

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No.7888/DEL/2018
(Assessment Year: 2012-13)**

ACIT, Central Circle 28, vs. Shiv Murti Developers P. Ltd.,
New Delhi. 59/11, Old Rajinder Nagar,
New Delhi – 110 060.
(PAN : AAICS3870P)

**ITA No.7889/DEL/2018
(Assessment Year: 2013-14)**

ACIT, Central Circle 28, vs. Shiv Murti Developers P. Ltd.,
New Delhi. 59/11, Old Rajinder Nagar,
New Delhi – 110 060.
(PAN : AAICS3870P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sanjay K. Agarwal, CA
Ms. Apoorva Bhardwaj, CA
REVENUE BY : Shri Dharam Veer Singh, CIT DR

Date of Hearing : 24.06.2024
Date of Order : 30.08.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

The assessee has filed appeals against the order of the Learned Commissioner of Income Tax (Appeals)-XXXVI, New Delhi ["Ld. CIT(A)", for short] dated 07.09.2018 & 12.09.2018 for the Assessment Years 2012-13 & 2013-14 respectively.

2. Both the appeals are interconnected having common issues. Both the appeals are heard together and disposed off by this common order.

LEAD APPEAL ITA NO.7888/Del/ 2018 (AY 2012-13)

3. Brief facts of the case are, a search and seizure operation under section 132 of the Income-tax Act, 1961 (for short 'the Act') was conducted in the case of Earth Infrastructure Limited, Industrial Area Naraina, Delhi and certain documents were found and seized. As per the seized documents at pages 20, 23, 34, 35, 84 and 88 of Annexure A-79 revealed that assessee had made cash payment to the tune of Rs.5,21,34,953/- and payments by cheque to the tune of Rs.4,47,00,000/- to various farmers (land owners) and Earth Infrastructure Limited for purchase of certain land at Najafgrh, Delhi during the period from 01.04.2011 to 31.03.2012. The relevant extract of the above payments were produced in assessment order at page 2. In order to verify the source of the aforesaid payments, the summons under section 131 of the Act were issued to the assessee. During the course of investigation, the same was returned unserved. After verification of the records with the department, he observed that the opening cash and bank balance for the assessment year 2012-13 in which the assessee had made payments aggregating to Rs.9,68,34,953/- was nil. He observed that the source of the above payments made by the assessee were not found established, therefore, there is sufficient reason to believe that income to the tune of Rs.9,68,34,953/- has escaped assessment. After recording the reasons and approval under section 151(1) of the Act, he issued notice under section 148 and served on the assessee but in response, assessee submitted return of income declaring loss of Rs.5,16,000/- and requested for copy of reasons recorded which was provided to the assessee. Ld. AR of the assessee attended and submitted various details from time to time. After considering the submissions of the assessee and fully relying on the

assessment proceedings under section 143(3) read with section 153A/153C of the Act for the assessment year 2012-13 in the case of Murlidhar Infracon Pvt. limited and response from assessee vide letter dated 21.03.2016, the same was reproduced by the AO in his order. For the sake of brevity, the same is reproduced below :-

“1. The Promoters / Management of Earth Group of Companies were interested to undertake a Farm House project in New Delhi locality.

2. Sh Pawan Sharma father of Aditya Sharma who is shareholder and Director of Shiv Murti Developers (P) Limited was also keen to undertake such a project. Sh. Pawan Sharma has vast experience of 25 years in Land Procurement, Farm House Business.

3. As their business interest met, they (i.e. Management of Earth Group and Sh Pawan Sharma alias Shiv Murti alias Aditya Sharma alias SM) came together and mutually agreed among themselves that a new company will be incorporated (i.e. Murlidhar Infracon Private Limited) for the purpose and they will hold the share capital of the company in the profit sharing ratio.

4. There was an understanding in between Murlidhar and Sh.Pawan Sharma alias Shivmurti. As per the understanding, land pooling and consolidation of land was the responsibility of Sh. Pawan Sharma alias Shivmurti due to his vast experience and Development of the same was to be done by Murlidhar, a company of the Earth Group.

5. As per initial arrangement the share in capital of Murlidhar was to be 60 % of the Earth Group and 40 % of the Sh. Aditya Sharma son of Pawan Sharma alias Shivmurti (SM). Investment was also to be done by Earth Group and SM alias ShPawan Sharmal Aditya Sharma in the same ratio (i.e. 60:40). Land was to be consolidated in the name of M/s Murlidhar Infracon (P) Limited, whose capital was held by both in the Profit sharing ratio (i.e. 60:40).

6. Since land pooling and consolidation of land was the responsibility of Sh. Pawan Sharma alias Shivmurti (SM) , so the role at initial stage was dominantly of Sh. Pawan Sharma alias Shivmurti (SM) .

7. After some initial deals handled and done by Sh.Pawan Sharma alias Shivmurti (SM) as per the initial understanding, Sh Pawan Sharma had come to EIL Management with papers relating to Advances / Biyanas allegedly done by him with selling parties. But the Promoters of Earth Group smelled siphoning off funds by Sh Pawan Sharma alias SM in the dealing either in individual capacity or in connivance with the prospective sellers, point blank refused into or even recognize any such deal at such exorbitant rates. In turn Sh Pawan Sharma alias SM turned up later on and submitted that all deals were renegotiated and Murlidhar had to pay only the renegotiated prices as per the Registries. However,

the payments through ATS and Receipts shown to Murlidhar were requested to be ignored, but cheque payments were requested by him to be considered.

8. However, when asked to contribute his share of 40% as agreed, Sh. Aditya Sharma / Pawan Sharma alias Shiv Murti requested that presently he is short of liquidity and accordingly would contribute not more than 20% /30% in the deal. As a consequence, on 03rd November, 2012 and 12th December, 2012 Murlidhar increased its share to 70% and 80% respectively and Sh. Pawan Sharma alias Shiv Murti reduced its share to 30% and 20% respectively, as already brought on record in the statement of Sh Avdhesh Goel.

9. When after reduction of share to 20 %, again Earth Group asked for settlement of accounts, Mr Pawan Sharma alias SM again came in first week of January, 2013 with the papers, which are seized and again claimed that he has spent as per these papers. He was clearly told that Earth Group Management recognizes the dealing as per the Registry values only, as agreed earlier while getting the Registry done.

10. He raised a dispute and the left the papers at Earth Group Office to be reviewed/ seen by Promoters of Murlidhar.

11. In the mean time there was a Search operation on Earth Group on 16.01.2013 and these papers were seized.

12. Later on Mr Pawan Sharma alias SM also admitted in person, during talks that although at the stage of Biana, in some cases he had paid cash to negotiate, but with a clear understanding with the farmer(s) that when the cheque payment will be made the same is to be returned; and he acted accordingly. As time elapsed, Mr. Pawan Sharma alias SM admitted in talks with the Promoters of the Earth Group that Cash component infect never existed and the value of the Properties is as per the Registries only. "

4. By relying on the other response, the AO proceeded to make the addition of Rs.5,21,34,953/- with the following observation :-

“8. The assessee in its reply has furnished copies of agreements with 3 parties as shown above alongwith details of cheque payments made to them and has also stated that it has never dealt with any purchase of sale of land and therefore denied that the documents belong to it. The reply of the assessee alongwith documents submitted by it has been considered vis-à-vis reply of M/s. Murlidhar Infracon Pvt. Ltd. for the A.Y. 2012-13 and the seized documents as per

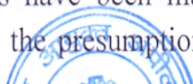
Annexure A-79. The reply of the assessee is not acceptable in view of the fact that as per the documents seized as per the said annexure the name of the assessee company i.e. "Payment Paid by Shivmurti" is clearly mentioned against the cash/cheque payments made to various farmers and to Earth and its name is repeatedly appearing on other pages of the said annexure as well as is displayed in the table at Page No.2 above. The assessee has not given any justification with regard to the fact that its name is repeatedly reflected as "Payment Paid by Shivmurti" against such payments on various pages of the seized documents. Therefore, denial of the assessee of not having made any payments in respect of land deals just on the pretext that the documents belong to M/s Murlidhar Infracon Pvt Ltd is not acceptable. Further, on perusal of the sale deed agreement submitted by the assessee company in three cases, as mentioned above, it is seen that M/s Murlidhar Infracon P Ltd (vendee) has been represented by its Director Sh Aditya Sharma S/o Sh Pawan Sharma and he has also signed these sale deed agreements for Murlidhar Infracon Pvt Ltd. It may be mentioned that Sh Pawan Sharma is Director of the assessee company. Therefore, the submission made by M/s Murlidhar Infracon P Ltd during the assessment proceedings in its case (reproduced supra) that there was an agreement between the management of EIL and Shiv Murti for purchase and development of Land is found to be acceptable and hence role and involvement of the assessee company in purchase of lands in respect of which cash and cheque payments have been made cannot be ruled out. Moreover, assessment u/s 153A r.w.s 153C in the case of M/s Murlidhar Infracon Pvt Ltd for A. Y. 2012-13 has already been completed wherein on the basis of the aforesaid seized documents protective addition of Rs.1,82,82,953 has been made in its case on account of cash payments out of total cash payments of Rs 5,21,34,953 pertaining to the period beginning from the date of incorporation of the said company viz 28.12.2011. From the above facts and the seized documents it is clearly evident that the said cash payments have been made by the assessee company on land deals and therefore substantive addition of Rs 5,21,34,953 is made in the hands of the assessee company as cash payments out of its undisclosed sources."

5. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A)-XXVI, New Delhi and raised several issues on jurisdiction as well as on merits. Before the Id. CIT (A), Id. AR submitted as under :-

OUR SUBMISSION

It is further respectfully submitted that Ld AO has completed assessment U/s 147/143(3) of the Income Tax Act'1961 in case of appellant company by making additions of Rs. 5,21,34,953/- solely on the basis of cash payments recorded in Page No. 20,23,34,35,84 & 88 of Annexure A-79 seized during the course of search U/s 132 carried out on Earth Infrastructure Ltd. in their premises at B-100, Industrial Area, Naraina, Delhi stating that the appellant company M/s Shiv Murti Developers Pvt. Ltd. made cash payments to the tune of Rs. 5,21,34,953/- on land deals during the period from 01.04.2011 to 31.03.2012. In this regard the pertinent facts borne on record which are completely ignored by Ld. AO are as under:

- a. That the assessee company is maintaining regular books of accounts which are duly audited under the Companies Act'1956 by independent chartered accountant and accounts are audited on yearly basis and no defect has been found by Ld AO in books of accounts maintained by assessee company.
- b. That the alleged documents was not seized from the possession of the appellant company as such no presumption can be drawn Sec 292C of the Income Tax Act'1961 that the document so seized from the third party may belong to appellant.
- c. That in all the seized materials i.e. Page No. 20,23,34,35,84 & 88 of Annexure A-79 referred to in reasons recorded (Copy enclosed at **Page No. 2-7 of Paper Book - 2**) two types of payments have been mentioned:
 - i. Cash Payment
 - ii. Cheque Payment
- d. This fact further stands verified from copy of assessment order dated 31.03.2016 U/s 153C of M/s Murlidhar Infracon Pvt. Ltd. where the Ld AO has made an addition of Rs.1,82,82,953/- (Copy enclosed at **Page No. 58-62 of Paper Book**) only the cash portion as appearing in the seized documents and the amounts of cheques has been ignored, the reasons is that the same stands verified from the books of accounts. It is further submitted that if the payment by cheques have travelled from bank account of M/s Murlidhar Infracon Pvt. Ltd. then the presumption automatically drawn that the payments have been made by them by cheques which tally with their books of accounts the presumption the payment in cash should have been made by them and



the document only belong to M/s Murlidhar Infracon Pvt. Ltd. and not to appellant company.

- e. That from the perusal of sample copy of conveyance deed for purchase of land executed in favor of M/s Murlidhar Infracon Pvt. Ltd. enclosed at **Page No. 11 to 34 of Paper Book-2** and chart showing cheque payments stated in this conveyance deed enclosed at **Page No. 35 of Paper Book - 2**, your honor will appreciate that cheque payments stated in seized material has been made by M/s Murlidhar Infracon Pvt. Ltd. and the land is also purchased by them which is also appearing in their audited Balance Sheet as on 31.03.2012 as "Inventories" (Note No. 8) immovable property-land (Copy enclosed at **Page No. 45-54 of paper Book-2**).
- f. That the appellant company maintained only one bank account during the Financial Year 2011-12 i.e. Current account No 00262560001019 with HDFC Bank Ltd, Old Rajinder Nagar, Delhi (**Copy enclosed at Page No 10 of Paper Book – 2**) and during the Financial year 2011-12 the total receipts in the said bank account is Rs. 26 lacs and total payment is Rs. 30 Lacs, only. The balance in said bank account as on 31.03.2011 and 31.03.2012 matches with the opening and closing bank balance and stated in Audited Balance Sheet of appellant company and audited balance sheet match with Books of Accounts regularly maintained by the appellant company and no defect has been found by Ld AO in books of accounts.
- g. That from the perusal of details of receipts and payments made out of aforesaid bank account maintained by appellant company (Cope enclosed at **Page No. 9 of Paper Book-2**) your honour will appreciate that none of the payments made by appellant company for purchase of any land. Further, none of the cheque payment appeared in seized material is made by appellant company. That the reference of cheques given in the seized document where name of the bank i.e. Punjab National Bank or cheque number given have not been issued by the appellant company since from the beginning the appellant company has never had/operated any bank account with Punjab National Bank. Moreover the cheque number mentioned in the seized paper have never been issued by the appellant company and that the same stands verified from the copy of bank statements of appellant company and books of accounts maintained by it. Further it was also not a case that Ld AO who has found any other bank account held by the appellant company except that is recorded in books of accounts.
- h. That the appellant company has not purchased any land during the year under consideration or in earlier or subsequent years as evident from Audited Balance Sheet as on 31.03.2012 (enclosed on **Page No. 4-20 of Paper Book**). Further it is not a case that Ld AO who has ever claimed that the assessee company is found in possession of any land in the name of assessee company.
- i. That the headline of seized documents shows "PAYMENT PAID BY SHIVMURTI". There is no basis with Ld. AO to read "SHIVMURTI" written on seized documents as

“Shivmurti Developers Private Limited” or Ld. AO has not assigned any reason in reasons recorded what made him to read “SHIVMURTI” as “Shivmurti Developers Private Limited”. The word Shivmurti may represent to any proprietorship/partnership concern also.

- j. That there is no statement available from M/s Earth Infrastructure from whose possession material were seized or any other person mentioned in the seized material stating that the cash and cheque payment mentioned in seized material have been made by the appellant company or the transactions recorded therein belongs to the appellant company. On the basis of judgment at **S.M Aggarwal 293 ITR 43 (DEL)** where held that *“only the person competent to give evidence on the truthfulness of the contents of the documents is the writer, therefore only Earth Infrastructure Limited is liable to explain the documents and appellant cannot be made liable for documents seized from third party in the absence of any corroborative evidence”*.
- k. That Ld. AO is going by the form of the documents seized only ignoring the substance i.e. content of the documents. The form of the document is that it contains as a head note “PAYMENT PAID BY SHIVMURTI” whereas in substance it contains two types of payments made i.e. cheques and cash. Payment in cheque has been accepted as made by M/s Murlidhar Infracon Private Limited in their assessment U/s 153C/143(3) as evident from copy of assessment order placed at Page No. – of Paper Book) whereas payments in cash has been presumed to have been made by appellant. Further it is held by the hon’ble Apex Court in the case of **Sir Kikabhai Premchand 24 ITR 506 (SC) (1953)** that *It is well recognized that in revenue cases regard must be had to the substance of the transaction rather than to its mere form* and Ld Ao is adopting pick and choose approach insofar as considering cheque transactions have been made by M/s Murlidhar Infracon Pvt. Ltd. and the cash transactions have been made by the appellant company which is against the principles of natural justice and the ratio laid down by Hon’ble Vishakhapatnam Tribunal in the case of **Bommanna Swarna Rekha 147 Taxmann 59** wherein it is held that *where during course of search at residence of assessee's husband, a piece of paper without any name, date or signature was found - Assessing Officer treating part of transactions mentioned in loose paper as relating to assessee, made certain additions as unexplained expenditure and as unexplained investment by assessee - Whether loose paper found and seized had to be read in toto and it could not be read as partly belonging to husband of assessee and partly belonging to assessee - Held, yes - Whether onus was on Assessing Officer to prove that transactions as stated in said loose paper, which was not found from possession of assessee, related to assessee - Held, yes - Whether since Assessing Officer had not brought out any cogent evidence or material on record which might prove that part of items stated in paper, represented transactions entered into by assessee impugned additions were to be deleted - Held, yes.*

Further Hon’ble High Court of Calcutta in the case of **Kultar Singh v Mukhtiar Singh (1964) 7 SCR 790** and **Jagannath Deb Roy v. Byomkesh Roy AIR 1973**



Cal 397 that *One of the well established rule of construction is that the document must be read as a whole. A piecemeal reading of the document either of recital or operative portion or the covenants cannot bring about a fair and proper construction of a document.*

The reasons for making addition as stated by Ld. AO in assessment order reads as under:

“The reply of the assessee is not acceptable in view of the fact that as per the documents seized as per said Annexure the name of the assessee company i.e. “PAYMENT PAID BY SHIVMURTI” is clearly mentioned against cash/cheque payments made to various farmers and to Earth and its name repeatedly appearing on other pages of the said annexure as well as is displayed on the table in the page No. 2 above. The assessee has not given any justification with regard to the facts that its name is repeatedly reflected as “PAYMENT PAID BY SHIVMURTI” against such payments on various pages of seized documents. Therefore, denial of assessee of not having made any payment in respect of land deals just on the pretext that document belong to Murlidhar Infracon Pvt. Ltd. is not acceptable. Further, on perusal of said sale deed agreement submitted by the assessee company in three cases as mentioned above, it is seen that M/s Murlidhar Infracon Pvt. Ltd. (Vendee) has been represented by its director Sh. Aditya Sharma Son of Sh Pawan Sharma and he has also signed these sale deed agreements for Murlidhar Infracon Pvt. Ltd. it may be mentioned that Sh. Pawan Sharma is director of the assessee company. Therefore the submission made by Murlidhar Infracon Pvt. Ltd. in its case reproduced (supra) that there was an agreement between management of EIL and Shivmurti for purchase and development of land is found to be acceptable and hence role and involvement of the assessee company in purchase of land in respect of cash and cheque payments have been made cannot be ruled out”.

From the perusal of same, your honor will appreciate that Ld. AO relied upon submission made by Murlidhar Infracon Pvt. Ltd. during their assessment proceedings which is not part of reasons recorded by Ld AO to assume jurisdiction u/s 147/148 of the Income Tax Act'1961. Further jurisdictional high court in case of **Xerox Modicorp Ltd. 350 ITR 308 (Del) (2013)**, **Meenakshi Overseas (P.) Ltd. 82 taxmann.com 300 (Delhi) (2017)**, **Madhukar Khosla v. Assistant Commissioner of Income Tax (2014) 367 ITR 165 (Del)** held that *“The Reassessment proceedings have to stand or fall on the basis of what was stated in the reasons recorded U/s 148(2) and nothing more”*. Hence, no adverse inference can be drawn on the basis of submission of M/s Murlidhar Infracon Pvt. Ltd. during their assessment proceedings which is neither part of reasons recorded nor supported by any tangible evidence. Further, the same was not confronted to the appellant company before using the same against the appellant. As such, no adverse view should be taken based on such evidence as held by hon'ble apex court in the case of **Kishan Chand Chela Ram 125 ITR 713.**



Without prejudice to above, at Point 12 of said letter dated 21.03.2016 by M/s Murlidhar Infracon Pvt. Ltd. they have stated as under:

Point 12: Letter of Pawan Sharma Alias SM also admitted in person, during talks that although at the stage of Biana, in some cases he had paid cash to negotiate, but with clear understanding with the farmer(s) that when the cheque payment will be made the same is to be returned; and he acted accordingly. As time elapsed, Mr. Pawan Sharma Alias SM admitted in talks with the promoters of Earth group that cash component in fact never existed and the value of the properties is as per the Registries only”.

As per the submission of M/s Murlidhar Infracon Pvt. Ltd. that Mr. Pawan Sharma finally admitted in talks with the promoters of Earth Group that cash component in fact never existed and the value of the properties is as per registries only and all the registries were in the name of M/s Murlidhar Infracon Pvt. Ltd. only. It is not the case of Ld AO that any of the registry is in the name of appellant company.

- m. It is not the case of Ld. AO whereby he had found any undisclosed source of income of the appellant to suggest any such large payment. Further the evidence available also does not suggest any such payment being made by appellant company whose net worth is only Rs. 11,64,675 on 31.03.2011 & Rs. 6,89,943 as on 31.03.2012.

In view of the facts stated herein before, your honour will appreciate that the allegation of Ld AO that the cash payment of Rs. 5,21,34,953/- mentioned in seized material has been made by appellant for purchase of land is based on his own presumption and not supported by any supporting evidence. Further, the corroborative evidence stated herein before and produced during the course of assessment proceeding also does not suggest that the seized material or cash payment stated therein belongs to appellant company. It is held by jurisdictional high court in the case of **Phonenix Datatech Services (P.) Ltd. [2017] 77 taxmann.com 294 (Delhi)** that *Where certain addition was made to assessee's income on basis of a chart recovered from search proceedings carried out in case of third party, since assessee was neither a searched party nor a party receiving notice under section 153C, evidentiary value of chart recovered could not be regarded as conclusive and, thus, impugned addition was to be set aside.*

Further the addition made by Ld. AO is based on his own presumptions and based on mere suspicion and not based on any tangible evidence to prove that the appellant company has made any cash payment or has purchased any land. Hon'ble Apex Court in the cases of **Lal Chand Bhagat 37 ITR 288 (SC), Dhakeshwari 26 ITR 775 (SC)** where it is held that *“there must be something more than suspicion to support an assessment. Assessment based on pure suspicion is bound to be quashed.”*

In our case also the appellant is neither a searched party nor a party receiving notice U/s 153C and hence evidentiary value of seized material stated by Ld. AO could not be regarded



as conclusive in the absence of any corroborative evidence to make any addition as done by
 Ld. AO.

Further we place reliance on following judgments wherein evidentiary value of seized material for making addition has been decided:

1. **DK Gupta 174 Taxmann 476 (Del)** held that "*there was no corroborative or direct evidence to presume that notings/jottings recorded in said two diaries had materialized into transactions giving rise to income which had not been disclosed in regular books of account - Tribunal, therefore, upheld order of Commissioner (Appeals)*".
2. **Amarjit Singh Bakshi 86 ITD 13 (Del) (TM)** *Whether where document in question was not recovered from assessee's possession but was recovered from N's possession, and assessee was not allowed any opportunity of cross-examination and, further, N's testimony was not found credible at all, it could not be said that there was any iota of evidence to support revenue's case that a huge figure over and above figure booked in records and accounts changed hands between parties and, therefore, no addition could be made based on such document in hands of assessee - Held, yes*
3. **Jindal Stainless Ltd 120 ITD 301 (Del)** *Whether documents recovered from residential premises of 'S' could not be made basis for making addition in assessment framed in case of assessee without providing assessee an opportunity to cross-examine 'S' and also without bringing on record any positive material that assessee had received extra money from customers outside books of account - Held, yes - Whether therefore, impugned addition made to income of assessee was not justified and deserved to be deleted. Yes.*
4. **TS Venkatesan 74 ITD 298 (Cal)** *In the absence of corroborative material, addition of undisclosed income could not be made simply on the basis of entries on loose papers recovered from third party and certain general statement of said party.*
5. **Doon Valley Roller Flour Mills P Ltd 31 ITD 238 (Del)** *Whether mere fact that certain books of account were found lying in compound of one of its shareholders, was not sufficient to link those books with assessee, especially when assessee did not admit ownership of those books, and in such circumstances, presumption could not be raised against assessee.*
6. **CIT v. S.M. Aggarwal [2007] 293 ITR 43/162 Taxman 3 (Delhi)**, "*no adverse inference can be drawn unless the author of the document was examined, particularly since the document did not belong to the Assessee.*
7. **In Mahavir Woollen Mills case [2000] 245 ITR 297 (Delhi)**, during the course of search and seizure proceedings, certain slips were found, which, the Assessing Officer concluded, contained details of payment beyond those which were made by cheques and drafts and were duly reflected in the books of account. The assessee's stand before the Tribunal was that the documents were "dumb documents" which did not contain full details about the dates of

payment and its contents were not corroborated by any material and could not be relied upon and made the basis of addition. The Tribunal considered this aspect and observed that on comparison of the seized documents and ledger accounts of the parties, the seized documents could not be regarded as "dumb documents".

8. **CIT v. Ved Prakash Choudhary [2008] 305 ITR 245/169 Taxman 130 (Delhi)**, "in the absence of corroborative material, the additions made on the basis of sketchy documents which were unproved cannot be sustained in law.
9. **CIT v. Vivek Aggarwal [2015] 231 Taxman 392/56 taxmann.com 7 (Delhi)** "*unless the amounts stated in the documents were actually paid, it cannot be presumed that the amount mentioned in the sale deed was not correct*".
10. **CIT v. Kantilal Prabhudas Patel [2008] 296 ITR 568 (MP) and CIT v. Manish Buildwell (P) Ltd. [2012] 204 Taxman 106/[2011] 16 taxmann.com 27 (Delhi)** *that the additions cannot be made on guess work or estimates.*

In the facts and circumstances, addition of Rs. 5,21,34,953/- made by Ld AO solely on the basis of contents of material seized from third party and not supported by any corroborative evidence is liable to be deleted and the appellant prays for the same.

6. Ld. CIT (A) remanded the matter back to AO vide letter dated 23.04.2018 and further remanded the matter vide letter dated 04.01.2018. In response, the AO submitted the relevant remand report which is reproduced by the Id.CIT(A) at pages 21 to 23 of the order and in response, assessee has submitted rejoinder to the remand report and the same is reproduced at pages 24 to 29 of the order. Further, assessee also filed an affidavit before Id. CIT (A) and the same was considered under section 250(4) of the Act and same was reproduced at pages 31 to 34 of the order. After considering the remand report and response to the remand report and affidavit, Id. CIT (A) deleted the substantive addition in the hands of the assessee and directed to initiate the proceedings in respect of correct entity by observing as under :-

“ Having considered the facts of the case, the affidavit filed supra is considered. The appellant has not undertaken any such transaction as there is no substantive evidence on record to establish. The appellant produced evidence in the form of conveyance deed for purchase of land executed in

favour of Murlidhar Infracon Pvt. Ltd. during the year under consideration which contains cheque details which are also stated in seized material as well as issued from bank account of Murlidhar Infracon Pvt. Ltd. The AO concluded that appellant company M/s Shiv Murti Developers Pvt. Ltd. made cash payments to the tune of Rs.5,21,34,953/- and by cheques to the tune of Rs.4,47,00,000/- to various farmers (land owners) and M/s Earth Infrastructure Limited for purchase of land at Najafgarh from 01.04.2011 to 31.03.2012 but this imputation is not supported by any corroborative evidence. There is no detail of such lands having been purchased. The appellant categorically denied having purchased any land during the period from 01.04.2011 to 31.03.2012 or made any cash or cheque payment to any farmers, land owners or Earth Infrastructure Limited for purchase of land. It appears to be a case of mistaken identity. The AO is directed to pick up the accounting trail from the bank accounts of M/s Murlidhar Infra Pvt. Ltd. and identify the correct party to examine the veracity of seized documents against that person/ entity and then initiate the process of reassessment as per the Act. This direction is issued under section 150 of the Income Tax Act 1961.”

7. Aggrieved with the above order, Revenue is in appeal before us by raising following grounds of appeal :-

“1. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in totally deleting the addition of Rs.5,21,34,953/- with regard to purchasing of lands from various farmers (land owners) and M/s. Earth Infrastructure Ltd. at Najafgarh from 01.04.2011 to 31.03.2012.

2. That the order of ld. CIT (A) is perverse, erroneous and is not tenable on facts and in law.

3. That the grounds of appeal are without prejudice to each other.”

8. At the time of hearing, ld. DR for the Revenue submitted that ld. CIT (A) has not forwarded any record to AO after accepting the additional evidence in the form of affidavit. In this regard, he brought to our notice page 31 of the first appellate order. Ld. DR submitted that assessee has purchased agricultural land from various farmers and made several payments to them. He submitted that Murlidhar Infracon Pvt. Ltd.

was incorporated only on 28.12.2011. However, several payments were made to farmers before its incorporation. By observing such payments, the AO has rightly made substantive addition in the hands of the assessee and protective addition in the hands of Murlidhar Infracon Pvt. Ltd.. He submitted that the same was reversed by Id. CIT(A) by relying on the submissions made by the assessee i.e. he deleted the substantive addition in the hands of the assessee. He brought to our notice para 7.2 of the assessment order and submitted that all the payments were made by cheques/cash before incorporation of Murlidhar Infracon Pvt. Ltd. and he submitted that Id. CIT (A) has not appreciated the above facts properly. He submitted that the payments were made before incorporation of Murlidhar Infracon Pvt. Ltd., who had made the abovesaid payments. He submitted that Id. CIT(A) also found that the information found in the seized documents are genuine. In this regard, he brought to our notice page 193 of the paper book which is the sale deed entered by Murlidhar Infracon Pvt. Ltd. with Palak Properties Pvt. limited and he brought to our notice page 197 of the paper book wherein certain payments were made during 2011-12 and submitted that a payment of Rs.22 lakhs vide cheque no.575073 was made on 21.11.2011 which is before incorporation of Murlidhar Infracon Pvt. Ltd.. Similarly, he brought to our notice page 204 which is another sale deed with Murlidhar Infracon Pvt. Ltd.. In this case also, similar payment was made before incorporation of Murlidhar Infracon Pvt. Ltd.. By bringing the above agreement, he submitted that cheque payments were matching with the seized document, therefore, cash payment also to be presumed as true. Further, he submitted that the affidavit filed by the assessee before the Id. CIT(A) should be remitted to the AO and submitted that as per para 5 of the abovesaid

affidavit, the facts mentioned are wrong and incorrect. By referring to the findings of the Id. CIT(A), he submitted that factual incorrect findings were recorded by the Id. CIT (A). Therefore, he prayed that the issue may be remitted back to AO for proper verification.

9. On the other hand, Id. Counsel for the assessee submitted that a search on Earth Infrastructure Ltd. was conducted on 16.01.2013 and this fact on record that "SM" was mentioned in the seized document and it denotes Shiv Murali Dharam and it does not refer to Shiv Murti Developers P. Limited i.e. assessee. Further, he brought to our notice page 87 of the paper book which is the assessment order passed under section 153C read with section 153A/144 of the Act in the case of Murlidhar Infracon Pvt. Limited wherein protective addition was made in their hands of Rs.1,82,82,953/-. Further, he brought to our notice page 224 of the paper book which is the Notes to the Financial Statement of Murlidhar Infracon Pvt. Ltd. and the list of the shareholders are given and submitted that assessee is not a shareholder and assessee is only a commission agent. He brought to our notice page 35 of the paper book which is the balance sheet of the assessee company. Further he brought to our notice page 41 of the paper book wherein assessee was given various advances to land owners to the extent of Rs.1,66,00,000/-. Prior to incorporation of Murlidhar Infracon Pvt. Ltd. whatever the payments were made to various land owners, the AO presumed that the same have been made by the assessee. In this regard, he brought to our notice para 7.2 of the assessment order and brought to our notice sub-para no.4 wherein it is recorded as under :-

“4. There was an understanding in between Murlidhar and Sh. Pawan Sharma alias Shivmurti. As per the understanding, land pooling and consolidation of land was the responsibility of Sh. Pawan Sharma alias Shivmurti due to his vast experience and development of the same was to be done by Murlidhar, assessee company of the Earth Group.”

10. With the above submission, he brought to our notice page 35 of the first appellate order and supported the findings of the Id. CIT(A) and no prejudice is caused to the Revenue with the findings of Id. CIT (A) that the addition has to be made in the hands of Murlidhar Infracon Pvt. Ltd.. By referring to the submissions of the Id. DR for the Revenue, he submitted that no doubt, certain payments were made before the incorporation of Murlidhar Infracon Pvt. Ltd. but these payments were not made by the assessee and he submitted that absolutely no prejudice caused to the Revenue and Id. CIT (A) only gave direction to the AO to redo the assessment properly under section 150 of the Act.

11. Considered the rival submissions and material placed on record. We observed that the assessee is a private limited company engaged in the business of commission agent and as per records, the assessee has only one bank account maintained with HDFC Bank, Old Rajender Nagar, New Delhi. Subsequent to search conducted in the case of Earth Infrastructure Ltd., Delhi, certain documents were found and seized which included documents identified as Annexure A-79 whereby certain cash payments and payments by cheque were found which were made to various farmers during the period 01.04.2011 to 31.03.2012. We observed from the record that the AO initiated the proceeding under section 153C of the Act in the case of Murlidhar Infracon Pvt. Ltd. and made the addition of Rs.1,82,82,953/- on account of cash

payments out of the total cash payment of Rs.5,21,34,953/- pertaining to the period beginning from the date of incorporation of Murlidhar Infracon Pvt. Ltd. on protective basis. However, in the case of assessee, the assessment was completed under section 143(3) read with section 147 of the Act.

12. We observed from the record that the assessee has submitted evidences in the form of conveyance deed for purchase of the land executed in favour of Murlidhar Infracon Pvt. Ltd. during the year under consideration and from various conveyance deed submitted before the authorities and also before us shows that cheque payments were made to various farmers and the same are recorded in the conveyance deed and also found that certain cash payments were made to the farmers and same was seized during search proceedings and corroborative evidences were submitted and available with the AO. Since all the conveyance deeds were registered in the name of Murlidhar Infracon Pvt. Ltd. and it is presumed reasonably that the cash payments also would have been made by Murlidhar Infracon Pvt. Ltd. and there is no corroborative evidence found and available with the AO which denotes to the assessee. Corroborative evidence found during search with the name Shiv Murthy, the AO presumed that it is belonging to assessee. Mere Shiv Murthy does not denote only to the assessee it may denote to any other person also. Since the conveyance deeds are registered in the name of Murlidhar Infracon Pvt. Ltd. and the assessee is merely a commission agent and as per the balance sheet submitted before us by the assessee, there is no evidence that assessee has purchased any asset during the year nor earlier. As per the affidavit filed before the Id. CIT (A), the facts are clear that assessee has acted merely as a commission agent and all the payments relate to

Murlidhar Infracon Pvt. Ltd. only. Ld. DR raised certain issues relating to certain payments made to the farmers before the incorporation of Murlidhar Infracon Pvt. Ltd.. We observed from the conveyance deeds that Murlidhar Infracon Pvt. Ltd. has accepted that they have made payments by mentioning various payments made to farmers prior to its incorporation. It clearly denotes that the directors/shareholders of Murlidhar Infracon Pvt. Ltd. must have made the arrangement to make those payments. There is no record brought on record by the Revenue that these payments were routed through bank accounts maintained by the assessee. Therefore, in absence of any cogent material, we are inclined to agree with the findings of Id. CIT (A). We do not see any reason to disturb the finding of the Id. CIT (A) and Id. CIT (A) merely deleted the addition made in the hands of the assessee, however he remitted the issue back to the file of AO to redo the assessment after making proper verification. Therefore, there is no prejudice caused to the Revenue with the findings of Id. CIT (A). Accordingly, the grounds of appeal filed by the revenue are dismissed.

13. The facts in ITA No.7889Del/2018 in assessment year 2013-14 are mutatis mutandis to the above case, hence our above order applies to the AY 2013-14 also.

14. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on this 30th day of August, 2024.

**Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 30.08.2024
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-XXVI, New Delhi.
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**