, diaries, and broker-maintained digital compilations, when they are not part of the assessee's books, not authenticated by the assessee, and are not discovered from the assessee's possession; third, what is the legal consequence of a statement recorded under section 132(4) which is retracted promptly by sworn affidavit, and whether such retracted statement, absent independent corroboration, can still be treated as a sufficient basis to visit an assessee with addition; fourth, whether the requirement of corroboration stands satisfied in the present case by any buyer confirmation, cash trail, recovery, or any incriminating material found from the assessee; and fifth, whether, even on a cumulative appreciation, the material relied upon is of such quality that it crosses the threshold from suspicion to proof. These are not peripheral facets; they strike at the root, and the adjudication must begin there.

31. The law is equally clear that in fiscal adjudication, the standards are neither of conjecture nor of moral probability, but of legal proof anchored in cogent material. Search assessments and post-search additions, by their very nature,

often proceed upon seized material; but even seized material must speak with clarity, and where it does not, it must be supported by corroboration. A third-party record may trigger enquiry; it cannot, without more, conclude enquiry. Similarly, a statement, even if recorded under section 132(4), is not an unassailable monument; its evidentiary worth is measured by voluntariness, consistency, and corroboration. It is in the backdrop of these settled principles that we proceed to evaluate the addition made in the instant case. The addition made by the Assessing Officer is under section 69A of the Act. The provision, in its plain statutory contour, contemplates a situation where the assessee is found to be the owner of money, bullion, jewellery or other valuable article which is not recorded in the books of account, if any, maintained by the assessee, and the assessee offers no explanation or the explanation offered is not satisfactory. The expression “found to be the owner” is not a decorative phrase; it constitutes a jurisdictional pivot.

32. In the present case, it is an admitted position emanating from the record, including the assessment order itself, that no cash, bullion, jewellery or other valuable article was found from the premises of the assessee during search proceedings. The case of the Revenue is not one of physical discovery from the assessee, but one of inference drawn from third-party

documents and a third-party statement. Therefore, at the threshold, the Tribunal must examine whether, on the facts as established, the statutory pre-condition of section 69A is satisfied; and if not, whether the invocation of section 69A can be sustained merely on presumptive reasoning.

33. The Revenue's case, as argued and as reflected in the assessment order, rests predominantly upon: (i) handwritten loose sheets and certain coded sheets seized from the premises/cabin of Shri Rajesh Gandhi; (ii) the spiral pocket diary titled "JSW SHOPPE", containing alleged date-wise records of cash receipts linked to certain flat numbers; (iii) the WhatsApp chats/images extracted from a mobile device attributed to Shri Rajesh Gandhi; (iv) the Excel workbook titled "Brokerage" containing the sheet "Palatina" with tabulated particulars; and (v) the statement of Shri Rajesh Gandhi recorded under section 132(4), which is stated to decode and own up these materials as representing "on-money" receipts by the builder. Thus, the entire narrative of the Revenue is built upon materials emanating from the same source Shri Rajesh Gandhi and the attempt is to use that source to fasten alleged cash receipts upon the assessee.

34. It is important, at this stage, to keep the evidentiary compartments distinct. Loose sheets, coded papers, diaries,

and Excel compilations are not books of account maintained in the regular course of business by the assessee. They are not found from the assessee. They are not shown to be authored by the assessee. They do not bear the assessee's signatures, acknowledgements, or internal identifiers which would connect them organically to the assessee's accounting system. In law, therefore, such papers howsoever suspicious in appearance require corroboration and linkage. The Assessing Officer has sought to provide linkage by correlating agreement values with figures appearing in these sheets and treating the differential as cash. However, correlation of figures, by itself, is not proof of receipt; it is, at best, a basis for enquiry. The decisive question remains: is there any independent evidence demonstrating that the assessee actually received such differential in cash?

35. On this aspect, we find that no buyer confirmation has been brought on record to evidence payment of cash. No statement of any flat purchaser has been recorded and confronted to the assessee showing that an amount over and above the agreement value was in fact paid in cash to the assessee. No evidence of cash trail whether in the form of cash deposits, investment patterns, unexplained assets, or recovery of cash has been demonstrated in the hands of the assessee. No seized material from the assessee's premises has

been placed to show receipt, utilisation, or accounting concealment of such alleged cash. Therefore, the alleged on-money remains a hypothesis anchored in third-party papers, but not established as a fact by independent corroboration.

36. The Revenue then places substantial reliance on the statement of Shri Rajesh Gandhi recorded under section 132(4) to elevate the seized papers from “notings” to “explained transactions”. We do not dispute that a statement recorded under section 132(4) carries evidentiary value. However, evidentiary value is not synonymous with evidentiary conclusiveness. Here, the statement is not standing alone in pristine permanence; it is followed by a prompt retraction by a notarised affidavit dated 29.01.2024, i.e., within a few days of the search. The retraction may or may not be ultimately acceptable; but its existence and its promptness are material in law, because they compel the Revenue to discharge a heavier burden of corroboration. A retracted statement cannot be treated as the sole fulcrum of addition unless the Revenue demonstrates that the contents of the statement are supported by independent evidence dehors the statement itself. Otherwise, the adjudication becomes circular papers are proved by statement, and statement is proved by papers, both emanating from the same source.

37. We also find that the confrontation of the broker's statement before Shri Pankaj Goshar on 24.01.2024 has been specifically relied upon by the assessee to demonstrate that the principal stakeholder denied the allegation of cash receipt. This denial, by itself, may not be conclusive; yet, it materially demonstrates that the broker's narrative was not adopted or admitted by the assessee's side. It is in this background that the requirement of cross-examination also assumes relevance. Where the addition is substantially founded on a third-party statement, denial of effective opportunity to cross-examine the maker, when sought, impairs the evidentiary worth of such statement against the assessee. A statement is not merely to be read; it is to be tested. If the Revenue seeks to use it as a sword, the assessee must be afforded the opportunity to test its sharpness.

38. Coming to the digital materials, namely WhatsApp extracts and Excel workbook "Brokerage" with the sheet "Palatina", the Revenue has treated them as corroborative. Even assuming, for the sake of argument, that these extracts are authentic and admissible, their evidentiary value still hinges upon linkage. An Excel sheet prepared or maintained by a broker remains, in law, a third-party record unless it is shown to be part of the assessee's system or acted upon by the assessee. Similarly, WhatsApp chats may show

discussions, negotiations, or representations; they do not, by themselves, establish actual receipt of cash by the assessee. The law requires proof of receipt, not mere probability of receipt. The Assessing Officer has not demonstrated that any cash was in fact exchanged, received, and retained by the assessee, nor has he traced such alleged cash into any asset, investment, or unexplained accretion in the assessee's hands.

39. One more aspect which cannot be glossed over is the treatment of the "parking" component. The show cause notice proposed, inter alia, addition for alleged cash receipts on account of parking. The assessment order, however, ultimately did not make addition on that component. This conduct reflects that the Assessing Officer himself did not accept the seized material as wholly reliable in all its parts. When an assessing authority selectively accepts some portions of a third-party record and discards others, it becomes imperative that the accepted portion must be supported by stronger corroboration, because the record itself is not being treated as uniformly dependable. Otherwise, the selection becomes vulnerable to the charge of being guided by suspicion rather than proof.

40. The jurisprudential position on loose sheets and third-party notings, particularly when they do not constitute

regular books of account and are not found from the assessee, has been repeatedly reiterated. The Ld. AR has relied upon judicial precedents, and we have already referred to the same above. In that light, and applying those principles to the present facts, we find that the seized loose sheets, diary entries, and broker-maintained digital compilation, even when read along with the broker's statement, do not attain the character of conclusive evidence against the assessee in the absence of independent corroboration such as buyer confirmations, cash trail, recovery, or incriminating material from the assessee.

41. The Hon'ble Bombay High Court in CIT vs Lavanya Land (P.) Ltd. (supra) has emphasised the necessity of reliable evidence and the limitations of sustaining additions purely on third-party notings absent proof of actual cash changing hands. Likewise, the Hon'ble Karnataka High Court in DCIT vs Sunil Kumar Sharma (supra), affirmed by the Hon'ble Supreme Court (supra), reiterates that loose sheets, not forming part of regularly maintained books of account, cannot by themselves be treated as sufficient material to sustain addition, particularly when not corroborated by other evidence. These authorities, read in conjunction with the factual matrix herein, fortify the conclusion that the evidentiary threshold has not been crossed.

42. Once we arrive at the above conclusion on evidence, the consequence in law follows. The jurisdictional premise of section 69A is not satisfied because the assessee was not found to be owner of any unexplained money within the meaning of section 69A; and even on broader principles governing additions based on third-party documents, the Revenue has not discharged the burden of proving actual receipt of cash by the assessee. Therefore, the addition under section 69A cannot be sustained.

43. We also note that the Ld. CIT(A), while partly granting relief, proceeded to restrict the addition to an estimated profit element by treating the alleged receipts as business receipts. However, such an approach presupposes the establishment of receipt. Estimation of profit element is a step which can logically follow only after the foundational fact of receipt is proved. Where receipt itself remains unproved on the touchstone of corroborative evidence, sustaining any portion thereof, even on an estimated basis, would amount to sustaining a conclusion without a proven premise. The law does not permit such a reverse construction.

44. Accordingly, in view of the cumulative facts and circumstances, the legal position governing section 69A, and the evidentiary limitations of third-party documents coupled

with a promptly retracted statement lacking independent corroboration, we hold that the addition of Rs.11,59,21,060/- made by the Assessing Officer under section 69A is unsustainable in law and on facts. The same is directed to be deleted in full. The grounds raised by the assessee, on this issue, are allowed.

45. Since the very addition does not survive, the grievance of the Revenue seeking enhancement/sustenance of a higher amount necessarily becomes infructuous and is dismissed. Consequently, the assessee's appeal stands allowed and the Revenue's appeal stands dismissed.

**46. In the result, the appeal filed by the assessee is allowed, and the appeal filed by the Revenue is dismissed.**

Order pronounced on 20<sup>th</sup> February, 2026.

**Sd/-**

**(ARUN KHODPIA)**

**ACCOUNTANT MEMBER**

Mumbai; Dated 20/02/2026

KARUNA, *sr.ps*

**Sd/-**

**(AMIT SHUKLA)**

**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)  
**ITAT, Mumbai**