IN THE INCOME-TAX APPELLATE TRIBUNAL"B" BENCH, MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.4294/MUM/2025
(A.Y. 2022-23)

Deputy Commissioner of Income Tax, Central Circle – 8(2) Room No. 658, 6th Floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai –400020, Maharashtra	v/s. बनाम	**Niru Dhiren Shah** 3rd Floor, Flat No. 35, Jolly Maker Apartment, No. 3 119, Cuffe Parade, Colaba, Mumbai – 400 005, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AANPS7632R		
Appellant/अपीलार्थी	..	**Respondent/प्रतिवादी**

Assessee by :	Dr. K. Shivaram, Sr. Adv. & Ms. Neelam Jadhav
Revenue by:	Shri Leyaqat Ali Aafaqui, (Sr.AR)

Date of Hearing	22.09.2025
Date of Pronouncement	27.10.2025

आदेश / O R D E R

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 11.04.2025 is preferred by the Revenue against the order passed by the Learned Commissioner of Income-tax, Appeal, CIT(A)-50, Mumbai [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 23.02.2024 for the Assessment Year [A.Y.] 2022-23.

2. The grounds of appeal are as under:

1. *Whether the ld. CIT(A) erred in law and on facts in deleting the addition of Rs. 3,16,65,485/- made u/s 69 of the Income-tax Act, 1961, solely on the ground that the seized WhatsApp chat did not directly involve the assessee, despite the circumstantial and corroborative evidence available on record?*
2. *Whether the Ld. CIT(A) was justified in holding that the WhatsApp communication recovered during search on a connected person has no evidentiary value, ignoring the fact that such digital evidence was supported by market rate data from a government source?*
3. *Whether the Ld. CIT(A) failed to appreciate that in the absence of a plausible explanation from the assessee for the undervaluation of the property, the Assessing Officer rightly invoked the provisions of section 69A based on preponderance of probability and circumstantial evidence?*
4. *Whether, under the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition without considering the broader evidentiary framework applicable to income-tax proceedings, particularly with respect to digital and circumstantial evidence recovered during search?*

3. Brief facts of the case are that the assessee filed return of income declaring total income of Rs. 30,50,500/-. A search u/s 132 of the Act was conducted on the assessee on 27.10.2021 along with the search conducted on M/s Amhara Construction Pvt. Ltd. Thereafter, the case was centralized and selected for scrutiny and assessment u/s 143(3) was completed on total income at Rs.3,47,15,985/-. The AO made an addition of Rs.3,16,65,485/- by holding that the assessee had received this amount in cash over and above the sale value of immovable property shown of Rs.3,38,59,224/-.

3.1 Search u/s 132 of the Act was also conducted at the residential premises of Shri Rounak Kumar, at Pune. During the search, a sale deed dated 28.09.2021 was found which was executed between Smt. Neeru Shah, Shri Nikhil Dhiren Shah being sellers and Shri Rakesh Kumar, the purchaser with respect to the sale of Shop No 5, Sarita Taran Cooperative Housing Society, Shivaji Nagar, Pune. It was seen that as per the registered sale deed, the sale consideration was of Rs.3,38,59,224/- and the stamp duty value as per Index II Rs.2,56,17,339/-.In the search, a whatsApp chat between Shri Rounak Kumar (son of Rakesh Kumar, the purchaser) and Shri Prashant Somnath, the accountant was found, which contained a screenshot of an Excel sheet wherein entries like area, rate and market value of certain properties were recorded. The AO noted that on perusal of the website of the Department of Registration and Stamps, Government of Maharashtra, the rate of the shops in the adjacent area was of Rs.4,40,680/- per sq. mts. Applying this rate, the market value of the shop sold by the assessee came to Rs.6,55,24,709/-. The AO observed that this fact was corroborated by the details recorded in the Excel sheet as per the chat. Hence, he concluded that the market value of the shop sold by the assessee was of Rs.6,55,24,709/- but as per the registered sale deed, the sale amount was shown only at Rs.3,38,59,224/-

.Therefore, the difference amount of Rs.3,16,65,485/- represented unaccounted cash receipts from the sale of this shop. The AO issued notice to the assessee, requiring her to explain as to why this amount should not be added to her income as unaccounted cash receipts. In response, it was submitted that the stamp duty value of the shop sold was of Rs. 2,56,17,339/-, whereas the shop was sold at Rs.3,38,59,224/- which was higher than the stamp duty value. Further, the AO had relied on Excel sheet exchanged on whatsApp, which was not a valid document. Therefore, no addition could be made on the basis of this chat. After considering the submission of the assessee, the AO held that the market value of the property as per the current market price was Rs.6,55,24,709/-, which was corroborated by the Excel sheet in the chat. Therefore, amount of Rs.3,16,65,485/- (difference between market value of Rs.6,55,24,709/- and the sale price of Rs.3,38,59,224/-) representing unaccounted cash receipts by the assessee was added as unexplained money u/s 69A of the Act in the hands of the assessee.

4. During the appeal proceedings before the ld.CIT(A), it was contended that the addition made by the AO was merely on the presumption that the assessee had received cash over and above the sale price as per the sale deed. The AO had solely relied on the chat between Shri Rounak Kumar and his accountant, Shri Prashant Somnath. The

chat between third parties had no evidentiary value and hence, could not be used as evidence against the assessee. She further contended that in the chat, neither the name of the assessee nor details of the property sold by her were mentioned. Therefore, no addition could be made only on the basis of this chat. Further, provisions of section 69A of the Act were not applicable, as no such cash was found from the assessee.

4.1 The ld.CIT(A) observed that the AO has mainly relied on the notings recorded in the Excel sheet which was exchanged in the whatsApp chat between Shri Rounak Kumar and his accountant, Shri Prashant Somnath and not with the assessee. Further, the statement of Shri Rounak Kumar was recorded u/s 132(4) of the Act. The relevant parts of the statement was also reproduced in the assessment order. From this statement, no inference could be drawn that the alleged shop had been sold at the market value as mentioned in the chat and for the same, cash had been exchanged. No documentary evidence was found during the search conducted on the assessee as well as on Shri Rounak Kumar, which could show that she had received any cash. The ld.CIT(A) has also considered the statement of the assessee recorded u/s 132(4) of the Act on 27.10.2021, wherein in questions no. 25 to 29, she was asked questions regarding the alleged property. However, in this statement also, nothing adverse was found. Thus, it was evident that there was no

evidence either found from the search conducted on the assessee or the search conducted on Shri Rounak Kumar, which showed that the alleged shop had been sold for Rs.6,55,24,709/- and cash of Rs.3,16,65,485/- had been paid to the assessee. The chat was not corroborated by any documentary evidence. Therefore, only on the basis of chat, it could not be held that the assessee had received cash over and above the sale amount. He further relied on the case of ACIT Vs Designers point (India) P. Ltd (ITA No 2517/Del/2022) regarding the evidentiary value of WhatsApp chat as decided as under-

> *" 6. On careful consideration of above submissions, from assessment order we note that the Assessing Officer has made addition of Rs. 9,50,000/- on account of unaccounted payment of salary in cash to four employee's u/s. 69C of the Act. The ld. CIT(A) deleted amounts pertaining to Shri Dhananjay & Ms Yamini but confirmed the addition pertaining to Ms Seema Dutta and Aman Sehgal amounting to Rs.5,75,000/- by relying on the statements of said two employees. The basis of addition is that during search & seizure operation two different offer letters were found & seized and during statement the said employees supported the factum of part cash payment of salary. However, we note that there was no other evidence in the hands of AO supporting the factum of cash payment to said two employees. It is also pertinent to note that under identical facts and circumstances the ld. CIT(A) has deleted part addition pertaining to other two employees Shri Dhananjay Singh & Ms Yamini Singh in absence of any sustainable and reliable evidence but confirmed the addition on account of alleged cash payment to said two employees. We are also in agreement with the contention of ld. AR that in absence of providing cross examination on the said two employees whose statements have been relied by the Assessing Officer, such statements cannot be used against the assessee for making addition on account of part payment of salary in cash to the said two employees only on the basis whatsapp chats which has no evidentiary value in absence of other collaborative adverse material against the assessee showing part payment of salary in cash to the said two employees.*
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> *7. This is also pertinent to mention that the Assessing Officer has proceeded to make addition on the basis of whatsapp chats between Ms. Seema Dutta and Mr.*

Aman Sheghal and their statements only and no other documentary evidence or adverse positive material has been found and searched during the course of search and seizure operation. We are unable to see any distinction between the cases of Shri Dhananjay Singh & Ms. Yamini Singh with the cases of Mr. Aman Sheghal & Ms. Seema Dutta. The whatsapp chats standalone basis is not having valid evidence to support the action of the Assessing Officer making addition u/s. 69C of the Act on account of alleged part payment of salary in cash to said two persons. Therefore sole grievance of assessee is allowed and Assessing Officer is directed to delete the addition."

4.2 In the above decision, the ITAT held that WhatsApp chat on standalone basis had no evidentiary value. In view of the above, the ld.CIT(A) concluded that the addition made only on the basis of the chat and not corroborated by any documentary evidence could not be sustained. Accordingly, the AO was directed to delete the addition of Rs.3,16,65,485/-.

5. Before us, the ld.DR argued that the ld.CIT(A) was not justified in deleting the addition despite adequate evidence on record. It is stated that he mechanically dismissed the chat as a "third-party communication" without appreciating its direct nexus to the assessee's property transaction. The chat explicitly referred to the property sold by the assessee calculating the cash differential based on official market rates and was recovered during a search connected to the assessee's case. This was not mere suspicion but concrete digital evidence recovered under section 132 of the Act, which carried presumptive value. The chat is corroborated by independent government data (market rates

from the Department of Registration & Stamps, Maharashtra), establishing a cash component on the preponderance of probability. The ld.CIT(A) ignored this corroboration, erroneously requiring direct involvement. It is contented that hon'ble Rajasthan High Court in Giriraj Pugalia v. Assistant Commissioner of Income Tax, dated 04.03.2025 (Raj) dismissed writ challenging a s.153C notice which was founded on WhatsApp chats seized from a third-party. The Court held the chats were specific (identified plots, parties, cash payments) and were corroborated by other seized material (cash books/statements), and therefore could be treated as "other documents" to initiate 153C proceedings. Reliance is also placed on Sumati Dayal v. CIT [1995] 214 ITR 801 (SC) CIT v. Durga Prasad More [1971] 82 ITR 540 (SC) which held that tax authorities must apply the test of human probabilities. Digital evidence recovered during search has inherent evidentiary value, especially when corroborated. The ld.CIT(A) erred in deeming it valueless merely because it was from a "connected person" (buyer's son), overlooking section 132(4A) presumption that seized documents belonged to the transaction's context. Rebutting the assessee's claim that the chat was "unauthorized" and not binding, it was submitted that whatsApp chats qualify as electronic records under section 2(1)(t) of the Information Technology Act, 2000, and are admissible if compliant with

Section 65B of the Indian Evidence Act, 1872. Here, the chat was forensically recovered, and its contents align with official market rates, providing corroboration. The assessee's failure to rebut this with evidence strengthens the AO's case. Hon'ble Supreme Court in Arjun Panditrao Khotkar v. Kailash Kushanrau Gorantyal [2020] 7 SCC 1 clarified that electronic evidence (including chats) is admissible without original device if certified under section 65B, emphasizing reliability in civil proceedings like tax assessments. Hon'ble Bombay High Court in SBI Cards & Payment Services Pvt. Ltd. v. Rohidas Jadhav (2018) held that whatsApp messages have evidentiary value if corroborated, rejecting blanket dismissal. Assessee's explanation is implausible given the vast gap between registered value (Rs. 3.38 crore) and market value (Rs. 6.55 crore). This undervaluation, coupled with the chat's explicit cash reference, establishes circumstantial evidence under the preponderance standard applicable to tax proceedings. Rebutting the ld.CIT(A)'s reliance on non-confirmation in statements, it is submitted that absence of admission does not negate inference from evidence. The burden under section 69A shifts to the assessee once prima facie case is made. The ld.CIT(A) adopted a narrow view, ignoring the holistic framework, search evidence, digital records, market corroboration, and probability. Tax proceedings are quasi-judicial, allowing inferences from

circumstantial evidence. The deletion overlooked the AO's detailed analysis and the assessee's inadequate rebuttal. ITAT Mumbai in J. Kumar Infraprojects Ltd. v. DCIT (2024) upheld additions where third-party digital evidence was corroborated. The order is based on a fundamental misunderstanding of how circumstantial and digital evidence is to be appreciated in a cohesive manner during search operations. The addition of Rs. 3,16,65,485/- u/s 69A was justified, legal, and based on a preponderance of credible evidence that formed a complete chain: (a) evidence from the purchaser's premises, (b) corroboration from a government website and (c) the inability of both the purchaser's representative and the seller to offer a credible explanation for the discrepancy.

5.1 Rebutting the assessee's contention that no physical money was found and the addition violates Section 69A's requirement of "found to be the owner," it was further submitted by the ld.DR that section 69A applies to unexplained ownership of money not recorded in books. The AO inferred ownership from the undervalued sale supported by the chat. The assessee failed to provide a plausible explanation for selling at below market value, shifting the burden under section 69A of the Act.

6. The ld.AR on the other hand, placed reliance on the appellate order reiterating the contentions as made before the ld.CIT(A).It is stated that whatsapp chat did not involve the assessee in any manner. Moreover, no incriminating materials were seized to support the view of the AO during search operations. As regard the decision in the case of Giriraj Pugalia (supra),it is stated that in the said case, the proceedings were upheld as the incriminating material comprised specific, corroborated, and directly connected evidence. The Court held that WhatsApp chats, if specific, transaction-related, and duly corroborated by other material, would qualify as "documents" under Section 153C of the Act, thereby justifying initiation of proceedings against a non-searched person. The legislative scheme under Section 153C contemplates such action where incriminating material belonging to a non-searched person is discovered in the course of search on another. In this case, neither the Chat was found in the course of the search of the assessee nor any incriminating material was found during the search. The issue is whether chats between third parties when no reference of the assessee was made can be used against the assessee, without following the due process of law as required by the Act. Hence, the ratio cannot be applicable to the facts of the respondent. It is submitted that in the case of **Arjun Panditrao Khotkar v. Kailash Kushanrao**

Gorantyal (2020) 7 SCC 1 (SC), it was held that electronic records, including whatsApp chats, are inadmissible without a certificate under section 65B of the Evidence Act. The respondent also places reliance on this judgment, wherein the Supreme Court reiterated the mandatory requirement of such certification. In the assessee's case, no incriminating documents were found in search and no disclosure was made u/s 132(4). Hence, this precedent does not apply.

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 to 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 devise 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.**

Order pronounced in the open court on 27/10/2025.

Sd/-	**Sd/-**
NARENDER KUMAR CHOUDHRY	**PRABHASH SHANKAR**
(न्यायिक सदस्य /JUDICIAL MEMBER)	**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai
दिनांक /Date 27.10.2025
Lubhna Shaikh / Steno

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 DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

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

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आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.