

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned two separate appeals by the Revenue are preferred against two separate orders of the Id. CIT(A) - 35, New Delhi dated 16.05.2018 pertaining to Assessment Year 2010-11. Since the underlying facts in both these appeals are same and were heard together, therefore, they are disposed of by this common order for the sake of convenience and brevity.

2. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules. Judicial decisions considered wherever necessary.

3. The common grievance in both these appeals relates to the deletion of addition made on account of unexplained investment u/s 69 of the Income-tax Act, 1961 [the Act, for short] amounting to Rs. 2,32,82,386/- in ITA No. 5764/DEL/2018 and deletion of addition made on account of unexplained receipt of the same amount in ITA No. 5763/DEL/2018.

4. Briefly stated, the facts of the case are that a search and seizure operation was carried out in the Brahmaputra Group of cases including the assessee on 28.09.2010 and various books of account and documents etc were found and seized. Accordingly, notice u/s 153A of the Act was issued and served upon the assessee pursuant to which, return was filed.

5. During the course of scrutiny assessment proceedings, the assessee was confronted with seized document, seized from the residential premises of Shri Sanjeev Kumar Prithani. The seized document is as under:

Detail of the Debit to Mr. Ramesh Kumar Prithani ✓			
S. No.	A/C Head		Market Value
1	Ramesh Kumar Prithani Loan		5,342,407.00
2	Ideal Garden		21,000,000.00
3	Office Building- 4th Floor (BCL) 1784 sq feet @ Rs. 7000/-	12,488,000.00	
	Office Building- 4th Floor (BCL) 745 sq feet @ Rs. 2000/-	1,490,000.00	13,978,000.00
4	Office Building- 6th Floor (BEPL) 1696 sq feet @ Rs. 7000/-		11,872,000.00
5	Old Dozer 2 Nos, old compactor 1 nos, old duals & scorpion		2,000,000.00
TOTAL			54,192,407.00

Add. WBHIDCO Payment	33,000,000.00
Payment made from 1-10-2008 to till date	5,274,685.00
	<u>92,467,092.00</u>
Less Total amount	150,000,000.00
Balance Amount:-	<u>57,532,908.00</u>

Payment Schedule

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Upto 13-4-2009 (Cheque)	4,250,522.00 ✓
Upto 15-4-2009 (Cash)	15,782,386.00 ✓
Upto 30-6-2009 (PDC)	7,500,000.00 ✓
Upto 30-9-2009 (PDC)	15,000,000.00 ✓
Upto 31-3-2010 (PDC)	15,000,000.00 ✓

Other Term & conditions

- Late interest on agreed amount beyond the time schedule will be charged @ 12%
- Personal guarantee given by RKP to various banks will be withdrawl as soon as possible
- RKP is not liable to pay any dues on behalf of BIL w.e.f. 1-4-2008
- The current account with SBI Kolkatta will be closed on 15-4-2009 and balance payment of WBHIDCO will transfer to Bengal Brahmaputra Relaty Ltd. on sub contract basis.
- BIL will not submit any bid in HIDCO and east west corridor in kolkatta. RKP can submit bid anywhere he likes
- Entire shareholding and resignation of Rk ' will be handed over to BIL on payment and PDC on 15-4-9
- On payment of Rs. 75.00 Lakh in cash on 30-6-2009 PDC of Rs. 75.00 Lakh will be returned.

Bayan ke Prithani
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Certified True Copy

6. At the very outset, it can be seen that the aforementioned seized document is unsigned, undated and unverified. Evidentiary value of such document, as exhibited hereinabove, is highly questionable and has not been accepted by the Hon'ble Supreme Court in the cases of Common Cause [A Registered Society] 294 ITR 220, CBI Vs. VC Shukla 3SCC 410 and the Hon'ble High Court of Delhi in the case of Girish Choudhary 296 ITR 619.

7. At the assessment stage itself, it was explained by the assessee that :

“This document is a proposed undated payment schedule made possibly in the year 2007-08 regarding separation of Shri Ramesh Kumar Prithani from Brahmaputra Group, no such payment took place till date and the same has not been materialized”.

8. The ld. DR had vehemently stated that subsequently, family partition did take place and the payments were made as per the statement of Shri Ramesh Kumar Prithani recorded u/s 132(4) of the Act on 28.09.2010.

9. However, a perusal of the paper book shows that Shri Ramesh Kumar Prithani has stated to have paid Rs. 50 lakhs to Shri Suresh Kumar Prithani, his brother for purchase of shares. Thus, payment was made by Shri Ramesh Kumar Prithani to Shri Suresh Kumar Prithani but addition has been made in the hands of Shri Sanjeev Kumar Prithani.

10. Moreover, Shri Sanjeev Kumar Prithani has categorically stated in his affidavit as under:

"I Sanjeev Kumar Prithani, Age 48 Years, s/o S. P. Agarwala R/O C-5/60, Ground Floor, Vasant Kunj, New Delhi -110037, do hereby solemnly affirm and sincerely state as follows:

1. **I** have not paid any amount to **Mr.** Ramesh Kumar Prithani brother of my towards the amount mentioned in the document Annexure -1/ BA-9 r Page no.18 seized during the search and seizure on 28.09.2010 from my residence at C-5/60 Vasant Kunj, New Delhi-110070.
2. **I** have not received any amount from **Mr.** Ramesh Kumar Prithani in respect of the document Annexure -1/ BA-9, Page no.18 seized from my residence at C-5/60 Vasant Kunj, New Delhi- 110070.

The above mentioned facts are true and correct to the best of my knowledge, information and belief. "

11. The Assessing Officer has brought nothing on record to demolish the aforementioned affidavit. Therefore, the contents of the affidavit cannot be brushed aside lightly. Even Shri Ramesh Kumar Prithani, in his letter addressed to the DCIT, Central Circle - 17, New Delhi dated 21.02.2013 has categorically stated that no payment, as proposed and recorded in the loose sheet has taken place either in cash, cheque, property or in any other manner whatsoever.

12. A perusal of the seized document mentioned elsewhere shows that there is a reference to a cheque payment and also post dated cheques. Nothing has been brought on record to demonstrate that these cheque/payments were actually materialized and transaction through cheque has been completed. Dates mentioned therein relate to April 2009 to March 2010 and the impugned assessment order is dated 28.03.2013, which means that even in four years nothing has been brought on record to suggest that the transaction in cheque has taken place in respect of the payments mentioned in the family partition payment schedule.

13. Considering all these facts in totality, we could not find any reason to interfere with the findings of the Id. CIT(A). Both the appeals of the Revenue are dismissed.

14. In the result the appeals of the Revenue in ITA Nos. 5763 & 5764/DEL/2020 are dismissed.

The order is pronounced in the open court on 27.09.2023.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 27th SEPTEMBER, 2023.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	