

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

ITA No. 7402/MUM/2025 (AY: 2012-13)

(Physical Hearing)

Prakash Bhaguji Katkade 802, Cosmos Mary Park, Near Keshav Mangal Karyalay, Khopat, Thane, Maharashtra – 400601. [PAN: ABBPK8793J]	Vs	ITO, Ward – 3(1), Thane 6 th Floor, Ashar IT Park, Road No. 16Z, Wagle Estate, Thane(W), Maharashtra – 400604.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Subodh Ratnaparkhi, CA
Revenue by	Smt. Usha Gaikwad, Sr. DR
Date of Institution	14.11.2025
Date of hearing	18.03.2026
Date of pronouncement	04.06.2026

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Id. CIT(A)/ADDL/JCIT(A), Panaji dated 26.09.2025 for Assessment Year (AY) 2012-13. The assessee has raised following grounds of appeal:

"1. The Hon CIT(A) erred in upholding the re-opening of assessment u/s 147 of the 1. Tax Act 1961, by issue of the notice u/s 148 on 29.03.2019, not appreciating that such re-opening of assessment u/s 147 was bad-in-law and the asst. order flowing therefrom, being the order u/s 143(3) r.w.s. 147 was also invalid and bad in law and hence the same was required to be quashed.

2. The Hon CIT(A) erred in upholding the addition of Rs.14,25,000/- u/s.69A of the IT Act, 1961 as unexplained money being alleged on-money paid to Cosmos Group towards purchase of flat no. 802, Cosmos Mary Park, Thane(W), ignoring the contentions of the appellant that there was no evidence of any such on-money payment and ignoring the claim of the appellant that he had not paid any such on-money towards the purchase of the said flat. The addition Rs.14,25,000/- on the above being was not warranted by facts and in law and may please be deleted.

3. The Hon CIT(A) erred in relying upon the statements of the members of the Cosmos Group without affording your appellant with opportunity to cross examine the said persons, thereby breaching the salient principles of equity, fair play and natural justice. The order framed in breach of the principles of natural justice is bad-in-law and void-ab-initio.

4. The appellant craves leave to add, alter, amend, delete and/or vary any of the above grounds of appeal at any time before the decision of the appeal.”

2. Brief facts of the case are that assessee is individual filed its return of income for A.Y. 2012-13 declaring income of Rs. 2,71,280/-. Initially, the return was accepted. Later on, the case was reopened on the basis of information received from DDIT(Inv), Unit – 1(4), Mumbai wherein it was informed that search was carried out in case of Cosmos Group on 24.09.2024. Cosmos Group is engaged in the business of development of real estate and construction. The AO recorded that during the course of search action, document relating to receipt of on-money by the assessee was found. Such details were maintained in the Gmail and yahoo mails of Cosmos Group. The AO further noted that a cash book of on-money received by Cosmos Group, which contained the flatwise and shop-wise details was prepared in Excel sheets. The statement of Karuna Khambayat, sales head of Cosmos Group was recorded, wherein she accepted that often a cash payment involve on sale of flat/shops/offices. The AO also mentioned about the statement of Suraj Parmar, one of the promoters of Cosmos Group about cash transaction. On the basis of such information, the AO noted that assessee has purchased Flat No. 802 of Cosmos Mary Park from Cosmos Group and has paid money of Rs. 34,50,000/- in two instalments that is Rs. 25,50,000/- in A.Y. 2012-

13 and Rs. 6,00,000/- in A.Y. 2013-14 over and above, the agreement value. On the basis of such information, the case of assessee was reopened after obtaining prior approval of Principal Commissioner of Income Tax (Pr. CIT) – 2, Thane. The notice under section 148 was issued on 29.03.2019. In response to such notice, the assessee filed return of income. The reasons recorded were provided to the assessee. The assessee denied of having paid of on-money against purchase of flat and make request to refer the matter to DVO. The AO recorded that as the case does not pertain to valuation of flat, therefore, request of assessee was declined.

3. The AO on the basis of material issued show cause notice for making addition of unexplained investment. In response to show cause notice, the assessee furnished confirmation letter from Cosmos Builder that they have received Rs. 72.00 lacs from the assessee in respect of Flat No. 802. The confirmation of assessee was not accepted by AO. The AO relied upon alleged incriminating evidence found in search action and the statement in the Excel sheet. The AO by referring the statement of Suraj Parmar, son of Ramesh Parmar recorded on 26.09.2014, made addition of Rs. 14,25,000/- as income from undisclosed sources, being 50% of Rs. 28,50,000/-. The AO made such addition as the assessee is owner of 50% of flat.
4. On appeal before Id. CIT(A), the action of AO was upheld. Before, Id CIT(A) the request of assessee for cross-examination of Cosmos Group member was also

declined by Id. CIT(A) by holding that addition is not only made on incriminating material. Further, aggrieved the assessee has filed appeal before Tribunal.

5. We have heard the submission of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the Revenue. The Id. AR of the assessee submits that the assessee along with his wife purchased a residential flat being Flat No. 802 at Cosmos Mary Park Thane (West) for a total consideration of Rs. 72.00 lacs. The details of payment are shown in the ledger account, copy of which is filed at page no. 98 to 101 of paper book. The copy of registered agreement dated 04.04.2012 is also placed on record. The assessee has not made any other amount except shown on the sale deed. The AO made addition of Rs. 14,25,000/- by taking view that assessee has made cash payment of Rs. 34,50,000/- out of which 28,50,000/- was paid in cash in the year under consideration. The assessee owned $\frac{1}{2}$ share in the flat, therefore, the AO made addition of Rs. 14,25,000/- being 50% of Rs. 28,50,000/- in the income of assessee. The AO never shared the incriminating material and the basis of making addition of on-money. No incriminating material was produced during assessment. The entire of incriminating material seized from Cosmos Group and actual evidence of on-money payment is nowhere discussed. The assessee since beginning submitted that in absence of primary evidence of incriminating material no adverse way is justified. The copy of incriminating seized document was not shared even till the stage of Id. CIT(A). The assessee has no privy to seize material. The assessee filed confirmation of

builder confirming the payment of Rs. 72,00,000/- by assessee and his wife. The builder has not taken the name of assessee for payment of cash. Otherwise, addition cannot be made on the basis of third-party statement. The Id. AR of the assessee submits that assessee has also challenged the validity of reopening. Before AO, there was no evidence of on-money paid by assessee to Cosmos Group. The AR further reiterated that addition of Rs. 14,25,000/- is not justified as revenue till date has not been able to produce an iota of evidence of having paid of on-money in cash by assessee for purchase of flat. The entire charge is baseless. To support his submission, the Id. AR also relied upon the following case laws wherein addition of on-money payment to cosmos group was deleted:

- Aakash Developers vs ACIT ITA No. 1767/M/2025 dated 29.09.2025
- Bharat Laxman Bhiwapurkar vs ITO ITA No. 3413/M/2023 dated 04.03.2024
- Mrs. Mamta Sharad Gupta vs ITO ITA No. 1553/M/2021 dated 16.06.2022
- Monika Anand Gupta vs ITO ITA No. 5561/M/2018 dated 21.04.2022

6. The Id. AR of the assessee further submits that assessee was not allowed cross-examination of key person of Cosmos Group despite making request rather request of assessee was expressly rejected by Id. CIT(A). In absence of cross-examination, no adverse view can be taken on the basis of third parties statement. To support such view, the Id. AR of the assessee relied upon the decision of Hon'ble Supreme Court in Andaman Timber Industries vs CCE 281 CTR 241 (SC). There was no independence opinion of AO about escapement of income. The independent application of mind is absent in the present case. To support such view, the Id. AR relied upon the decision of Hon'ble Supreme Court in ITO vs Lakhmani Mewal Das 103 ITR 437 (SC) and the decision of Mumbai

Tribunal in Akash Developers vs ACIT in ITA No. 1767/M/2025. The Id AR of the assessee submits that he has good case on validity of reopening as well as on merit.

7. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the Revenue supported the order of lower authorities. The Id. Sr. DR for the Revenue submits that AO was having sufficient evidence in the form of statement of key person of Cosmos Group and the supporting incriminating material found during the search which is sufficient to make the addition.
8. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that the AO made additions solely on the basis of statement of key persons of Cosmos group. The AO relied on the Excell sheet which is prepared by the investigation team (para-1 of AO order). Copy of incriminating material or the material contained in the alleged Gmail or yahoo mail is neither brought on record nor supplied to the assessee. No cognizance of confirmation of builder was taken by AO or the Id CIT(A). Statement *per se* cannot be considered as evidence, against third party unless it is tested by cross examination. We find that similar additions were made by revenue in case of various other purchaser, on the basis of statement of same persons which is basis for making addition against the assessee, however, on appeal before Tribunal similar additions were deleted in five cases, which is relied by Id AR of the assessee, which we have recorded above. We find that in case of Bharat Laxman Vs ITO (supra) the coordinate bench of Tribunal on similar set of

facts deleted similar addition on merit, the relevant part of the order is extracted below;

"5. Heard both the sides and perused the material on record. The assessee is an individual deriving income from salary. The assessing officer received information from the investigation wing in respect of search action taken place in the case of Cosmos Group engaged in the business of building and construction and the information relating to on money payment received. The assessing officer stated that for purchasing flat no. A/07 at Harizon Twilte, the assessee had made cash payment of Rs.31,00,000/- over and above the agreement value of the flat. After referring material placed on record the assessee submitted that AO has merely relied upon the statement recorded u/s 132(4) of the Act key persons of the Cosmos Group without bringing on record any incriminating material seized during search action to establish that assessee had paid alleged on money. After perusal of the material on record, it is also noticed that assessing officer has neither shared any incriminating evidence with the assessee nor brought on record to demonstrate that the assessee had actually paid the alleged-on money of Rs.31,00,000/- over and above the agreement price of the property. In spite of repeated request made by the assessee the assessing officer has also not provided any copy of the seized material to the assessee. Vide letter dated 17.12.2018 the assessee has also brought to the knowledge of the assessing officer that director of Cosmos Group Mr. Manish Mehta did not turn up for cross examination on the date of 14.12.2018 however the representative of the assessee was present before him. During the course of appellate proceeding before us the Id. Counsel has also referred the decision of ITAT in the case of Mrs. Mamta Sharad Gupta Vs. ITO 1(2) vide ITA No. 1553/Mum/2021 dated 16.06.2022 on the similar issue of on money as per the search action carried out in the case of Cosmos Group wherein the ITAT has held as under:

"9. Since the sole issue raised in this appeal is covered by the order (supra) passed by the co-ordinate Bench of the Tribunal addition made in this case is not sustainable. Because the addition is made merely on the basis of statement made by one Mr. Suraj Parmar, one of the promoters of Cosmos Group under section 132(4) of the Act without any corroboration. Moreover, statement or any material seized during the course of search under section 132(4) of the Act can only be used against Mr. Suraj Parmar of Cosmos Group and not against the assessee without any corroboration. Excel sheet alleged to have been recovered from the office of builders is also not admissible being not proved under section 65 of the Evidence Act. So, in view of the matter, addition made by the AO and sustained by the Ld. CIT(A) is not sustainable in the eyes of law, hence ordered to be deleted. Consequently, appeal filed by the assessee is allowed."

The Id. Counsel has also referred the similar kind of addition made on the basis of search action in the case of Cosmos Group in the case of *Monika Anand Gupta Vs. ITO, Ward 1(2) vide ITA No.5561/Mum/2018* which was adjudicated by the ITAT, Mumbai dated 21.04.2022 wherein held as under:

"6. I have heard both the parties and perused the record. I find that the addition for on-money payment has been done in this case without any corroborative material found from assessee. The addition is solely based upon some statement of the builder. Such additions are not sustainable on the touchstone of Hon'ble Supreme Court decision in the case of *CIT vs P.V Kalyanasundasram 164 Taxman 78 (SC)*. Moreover, there is nothing on record to suggest that so called electronic evidence collected by revenue at the builder's office is compliant with the requirement of section 65B of Evidence Act regarding admissibility of electronic evidence. Hence, I set aside the orders of the authority below and direct that the addition be deleted."

After taking income consideration the above facts and finding of the ITAT we find that similar to the aforesaid decision the addition in the case of the assessee was also solely based upon the statement of the builders and assessing officer could not substantiate the same with any incriminating material. Therefore, following the decision of the ITATs on the similar issue as referred above we consider that addition made by the AO is not sustainable, therefore, same is deleted. Accordingly, the grounds of appeal no.2 to 3 of the appeal of the assessee are allowed.

6. During the course of appellate proceedings before us ground of appeal no.1 was not discussed therefore, the same stand dismissed.

7. In the result, the appeal of the assessee is partly allowed.”

9. Considering the aforesaid decision of Tribunal on similar set of facts and respectfully following the same, the additions made by AO are deleted. Further considering the facts that we have allowed relief to the assessee on merit, hence, adjudication on legal issue of validity of reopening has become academic. In the result, the grounds of appeal raised by the assessee are allowed.

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

Order was pronounced in the open Court on 04/06/2026.

Sd/-
MAKARAND VASANT MAHADEOKAR
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Dated: 04/06/2026
Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

By Order

Assistant Registrar / DDO
ITAT, Mumbai