

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.2028/Del/2019
Assessment Year: 2010-11

ITO Ward- 20 (1) New Delhi	Vs.	Positive Buildwell Pvt. Ltd. 220, Okhla Industrial Estate, Phase-3, New Delhi PAN No.AAECF0366M
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. P.N. Barnwal, CIT DR
Respondent by	Sh. M.P. Rastogi, Advocate Sh. Deepak Malik, Advocate

Date of hearing:	04/12/2023
Date of Pronouncement:	04/12/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-7, New Delhi dated 28.12.2018 pertaining to A.Y. 2010-11.

2. The grievance of the assessee read as under :-

“Whether the Ld. CIT(A) has erred in law and on facts and in circumstances of the case, in deleting the addition of Rs.15,00,00,000/- made by the Assessing Officer under section 69 of the Income Tax Act, 1961, on account of unexplained investments by the assessee in the form of

cash paid to Vatika Group of purchase of land at Sectors 84 and 85 of Gurgaon, Haryana on the basis of incriminating documents/ material seized during the course of search and seizure action under section 132 of the Income Tax Act, 1961 on Dhingra group of cases on 16.01.2013 ?

3. At the very outset the Counsel for the assessee stated that the impugned grievance has been considered by this Tribunal in ITA No.3709/Del/2017 while deciding the batch of appeals in order dated 20.04.2023 in the group of cases of Span India Private Limited, SEH Realtors Ltd., U.K. Paints India Private Limited, Scorpio Research & Consultants Pvt. Ltd. and Vatika Limited. The Counsel stated that even the CIT(A) has followed his own order in the case of Scorpio Research and Consultants while giving the relief. Though the DR fairly conceded but stated that in the case in hand the AO has examined the director Ravi Kapoor and Naresh Kumar Manchanda who were confronted with the e-mails found at the time of search in which the payments in cash has been mentioned.

4. The DR stated that these facts were absent when the CIT(A) gave the relief following the decision in the case of Scorpio Research and Consultants Private Limited.

5. We have carefully perused the orders of the authorities below. We find force in the contention of the Counsel the impugned issue was also considered by this Tribunal in the case

of Vatika Limited in ITA No.3709/Del/2017. The relevant findings read as under :-

“68. We have considered the rival submissions and perused the materials on record. From the observations of the Assessing Officer in the assessment order, it is clearly evident, relying upon certain email communications between some persons related to the assessee company and other entities, the upon certain email communications between some persons Assessing Officer has concluded that in addition to the amount recorded in the agreement towards consideration for sale of land in Sector 84 and 85 of Gurgaon, the assessee received money in cash, as, the information in the email suggests that the total consideration paid towards purchase of land by different entities was to the tune of Rs.150 crores and not the recorded amount of Rs.105 crores. Accordingly, he has inferred that the assessee has received an amount of Rs.45 crores in cash outside the books towards sale consideration of land, which was added back to the income of the assessee. It is observed from the materials on record, except the email communications, the Assessing Officer has no other corroborative evidence to conclusively prove that money in cash had actually changed hands. Except the email communications, no other documents have been seized, either from the assessee or from other entities to indicate that cash payment was actually made.

Apart from relying upon the email communication, the Assessing Officer has not made proper Inquiry to establish on record that cash payments were actually made to the assessee. As rightly observed by learned Commissioner (Appeals), the emails on which the Assessing Officer placed reliance, essentially, do not patently show any agreement or discernible consent arrived at between the buyer and seller regarding the land to be purchased or the rate per sq. yards. The emails are in the nature of discussions and proposals to a planned purchase transaction. It has been factually found by learned Commissioner (Appeals) that the figures relating to the alleged total deal vary in different emails. Learned Commissioner (Appeals) has also given a factual finding that no seized materials were found conclusively establishing that any amount in cash was actually paid or any such sum was adjusted against the final sale consideration.

69. We must say, the Revenue has failed to controvert any of the factual findings recorded by learned Commissioner (Appeals). Though, email relied upon by the Assessing Officer may give rise to suspicion that there may be cash payment in addition to the recorded sale consideration, however, such suspicion, howsoever strong, cannot take place of evidence. It is a fact on record that the Assessing

Officer has not brought any evidence to establish that cash payments were actually made to the assessee.

70. In view of the aforesaid, we do not find any reason to interfere with the decision of learned Commissioner (Appeals) on this ground.”

6. While dismissing the appeal of the revenue the coordinate Bench has also considered the e-mail relied upon by the AO, therefore, on finding parity of facts we decline to interfere with the findings of the CIT(A). The appeal by the revenue is dismissed.

7. Decision announced in the open court on 04.12.2023.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

NEHA

Date:- .12.2023

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI