

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH, CHANDIGARH

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT

आयकर अपील सं./ ITA No. 1207 & 1496/CHD/2025
निर्धारण वर्ष / A.Y. : 2016-17 & 2020-21

Smt. Jyoti, C/o DC Office, Distt. Administrative Complex, Sector 76, SAS Nagar.	Vs	The AO, NFAC.
स्थायी लेखा सं./PAN NO: APEPJ7978P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Assessee by : Shri Mustaq Ahmed, CA.
Revenue by : Shri Vivek Vardhan, Addl. CIT Sr.DR

Date of Hearing : 20.01.2026
Date of Pronouncement : 27.01.2026

O R D E R

PHYSICAL HEARING

The present two appeals are directed at the instance of the assessee against the orders of 1d.CIT (Appeals) dated 05.08.2025 and 30.10.2025 passed for assessment year 2016-17 and 2020-21.

2. The issues involved in both the appeals are common, therefore, they are being heard together and I deem it appropriate to dispose off both these appeals by this common order.

3. The grievance of the assessee is that 1d.CIT (Appeals) has erred in confirming the addition of Rs.29,57,330/- and Rs.28,50,000/- in assessment year 2016-17 and 2020-21 respectively. Apart from this quantum addition, assessee is challenging re-opening of assessment in assessment year 2016-17.

4. The brief facts of the case are that a search & seizure operation was carried out at the premises of M/s Homeland Buildwell Pvt. Ltd. u/s 132 of the Income Tax Act dated 26.02.2020. According to the 1d. AO, during the course of search, incriminating material was discovered and seized which exhibits that certain home buyers have paid on money over and above the price stated in the Sale Deed. The AO, thereafter, observed that assessee has purchased flat No. 30 Tower-4 at Third Floor in Homeland Heights, Sector 70, Mohali. According to the AO, the assessee had paid a sum of Rs.1,57,29,118/-, however, the sale was registered for a consideration of Rs.70,10,818/- after deducting TDS of Rs.70,110/-. The difference between the alleged figure calculated by the AO on account of certain inputs from the

search vis-à-vis amounts disclosed in the Sale Deed was being treated by the AO as own money paid by assessee in two assessment years. Accordingly, he made an addition of Rs.27,50,000/- in assessment year 2016-17 and Rs.28,50,000/- in assessment year 2020-21.

5. Dissatisfied with the additions, assessee carried the matter in appeal before the 1d. First Appellate Authority, however, her contentions are rejected by the 1d. First Appellate Authority.

6. With the assistance of 1d. Representative, I have gone through the record carefully. It emerges out that identical issue has come up before ITAT Chandigarh in ITA No. 853/CHD/2024 in the case of Shri Paramjeet Singh Mogla Vs ITO, where we have considered the case of similarly situated customer and ultimately deleted the addition. The detailed findings recorded by the Tribunal in this order read as under:

5. This appeal was listed for hearing on 13.01.2025 and the Bench has passed the following order :

“The assessee is in appeal before the Tribunal against the order of the 1d. CIT(A) dated 15.06.2024 passed for assessment year 2016-17. The grounds of appeal taken by the assessee are not in consonance with Rule 8D of ITAT Rules rather they are descriptive and argumentative in nature.

2. In brief, grievance of the assessee is that 1d. CIT(A) has erred in

confirming the addition of Rs.30 lacs.

3. *The brief facts of the case are that assessee has filed his return of income on 27.02.2017 declaring total income of Rs.13,45,430/-.* The ld. AO has reopened the assessment by issuance of a notice under Section 148 on 30.03.2021. According to the AO, assessee has purchased a flat No.133 Tower No.2, 13th Floor from Homeland Heights Apartments. A search & seizure operation was conducted at the premises of the developer of this project wherein statement of one Shri Monu who was working as a Customer Relationship Manager (CRM) of M/s AB Alcobev Pvt. Ltd. was recorded. He was earlier working at the Homeland Heights, Sector 70. A laptop was seized in which it revealed that certain files were deleted by Shri Monu and later on these files were retrieved by the Department. From this laptop, according to the Revenue, certain incriminating details were recovered which exhibit that some of the flats were sold after accepting part cash as a component of sale consideration. This factum of cash is being narrated under expression 'Discount'. The Revenue drawn an inference that assessee has also paid cash of Rs.30 lacs while purchasing the flat, hence reopened the assessment. The AO treated the alleged information as a gospel truth and did not substantiate the information by cross verifying the details. He even did not call Monu as a witness in favour of the Revenue. He made an addition of Rs.30 lacs by alleging that assessee has made payment of this amount apart from cheque component mentioned in the Sale Deed.

4. *The appeal to the ld. CIT(A) did not bring any relief to the assessee.*

5. *The ld. Counsel for the assessee while impugning the orders of the Revenue Authorities has emphasized that except a bald allegation in the shape of discovery of some sheet from one Monu, who was not even under employment of developer at the relevant time, was made as a basis of this addition. The Department did not supply either the statement of Monu, the alleged incriminating material to the assessee nor allowed any cross-examination of the alleged witness. The AO himself has not cross verified any of the details, he just relied on the information of the alleged Investigation Wing.*

6. *After hearing the matter for some time, we directed the ld. DR to produce the alleged file from Investigation Wing exhibiting what are the details possessed by the Revenue so that we could verify whether any credible material is being in possession of the Revenue or not. Apart from this, we would like to know the details of other purchasers whether any addition was made in the hands of any other assessee and if made, what is the status of those appeals. Hearing is adjourned to 18.02.2025. Copy of this ordersheet be supplied to both the parties. This appeal be treated as part heard."*

6. *On the last date of hearing, nothing was brought on record by the Revenue except an Appraisal Report prepared by Investigation Wing which was transmitted to the concerned Assessing Officers. In other words, it is just an opinion of some officer who has conducted the investigation. The basic evidence or the basic document was never transmitted to the AO.*

7. *On due consideration of the facts and circumstances, we find that only evidence alleged to be possessed by the Revenue is some details unearthed from the computer of Shri Monu whose erstwhile employer was the developer from whom assessee has purchased the flat. We observe that the authenticity of such details in laptop of a third person will always remain doubtful without sufficient corroborative evidence. There is no direct evidence possessed by the revenue. The concerned employee has already left the job of the developer. The AO has neither supplied the alleged copies of those documents recovered from the laptop of Shri Monu nor he has put Shri Monu for cross-examination of the assessee. It is not established on the record whether assessee has made any payment to Shri Monu. Only a chart prepared by an employee was recovered but that cannot be the evidence, solely on whose basis addition can be made. At this stage, we deem it appropriate to make reference to the judgement of Hon'ble Supreme Court in the case of Andaman Timber Industries Vs Commissioner of Central Excise 281 CTR 241 (S.C.) wherein the Hon'ble Supreme Court has propounded that if a witness was not put for cross-examination, then statement recorded against a person from his back will not be used in evidence. Para 6 of the judgement reads as under :*

“6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice' because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.”

8. *Thus the Revenue did not possess sufficient evidence in support of its case. The addition made to the total income of the assessee is not sustainable. Accordingly, we allow the appeal and delete the addition.”*

7. There is no disparity on facts. Shri Paramjeet Singh Mogla had also purchased a flat No. 133 Tower No. 2, 13th Floor from M/s Homeland Heights Apartments. On the basis of some information collected during the course of search, the AO has drawn an inference that assessee has paid over and above the registered sale consideration. We have made a detailed qualitative analysis of the evidence considered by the AO and thereafter held that nothing substantial was possessed by the AO for drawing an inference that assessee had paid cash over and above the amounts stated in the Sale Deed. There is no disparity on the facts in the present appeals. In these appeals also, AO did not lay his hand on any material which could be worthy of credence and demonstrate that assessee has made investment in cash. Accordingly, the additions made by the AO are deleted.

8. As far as re-opening of assessment in assessment year 2016-17 is concerned, we are of the view that AO got information from Investigation Wing which could authorize him to form a reasonable belief that income has escaped

assessment. Accordingly, we do not find any merit in this ground of appeal in assessment year 2016-17. It is rejected.

9. In the result, appeal for assessment year 2016-17 is partly allowed, whereas, appeal in assessment year 2020-21 is allowed.

Order pronounced on 27.01.2026.

Sd/-

**(RAJPAL YADAV)
VICE PRESIDENT**

“Poonam”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, चंडीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

सहायक पंजीकार/ Assistant Registrar