

**IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH MUMBAI**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2408/MUM/2025  
Assessment Year: 2018-19**

Bhagawati M Jain C-22, Bhanu CHS, Bhanu Nagar, Dombivali East, Kalyan - 421201 Maharashtra  (PAN: AATPJ1123G)	Vs.	Income Tax Officer Ward 3(1), 2nd Floor, Rani Mansion, Kalyan-Murbad Rd, Kalyan-Dombivali, Maharashtra, 421301
(Appellant)		(Respondent)

Present for:

Assessee : Shri Viraj Mehta, CA  
Revenue : Shri Aditya Rai, Sr. DR

Date of Hearing : 22.12.2025  
Date of Pronouncement : 10.03.2026

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2024-25/1073449956(1), dated 19.02.2025, passed against the assessment order by Assessing Officer, National Faceless Assessment Centre, Delhi, u/s. 147 r.w.s.144B of the Income-tax Act (hereinafter referred to as the “Act”), dated 26.02.2024, for Assessment Year 2018-19.

2. Grounds taken by assessee are reproduced as under:

*“1. On the given facts, circumstances and judicial pronouncements, CIT (Appeals) has erred in confirming the action of Ld. Assessing Officer of reopening the case u/s 148 instead of section 153C as reopening u/s 148 is bad in law and therefore order passed u/s 147 is liable to be quashed and void-ab-initio.*

*2. Without prejudice to above, on the given facts, circumstances and judicial pronouncements, CIT (Appeals) has erred in confirming the action of Ld. Assessing Officer of reopening the case u/s 148 as reopening u/s 148 is beyond jurisdiction & bad in law. Therefore order passed u/s 147 is liable to be quashed and void-ab-initio.*

*3. Without prejudice to above, on the given facts, circumstances and judicial pronouncements, CIT (Appeals) has erred in confirming the action of Ld. Assessing Officer of reopening the case u/s 148 as the same is without complying the provisions of section 151. Therefore order passed u/s 147 is liable to be quashed and void-ab-initio.*

*4. On the given facts, circumstances and judicial pronouncements, CIT (Appeals) has erred in confirming the action of Ld. Assessing Officer by making addition of Rs. 21,99,000/- u/s 69B. Such confirming of addition u/s 69B is bad in law and addition is liable to be deleted.*

*5. On facts and circumstances, Ld. CIT(A) has erred in confirming the addition without providing cross examination which is against the principle of natural justice. Such addition is bad in law and erroneous in facts and liable to be deleted as the same is confirmed without providing cross examination.*

*6. On facts and circumstances, Ld. CIT(A) has erred in confirming the addition without providing proper opportunity of hearing which is against the principle of natural justice. Such addition is bad in law and erroneous in facts and liable to be deleted as the same is confirmed without providing proper opportunity of hearing.”*

2.1. Essentially, the issue involved in this appeal is in respect of addition made towards alleged on money payment made by the assessee in respect of an immovable property purchased by him from a builder in whose case a search and seizure action had undertaken u/s. 132 of the Act.

3. Brief facts in this regard are that assessee did not file his original return of income u/s. 139(1). Case of the assessee was taken up for reassessment based on information shared through insight portal by the office of DDIT, Central Circle-1(3), Mumbai according to which a

search and survey action was conducted in the case of M/s. Bhagawati Developers and its group concerns on 15.10.2018. In the course of this search action and based upon the seized material and submissions made therein, it was noted that assessee had purchased a shop from one of the concerns of the said builder and made payment to the builder in cash, as on money amounting to Rs. 21,99,000/-. Notice u/s. 148A(b) dated 08.03.2022 was issued along with the annexure containing the information leading to invocation of the said section. Assessee filed his reply dated 14.03.2022 in response to the said notice and furnished the details relating to the payments made by him for the purchase of the immovable property. It was submitted that he had purchased one shop from M/s. Patel Enterprises vide agreement executed on 23.06.2017 for an amount of Rs.29,50,000/-. All the payments in respect of this purchase were made through banking channel, details of which were furnished in the said reply. Assessee also requested for supply of evidences to prove that he had made payments to the builder in cash alleged as on money and also sought statements which were relied upon for the purpose of such an allegation. Assessee also sought an opportunity to cross examine the builder for the allegation of cash payment as on money.

3.1. Ld. Assessing Officer acknowledged the submissions made by the assessee, however he noted that on verification of index-II, it was found that market value of property was Rs.37,20,500/-, as against the agreement value of Rs.29,50,000/-. He also referred to the admission made by one, Shri Kulin Shantilal Vora, who looks after the sales of all the projects of M/s. Bhagawati Developers and its group concerns whose statement was recorded under oath during the search and survey action. By placing reliance on the said statement and seized material found during the course of search of the builder, ld. Assessing Officer

came to a conclusion that assessee had made undisclosed investment and thus, passed an order u/s.148A(d) for issuing notice u/s.148. Notice u/s.148 was issued on 08.04.2022 in response to which assessee filed his return of income on 23.05.2022 reporting total income at Rs.5,00,130/-.

3.2. Case of the ld. Assessing Officer is that a search and seizure operation was conducted on M/s. Bhagawati Developers and its group concerns. One of the concerns covered in the search operation is M/s. Patel Enterprises which is a firm and Shri Kulin Shantilal Vora is its partner. Sale agreement of shop purchased by the assessee clearly mentions the name of one party as M/s. Patel Enterprises through partner Kulin Shantilal Vora. According to the ld. Assessing Officer, unit wise and flat/shop wise details of on money received by the group and its group concerns was provided by the search group. In the said search, Shri Kulin Shantilal Vora had admitted the receipt of on money on the sales made by the group and its concerns. Such sales include one of the shop purchased by the assessee from the group concern.

3.3. In this regard, ld. Assessing Officer had issued a show cause notice, to which assessee replied reiterating denial of cash payment and asking for evidence of cash payment. Assessee also sought copies of statement recorded of Shri Kulin Shantilal Vora and his cross examination. However, ld. Assessing Officer observed on such a request that, admission made by Shri Kulin Vora is a matter of common sense and human probability that no person will admit receipt of money in huge amount just without any reason, since, assessee has confronted that such a statement made by Shri Kulin Vora is only to avoid or save himself from the proceedings of the department. On the request made for providing opportunity for cross examination of Shri Kulin Shantilal

Vora, ld. Assessing Officer observed in the impugned order that, the statement of Shri Kulin Shantilal Vora is for all sales made and on money received on them from multiple parties, one of them being assessee, whose details were found in the seized documents. He thus, noted that specific mention of assessee cannot be found in the statement and therefore, statement not being in person or party specific, no question of cross examination arises. He thus, denied providing the opportunity of cross examination to the assessee, in respect of the statement which formed the basis for the purpose of making addition. Assessment was thus, completed by drawing a conclusion that assessee had made undisclosed investment under the provisions of section 69B and thus, addition was made of Rs.21,99,000/- to the total income, on account of payment of on money in cash for the shop purchased by the assessee.

4. In the first appeal before ld. CIT(A), assessee reiterated his submissions made at the reassessment proceedings. Ld. CIT(A) categorically observed in Para 4 at page 9 of his order that request for cross examination was rejected by the ld. Assessing Officer after duly considering it on the ground that the statement of Shri Kulin Shantilal Vora was for all sales made by the group and the on money received by them from multiple parties and the assessee was one of those who had paid on money. He stated that ld. Assessing Officer had referred to human probability in respect of the alleged transaction. He thus, concluded that the facts were confronted to the assessee and he was given opportunity of being heard and therefore, it was not necessary to cross examine. Accordingly, addition made by the ld. Assessing Officer was sustained, by dismissing the appeal filed by the assessee. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, ld. Counsel for the assessee emphasized on the fact that assessee had been repeatedly, right from the first submission made in response to notice u/s.148A(b), seeking the details and material which were relied upon for the allegation of payment of on money in cash by the assessee, as well as asking for cross examination of the person whose statement were relied upon which were recorded during the course of search proceedings of the builder and its group concerns. Specific submission made by the assessee in one of his replies dated 11.11.2023 as reproduced in the impugned reassessment order is extracted below for ready reference:

*"Now, in your show cause notice, you just stated that one Shri Kulin Vora admitted in his stated recorded, the group was accepting on money in form cash amount. And only on this statement your conclusion that I have paid cash Rs. 21,99,000/- to the builder without any evidence and proof that I personally paid the case to the builders. It is clear that builder given their statement on his owns situation to avoid the further proceeding against him or save him some other proceeding, on this I am not concern. Without any proof or any evidence against me for such payment to the builders, I am objecting for your conclusion that I have also paid cash amount of Rs. 21,99,000/- for purchase of shop, without giving me any proof or evidence of cash payment by me to the builder. Even I asked earlier for this proof or evidence of cash payment by me to the builder, but still today no evidence was produce or furnished to me. And even not allowing me for the cross examination of the said builders.*

*I am referring to following decision as held for similar issue.*

- i. C Vasantlal and Co. 45 ITR 206(SC)*
- ii. Kishan Chand Chellaram VSCIT (125 ITR 713)*
- iii. CIT Central Jaipur Vs. Smt. Sunita Dhadda*
- iv. M/s Andaman Timber Industries Vs. Commissioner of Central Excise 92015 (281 CTR 241(SC))."*

5.1 On the contrary, ld. Sr. DR placed reliance on the orders of authorities below and submitted that addition made is based on material passed on by search party to the ld. Assessing Officer and is thus, justified.

6. From the perusal of the orders of the authorities below as well as material placed on record in the paper book containing 18 pages, we

note that assessee has consistently, right from the first submission in the proceedings, has been categorically denying having paid any amount in cash over and above the agreement value. Ld. Assessing Officer has not confronted to the assessee any of the material found during the course of search of the builder and its group concerns for the allegation of payment of on money. The seized material found during the course of search of the builder is not corroborated with any other evidence except by the statement of one Shri Kulin Shantilal Vora, which also has not been confronted to the assessee for cross examination. We note that since the assessee was not provided with the adverse material, it hampers the primary and fundamental requirements of principles of natural justice. The reason given by ld. Assessing Officer for denying the opportunity of cross examination of Shri Kulin Shantilal Vora is that, his statement is for all the sales made by the group and the group concerns in respect of on money received by them from multiple parties. The statement is not on specific mention of assessee, since it refers to all the sales made on which on money was received from various parties. Such an observation and reasoning given by ld. Assessing Officer, brings out the fact that there is no specific mention of the assessee in the statement recorded during the course of search which forms the sole basis for the ld. Assessing Officer to make addition in the hands of the assessee.

6.1. We find that, at best, such a statement can raise a doubt or suspicion against the conduct of the assessee to trigger further enquiry or investigation for finding out and bringing on record relevant fact and material, so, as to conclusively prove the payment of on money by the assessee over and above the declared sales consideration. In the given set of facts as emerging from the orders of the authorities below and the replies furnished by the assessee, apparently ld. Assessing Officer has

failed to bring any such evidence or material on record to prove the payment of on money by the assessee, more so, when assessee has from the very beginning denied payment of any such on money in cash. Addition made is on account of on money based on the information found during the search and seizure operation of the builder and the statement recorded u/s.132(4) of the Act. The material so found is not from the possession of the assessee, but in the course of search and seizure operation conducted in case of a third party that is the builder. There is no further corroborative evidence to establish that the contents of the seized material and the statement relied upon, are correct and authentic to the extent that assessee paid on money in cash. Further, not providing the opportunity to cross examine the person on whose statement reliance is placed, results into breach of principles of natural justice. In this regard, we place our reliance on the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries v. CCE [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.

6.2. We also place our reliance on the decision in the case of CIT vs. ODEON Builders (P) Limited 418 ITR 315, wherein it is held that 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.

6.3. Hon'ble Supreme Court in the case of KP Varghese vs. ITO [1981] 131 ITR 597 (SC) observed in Para 4 that it is a well settled rule of law that the onus of establishing the conditions of taxability are fulfilled, is

always on the revenue. To throw the burden of showing that there is no understatement of consideration on the assessee would be to cast an almost impossible burden upon him to establish the negative, namely that he did not receive any consideration beyond that declared by him. Thus, Hon'ble Supreme Court laid the burden on the revenue to establish the conditions for bringing to charge any income in the hands of the assessee.

7. Accordingly, in the given set of facts as narrated above, we are of considered view that assessee cannot be made to prove the negative stance for which he has been taking, right from the very first hearing by bringing on record all the corroborative documentary evidence in respect of actual and real purchase made by him. Therefore, in the given set of factual and legal position, no addition is warranted in the hands of the assessee. Addition so made by ld. Assessing Officer u/s. 69B is deleted. Ground nos. 4 and 5 raised by the assessee in this regard are allowed.

7.1. Other grounds raised by the assessee, dealing with the jurisdictional issues are left open and not dealt upon as appeal of the assessee has been allowed on the merits of the case.

8. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 10 March, 2026

Sd/-  
(Pawan Singh)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 10 March, 2026***

*MP, Sr.P.S.*

Copy to:

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

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai