

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.5181/Del/2017, A.Y.2011-12

Assistant Commissioner of Income Tax, Central Circle-18, Income Tax Office, Jhandewalan, New Delhi	Vs.	Snerea Properties Pvt. Ltd. 296, Forest Lane, Neb Sarai, Sainik Farms, New Delhi PAN: AAJCS5856Q
(Appellant)		(Respondent)

ITA No.5182/Del/2017, A.Y.2011-12

Assistant Commissioner of Income Tax, Central Circle-18, Income Tax Office, Jhandewalan, New Delhi	Vs.	Shrey Properties Pvt. Ltd. 296, Forest Lane, Neb Sarai, Sainik Farms, New Delhi PAN: AAJCS5853M
(Appellant)		(Respondent)

Appellant by	Shri Kunal Pawar, CA
Respondent by	Ms. Jaya Chaudhary, CIT(DR)

Date of Hearing	21/11/2024
Date of Pronouncement	19/01/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

Since the issues involved in these appeals are identical; hence, these are being heard together and are being disposed off by this common order for the sake of brevity.

2. These appeals for the Assessment Year (hereinafter, the 'AY') 2011-12 filed by the Revenue are directed against orders dated 09.05.2017 passed by the Commissioner of Income Tax (Appeals)-27, New Delhi [hereinafter, the 'CIT(A)'].

3. The grounds taken by the Revenue in these appeals are similar; therefore, the grounds taken in the ITA No. 5182/Del/2017 in the case of Shrey Properties Pvt. Ltd. are reproduced hereinunder:

"1. On the facts and in the circumstance of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 75 Cr. without appreciating the facts that the shares of the assessee company were transferred during the year for a meagre amount of Rs. 5 Cr. whereas the valuation of the company due to the ½ share of ownership of land at Prithvi Raj Road, was land worth Rs. 75 Cr. implying that the substantially part amount of the consideration has been received in cash which is evident by the MOU dated 10.08.2011 entered into between Sh. D.K. Gupta and Sh. Sanjeev J Aerens the substantive share holder and director of the company.

2. The Ld. CIT(A) has erred in holding that the A.O has not recorded a proper satisfaction note and passed the order u./s 147/143(3) of the Act without providing proper opportunity to the assessee whereas It is evident from the assessment record that before issuing notice u/s 148 of the Act to the assessee the A.O. has properly recorded reasons for re-opening of the case and the order was passed after providing sufficient opportunity to the assessee.

3. The Ld. CIT(A) has erred in holding that forwarding of matter to the valuation cell is bad interpretation of the Act the A.O. has discretion to refer the matter of valuation of assets by valuation officer.

4. The appellant crave leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

4. The facts of these cases are that the assessments in these cases were reopened under section 148 of the Income Tax Act, 1961 (hereinafter, the ‘Act’) based on the information gathered during the search & survey operations carried out in the group cases of Sh. Surender Kumar Gupta, wherein a MOU in respect of the property No.15/1 Prithviraj Road, New Delhi co-owned (50% each) by these two assesseees (Snerea Properties Pvt. Ltd and Shrey Properties Pvt. Ltd.) was found, which showed the transfer of the interest in the said property to Om Shivay Pvt. Ltd. in lieu of payment of Rs.5.00 Crores each to these two assesseees (in aggregate Rs.10.00 Crores). The Assessing Officer (hereinafter, the ‘AO’) estimating the market value of the said property at Rs.150.00Crores and opining that these assesseees had received the sum of Rs.150.00 Crores, reopened these cases.

4.1 During the reassessment proceedings, the AO referred the said property to the Valuation Cell of the Income Tax Dept, who reported to the AO that these assesseees had not made any investment including renovations/alterations in/of the said property in the AY 2011-12. During the course of reopened assessment proceedings, these assesseees submitted that they had not sold any property in the relevant year; therefore, the question of deriving/earning any income did not arise. Further, in response

to the specific query by the AO, it was submitted by these assesseees that the transfer of shares done by the shareholders at the price lower than the market price of the share, if any, should be considered in the hands of the transferor shareholders and not in the hands of these assesseees. However, the AO was not satisfied with the explanation of these assesseees; therefore, he observing as under, taxed the Estimated market value of the said property at Rs.150.00 Crores in the hands of these assesseees in equal proportions:

“Perusal of the valuation report, it showing that no investment have been made by the assessee company during the said period. It has been noticed that the DVO has not determined the valuation of the property 15/1 Prithiviraj Road, New Delhi as stated in the prescribed form dated 18.11.2013 submitted by this office letter no.733 dated 18.11.2013. Since as per para 3 on page 3 of the seized MOU which showing that 50% of the share in 15/1, Prithiviraj Road New Delhi property held jointly by M/s Shrey Properties Pvt. Ltd. and M/s Snerea Properties Pvt. Ltd. has been allotted to M/s Om Shivay Pvt. Ltd. (Mr. Padam Singh and Mr. Sunil Kothari being the promoters) by AEZ Infratech Pvt. Ltd. during F.Y. 2010-11 relevant to the A.Y.2011-12. Therefore, the market prices of the said property was to the determined by the DVO which was not done and the present report is only on the fresh investment on the property which was stated have not been made during the year and said report is not relevant to the requirement of the A.O.

As per the assessee company Memorandum of Article & Association, the assessee company is in the business of real estate and it has been to purchase, sell, develop, take in exchange, or on lease or otherwise acquire for sale any real estate including interest in or with respect to any immovable property for the purpose of the company in consideration a gross sum or rent or partly in one way and partly in the other or for any other Consideration and to carry on business as properties of flats and building and to let on rent apartments therein and to provide for the conveniences commonly provided in flats, suits and residential and business quarters, to enter into agreement with any company persons

for obtaining by grant of license or on such other terms of all types, formulae and such rights.

The assessee company was formed with its main abject being the deal in real estate. Rather than developing the land on its own, the assessee company has sold the land on the basis of valuation of shares during FY 2010-11. This is very clear example of an adventure in nature of trade and the transaction of business activity of the assessee company and are to be assessed as business income. Thus, the assessee purchased land and sold it rather than undertaking development activity with the sole object of deriving profit out of it. It has been concluded that the income out of the transaction is the business income of the assessee company which was not recorded in the books of accounts and the sale proceeds of land as per the sales of an independent residential house parameters is taken market value Rs.150,00,00,000/- as sale consideration of the said property in question. The share of the assessee company 50% taken at Rs. 75,00,00,000/- is treated as undisclosed sources of income u/s 68 of the IT. Act, 1961 and is to be taxed as such in the hands of the assessee company.”

4.2 Aggrieved, both assessees filed appeal before the CIT(A) who allowed the both appeals. Now Revenue is before us in both cases challenging the finding of the CIT(A).

5. The Ld. CIT(DR) contended that the one any only one inference emerged from the MOU was that the MOU was nothing but an agreement of transfer of interest of the property (15/1 Prithiviraj Road, New Delhi) co-owned by these respondent/assesseees (Snerea Properties Pvt. Ltd and Shrey Properties Pvt. Ltd.). It was not a simple case of transfers of shares by the shareholders. It was vehemently argued that had it a case of transfer of the

shares in normal course; there would have not been any requirement of MOU. She contended that the MOU not only lifted the corporate veil but also demonstrated the true nature of the transaction under reference. She submitted that it was a case of transfer of the property (15/1 Prithiviraj Road, New Delhi) taken place in the garb of transfer of shares. She, placing emphasis on the Memorandum of the Article of the respondent/assesseees, submitted that the said property was held as stock-in-trade and that why the AO had categorically held that he said income was business income. In view of the above arguments/submissions, she requested for setting aside the impugned order and restoration of the assessment orders.

5.1 The Ld. CIT-DR submitted that the case of the assessee was rightly reopened under section 147 of the Act based on the MOU and information in possession of the AO. She contended that the impugned order was non-speaking order on this issue. The Ld. CIT(A) had not given categorical finding with proper reasoning for holding that there was no proper satisfaction for reopening the case and assessment proceeding concluded under section 147/143(3) of the Act without providing proper opportunity to the assesseees. It was contended that the AO had properly recorded reasons for reopening of the case and the order was passed after affording sufficient opportunities of being heard to the assesseees.

6. Contrary, the Ld. Authorised Representative (hereinafter, the 'AR') submitted that it was case of transfer of shares. None of these respondent/assesseees had transferred the property (15/1 Prithiviraj Road, New Delhi) to anyone including Om Shivay Real Estate Pvt. Ltd. By placing emphasis on the assessment order, the Ld. AR contended that the AO would have examined the said issue in the hands of transferor shareholder; AEZ Infratech Pvt. Ltd. Our attention was drawn to the letter No. F. No. Addl. CIT/Coord./HPSA/2018-19/ 15934 dated 4/16 .01.2019 of the Office of the Principal Chief Commissioner of Income Tax, New Delhi through which the respondent/assesseees' grievance petitions filed before the High-Pitch Scrutiny Assessment Grievance Committee was disposed off. In view of this letter, the Ld. AR contended that the said assessments were held by the Committee as high pitched.

6. The Ld. AR further contended that the addition of Rs.75.00 Crores under section 68 of the Act in each case on the basis of estimation of market value of the property situated in Prithviraj Road, New Delhi was uncalled for as no such credit had been appearing in the books of accounts of these assesseees in the relevant year. Since none of these respondent/assesseees had sold the property (15/1 Prithiviraj Road, New Delhi) during the relevant year; therefore, no income on this score was assessable in the hands of these assesseees. The aforesaid transaction of property transfer, if any, had taken

place by the transferor shareholder by transfer of shares and any income/deemed income arisen in this regard on the transfer of shares was chargeable in the hands of transferor and not in the hands of the respondent/assessee.

6.1 The Ld. AR, drawing our attention to para 8.1 of the impugned order wherein the Ld. CIT(A) had held as under, questioned the applicability of Section 68 of the Act:

“8.1 I have considered the issue from all possible angles and by applying the parameters of Section 68 of the Act. I could not find single evidence which could lead to the conclusion that entire transaction is sham. Therefore, considering the entire issue in the light of the material evidence brought on record, in my considered view, the assessing officer have erred in treating advance as income of the assessee, as per financial statement and the submitted record during assessment proceedings it is clear that in the said case there are no matter involved for concealment of income. In my considered view, for the reasons discussed hereinabove, I do not find it necessary to apply the provisions of Sec. 68 of the Act. Except for this if it is considered in view of the newly inserted Section 50CA w.c.f. 01.04.17 if any taxability will be determined that will be in hands of Shareholders not in hand of Assessee Company. I, therefore, direct the AO to delete the addition of Rs. 75,00,00,000/-. Ground No. 3 is accordingly allowed.”

6.2 The applicability of Section 68 of the Act by the AO was questioned placing reliance on the decision of Hon'ble Punjab and Haryana High Court in the case of Smt. Santa Devi 171 ITR 532 and Hon'ble Mumbai High Court in the case of Bhaichand N. Gandhi [1983] 141 ITR 67. The Ld. AR contended that the Ld. CIT(A) had rightly held that the reopening of the cases was not proper as there was no proper satisfaction note recorded

under section 147 of the Act. Further, the AO did not provide proper opportunity of being heard during the reopened assessment proceedings.

7. We have heard both the parties and have perused the material available on the record. We take note of the fact that the Ld. CIT(A) has not decided each ground of appeal with detailed reasoning for disagreeing with the assessment order. As per provisions of section 250(6) of the Act, the CIT(A) is obliged to dispose of the appeal in writing after stating the points for determination with detailed reasoning for the decision on each such point of determination. Here, the finding of the Ld. CIT(A) on each issue is not more than 1-2 paras. The finding, according to us, is not well reasoned.

8. We are of the considered view that the AO; on one hand has held the disputed addition as business income and on other hand as income under section 68 of the Act. Such anomaly does exist in the assessment order. However, the AO has not brought detailed facts emerged from the MOU that how and when the said property (15/1 Prithiviraj Road, New Delhi) is held as stock-in-trade from the asset, if any, in the books of account

9. In view thereof, without offering any comment on merit of the case, we deem it fit to set aside the impugned orders and remit the matter back to the file of the CIT(A) for deciding these cases, in accordance with law, after providing adequate opportunity of being heard to the assesseees. The

assessee, no doubt, shall cooperate in fresh appellate proceedings before the Ld. CIT(A).

10. Both appeals of the Revenue are allowed for statistical purposes.

Order pronounced in open Court on 19th February, 2025

Sd/-

(YOGESH KUMAR US)
JUDICIAL MEMBER

Dated: 19/02/2025

Binita, Sr. PS

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT/CIT
4. CIT(A)
5. Sr. DR-ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI