

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No. 7822/Mum/2025
(Assessment Year:2017-18)

Najmussaher Saeed Khan Room No. 12, 1 st Floor, 262/280, Dawood Baug, Bapty Road, Mumbai-400 008	Vs.	Asst. CIT, Central Circle-4(2) Room No. 1918, Air India Building, Nariman Point, Mumbai-400 021
PAN/GIR No. BRQPK 7919 C		
(Appellant)	:	(Respondent)

ITA No. 8999/Mum/2025
(Assessment Year:2017-18)

Sayed Mukim Khan 1 st Floor, Bilal Masjid Compound, M. S. Road, Sonapur, Mumbai-400 008	Vs.	Dy. CIT, Central Circle-4(2) Room No. 1918, Air India Building, Nariman Point, Mumbai-400 021
PAN/GIR No. APQPK 4271 E		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Mumtaz Ahmad
Respondent by	:	Shri Vivek Perampurna

Date of Hearing	:	11.03.2026
Date of Pronouncement	:	17.04.2026

ORDER

Per Saktijit Dey, Vice President:

Captioned appeals are by two different assesseees, arising out of two separate orders of learned Commissioner of Income Tax (Appeals), Mumbai, pertaining to the assessment year (A.Y. for short) 2017-18.

2. The common issue arising in both the appeals relates to addition made of Rs.15 lacs each in case of the assessee's as unexplained investment u/s. 69 of the Income Tax Act,

1961 ('the Act' for short) on account of alleged on-money paid in cash towards purchase of a flat.

3. Briefly the facts are, the assessee in appeal are resident individuals and are husband and wife. For the assessment year under dispute, both the assessee filed their return of income u/s. 139(1) of the Act. A search and seizure operation u/s. 132 of the Act was carried out on 17.03.2021 in case of Rubberwala group and M/s. Hilton Infrastructure, which as observed by the Assessing Officer ('A.O.' for short), is an entity of the Rubberwala group. In course of the said search and seizure operation, residential premises, being Flat No. 1402, Ameena Heights, Agripada, Mumbai of Shri Tabrez Shaikh – Partner in M/s. Hilton Infrastructure and one of the promoters of Rubberwala Group was also searched. In course of search operation in his residential premises, a pen drive was found and seized wherein an excel sheet was found to have been maintained. In the said excel sheet, names of various allottees of flats in the housing project of M/s. Hilton Infrastructure were mentioned. As observed by the A.O., the excel sheet also mentioned the on-money received in cash from the allottees. In this connection, a statement u/s. 132(4) of the Act was recorded from Shri Tabrez Shaikh. When he was confronted with the excel sheet, initially he expressed his inability to explain anything. Subsequently, in course of post search proceedings, Shri Tabrez Shaikh was again called for enquiry and a statement was recorded from him, wherein he was specifically asked about the receipt of on-money. In response to the query raised, Shri Tabrez Shaikh accepted receipt of on-money in cash in respect of Fuego project in different years. Based on the statement recorded from Shri Tabrez Shaikh and the information found in the pen drive, the A.O. initiated proceedings u/s. 153C of the Act in case of the present assessee, since, the assessee had jointly bought

a flat in the said project and as per the A.O. their name appeared in the excel sheet. In course of assessment proceeding, the A.O. called upon the assessee to explain the source of the alleged on-money paid of Rs.30 lacs. In response to the query raised by the A.O., both the assessees denied of having paid any on-money in cash, over and above, the amount paid through cheque as per the sale deed. The A.O., however, was not convinced. Based on the information contained in the excel sheet and statement recorded from Shri Tabrez Shaikh, he, ultimately, concluded that both the assesses, indeed, had paid on-money in cash to the developer/builder towards purchase of flat. Accordingly, he added the amount of Rs.30 lacs each at the hands of both the assessee's.

4. Contesting the additions, the assessees filed appeals before Id. First appellate authority.

5. In course of proceeding before Id. First appellate authority, the assessees again reiterated their stand of having not paid any on-money in cash, over and above, the declared sale consideration paid through cheque. Alternatively, it was submitted, since, both the assesses, being husband and wife, jointly purchased the property, the alleged on-money paid of Rs.30 lacs cannot be added in case of both of them. While deciding the appeal, though, Id. First appellate authority did not accept the claim of the assessee that they had not paid any on-money in cash, however, he agreed with them that the alleged on-money paid of Rs.30 lacs cannot be added at the hands of each of the assessees, as both are 50% owner of the property. Accordingly, he reduced the addition to Rs.15 lacs each in case of both the assessees.

6. We have considered rival submissions and perused the materials available on record. A reading of the respective assessment orders passed in case of the assesseees, clearly demonstrate that the foundation of the assessments is based on the pen drive found in course of search and seizure operation in the residential premises of one Shri Tabrez Shaikh, who is stated to be a partner in M/s. Hilton Infrastructure and the statement recorded from Shri Tabrez Shaikh. Apart from these materials, there is nothing on record to suggest that the A.O. made any independent enquiry with other buyers or any other source to unearth the cash trail of the amount mentioned in the excel sheet found in the pen drive. In fact, in the statement recorded from Shri Tabrez Shaikh, there is no specific admission that he had received cash from the present assesseees. He has given a general answer to a general question by the Income Tax Authorities. When the assesseees from stage of assessment proceedings itself have categorically denied of having paid any cash over and above the declared sale consideration, the A.O. cannot forcefully make the additions simply relying upon a third-party statement and some materials seized from the third party without any other corroborative evidence to demonstrate that the contents of the seized material in the pen drive are correct. Therefore, we are of the firm view that the impugned additions have been made merely on suspicion, conjectures and surmises rather than on cogent evidence. That being the case, additions cannot be sustained. While coming to such conclusion, we have found support from the decision of the Hon'ble Jurisdictional High Court in case of CIT vs. M/s. Ambit Realty Pvt. Ltd. (in ITA No.83 of 2014 judgement dated 07.02.2017). Thus, the A.O. is directed to delete the additions made in case of both the assessee's.

7. In the result, the appeals are allowed.

Order pronounced in the open court on 17.04.2026

Sd/-

(Makarand V. Mahadeokar)
Accountant Member

Mumbai; Dated : 17.04.2026

Roshani, Sr. PS

Sd/-

(Saktijit Dey)
Vice President

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai