

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER &
SHRI JAGADISH, ACCOUNTANT MEMBER**

**ITA Nos. 7803 & 7804/Mum/2025
A.Ys: 2018-19 & 2019-20**

Ashok Hanjaji Mali 20, Rangoli Time Complex, Dr. B. S. Ambedkar Road, Parel (East), Mumbai - 400012	Vs.	ACIT, Income Tax Central Circle 4(2), Mumbai
PAN/GIR No. ANBPM7350B		
(Applicant)		(Respondent)

**ITA Nos. 8406, 8407 & 8408/Mum/2025
A.Ys: 2017-18, 2018-19 & 2019-20**

Abdullatif Ibrahim Badarpura Room No. 06, Mohammed Umar Rajab Road, 71, Morland Road, Mumbai Central, Mumbai - 400008.	Vs.	DCIT, Central Circle, Mumbai
PAN/GIR No. AINPB9892Q		
(Applicant)		(Respondent)

**ITA Nos. 8611, 8612 & 8613/Mum/2025
A.Ys: 2017-18, 2018-19 & 2019-20**

Amraram Mali Shop No. A-52, 1 st Floor, Orchid City Center, Bellasis Road, Mumbai Central, Mumbai - 400008.	Vs.	ACIT, Central Circle 4(2), Mumbai
PAN/GIR No. CTBPM2523A		
(Applicant)		(Respondent)

Assessee by	Shri Bharat Kumar
Revenue by	Shri Rajesh Kumar Yadav (CIT-DR)

Date of Hearing	19.02.2026
Date of Pronouncement	27.02.2026

आदेश / ORDER

PER BENCH:

These appeals have been preferred by the different Assesseees against the separate orders dated **06.10.2025 and 10.10.2025** impugned herein passed by the National Faceless Appeal Centre (NFAC), Delhi/Ld. Commissioner of Income Tax (Appeals) [in short "Ld. Commissioner] u/s 250 of the Income Tax Act, 1961 [in short "the Act"] for the A.Y **2017-18 to 2019-20**.

2. These appeals are having involved identical facts and issues, except variants in amounts and therefore, for the sake of brevity, the same were heard together and are being disposed of by this composite order, by taking into consideration the facts and issues involved in **ITA No. 7803/Mum/2025** for the **A.Y 2018-19**, as

lead case and the result of the same should be applicable *Mutatis mutandis* to all appeals under consideration.

3. Coming to the **ITA No. 7803/Mum/2025**, it is observed that a search and seizure action u/s 132 of the Act was carried out on dated 17.03.2021, on Rubberwala Group and its associates, including in the residence of Shri Imran Ashfaque Ansari, wherein his statement was recorded on oath at his residence and a 16GB pen drive was also retrieved from his possession. Mr. Ansari in his statement stated that he has been working with Rubberwala group since 2010 and inter-alia dealing with sales and registration of the shops in Platinum Mall Project of M/s. Rubberwala Housing and Infrastructure Ltd. (RHIL). Mr. Ansari also explained the complete procedure of the sale of shops in the "Platinum Mall" project and revealed that total price of shops contains cash and banking channel components, which were decided by Shri Tabrez Shaikh (Director of RHIL and promoter of Rubberwala Group). Mr. Ansari also stated that data related to shops is maintained by him in excel sheets and stored in pen drive.

4. Thus, the AO on the basis of aforesaid search and seizure proceedings carried out u/s 132 of the Act, issued a notice dated 29.03.2023 u/s 153(C) of the Act to the Assessee, who in response filed his return of income on dated 29.04.2023, declaring total income of Rs. 5,24,900/- as declared originally by filing original return for the assessment year under consideration, on dated 29.08.2018.

5. Thereafter, the AO show caused the Assessee to explain the amount of **Rs. 16,00,000/-+9,43,750/-** {Rs. 25,43,750/- in total} respectively for the AYs. 2018-19 and 2019-20, allegedly paid in cash during the year under consideration, over and above the purchase price of shop bearing **Shop No. 243**, admeasuring carpet area of 7.56 Sq. Mtr. situated at 2nd floor of Platinum mall, having been paid in installments and to the tune of Rs. 20,09,100/- in total, through banking channel, as against the stamp duty value (circle rate) of Rs. 15,17,292/-.

6. The Assessee in response to the said show cause submitted its reply, relevant part of the which is reproduced herein, as under:

"I have to state that I had NOT GIVEN ANY CASH of Rs. 25,43,750/- to a person Shri Imran Ansari as mentioned in the show cause notice. The allegation is completely false and not acceptable, hence the question of charging Rs. 25,43,750/- as my income does not arise at all in the A.Y 2015-16 to A.Y 2021-22. Also it is mentioned that the cash was not paid to Shri Imran Ansari, I would like to state that I do not know any such person mentioned in the notice"

7. The Assessing Officer, though considered the aforesaid claim of the Assessee that he has not made any cash payment to RHIL or the Rubberwala Group, as mentioned in the show-cause notice, however, found the said claim of the Assessee, as not acceptable, mainly on the following reasons:

1. Shri Imran Ansari, a key employee of the Rubberwala Group, who was handling sale and registration of shops in "Platinum Mall", accepted that he had maintained Excel

sheets in which details of every person who paid cash in respect of purchase of shops on cash, was mentioned.

2. The Promoter and Director of the RHIL Group, Shri Tabrez Shaikh, accepted to take cash from individuals for sale of shops in Platinum Mall and also offered income @ 8% of the said cash, as non-accounted receipts in his statement recorded under section 131 of the Act on dated 19.08.2021.

3. A 16 GB pen drive containing the data related to shops as maintained by Mr. Ansari in Excel sheets was recovered from Mr. Ansari during search proceedings at his residence.

8. The Assessing Officer, on the aforesaid reasons, held that the Assessee has made the investment of **Rs. 16,00,000/-**, as unrecorded in the books of accounts maintained by the Assessee and also the Assessee had offered no explanation for the nature and source of such investment and thus the A.O added the amount of **Rs. 16,00,000/-** as unaccounted cash paid against the purchase of shop during the year under consideration, under section 69 of the Act, vide assessment order dated 09.03.2024 under section 153C of the Act.

9. The Assessee, thus, being aggrieved against the decision of the AO in making the addition of **Rs. 16,00,000/-**, preferred first appeal before the Ld. Commissioner by raising various grounds.

10. The Ld. Commissioner though considered the assessment order and the claim of the Assessee specifically to the effect that he has not made any cash amount over and above the sale consideration amount, as reflected in the sale deed and the AO has also not provided the cross examination of the witnesses, on whose statements the AO has made reliance. However, the Ld.

Commissioner ultimately affirmed the aforesaid addition by dismissing appeal of the Assessee.

11. Thus, the Assessee being aggrieved, has preferred instant appeal.

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

13. The Assessee further claimed that the facts and issues are exactly similar except variation in amounts, as deliberated upon by Hon'ble Coordinate Bench of the Tribunal in the case of ***Veena Hiralal Mehta Vs. DCIT {ITA no 5492 & 5493/Mum/2025 decided on 06.02.2026}***, wherein the Hon'ble Bench dealt with the identical issue on the basis of identical facts and circumstances and allegation and evidence and the fact of not providing the opportunity of cross examination to the Assessee and ultimately deleted the identical addition by allowing the appeal of the Assessee.

14. On the contrary, the Ld. DR submitted that the Assessee was provided with the combined show-cause notice dated 19.02.2024 along with the relevant details and documents. Further, in the

satisfaction note, all the details were mentioned and communicated to the Assessee, which also contains the Excel sheets, detailing the shop number, area, level, total amount, etc.. Further there is direct evidence for making the addition, such as statement of MR. Ansari, excel sheets, pen drive and a fact that Director of RHIL has offered income @ 8% of the unaccounted cash component and therefore, the orders passed by the authorities below cannot be faulted with.

15.The Ld. DR also relied on the judgment of the Hon'ble Madras High Court in the case of **ACIT Vs. Vetrivel Minerals (VV Minerals), [2025] 174 taxmann.com 110 (Madras) (30.04.2025)** and claimed that the Hon'ble High Court has held that it is open to the Assessee to challenge the genuineness of the material relied on by the department. But non-furnishing of the certificate u/s 65B of the Act cannot be used as shield to resist the reception of the electronic record. Thus, it is for the simple reason that the assessment proceedings are not judicial proceedings and therefore the technical rules of the Evidence Act, are inapplicable to them.

16. The Hon'ble High Court also considered the Digital Evidence Investigation Manual 2014 issued by the Central Board of Direct Taxes (CBDT), wherein it is mentioned that since Sec. 65A and 65B of the Indian Evidence Act govern the integrity of the electronic record, therefore while handling any digital evidence, the procedure has to be in consonance with the said provisions. The Hon'ble High Court further opined that the contents of the manual cannot have any statutory value or force and in any

event, they cannot alter the legal position laid down by the Hon'ble Supreme Court.

17. The Ld. DR also relied on the judgment passed by the Hon'ble Delhi High Court in the case of **Smt. Dayawanti Vs. CIT, [2016] 75 taxmann.com 308 (Delhi)**, wherein it has been held that statement recorded during the search operation, could be relied upon to make the addition to Assessee's income.

18. The Ld. DR further relied on the judgment passed by the Hon'ble Coordinate Bench of Tribunal at Rajkot in the case of **DCIT Vs. Gopal Bhupendra Chudasama, [2025] 181 taxmann.com 908 (Rajkot - Trib)**, wherein the Hon'ble Bench considered the addition made on the basis of pen drive seized from the Accountant, qua "on-money" cash receipts from buyers. However, the Hon'ble Bench ultimately remitted the matter to the file of Ld. CIT(A) with a direction to call for appropriate remand report from the AO.

19. The Ld. CIT DR also drew attention of this Court to para 21 of the judgment passed in the case of **Veena Hiralal Mehta (supra)**, and claimed that in that particular case, the Hon'ble Bench has dealt with exceptional circumstances, as no cash voucher, receipt, ledger or documents signed by the Assessee and incriminating material directly connected with the Assessee, was ever found. Thus, this case cannot be equated on the similar footing, as of Veena case(supra).

20. Having heard the parties and perusing the material available on record and giving thoughtful consideration to the peculiar

facts and circumstances of the case and rival claims of the parties, it is observed that from the assessment order, it clearly appears that the Assessing Officer made the addition mainly on the basis of the pen drive recovered from the premises of Mr. Ansari, the statement of Mr. Ansari, wherein he admitted receipt of the cash component by the company, and the statement of the Director of the RHIL Group, wherein he admitted statement made and the Excel sheet prepared by Mr. Ansari as true and offered income 8% of the cash amounts/component, as unaccounted receipts.

21. Admittedly, in the case as well during the search and seizure operation carried out in the premises of Rubberwala Group and Mr. Ansari or otherwise from the Assessee, no cash voucher, receipt, ledger or document signed by the Assessee and any incriminating material directly connected with the Assessee, was ever found. Whereas, the Assessee specifically claimed before the Assessing Officer that he has not made any cash payment for shop purchased by him.

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

23. Thus, in the aforesaid facts and circumstances, as no incriminating material directly connected with the Assessee, such as cash voucher, receipt, ledger or any document signed by the Assessee, was ever found during the search or post-search

proceedings, either from the Rubberwala Group or Mr. Ansari, whose statement has been made the foundation for making the addition, in that eventuality, the onus shifts upon the Revenue Department to substantiate/corroborate the evidence collected during the search proceedings and to offer an opportunity for confrontation or cross-examination of the witnesses, whose statements were relied upon, while making the addition. Which the Revenue failed to substantiate the evidence collected and also failed to give any opportunity of cross examinations of the witnesses, whose statements were relied on and/or made a foundation for making the addition.

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

25. We again considered the rival submissions of the parties to address the specific objections raised by the Ld. DR with regard to the legality of the electronic evidence such as pen drive and excel sheet retrieved from such pen drive. No doubt, Income Tax Authorities are not strictly bound by the Rules of evidence. However, it is the mandate of the law that the material which is to be used against the Assessee, must be brought into the notice

of the Assessee and the Assessee must be given an opportunity to make its representation against such evidence and / or to tender evidence against truth of the recitals contained therein. According to the Digital Evidence Investigation Manual 2014 issued by the CBDT since Sec. 65A and 65B Indian Evidence Act governing the integrity of the electronic record and therefore while handling any digital evidence, the Revenue Authorities are required to follow the procedure in consonance with the said provisions. No doubt CBDT cannot override the legal position laid down by Hon'ble Apex Court, as held by the Hon'ble Madras High Court in the case of **Vetrivel Minerals (supra)**. However, the spirit of the CBDT manual (supra) to the effect that in order to preserve the integrity of electronic record, the procedure adopted has to be inconsonance with the provisions of Sec. 65A and 65B of the Act, cannot be sidelined by the Revenue Authorities as they are bound to follow the CBDT Circulars/guidelines.

26. Even otherwise, the Hon'ble Madras High Court has dealt with the factually dissimilar case, and the issue qua applicability of section 65B of the erstwhile Evidence Act or the corresponding provisions of latest Act, is not in controversy in this case. Further certain observations made, cannot be applied blindly, to a factually dissimilar case.

27. We further observe that Hon'ble Delhi High Court in the case of **Smt. Dayawanti (supra)**, has held that the statement recorded during the search operation could be relied upon to make addition to Assessee's income but the Hon'ble High Court nowhere held that no corroboration is required to rely on such statement. In our view, simpliciter statement cannot be made a basis for making the addition, until and unless the same is

corroborated with the substantive evidence. Even otherwise, the Hon'ble High Court has made the simple observation, without laying down any dictum of law and therefore the same is not applicable to the instant case.

28. Coming to the another judgment relied upon on by the Ld. DR, we observe that Hon'ble Coordinate Bench of the Tribunal in the case of **Gopal Bhupendra Chudasma (supra)**, has dealt with peculiar facts and circumstances of the case and simply made various observations, which cannot be made applicable to the case under consideration, as both the cases are factually dissimilar. Even otherwise, the Hon'ble Bench at Rajkot ultimately remanded the case to the file of Ld. Commissioner for decision afresh by calling the appropriate remand report from the Ld.AO. In our view certain observations made in the order under the peculiar facts and circumstances, have no effects on the factually dissimilar cases and therefore the contention of the Ld. DR that the Hon'ble Bench in that particular case has relied on the digital evidence, can also be relied on this case, having no weightage and/or not entertainable.

29. Coming to the next contention raised by Ld. DR by drawing attention of this court to para 21 of order passed in **Veena Hiralal Mehta (supra)** and by submitting that in that particular case because no cash voucher, receipt, ledger or documents signed by the Assessee and / or incriminating material directly connected with the Assessee was ever found, therefore, the Hon'ble Coordinate Bench of the Tribunal has dealt with a specific facts and circumstances. Whereas, facts of the instant case are dissimilar to the aforesaid case, decided by the Tribunal.

30. The Ld. Counsel for the Assessee in order to contradict the above claim/contention of the Ld. DR placed on record, following assessment orders:

Sr no.	Dated	U/s	AY	Name of Assessee
01	06.03.2024	153C	2018-19	Veena Hiralal Mehta
02	26.03.2024	153C	2017-18	Monish Mali
03	22.03.2024	153C	2017-18	Dinesh M Choudhary

And claimed that the said assessment orders on the basis of which identical additions have been made in the identical facts and circumstances and evidence, as has been made in the assessment order as involved in the instant case, on the similar facts and circumstances and evidence and fact that no opportunity to the Assessee for cross examination of the witnesses was granted by the AO or the Ld. Commissioner and therefore specific contention of the Ld. DR to the effect that the decision in the case **Veena Hiralal Mehta (supra)**, is based on dissimilar facts and circumstances and therefore cannot be made applicable to the instant case, has no substance, especially in view of peculiar facts demonstrated above.

31. As observed above that the Hon'ble Coordinate Bench of the Tribunal in the case of **Veena Hiralal Mehta (supra)**, has dealt with identical addition on the basis of identical facts and circumstances and evidence and ultimately deleted the same by observing and holding as under:

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

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

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

21. We have given thoughtful consideration to the peculiar facts and circumstances of the case and rival claims of the parties. Admittedly, during the search and seizure operation carried out in the premises of Rubberwala Group and Mr. Ansari or otherwise from the Assessee, no cash voucher, receipt, ledger or document signed by the Assessee and incriminating material directly connected with the Assessee, was ever found. Whereas, the Assessee specifically claimed before the Assessing Officer that she has not made any cash payment for the purchase of the shops purchased by her.

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

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

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

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

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

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

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

26. The Hon'ble co-ordinate Bench of the Tribunal in *Pravin Khetaram Purohit (or Parveen Kheta Ram) vs. DCIT (ITA Nos. 4742 to 4744/M/2025, decided on 15.10.2025)* also dealt with identical addition based on the same search and seizure and material recovered and statements recorded and ultimately deleted the identical addition by observing and holding as under:

“18. From the records we also noticed that no statement was provided to the assessee, and none of the persons, whose statements were relied upon were produced for cross-examination. Even the extract of the statement mentioned in the assessment order does not indicate the name of the assessee.

19. Apart, the AO during the course of assessment also failed to provide the opportunity to cross examine of the witnesses, whose statements were relied upon by the revenue which resulted in ‘breach of principles of natural justice’. In this regard, reliance is being placed upon the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. CCE reported in (2015)281 CTR 241 (SC) wherein it has been held that ‘failure to give the assessee the opportunity to cross examine witness, whose statements are relied upon, results in

breach of principles of Natural Justice. It is a serious flaw which renders the order a nullity’.

20. In the case of CIT Vs. Odeon Builders Pvt. Ltd. (418ITR 315), it was held that the ‘addition/disallowance made solely on third party information without subjecting it to further scrutiny and denying the opportunity of cross examination of the third party renders the addition/disallowance bad in law’.

21. In the case of H.R. Mehta v/s Assistant Commissioner of Income-tax, Mumbai 72 taxmann.com110 (Bombay) wherein it was held as under:

In the light of the fact that the money was advanced apparently by the account payee cheque and was repaid vide account payee cheque the least that the Assessing Officer should have done was to grant an opportunity to the assessee to meet the case against him by providing the material sought to be used against him in arriving before passing the order of assessment. This not having been done, the denial of such opportunity goes to root of the matter and strikes at the very foundation of the assessment and, therefore, renders the orders passed by the Commissioner (Appeals) and the Tribunal vulnerable. The assessee was bound to be provided with the material used against him apart from being permitting him to cross examine the deponents whose statements were relied upon by him. Despite the request seeking an opportunity to cross examine the deponents and furnish the assessee with copies of statements and disclose material, these were denied to him.

22. Taking into consideration the entire facts and circumstances and legal propositions as discussed by us above, we direct the AO to delete the addition.”

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

“10. I have considered rival submissions and perused material on record. Undisputedly, the genesis of the addition made of ` 42 lakh on

account of alleged payment of on-money in cash towards purchase of a flat lies in a search and seizure operation conducted in case of Hiranandani Group and related persons. Though, in the assessment order the Assessing Officer has not discussed in detail the nature of incriminating material / evidence available on record to indicate payment of on-money in cash by the assessee to M/s. Crescendo Associates, however, from the show cause notice dated 4th March 2015, which is reproduced by the Assessing Officer in the assessment order, it appears that the incriminating materials are in the form of pen drive found and seized from the residence of one of the employees of Hiranandani Group and a statement recorded under section 132(4) of the Act from Shri Niranjani Hiranandani, Director and Promoter of the Group, wherein, the details of onmoney paid by buyers / prospective buyers to Hiranandani Group concerns are mentioned and further, in the statement recorded under section 132(4) of the Act on 14th March 2014, Shri Niranjani 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 Niranjani Hiranandani. The assessee had also requested the Assessing Officer for allowing her to cross-examine Shri Niranjani 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 Niranjani 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 Niranjani 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, Shri Niranjani Hiranandani 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 Niranjani Hiranandani are enough to conclusively establish the factum of payment of on-money by the assessee. At best, they can raise a doubt or suspicion against the conduct of the assessee triggering further enquiry / investigation to find out and bring on record the relevant fact and material to conclusively prove the payment of on-money by the assessee over and above the declared sale consideration. Apparently, the Assessing Officer has failed to bring any such evidence

/ material on record to prove the payment of on- money by the assessee. More so, when the assessee from the very beginning has stoutly denied payment of on-money in cash.”

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

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

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

7.2 In view of the discussion above, we hold that the addition made by the AO is based more on conjectures and surmises rather than on concrete evidence. Therefore, we do not find any infirmity in the appellate order

deleting the addition made. Consequently, all the grounds of appeal which are interlinked to each other are hereby dismissed.

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

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

32. Thus, on the aforesaid analyzation and respectfully following the above judgement of Tribunal, we do not have any hesitation to delete the addition under consideration. Hence, the addition under consideration is deleted by allowing the appeal in **ITA No. 7803/Mum/2025** for the A.Y 2018-19 filed by the Assessee.

33. In view of our judgment in **ITA No. 7803/Mum/2025**, all appeals under consideration, are allowed on the similar terms.

Order pronounced in the open court on 27.02.2026

**Sd/-
(JAGADISH)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHARY)
JUDICIAL MEMBER**

Mumbai,
KRK, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,
सत्यापित प्रति //True Copy//

1.

**उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai**