

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'A': NEW DELHI.**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
and
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1000/DEL/2024
(Assessment Year :2020-21)**

DCIT vs. Payal Khemka
Central Circle- 6 67/85-2 Jhun Bhawan, Natimali Varanashi
Delhi Uttar Pradesh 221001

(PAN: ADTPJ2728A)

**ITA No.1002/DEL/2024
(Assessment Year :2020-21)**

DCIT vs. PMK Impex Pvt. Ltd.
Central Circle- 6 1 Tolstoy Marg, Connaught Place,
Delhi New Delhi, Delhi 110001

(PAN: AAECPP8026G)

**ITA No.1004/DEL/2024
(Assessment Year : 2020-21)**

DCIT vs. Rajesh Rani Khemka.
Central Circle- 6 Cloth Market, Chandni Chowk,
Delhi Delhi 110055

(PAN: AAFPK 7336N)

**ITA No.1005/DEL/2024
(Assessment Year : 2020-21)**

DCIT vs. Rama Shankar Khemka.
Central Circle- 6 4428, Ganesh Bazar,
Delhi Cloth Market, Chandni Chowk,
Delhi 110055

(PAN: AAIPK 8457D)

CO No. 61/Del/2024
(Arising Out of ITA No.1000/DEL/2024)
(Assessment Year : 2020-21)

Payal Khemka
67/85-2 Jhun Bhawan,
Natimali Varanashi
Uttar Pradesh 221001

vs.

DCIT
Central Circle-6
Delhi

(PAN: ADTPJ2728A)

CO No. 62/Del/2024
(Arising out of ITA No.1002/DEL/2024)
(Assessment Year : 2020-21)

PMK Impex Pvt. Ltd.
1 Tolstoy Marg, Connaught Place,
New Delhi, Delhi 110001

Vs.

DCIT
Central Circle-6
Delhi
(PAN: AAECPP8026G)

CO No. 63/Del/2024
(Arising out of ITA No.1004/DEL/2024)
(Assessment Year : 2020-21)

Rajesh Rani Khemka
Cloth Market, Chandni Chowk
Delhi 110055

Vs.

DCIT
Central Circle-6
Delhi
(PAN: AAFPK 7336N)

CO No. 33/Del/2024
(Arising out of ITA No.1005/DEL/2024)
(Assessment Year : 2020-21)

Rama Shankar Khemka
4428, Ganesh Bazar,
Cloth Market, Chandni Chowk,
Delhi 110055

Vs.

DCIT
Central Circle-6
Delhi

(PAN: AAIPK 8457D)

ASSESSEE BY : Sh. Gautam Jain Adv,
& Sh. Lalit Mohan, CA
REVENUE BY : Sh. Jitender Singh, CIT DR

Date of Hearing : 18.11.2025
Date of Order : 06.02.2026

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. These appeals are filed by the revenue and cross objections by the assessees against the order of Id. Commissioner of Income-tax (Appeals)-24, New Delhi (hereinafter referred to 'Id. CIT (A)') dated 21.12.2023 for Assessment Year 2020-21
2. Since the issues are common and the appeals are connected, hence, the same are heard together and being disposed off by this common order. First we take up the appeal of revenue in **ITA No.1002/Del/2024 for AY 2020-21 and corresponding CO.No. 62/Del/2024.**
3. Brief facts of the case are, the assessee company i.e. 'Khemka Group'

negotiated for the purchase of property situated at A-32, Westend Colony, Delhi, in the first quarter of 2018 and finally purchased the property and registered the sale deed on 16.05.2019 and the property was purchased for Rs. 76 crores; and the share of the co-owners is as under:

Sr. No.	Name of Entity	Share (%)	Amount Paid not in dispute	Amount in dispute as alleged by learned Assessing officer on the basis of whatsapp chat
i)	PMK Impex (P) Ltd.	75	57 crores	17.25 crores
ii)	Rama Shanker Khemka	12	9.12 crores	2.76 crores
iii)	Payal Khemka	8	6.08 crores	1.84 crores
iv)	Rajesh Rani Khemka	5	3.80 crores	1.15 crores
	Total	100	76 crores	23 crores

4. Further, a search and seizure action u/s 132 of the Act was carried out in "Khemka Group of cases" on 14.01.2021. The search proceeding on locker No. 874 dated 08.03.2021 and is evident from the Panchnama dated 09.03.2021, in which copy of draft agreement of sale in relation to property located at A-32, Westend Colony, Delhi, (47-48 of PB), estimation cost sheet regarding renovation of the property (49-71 of PB) and board resolution of the assessee company (72 of PB) were found and seized. During the course of the search proceedings statement of Sh. Mayank Khemka being director of the company was recorded u/s 132(4) of the Act (73-108 of PB).
5. During post search proceedings, AO observed that the assessee company purchased a property located at A-32, Westend Colony, Delhi for a consideration of 76 crores and which was duly registered on 16.05.2019 (copy of sale deed is enclosed at pages 234-258 of PB). Further he observed

that during the course of search proceedings certain WhatsApp chat with 'Aditya Gupta' and 'Tony Gupta' was confronted to Sh. Mayank Khemka (pages 91-95 of PB), wherein it was specifically asked about the split of 99 crores as "76/23" and a sum of Rs. 76 crores were paid through RTGS for the purchase of the property located at A-32, Westend Colony, Delhi and it was duly registered on 16.05.2019 (sale deed enclosed at pages 234-258 of PB). Further, as per draft agreement to sale it was proposed that the said property to be purchased at the price of 99 crores with the condition that 76 crores for the land cost and 23 crores represents the estimated cost of renovation of the property which were agreed (47-48 of PB), but later on 10.04.2019, a board resolution was passed by the assessee company, the AO observed that there was delay tactics in renovation/refurbishment carried out by the M/s Wealth Estate Private Limited (seller) of the property and assessee company agreed to buy the property as it is without any renovation/refurbishment for the consideration of Rs. 76 crores (copy of board resolution is at page 72 of Paper Book). The assessee was asked to substantiate the transaction.

6. On 22.01.2021, director of the assessee company Sh. Mayank Khemka filed reply including explanation/clarification in respect of statement recorded on 15.01.2021, relevant part of reply is reproduced hereunder: (Page 128 of PB)

"We were looking to buy a residential property within the Central/South Delhi area. During the month of February 2018, we met Mr. Aditya

Gupta, one of the brokers, who offered us the property situated at A-32, Westend, New Delhi owned by M/s Wealth Estate Pvt. Ltd. We liked the proposal after our visit as the location and area of the said property matched our expectations. However, existing structure did not match our requirement.

Thereafter, we were persuaded by the broker that the refurbishment of the above said property would be undertaken by the seller at his own cost and fully furnished property as per our agreed specifications would be available to us at a total price of Rs. 100 crores. The details of such refurbishment to the extent of Rs. 24 crores were got prepared and exchanged between the parties.

Thereafter, negotiations and deliberations occurred several times for over a period of more than one year. We communicated to the seller that sale price of the property should not be more than Rs. 95 crores since it was tax neutral whether the same is sold through transfer of company or through registration.

Eventually, the negotiations for refurbished property failed and deal was hibernated for a considerable period of time. Again, an offer was received for sale of the above property on as is where is basis without any refurbishment for a consideration of Rs. 80 crores. Finally, the parties agreed for a total consideration of sale at Rs. 76 crores and registration of the above said party was consummated on 16.05.2019.

It is hereby clarified that neither the seller nor we incurred any cost for refurbishment before acquiring the above said property. The refurbishment entailing outlay was neither contributed nor incurred by either party. Necessary documents/details evidencing the above said version are enclosed and marked as annexure-15"

7. Further reply dated 22.06.2021, director of the assessee company Sh. Mayank Khemka filed reply in respect of property situated at A-32, Westend, New Delhi, relevant extract of the reply is reproduced hereunder:

"In furtherance to above, I wish to clarify that during the course of recording of my statement, various chats/images were confronted to me and under pressure and being scared of the prevailing situation, I failed to explain the contents of some graphic images/chats as culled out of my mobile data. In the background of the above said explanation and documents already filed vide letter dated 22/01/2021, I shall now

explain the pith and substance of the conversations which occurred during the conduct of such deal with various parties namely Mr. Aditya Gupta, Mr. Nirmal Sethia, Mr. C.S. Jain and Mr. Tony Gupta.

It appears that the said conversations would have been carried out in connection with purchase of the impugned property by various entities/individuals of our group from the seller i.e. M/s Wealth Estate Private Limited.

To understand the context of such chats, it is imperative to first understand the identity and role of the parties with whom such chats have been carried out during the process of purchase of the said property by our group which took considerable time and underwent mooting of several options during such negotiations. The concerned persons with whom such chats have been done are:

Mr. Nirmal Sethia is a non-resident individual and was stated to be the one of the persons connected with the seller company, M/s Wealth Estate Pvt Ltd wherefrom such property was purchased by our group.

Mr. C.S. Jain was the employee as well as director of the seller company who predominantly acted and negotiated the transaction of sale of the impugned property for and on behalf of the above said beneficial owner.

Mr. Aditya Gupta is the real estate broker who facilitated introduction of the parties concerted and acted as an intermediary in consummation of the deal.

Mr. Tony Gupta is another non-resident who happened to be merely a common acquaintance between me and Mr. Nirmal Sethia.

To trace background of the impugned transaction, it is pertinent to mention that we were envisaging to acquire a residential property in Central/ South Delhi area. In this context, various properties were shown to us by the real estate broker, Mr. Aditya Gupta. Eventually, the property at Westend was shown to us for which we expressed our willingness to acquire.

However, we were not satisfied with the then existing condition, interior and infrastructure of the said property since the same was quite old and appeared to exist in a dilapidated condition. We expressed our willingness to acquire the same provided the impugned property is refurbished or renovated as per our suitability and taste by the sellers. However, the broker stated that the sellers were only willing to sell the

property in its existing condition but agreed to discuss and revert regarding refurbishment to be performed by the sellers.

After a lapse of time, it was conveyed by the broker that the sellers were reluctant to conduct renovation refurbishment of the impugned property as per our choice but assured us that he has been making endeavours to persuade the seller to conduct the refurbishment. After a few days, the broker again contacted us and noted down our desired specifications/requirements.

Later on, it was communicated to us by the broker that the sellers have agreed to incur the refurbishment/renovation for which of cost estimated cost such renovation/refurbishment was quantified by them at Rs. 24 crores. Accordingly, the sellers proposed to sell the impugned property after incurring renovation/refurbishment cost to the extent of Rs. 100 crores. The estimate as prepared by the broker was shared with us as well as the seller, a copy of which was filed vide our letter dated 22/01/2021.

Thereafter, our meeting was held with the seller wherein they quoted the total cost of property including renovation/refurbishment at Rs. 100 crores. The said total cost, primarily the cost of renovation appeared to be excessive as well as exorbitant to us and we requested the broker to renegotiate the price with the seller.

Thereafter, it was also stated by the broker that the renovation/refurbishment work will be completed by them within a period of 60 days from the date of entering into the Agreement to Sell whereas we estimated such work to at least take four to six months period. The seller demanded entire cost of renovation/refurbishment to be paid in advance. However, on negotiations, the Seller agreed to bear the cost, but since the ultimate shareholder of the seller were non-resident, they insisted that the cost of such renovation to be denominated and fixed at the prevailing exchange rate of US dollar on the date of Agreement to Sell to ward off any exchange rate fluctuation losses at the time of actual payment by us.

It is also pertinent to mention that several permutation and combinations were being worked out by both the transacting parties for their intended

benefit. One such option of acquiring property through sale of shares of the company in which such property was enshrined was also proposed as the same would have entailed saving substantial cost on account of stamp duty for us. For analytical purposes, it was highlighted by us that the price of the property which is tax neutral to both the parties should be Rs. 95 crores. It was clarified that in case the property is old through sale of the shares of the company which enshrines the same, the tax outgo in the hands of shareholders would be Rs. 4.5 crores and the net amount received by the sellers in that case would be Rs. 95.5 crores. On the other hand, in case the property itself is transferred and registered in our favour, we shall have to incur a cost of Rs. 5.5 crores approximately on account of stamp duty without any tax incidence on the seller. Thus, the price of the property was requested by us to be considered and reduced to Rs. 95 crores. However, the 'said offer was summarily rejected by Mr. Sethia that the sale of the refurbished/renovated property will not be made by them at such price.

During such process it came to our knowledge that Mr. Tony Gupta, another non-resident, who happened to be our family friend had good relationship with Mr. Sethia too. I requested him to intervene and persuade Mr. Sethia to agree to our desired terms. After a few interventions, Mr. Tony Gupta reclused as nothing significant could be achieved by him to mellow down the stubborn attitude of Mr. Sethia. Consequently, the transaction was apparently shelved by both the parties.

After a period of time, again the offer of the above said property was received by us from the broker wherein the aggregate cost of the renovated/refurnished property was revised at Rs. 99 Crores with various other terms and conditions. A draft Agreement to Sell was also prepared, a copy of which was filed vide our letter dated 22/01/2021. Counter offer was made by us and discussions were held intermittently without any significant progress. Again, the transaction got halted and the same was shelved off by both the parties and the said Agreement to Sell was never executed. After a period of time, the transaction was again discussed, and we offered to acquire the existing property without any renovation/refurbishment to be performed by the seller. The broker after discussion with the seller quoted an enhanced price without any renovation/refurbishment. However, after a series of discussions, the

seller agreed to sell the impugned property on as is where-as basis for a total consideration of Rs. 76 crores. Keeping in view the ever changing and erratic behaviour of the seller, we decided to spontaneously proceed with the registration by making payment of the entire sale consideration on the date of registration itself without entering into any agreement to sell or further negotiations with them. Accordingly, we conducted a meeting of board of directors of M/s PMK Impex Private Limited on 10/04/2019 and resolved to purchase the said property for Rs. 76 crores without any refurbishment cost of Rs. 24 crores. A copy of such resolution was filed vide our letter dated 22/01/2021.

Eventually, the impugned property was registered in the name of various members of our group as stated supra on 16/05/2019 for a total consideration of Rs. 76 crores on as is where is basis and without any renovation/refurbishment to be performed by the seller.

Further, it is clarified that the conversations or chats as culled out of the mobile data will corroborate and authenticate the facts and circumstances as enunciated above. Indubitably, the entire consideration for purchase of the impugned property has been paid through declared source of income by our group and the due TDS on such purchase was also deducted and deposited. The evidences as found and seized during the course of search corroborate the veracity of our version in this regard. The contents of the impugned conversations/chats may be analysed in the light of the above said version which will clarify the entire gamut of facts and circumstances pursuant to which the same would have occurred between the parties concerned. It is therefore requested that no negative inference may be derived against our group on this issue. However, in case any other clarification or explanation is desired, the same may kindly be communicated to us.

8. Further it was submitted vide reply dated 24.2.2022 (pages 208-225 of Paper Book) that Khemka group had agreed to purchase property situated at A-32, Westend Colony, New Delhi with the help of property broker Mr. Aditya Gupta. However, since the property was in a dilapidated condition, Khemka group asked the seller company to undertake the refurbishment of the

property for which additional consideration of Rs. 23 crores were agreed which was over and above the sale price of property i.e. Rs. 76 crores. It was further stated that due to some reasons, the refurbishment was not undertaken by the seller and therefore the deal was executed at Rs. 76 crores.

The assessee has relied on the following documents in support of the above:

- i) Copies of cost estimate sheet (49-71 of Paper Book)
- ii) Draft agreement to sell dated in the month of November 2018 (47-48 of Paper Book)
- (iii) Board resolution passed by the assessee company on 10.5.2019 (to purchase the property at Rs. 76 crores without refurbishment) (72 of Paper Book)
- iv) Purchase deed showing purchase of property at Rs. 76 crores. (234-258 of Paper Book)

9. Further, a show cause notice dated 22.3.2022 was issued (extracted at page 11 of order of assessment) to the assessee company and reply dated 24.3.2022 was furnished as is evident from pages 12-15 of order of assessment. After considering the reply of the assessee, which is reproduced at pages 15-16 of order of assessment, The AO rejected the same and proceeded to make the addition with the following observations as under:

"5.12 Reply of the assessee company and Mr. Mayank Khemka was perused but not found tenable. Mr. Mayank Khemka was not able to explain his chat with Mr. Aditya Gupta as well as Mr. Tony Gupta at the time of his statement u/s 132(4). Further, statements of Mr. Aditya Gupta and Mr. C S Jain cannot be relied upon since both are the parties to the said deal and therefore have vested interest. The assessee's submission regarding Rs. 23 cr being refurbishment/renovation cost is just an afterthought. The chat with Mr. Tony Gupta clearly states "cut exchange rate tomm for cash portion". This reflects that the seller was adamant at fixing the exchange rate for cash portion which is Rs. 23 cr at the earliest in the month of September, 2018 to avoid any fluctuation

risk since the registration of the property occurred almost after a month from the date of said chat. There can't be any other reason for such a whatsapp msg by Mr. Mayank Khemka to Mr. Tony Gupta apart from Rs. 23 cr being the cash portion in the property deal. Had it been the case, the assessee would not have used "cash portion". The version of the assessee that various documents as found during the course of search and filed by it during the post search investigation corroborating its above and version cannot be accepted. Considering the above, it is be concluded that the assessee group has paid Rs. 23 crores over and above the declared price of Rs. 76 crores for the purchase of the property situated at A-32, Westend Colony, New Delhi in cash. The assessee has failed to furnish any explanation of the source of payment of Rs. 23 crores in cash for purchase of said property. In view of the above discussion, Rs. 17,25,00,000/- (being 75% share of the assessee in payment of Rs. 23 crores) is treated as unexplained investment of the assessee u/s 69 r.w.s. 115BBE of the Act for A.Y. 2020-21 relevant to the F.Y. 2019-20."

10. Aggrieved by the order, assessee filed appeal before learned Commissioner of Income Tax (A) on 26.04.2022. During the appellate proceeding's assessee submitted that the sole reliance for the making the addition of the Assessing officer is the WhatsApp chats found and statement recorded during the course of search proceedings. The assessee submitted its explanation of chats and also placed documentary evidences on record to prove that there are no cash transaction involved in the purchase of property. A tabular chart was filed before Ld CIT(A), which is placed at pages 75-84 of CIT (A) order, wherein complete submission made by the assessee regarding WhatsApp chat are filed. After considering the above submissions, Ld CIT(A) in para 4.1.18 of the impugned order observed as under:

Therefore, as per information in the above-mentioned table, the negotiations for said property was started sometime in first quarter of 2018 and the same were concluded through the sale deed executed on 16.05.2019. The chronological details of the whatsapp chats and documents seized are as under:

Date	Description
26.08.2018	Whatsapp chat between Sh. Nirmal Sethia and Sh. Mayank Khemka
09.09.2018	Whatsapp chat between Sh. Mayank Khemka and Sh. Tony Gupta
31.10.2018/01.11.2018	Whatsapp chats between Sh. Mayank Khemka and Sh. Aditya Gupta, property dealer
November, 2018	These pages are copy of draft ATS seized during the course of the search proceedings and marked as page no. 75 and 76 of Annexure A2, prepared by the parties in the month of November 2018 for executing the deal which shows the terms of the deal and also mentions the split of "76/23" that is Rs. 76 crores towards the purchase of property and Rs. 23 crores towards the cost of refurbishment.
Exact date is not known, as per the appellant this was prepared in April 2018	This page is a copy of the cost estimate sheet, seized during the course of the search proceedings and marked as page no. 85 of Annexure A-2, containing the complete details of the work to be done including MEP work, furnishing and other external as well as internal work at a total estimated cost of Rs. 24 crores, which was later agreed at Rs. 23 crores.
10.04.2019	This page is a copy of board resolution passed by the Board of Directors of the buyer company namely M/s PMK Impex Private Limited on 10.04.2019 which clearly

	mentioned that the property shall be purchased at Rs. 76 crores without estimated refurbishment cost of Rs. 23 crores.
16.05.2019	The property purchase deed dated 16.05.2019 entered into by M/s Wealth Estate Private Limited in favour of M/s PMK Impex Private Limited, Mr. Rama Shanker Khemka, Ms. Payal Khemka and Ms. Rajesh Rani Khemka for a total consideration of Rs. 76 crores only.

11.Ld. CIT(A) after considering the detailed submissions of the assessee and above observations, deleted the additions made by the Assessing Officer with the following observations: -

4.1.21 In view of above provisions of Section 132(4A) and 292C of Income Tax Act, it is presumed that any books of account or documents found from premises of the assessee belong to him and that the contents of such books of account and other documents are true. Further, as per Section 292C of Income Tax Act, 1961, there is a valid presumption that the books of account, other documents found in possession of any person in the course of search u/s 132 of the Income Tax Act then it may be presumed that the content of such books of account and other documents are true. The above whatsapp chats and documents were found and seized during the course of search proceedings and therefore the same shall be presumed to be true. Therefore, it can be concluded that all the whatsapp chats and the seized documents are true and represent the correct details of the transaction pertaining to the purchase of said property. Therefore, all the seized records have to be examined together and in totality to understand the correct nature of transaction pertaining to the property." (Page 89 of CIT(A) order)

4.1.22 As per the statement of Sh. Aditya Gupta, the property dealer the discussion and negotiations of this property were initiated some time in first quarter of 2018 and the registration of sale deed took place during May 2019. Therefore, there was a gap of more than one year between the initiation of discussions and conclusion of the deal. Sh. Mayank Khemka, who was the director of M/s P MK Impex Private Limited was apparently the lead person from the buyer side to negotiate and finalize

the said property transaction. Sh. Nirmal Sethia was not a director in the seller company but was apparently a person of relevance in finalizing the property transaction. Sh. C. S. Jain was a director in the seller company M/s Wealth Estates Private Limited, who represented the seller in the said sale transaction. Sh. Tony Gupta is a person known to Sh. Mayank Khemka, who was not apparently officially engaged in the property transaction as he was neither representing the seller nor was the broker in the said transaction. The property was sold by M/s Wealth Estate Private Limited through its director Sh. Arun Vij in favour of M/s PMK Impex Private Limited, Sh. Rama Shanker Khemka, Ms. Payal Khemka and Ms. Rajesh Rani Khemka. Sh. Mayank Khemka apparently represented all the four buyers. (Page 89-90 of CIT(A) order)

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4.1.32 This page is a copy of board resolution passed by the Board of Directors of the buyer company namely Mis PMK Impex Private Limited on 10/04/2019, which clearly mentioned that the property shall be purchased at Rs. 76 Crores without estimated refurbishment cost of Rs. 23 Crores. This document was found and seized in the search proceedings. It further mentions that the company have been negotiating with WEPL and Mr. Aditya Gupta for renovation and refurbishment of the said Property before the transfer from past one year and have not been able to reach any conclusion. Further, due to delay in finalization of the above transaction, the WEPL has now declined to undertake any renovation and is offering the said property on 'as is' basis for a total consideration of Rs. 76 Crores i.e. without any renovation or refurbishing. This document supports the contention of the assessee that the transaction was initially fixed for Rs. 99 crores but since the seller is not carrying out the renovation of a value around 23 crores, the property without any renovation or refurbishing has been bought for Rs. 76 Crores.

4.1.34 As per the AO's report submitted vide letter dated 29.11.2023, the comments on the following seized material is required to be highlighted:

S. No.	Particulars	Page no. of Paper Book	AO's Comment
1	Pages No. 75 and 76 of Annexure A-2 found and seized during the course of the search on 08/03/2021	179 to 180	It is a copy of an Agreement to Sell (ATS) with respect to property no. A-32, Westend Colony, New Delhi, which was found and seized during the course of the search on

			08/03/2021. The said ATS is unsigned and was prepared in the month of November 2018 according to which the cost of the land was Rs. 76 crores and the estimated cost of refurbishment was Rs. 23 crores.
2	Page No. 85 of "Annexure A-2" found and seized during the course of the search on 08/03/2021.	181	It is a copy of an estimate sheet found and seized during the course of the search on 08/03/2021. This page contains an estimate for renovation work at A- 32, Westend Colony, New Delhi the value of which is Rs. 24 crores. It's a single page on which an estimated cost of Rs. 24 crores for some renovation work for property at A-32 is appearing.
3	Page No. 86 of Annexure A-2 found and seized during the course of the search on 08/03/2021.	182	It is a copy of the board resolution found and seized during the course of the search on 08/03/2021. The said board resolution was passed by Mis PMK Impex Pvt Ltd. on 10/04/2019 for the purchase of Westend property on an as-is basis for a consideration of Rs. 76 crores. The board resolution also records that there was a renovation cost of Rs. 23 crore which was not undertaken and the property was purchased on an as-is basis for Rs. 76 crores

4.1.35 Further, the Assessing Officer in his subsequent report during the course of appellate proceedings had confirmed that Sh. Mayank Khemka filed a letter dated 22.01.2021 during the post search proceedings and the relevant issues highlighted in the reply filed by Sh. Mayank Khemka dated 22.01.2021 before DDIT, Unit-4(2), New Delhi are as under:

1. During the month of February 2018, we met Mr. Aditya Gupta, one of the brokers, who offered us the property situated at A-32, Westend, New Delhi owned by M/s Wealth Estate Pvt. Ltd.
2. We liked the proposal after our visit as the location and area of the said property matched our expectations. However, existing structure did not match our requirement.

3. Thereafter, we were persuaded by the broker that the refurbishment of the above said property would be undertaken by the seller at his own cost and fully furnished property as per our agreed specifications would be available to us at a total price of Rs. 100 crores. The details of such refurbishment to the extent of Rs. 24 crores were got prepared and exchanged between the parties.

4. Thereafter, negotiations and deliberations occurred several times for over a period of more than one year. We communicated to the seller that sale price of the property should not be more than Rs. 95 crores since it was tax neutral whether the same is sold through transfer of company or through registration.

5. Eventually, the negotiations for refurbished property failed and deal was hibernated for a considerable period of time. Again, an offer was received for sale of the above property on as is where is basis without any refurbishment for a consideration of Rs. 80 crores. Finally, the parties agreed for a total consideration of Rs. 80 crores. Finally, the parties agreed for a total consideration of sale at Rs. 76 crores and the registration of the above said property was consummated on 16/05/2019.

6. It is hereby clarified that neither the seller nor we incurred any cost for refurbishment before acquiring the above said property. The refurbishment entailing outlay was neither contributed nor incurred by either party. Necessary documents/details evidencing the above said version are enclosed and marked as Annexure 15." Thus, it is noteworthy that the assessee raised the same arguments (as were raised subsequently during the assessment and appellate proceedings) regarding the property transactions before the Investigation Wing immediately (almost within a week) after the initiation of search and also filed copies of documents supporting its claim. Moreover, the Assessing Officer did not offer any adverse comments to the above submission of the assessee filed before the investigation wing.

4.1.36 The Assessing Officer submitted during the appellate proceedings that his comments may be considered and appeal filed by the assessee may be decided on merits of case. It is noteworthy to mention that the Assessing Officer did not make any adverse remarks on the seized documents and/or on the submissions of the assessee on the seized

documents, which was not mentioned/dealt by the Assessing Officer in the assessment order.

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4.1.38 Therefore, the above case laws conclude for the case under consideration that the WhatsApp chats are true and correct but they alone are not sufficient to make conclusive findings about the income of the assessee unless there is corroborative evidence supporting the contents of the WhatsApp chats and the entire seized and other material/statements should be considered in entirety and a holistic view is required to be taken. In this case, all the other evidences gathered during search and the statements recorded during search and post search investigation does not corroborate with the WhatsApp chats and in fact, negates the conclusions drawn by the Assessing Officer from the WhatsApp chats.

4.1.39 Summing up, a suspicion is created by the whatsapp chats indicating the possibility of payment of a cash consideration for the purchase of property. The statement/s of the buyer, seller and the broker recorded during the search and post search investigations, however, does not substantiate to the suspicion and clearly mentions that no cash consideration was involved in the purchase of property. The assessee immediately after the search submits before the investigation wing certain documents substantiating assessee's claim that no cash was paid for the purchase of property. Moreover, there are certain seized documents which clearly substantiate the stand taken by the buyer and the seller of the property. This is a case of search and any conclusion to be drawn is required to be based on all the documents found/seized during the search as well as on the statements recorded in search and post search investigation. As per the legal presumption the documents found during the search are true and correct. The Assessing Officer did not bring anything on record to prove that the seized documents are either fabricated or incorrect or false. Therefore, any conclusion is required to be based on the holistic analysis of the entire seized material and the statements recorded.

4.1.40 In view of the discussion above, the Assessing Officer while making the addition had relied upon certain whatsapp chats found during the course of search. Thewatsapp chats considered by the Assessing Officer werebetween Sh. Mayank Khemka and other

persons namely Sh. Aditya Gupta, Sh. Mayank Khemka and Sh. Tony Gupta. On the basis of these whatsapp chats the Assessing Officer concluded that an amount of cash of Rs.23,00,00,000/- was paid by the buyers of the property to the owner of the said property namely M/s Wealth Estates Private Limited. In my considered opinion, while concluding that an amount of cash was paid by the buyers to the sellers, which was not disclosed for taxation purposes, the seized material and the statements should be considered in entirety. This is a case of search and several pieces of evidences were gathered during the course of search and the statements of several persons were recorded during the courses of search as well as during the post search investigation. While coming to any conclusion regarding any issue, the entire seized material as well as the statements recorded during the course of search and subsequently during the post search investigations are required to be considered and a holistic approach is required to be taken. Apart from the whatsapp chats discussed above, there are statements of Sh. Mayank Khemka, Rama Shankar Khemka u/s 132(4) of Income Tax Act and of Sh. Aditya Gupta and Sh. Chhatar Singh Jain u/s 131 (1A) of Income Tax Act, which are also required to be considered while adjudicating this appeal. Moreover, there is seized material namely Pages No. 75, 76 and 85, 86 of Annexure A-2 found and seized during the course of the search on 08/03/2021. The details of these statements and seized material were made available to the Assessing Officer as these documents were not specifically dealt with in the assessment order and a report was sought regarding the correctness of the documents as well as for the comments of the Assessing Officer. The Assessing Officer in his report did not dispute the correctness of the statements and the seized material and he did not offer any adverse comments. The assessee during the course of assessment proceedings submitted that the cost estimate draft, ATS, Board Resolution and a copy of the purchase deed was seized by the search parties during the course of search. The Assessing Officer had considered the reply of the assessee but not found it tenable. The Assessing Officer did not make any specific comments about the seized material highlighted by the assessee during the course of assessment proceedings and only relied on the whatsapp chats with Sh. Mayank Khemka with Sh. Aditya Gupta and Sh. Tony Gupta. The Assessing Officer's addition is only based on the whatsapp chats and no comments were offered on the other seized material either during the assessment or during the appellate proceedings.

It is an undisputed fact that the negotiations and discussions for the property have been going on between Sh. Aditya Gupta and Sh. Mayank Khemka and these whatsapp chats supports the same. However, it is observed that there are no evidences to prove that the conditions prescribed in the whatsapp chats regarding the bank approval, signing of agreement to sell, payment of 30% advance, keeping the agreement to sell with

Sh. Abhishek Manu Singhvi and payment of prior to the registration of sale deed have been fulfilled. The negotiation for the property tentatively started in April to October 2018 and the registration of the property took place in May 2019. According to the assessee the property was initially proposed to be purchased after refurbishment and later on the property was purchase without refurbishment. As per the seized material the contention of the assessee regarding refurbishment could not be proved incorrect. The Assessing Officer in his order and subsequent during appellate proceedings has neither addressed this issue of refurbishment nor provided any adverse findings. Since, the seized material has to be considered in entirety, therefore the contention of the assessee is apparently valid. There is evidence in the seized material itself that there was an agreement to sell and there was a cost estimate specifically mentioning the details of refurbishment to be carried out by the seller. There is no evidence to prove that the conditions prescribed in whatsapp messages were executed and fulfilled during the course of purchase of property. Even if it is presumed that there was a cash component proposed to be paid by the buyers to the sellers, there is no evidence to prove that such a consideration was actually paid by the assessee.

Moreover, in the absence of any details of alleged cash payments made by the assessee, if any, the year/s of taxability of the alleged amount/s is not ascertainable. The evidence in possession of the Assessing Officer supports the contention of the assessee that the amount of Rs. 23,00,00,000/- was the cost of refurbishment which was earlier to be borne by the seller and later on it was decided to discontinue with such refurbishment. The presence of agreement to sell, cost estimate and the Board Resolution in the seized material supports the stand taken by the assessee and the seized material have not been proved to be incorrect by

the Assessing Officer. WhatsApp chats alone could not lead to the conclusion that the buyer/s had paid Rs. 23 crores in cash to the seller/s towards part consideration for purchase of property and there was no corroborative evidence of these WhatsApp messages. In this case, all the other evidences gathered during search and the statements recorded during search and post search investigation does not corroborate with' the whatsapp chats and in fact, negates the conclusions drawn by the Assessing Officer from the whatsapp chats. Therefore, in the absence of any corroborative evidence, the whatsapp chats alone cannot be considered as evidence for the purposes of making addition to the total income of the Assessee. Moreover, in the statements recorded during 132(4)/131(1A) of Income Tax Act, Sh. Mayank Khemka, Sh. Rama Shankar Khemka, Sh. Aditya Gupta and Sh. C.S. Jain, there is no mention of any cash component for the said deal and it is only highlighted that the said deal had taken place for a consideration of Rs. 76 Crore only. Moreover, the statement of the broker, Sh. Aditya Gupta supports the assessee' s stand on proposed refurbishment. In view of the discussion above, I am of the considered opinion that the entire seized material and the statements recorded during and subsequent to search have to be considered together, while coming to any conclusion regarding the alleged payment of cash for purchase of the said property. A holistic consideration of the seized material and statements clearly supports the assessee's argument that no cash was paid for the purchase of property. The evidence in support of the assessee's contention in the form of the seized documents namely draft agreement to sale, cost estimates and Board Resolution establishes that there is no evidence of any payment of cash by the assessee for the purchase of property No. A-32 Westend Colony, New Delhi. Therefore, it is concluded that there is no evidence to establish the payment of any cash for purchase of the said property. Accordingly, the additions made by the Assessing Officer w/s 69 r.w.s 115 BBE of Income Tax Act as unexplained investment is not sustainable. Therefore, the addition of Rs. 17,25,00,000/- made by the Assessing Officer as unexplained investment of the assessee u/s 69 r.w.s 115BBE of Income Tax Act is deleted.

12. Aggrieved with the above order revenue is in appeal before us raising following grounds of appeal in ITA no.1000/Del/2024:-

1 Ground(a) The Ld. CIT(A) has erred in deleting the addition of Rs. 1,84,00,000/- made by the Assessing Officer in the order passed u/s 153A r.w.s. 143(3) of the Act.

2 (b) The Ld. CIT(A) has erred in not considering the evidence found during the course of search proceedings relied upon which the addition has been made.

3 (c) The Ld. CIT(A) has erred in considering the estimation made by the assessee in terms of plan of refurbishment cost without acknowledging the fact that no documentary proof has been furnished by the assessee.

4 (d) The Ld. CIT(A) has erred in not analyzing the fact that the estimation for refurbishment has been made but no refurbishment work has been done.

5 (e) The assessee craves leave to add, amend, alter or withdraw any or all grounds of appeal at any time before and during the course of hearing.

13. At the time of hearing, Ld. DR brought to our notice detailed findings of the Assessing Officer from the assessment order. He objected to the relief granted by the Ld. CIT(A) by merely relying on the submissions of the assessee and overlooked the evidence brought on record by the AO corroborated with the WhatsApp chats, he heavily relied on the detailed findings of the Assessing Officer.

14. On the other hand, Ld. AR made a detailed submissions for the sake of brevity it is reproduced below: -

22 THAT ADDITION MADE IS CONTRARY TO PLAIN READING OF THE DOCUMENTS SEIZED IN THE COURSE OF SEARCH U/S 132(1) OF THE ACT AND THUS, ADDITION MADE IS IN

**BLATANT DISREGARD OF THE STATUTORY PROVISIONS
CONTAINED IN SECTION 292C OF THE ACT**

23 It is submitted that the learned Assessing Officer in the order of assessment based on whatsapp messages in the mobile phone of Sh. Mayank Khemka has alleged that a sum of Rs. 23 crores was paid over and above Rs. 76 crores towards the purchase of property. It is submitted that in arriving at the aforesaid conclusion he has not accepted the contention that Rs. 23 crores represented the sum undertaken by the seller for refurbishment of the property; and was never paid or incurred by the assessee. It is submitted the aforesaid contention of the assessee is evidenced by the following seized documents:

i) Draft agreement to sale in relation to property situated at A-32, Westend Colony Delhi between M/s Wealth Estate (P) Ltd., M/s PMK Impex (P) Ltd. ("Assessee Company") and Shri Maynak Khemka marked as pages 75-76 of Annexure A-2 (pages 47-48 of Paper Book). The relevant portion of the draft agreement to sale as extracted at pages 326-327 of Paper Book

ii) Summary of cost of estimation sheet for the refurbishment to property situated at A-32, Westened Colony, Delhi marked as pages 75-76 of Annexure A2 (pages 49-71 of paper book) was also seized reads as under

WORK	INDIAN ITEMS (INR)	IMPORTED ITEMS (USD)	EXCHANGE RTE CONVERSION	TOTAL
Flooring	3500000	495000	34650000	38150000
Ceiling	6000000			6000000
Wall panelling	9500000			9500000
Toilets	4000000	140000	9800000	13800000
Door+staircase railing	8000000			8000000
Kitchen	1000000	80000	5600000	6600000
Wardrobes	3000000	60000	4200000	7200000
Lighting	12500000	160000	11200000	23700000
Fire Place+Pool table	300000	12000	840000	1140000
Civil Works	2500000			2500000
MEP Works	35000000			35000000
landscape	3500000			3500000
Fabrication	2500000			2500000
Zinc	4200000			4200000
External paint	1000000			1000000
Wall Cladding	1250000			1250000
Glass Works	4000000			4000000
Main Door	1000000			1000000
External Lighting	6000000			6000000
External window	7500000			7500000
Miscellaneous	4500000			4500000
Furniture	4000000	700000	49000000	53000000
Grand Total	124750000	1647000	115290000	240040000

Itemwise summary of material was also seized and; placed in paper book is as under:

Sr.No.	Nature of item	Pages of Paper Book
i)	Flooring	50
ii)	Ceiling	51
iii)	Wall Panelling	52
iv)	Toilets	53
v)	Door+staircase railing	54
vi)	Kitchen	55
vii)	Wardrobes	56
viii)	Lighting	57
ix)	Fire Place+Pool table	58
x)	Civil Works	59
xi)	MEP Works	60

xii)	landscape	61
xiii)	Fabrication	62
xiv)	Zinc	63
xv)	External paint	64
xvi)	Wall Cladding	65
xvii)	Glass Works	66
xviii)	Main Door	67
xix)	External Lighting	68
xx)	External window	69
xxi)	Miscellaneous	70
xxii)	Furniture	71

The board resolution dated 10.4.2019 of the assessee company found as a result of search dated 14.1.2021 and, marked as page 86 of Annexure A-2 reads as under (extracted at page 329 of Paper Book):

It is thus submitted that the conclusion of the learned Assessing Officer that a sum of Rs. 23 crores was paid over and above Rs. 76 crores towards the purchase of property is clearly misplaced in as much seized

documents amply demonstrate that sum was undertaken by the seller for refurbishment of the property; which was never carried out and, thus never paid by the assessee. The addition made is thus nothing but a mere capricious surmise and, a figment of imagination based on unfounded assumptions and whimsical considerations apart from being an arbitrary and, wholly unjustified. A tabular chart in support of the aforesaid submission is tabulated hereunder:

Date	Particulars of event	Reference	Seized / filed during proceedings
February, 2018	Appellant group met Mr. Aditya Gupta (broker) enquiring about purchase of a property	-	-
April, 2018	The impugned property was shown and 1 st round of discussion happened for purchase of the impugned property. Mr. Aditya asked the seller to carry out refurbishment, and he also prepared a cost estimate for such refurbishment which came to approx. Rs. 24 crores.	Copy of Cost estimate at pages 49-71 of Paper Book.	Seized during the course of search proceedings

Date	Particulars of event	Reference	Seized / filed during proceedings
August 26, 2018	Mr. Mayank Khemka offered the seller Mr. Nirmal Sethia, to purchase the property through registry at a consideration of Rs. 95.5 crores (including the cost of refurbishment), which was rejected by Mr. Sethia.	WhatsApp chat between Mr. Mayank Khemka and Mr. Nirmal Sethia.	Seized during the course of search proceedings
October 31, 2018 and November 1, 2018	Discussions and negotiations happened between the seller and the Appellant company through Mr. Aditya Gupta. Terms of the entire transaction was discussed and the split of "76/23" was mentioned.	WhatsApp chat between Mr. Mayank Khemka and Mr. Aditya Gupta	Seized during the course of search proceedings
November 2018	Draft Agreement to Sell was prepared between the seller and the purchaser mentioning the consideration for the property as Rs. 99 crores which also mentions that the cost of refurbishment was Rs. 23 crores out of the entire consideration.	Copy of Draft Agreement to sell enclosed at pages 47-48 of Paper Bok	Seized during the course of search proceedings
March 2019	The transaction was again discussed along with terms and conditions, however, this time without any refurbishment cost	-	-
April 10, 2019	Board resolution resolving that the said property would be purchased at a total consideration of Rs. 76 crores without refurbishment cost of Rs. 23 Crores was passed by the Appellant Company	Copy of the Board resolution is enclosed at page 72 of Paper Book.	Seized during the course of search proceedings
May 16, 2019	The impugned property was finally registered in the name of the Appellant along with the family members.	Copy of the final executed sale deed is enclosed at pages 300-324 of Paper Book.	Filed during the course of post-search as well as assessment proceedings

25. Section 292C of the Act supports the submission of the which reads as under:

"292C. [(1)] Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under

section 132 [or survey under section 133A], it may, in any proceeding under this Act, be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.[

[(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.]

26. It will be apparent from the above that statutory presumption is that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 of the Act then in any proceeding under the Act, it is to be presumed that the contents of such books of account and other documents are true. The learned Assessing Officer therefore without any material could not validly reject the contention of the assessee supported by seized documents that Rs. 23 crores was not paid by the assessee company which was proposed to be expended by vendor towards refurbishment of property but was never paid or incurred by the assessee company. Reliance is placed on the decision in the case of ACIT v. M/s

VatikaGreenfield (P) Ltd. reported in 315 ITR 113 (AT) wherein it has been held as under:

21. A conjoint reading of the above decisions suggests that taxing statutes have to be interpreted strictly. In the deeming provision what is prescribed is to be deemed and deeming provision cannot be extended beyond the legislative scope. The presumption as envisaged in s. 2920 is limited to the correctness of the documents found at the time of search or survey, but that presumption has not been extended by the statute to be presumed to be the income of the assessee. If it is so, then unless some evidence/material is brought on record by the Revenue to say that what is stated in the seized document is not correct, state of affairs, the state of affairs stated in the impounded document has to be presumed to be true. It has already been observed that there is no material/evidence on record to suggest alleged excess payment of Rs. 1 crore received by the assessee from Raja Singh Sethi was in any way in the shape of income and not an unsecured interest-free loan. Therefore also, the argument of learned Departmental Representative that on the basis of s. 292C, the action of the AO should be upheld, cannot be accepted. Therefore, we find no material to interfere in the decision arrived at by the CIT(A) vide which impugned addition has been deleted."

27 It is submitted that, it is well settled law that seized documents must be read as such. Reliance is placed on the following judgments:

i) 83 DTR 88 (Del) CIT vs. D.D. Gears Ltd. (extracted at page 324 of Paper Book)

ii) 75 ITD 1 (Pune) Golani Bros vs. ACIT (extracted at pages 324-325 of Paper Book)

349 ITR 85 (Del) CIT vs. Indeo Airways (P) Ltd. (extracted at pages 322-323 of Paper Book)

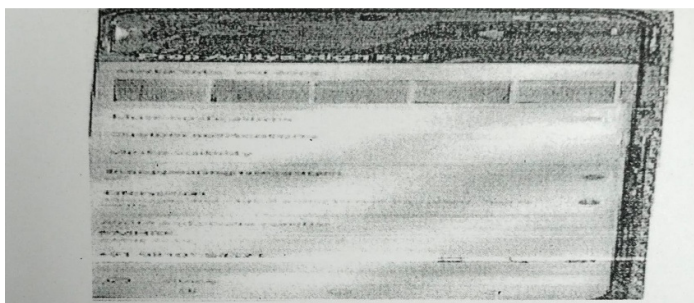
iv) 142 ITD 394 (Kol) Vivek Kumar Kathotia v. DCIT (extracted at pages 325-326 of Paper Book)

28 STATEMENT OF SH. MAYANK KHEMKA DIRECTOR OF THE ASSESSEE COMPANY IN RESPECT OF THE WHATSAPP CHAT ESTABLISHES THE CLAIM OF THE ASSESSEE COMPANY

29 It is submitted that assessee in the following statements stated as under:

i) Statement Recorded on 15.1.2021 u/s 132(4) of the Act regarding whatsapp chat with Mr. Aditya Gupta (pages 73-108 at pages 89-92 of Paper Book)

Q.69 I am showing you screenshot of one of your whatsapp contact. Please identify the person,



Ans. He is Aditya Gupta. He is a real estate broker.

Q.70 What is your business relation with Aditya Gupta? Has he ever played any role in your business transaction or property transaction?

Ans. He was the broker from seller side for A-32 Westend Colony, Delhi. He contacted me for the property and only after that we became friends. We met first time at that time. The said property was purchased bemy. After that deal, he regularly calls me and suggests good property deals.

Q.71 When was the sale deed registered for that property at A2 Westend Colony, Delhi?

Ans. The sale deed was registered on 16.5.2019.

Q.72 What was the date on which first payment for the said property made through banking channels?

Ans. 15.5.2019.

Q.73 Who was the seller of that property?

Ans. Wealth Estate Pvt. Ltd. Its office is at Connaught Place.

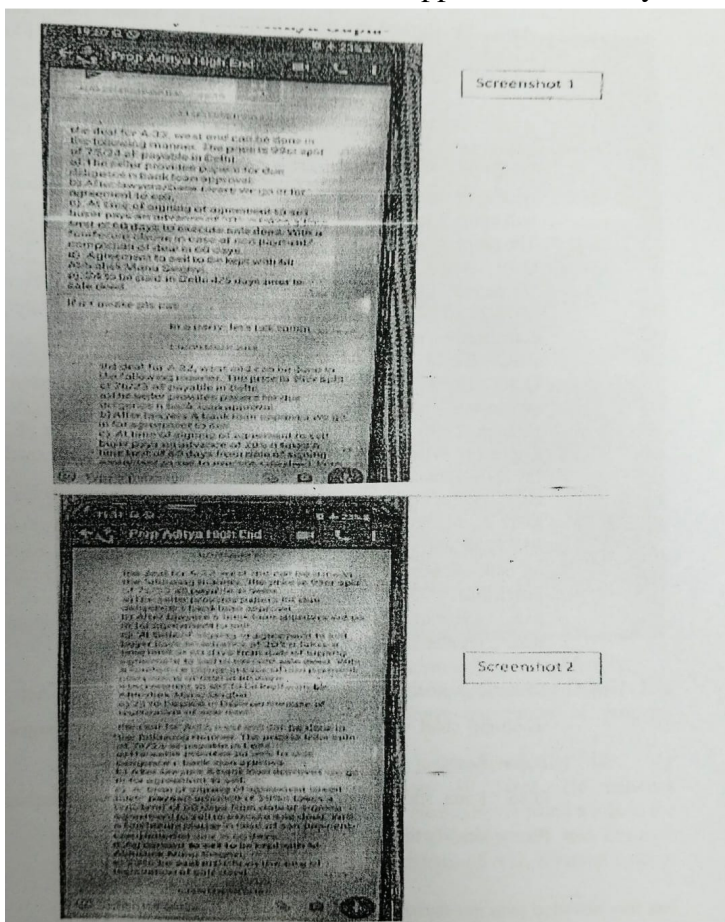
Q.74 Who is the main person in that company with whom you negotiated the deal?

Ans. Mr. Chattar Singh Jain was the person from the company side. Mr. Aditya Gupta was the broker from company side.

Q.75 Did you pay any commission to Aditya Gupta?

Ans. No.

Q.76 In reference to above property transaction, I am showing you screenshots of whatsapp chat between you and Aditya Gupta.



Ans. 1st screenshot-there might be some property which Aditya would have offered us for sale.

Q.77 You stated earlier that Aditya was the broker from Wealth Estate Ltd. for sale of a property located at Westend Colony and you got to know about him at that time only. In this context you are requested to explain the contents of the above mentioned screenshot-1, when you have stated in Q.70 that he did no work for you on the deal for A32 Westend Colony, Delhi.

Ans. He showed me many properties in Vasant Vihar, Jor Bagh and other areas. This could be one of that property. Probably I knew Aditya 1-2 years before the property I purchased.

Q.78 Please explain contents of the above mentioned screenshot no. 2 which is your reply to message sent by Aditya Gupta. Also confirm that "deal for A-32, Westend" is the same property finally bought by you, family members and PMK Impex.

Ans. I need some time recollect the details of the chat shown above. I will consult and discuss with my father and provide details in due time. The property address seems to be the same.

Q.79 As per screenshot 1 & 2, you have countered Aditya Gupta offer of "price is 99 cr split of 75/24 all payable n Delhi" with "price is 99 cr split of 76/23 all payable in Delhi". However much did you finally pay as sale consideration as per your sale deed through RTGS?

Ans. Rs. 76 crore paid through RTGS.

Q.80 This matches the first part of the price split you have offered in screenshot "76/23" mentioned by you which is the amount you paid through RTGS. Kindly clarify the second part of the split of "76/23 i.e. figure 23. What does figure 23 pertain to, when figure 76 exactly matches the RTGS amount paid by you,

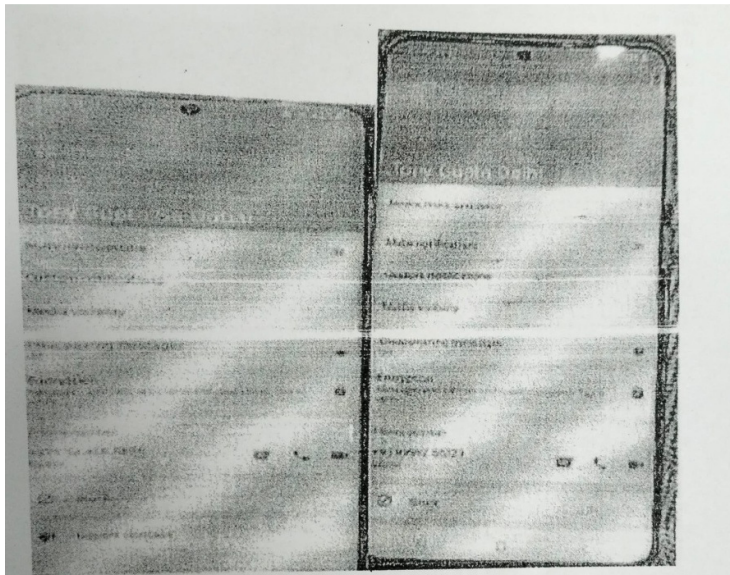
Ans. I don't remember.

Q.81 I am again drawing you attention to the relevant provisions of the IPC 1860 and Income Tax Act, 1961 which mandate prosecution for lying on oath. Please confirm and reply to the said questions in light of these provisions.

Ans. I acknowledge that I am aware of the provisions, I do not member what 23 refers to."

Statement Recorded on 15.1.2021 u/s 132(4) of the Act regarding whatsappchatt with Mr. Tony Gupta (pages 73-108 at pages 93-94 of Paper Book)

Q.86 I am showing you screenshot of one of your whatsapp contact. Please identify the person.

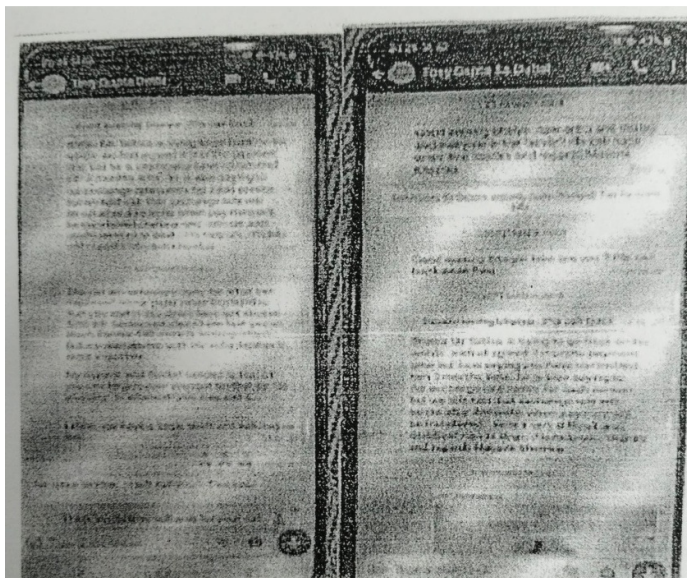


Ans. This person is tony Gupta who is known to me and my family.

Q.87 What is your business relations with Tony Gupta Sa Dubai? Has he ever played any role in your business transaction or property transaction?

Ans. Tony Gupta resides in south Africa and he is a family friend. My family has known him for more than 10 years. He operates coal/platinum/gold mines in South Africa. He has never paled a role in the business dealings of my entities or with my family. He was however involved in my property transaction of purchase of A32 Westend colony, Delhi.

Q.88 I am showing you screen shots of whatsapp chat between you and Tony Gupta Delhi



Ans. Tony is a friend of Mr. Sethia and he was negotiating on his behalf for the property at A 32 Westend, New Delhi.

Q.89 In whatsapp chat with Tony Gupta Delhi dated 21st August to 13th September 2018 you mentioned "Mr. Sethia, 100 crores, cash portion, Exchange Rate etc". What do those words mean?

Ans. The property price was pegged to the dollar and Sethia was changing the price according to the dollar fluctuations but the same was unacceptable to us. This was conveyed by us to Mr. Tony."

Statement recorded on 17.6.2021 u/s 133(1A) of the Act (pages 130-161 at pages 131-132 of Paper Book)

"Q.4 I am showing you your statement u/s 132(4), administered and recorded on 15.01.2021, during which vide Q.No. 76 to 94 you were confronted with the whatsapp chats with a property broker Mr. Aditya Gupta, Mr. Nirmal Sethia Jian and Mr Tony Gupta with regard to property namely 'A-32 Westend'. Please explain the nature of transaction mentioning "price is 99 Cr split of 76/23 all payable in Delhi".

Ans. In May 2019, we have bought an immovable property situated at A-32 Westend from M/s Wealth Estates Pvt. Ltd. through the broker Mr. Aditya Gupta. We learned that Mr. Nirmal Sethia was one of the

main person connected with the seller company. We wanted to buy the said property in furnished state for which seller quoted cost of property Rs. 76 crores and cost of renovation/refurbishment of Rs. 23 crores. After long negotiation and on failure of the seller to do any renovation, we agreed to buy the property as it is at a cost of 76 crores and dropped the idea of refurbishment. Mr. Tony Gupta is a mutual friend who was helping to buy the property at negotiated price. I will request you to grant me time of 7 days to file a detailed reply with relevant document in regard to above."

30 STATEMENT OF MR. ADITYA GUPTA (BROKER) AND STATEMENT OF MR. CHHATER SINGH DIRECTOR OF VENDOR OF THE PROPERTY ALSO SUPPORTS THE CLAIM THAT THE TRANSACTION OF INVESTMENT IN IMMOVABLE PROPERTY SITUATED AT A-32 WESTEND, NEW DELHII ON 16.5.2019 FOR A CONSIDERATION OF RS. 76,00,00,000/-

31 It is submitted that Sh. Aditya Gupta (broker) in his statement recorded on 1.2.2021 u/s 131(A) of the Act (pages 115-122 of Paper Book) and Sh. Chattar Singh Jain (Employee as well as Director of seller company) in his statement recorded on 29.1.2021 u/s 131(1A) of the Act (pages 109-114 of Paper Book) has also confirmed the facts stated by the assessee that the deal for purchase of property was finalized for Rs. 76 crores only.

32 It is submitted that statement of Sh. Aditya Gupta recorded on 1.2.2021 u/s 131(1A) of the Act stated as under (pages 115-122 of Paper Book)

Q22	What and when was the final proposal given by you to Mr. Mayank Khemka for the property A-32, West End, New Delhi ?
Ans.	I discussed with seller side i.e. Mr. CS Jain, about the requirement of Mr. Mayank Khemka and gave him details of refurbishing the property along with amount for refurbishing and in this regard, he told me to offer a price of Rs. 100 Cr. for the property and the same was conveyed to Mr. Mayank Khemka. This was done between Apr- Nov 2018. For refurbishing, Bills of Quantities (BOQ) were discussed.
Q23	What was the amount involved in the BOQ?
Ans	It was around Rs. 24-25 Crores.

Q25	When was the deal of A-32, West End, New Delhi finally materialised and at what consideration ?
Ans	The refurbishing proposal was dropped by the buyer Mr. Mayank Khemka. I met again Mr. Mayank Khemka and sought his interest in buying the property in as and wherein basis. Then I again approached Mr. CS Jain if they would be keen in selling the property. Mr. Jain showed his keenness to sell the property on as and wherein basis at a cost of Rs. 80 Crores. Finally, the deal was materialised at around Rs. 76 Crores on as and wherein basis in around Apr-May 2019.

Q30	Please explain the figures mentioned in the whatsapp messages, i.e. 75/24 & 76/23 written in your message and reply of Mr. Mayank Khemka.
Ans	It was 75 Crores for plot and building price and 24 Crores for renovation cost and in the reply of Mr. Khemka 76 was 76 Crores for plot and building price and 23 Crores for renovation cost.

Q.34	As per the information available with the Income Tax Department, and the evidences of whatsapp chats undertaken between you and Mr. Mayank Khemka, as referred in question No. 27, it is evident that the property was sold for Rs. 99 Crores, which was split into 76 Cr paid in cheque and 23 Crores paid in cash and the 23 Crores were paid in cash prior to date of sale deed. The same condition was also mentioned by you with respect to 24/23 in your whatsapp chat. Please explain.
Ans	There was no cash involved in this deal. The sale consideration was finalised at Rs. 76 Crores and Rs 24/23 crores was for renovation cost which did not materialised.

33 Also statement of Sh. Chhatar Singh recorded on 29.1.2021 u/s 131(1A) of the Act stated as under (pages 109-114 of Paper Book):

Q. 28	What is the current status of the property A-32, West End, New Delhi
Ans.	The company M/s. Wealth Estate Pvt. Ltd. has been merged in M/s. SICPA India Pvt. Ltd in most probably 2019. The property A-32, West End, New Delhi has been sold in the year 2019 only before the merger of the company.
Q.29	What was the amount of consideration for sale of the property A-32, West End, New Delhi.
Ans.	To the best of my memory it was 76 Crores.

Q.31	As per the information available with the department, the amount of sale consideration of the property A-32, West End, New Delhi is Rs. 100 Cr, whereby Rs. 76 Crores has been bank transfer and Rs. 23-24 Cr has been cash transfer. You are once again hereby given one more opportunity to tell the correct facts of the issue involved and the correct sale consideration received by your company..
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Ans.	The deal is at Rs. 76 Crores only. There is no question of Rs. 100 Crores.
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34 THAT ONCE THE TRANSACTION OF PURCHASE OF PROPERTY IS ACCEPTED BY REGISTRATION AUTHORITY AND STAMP DUTY ON THE SAME HAS BEEN PAID TO REGISTRATION AND STAMPS DEPARTMENT, GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI, THAT IN VIEW OF

REGISTRED SALE DEED NO ADDITION CAN BE MADE U/S 69 OF THE ACT: It is well settled law that sale deed cannot be disregarded as has been held in the following judgments:

1) 262 ITR 354 (Ker) CIT vs. K.C. Agnes and Ors (extracted at page 316 of Paper Book)

ii) 323 ITR 588 (P&H) Paramjit Singh vs. ITO (extracted at page 316 of Paper Book)

iii) 316 ITR 46 (Del) CIT vs. Shankutla Devi (extracted at page 317 of Paper Book)

iv) 52 SOT 62 (Chd) Rajdeep Builders vs. Asstt. CIT

vi) 250 ITR 484 (P&H) CIT vs. Satinder Kumar

vii) 323 ITR 510 (P&H) CIT vs. Chandni Bhuchar

viii) 49 SOT 732 (Chd) Subash Chand vs. Asstt. CIT

35 THAT MESSAGE EXCHANGED ON SOCIAL MEDIA PLATFORMS SUCH AS 'WHATSAPP CHAT HAS NO EVIDENTIARY VALUE

i) Civil Appeal No.. 9346 OF 2019 (arising out of SLP (Civil) No(s) 23194 of 2019 Ambalal Sarabhai Enterprise Ltd. v. KS Infraspace LLP Ltd. has held that whatsapp chat has no evidentiary value

ii) ITA Nos. 2199 and 2200/Mum/2019 dated 24.5.2021 DCIT v. M/s Ekta World (P) Ltd. (extracted at pages 301-303 of Paper Book)

iii) ITA No. 87/Viz/2020 dated 23.9.2020 ACIT v. Shri Manhukonda Shyam

iv) ITA No. 3028/Chny/2019 dated 13.5.2022 A. John Kumar v. DCIT (extracted at pages 299-301 of Paper Book)

v) 42 CCH 20 (Bang) Nandini Deluce v. ACIT

36 THAT THE UNAUTHORIZED ELECTRONIC DATA EVIDENCE EITHER IN THE SHAPE OF WHATSAPP CHAT RECOVERED FROM MOBILE PHONE IN ABSENCE OF COMPLIANCE OF SECTION 65B OF THE EVIDENCE ACT, IS INADMISSIBLE IN THE EYE OF LAW

i) Civil Appeal No.. 9346 OF 2019 (arising out of SLP (Civil) No(s) 23194 of 2019 Ambalal Sarabhai Enterprise Ltd. v. KS Infraspace LLP Ltd.

ii) (2014) 10 SCC 473 Anvar P.V. Vs P. K. Basheer

iii) 2008 (1) ARBLR 317 (Bom) Ark Shipping Co. Ltd vs Grt Shipmanagement Pvt. Ltd.

iv) W. P. 18013 (W) of 2012 (Kol) Abdul Rahman Kunji vs. The State OF West Bengal

v) Civil Appeal Nos 20828-20826 of 2017 dated 14.7.2020 Arjun Panditrao v. Kailash Kushanrao Gorantyal

vi) ITA No.208/Del/2023 A.Y. 2018-19 Shri Anil Kumar Gupta vs. ACIT

vii) ITA No.2016/Del/2023A.Y. 2017-18 Ritu Tuli vs DCIT

viii) ITA No. 5689/MUM/2024 dated 12.02.2025 ACIT v. Prashant Prakash Nilawar

37. THAT AS PER PROVISIONS OF SECTION 91 OF THE OF THE 1872 ACT WHEN TERMS OF A CONTRACTS, GRANTS OR OTHER DISPOSITIONS OF PROPERTY HAS BEEN REDUCED TO THE FORM OF A DOCUMENTS THEN NO EVIDENCE IS PERMISSIBLE TO BE GIVEN IN PROOF OF ANY SUCH TERMS OF SUCH GRANT OR DISPOSITION OF THE PROPERTY EXCEPT THE DOCUMENT ITSELF

38. Reliance is placed on judgment of Hon'ble High Court of Punjab and Haryana Paramjit Singh vs. ITO reported in 323 ITR 588 wherein it has been held as under:

"We have thoughtfully considered the submissions made by the learned counsel and are of the view that they do not warrant acceptance. There is well-known principle that no oral evidence is admissible once the document contains all the terms and conditions. Sections 91 and 92 of the Indian Evidence Act, 1872 (for brevity 'the 1872 Act') incorporate the aforesaid principle. According to section 91 of the Act when terms of a contracts, grants or other dispositions of property has been reduced to the form of a documents then no evidence is permissible to be given in proof of any such terms of such grant or disposition of the property except the document itself or the secondary evidence thereof. According to section 92 of the 1872 Act once the document is tendered in evidence and proved as per the requirements of section 91 then no evidence of any oral agreement or statement would be admissible as between the parties to any such instrument for the purposes of contradicting, varying, adding to or subtracting from its terms. According to illustration 'b' to section 92 if there is absolute agreement in writing between the parties where one has to pay the other a principal sum by specified date then the oral agreement that the money was not to be paid till the specified date cannot be proved. Therefore, it follows that no oral agreement contradicting/varying the terms of a document could be offered. Once the aforesaid principal is clear then ostensible sale consideration disclosed in the sale deed dated 24-9-2002 (A.7) has to be accepted and it cannot be contradicted by adducing any oral evidence. Therefore, the order of the Tribunal does not suffer from any legal infirmity in reaching to the conclusion that the amount shown in the registered sale deed was received by the vendors and deserves to be added to the gross income of the assessee-assessee."

39. It is submitted that section 92 of Indian Evidence Act, 1872 talks about the exclusion of evidence of oral agreement. Reliance is also placed on judgment in the case of Akashdeep vs. Manpreet Estate LLP, Mum reported in 105 taxmann.com 187 (PBPTA-AT) wherein it has been held as under:

"27. The authority has also concurred with the submission of R-1 that the 10 has miserably failed to discharge such burden of proof. Section

92 of Indian Evidence Act, 1872 talks about the exclusion of evidence of oral agreement. Once the primary evidence is proved by way of written document which is not challenged, no evidence of an oral agreement or statement shall be admitted, the burden shall be shifted to the party who pleaded oral agreement. After the amendment in the Benami Act, if apply as it is, the burden of proof was shifted upon the assessee. In the present case, the IO has failed to discharge such burden and he has merely based on his personal perception with uncorroborated statements had passed the order without even a single iota of evidence to discharge such a burden of proof once the R-1 was able to prove that his transaction was bona fide for beyond reasonable doubt.

40 THAT IN ABSENCE OF ANY CORROBORATIVE EVIDENCE CANNOT FORM BASIS FOR MAKING AN ADDITION: Moreover even the learned Assessing Officer has not referred to any corroborative evidence to draw adverse inference against the assessee. It is well settled law that addition made based on mere seized documents in absence of corroborative evidence and disregard of the seized documents is not in accordance with law. Reliance is placed on the following judgments:

- i) (1998) 3 SCC 410 CBI vs. V.C. Shukla (extracted at page 305 of Paper Book)
- ii) 394 ITR 220 (SC) Common Cause (A Registered Society) and Others v. UOI following the judgment in the case of CBI v. V.C. Shukla reported in 3 SCC 410 (extracted at page 305 of Paper Book)
- iii) 296 ITR 619 (Del) CIT v. Girish Chaudhary (extracted at page 306 of Paper Book)
- iv) 308 ITR 230 (Del) CIT vs. D.K. Gupta (extracted at page 306-307 of Paper Book)
- v) 383 ITR 320 (Del) CIT. Vatika Landbase (P) Ltd. (extracted at pages 307-308 of Paper Book)
- vi) ITA No. 2/2014 (Del) dated 6.4.2015 Vatika Ltd. (Formerly Vatika Landbase (P) Ltd.) v. CIT (extracted at page 308 of Paper Book)

vii) 322 ITR 191 (Del) CIT v. Anil Bhalla (extracted at page 309 of Paper Book)

viii) 423 ITR 1 (Del) CIT v. Sant Lal (extracted at page 310 of Paper Book)

ix) 97 ITR 696 (Bom) Addl. CIT v. Mis. Lata mangeshkar

x) 108 taxmann.com 437 (Bom) Pr. CIT v. Umesh Ishrani

xi) 332 ITR 468 (P&H) CIT v. Atam Valves (P) Ltd. (extracted at page 310 of Paper Book)

xii) 223 Taxman 44 (All) CIT v. Devendra Kumar Singhal

xiii) 307 ITR 137 (Guj) CIT v. Maulik Kumar K. Shah (extracted at page 310 of Paper Book)

xiv) 86 ITD 13 (Del) Amarjit Singh Bakshi (HUF) v. ACIT (extracted at pages 310-311 of Paper Book)

xv) 187 ITD 289 (Asr) Smt. Harmohinder Kaur v. DCIT (extracted at page 311 of Paper Book)

xvi) ITA Nos 3546, 3547 and 3549/D/2012 dated 26.8.2016 Mukesh Garg v. DIT

41 BURDEN IS ON THE REVENUE TO SHOW UNEXPLAINED MONEY UNDER SECTION 69 OF THE ACT. SUCH BURDEN HAS NOT BEEN DISCHARGED ON THE FACTS OF THE ASSESSEE

42 Section 69 of the Act reads as under:

"69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of

the [Assessing] Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

43It is also submitted that burden is on revenue to show unexplained investment under section 69 of the Act, such burden has not been discharged on the facts of the assessee. Reliance is also placed on the following judicial pronouncements:

i) 22 SOT 174 (Mum) Rupee Finance & Management (P.) Ltd. v ACIT (extracted at page 313 of Paper Book)

ii) 81 taxmann.com 257 (Bom) CIT v. Devesh Agarwal (extracted at pages 313-314 of Paper Book)

iii) 64 taxmann.com 332 (Del) ACIT v. Rakesh Narang (extracted at pages 314 of Paper Book)

iv) ITA no. 610/2012, Dated 19.10.2012 (Del) CIT vs Dinesh Jain HUF (extracted at pages 315 of Paper Book)

v) ITA No. 176/204 dated 25.4.2014 (Del) CIT v. Agile Properties (P) Ltd.

vi) 237 ITR 570 (SC) CIT vs. Smt. P. K. Noorjahan vi)

vii) 107 ITR 938 (SC) Roshan Di Hatt vs. CIT vii)

viii) 261 ITR 664 (Del) CIT vs. Naresh Khattar (HUF)

ix) 328 ITR 513 (SC) Sargam Cinema vs. CIT

x) 328 ITR 516 (Del) CIT vs. Naveen Gera

xi) 316 ITR 46 (Del.) CIT vs. Shakuntala Devi

xii) 335 ITR 572 (Del.) CIT vs. Bajrang Lal Bansal

44THAT SURMISES, CONJECTURES AND SUSPICION CANNOT BE MADE A BASIS TO MAKE FOR ADDITION

- i) 37 ITR 271 (SC) Uma Charan Shaw & Bros. Co. v. CIT
- ii) 37 ITR 151(SC) Omar Salay Mohammad Sait v CIT
- iii) 26 ITR 736 (SC) DhirajlalGirdharilal v CIT, Bombay
- iv) 26 ITR 775 (SC) Dhakeshwari Cotton Mills Ltd. v CIT (extracted at pages 332-333 of Paper Book)
- v) 37 ITR 288 (SC) Lal Chand BhagatAmbica Ram v CIT
- vi) 91 ITR 8 (SC) CIT v Calcutta Discount Company Ltd.

45 In view of the aforesaid addition made of Rs. Rs. 17,25,00,000/- and deleted by the learned Commissioner of Income Tax (Appeals) may kindly be upheld and grounds raised by the revenue may kindly be rejected.

46 It is thus prayed that appeal filed by revenue may kindly be dismissed and cross objection filed by the assessee may kindly be allowed.

47 Similar findings of the learned Commissioner of Income Tax (Appeals) wherein deleted the addition in the following cases

Sr. No.	Name of Entity	ITA No. (Deptt.)	CO No. (Assessee)	Amount in dispute as alleged by learned Assessing officer on the basis of whatsapp chat
i)	Rama Shanker Khemka	1005/D/2024	33/D/2024	2.76 crores
ii)	Payal Khemka	1000/D/2024	61/D/2024	1.84 crores
iii)	Rajesh Rani Khemka	1004/D/2024	63/D/2024	1.15 crores

48. In view of the aforesaid the finding of learned Commissioner of Income Tax (Appeals) deleting the disallowance made may kindly be upheld and grounds raised by the revenue may kindly be rejected.

15. Considered the rival submissions and material placed on record. We observed that the assessee along with the other related parties entered into a purchase agreement situated at A-32, Westend Colony, Delhi and after several negotiations finally purchased the property and got it registered on 16.05.2019 for total consideration of Rs.76 crores along with the other related parties. The basis of dispute under consideration are, during Search and Seizure operation u/s 132 of the Act at the premises of the group entities, a copy of draft agreement of sale relating to the above property was found along with the estimation cost of renovation of the said property and board resolution were found and seized. During search proceedings, certain WhatsApp chats were also recovered between the director of the assessee company, Aditya Gupta and Tony Gupta. It was mentioned in the Chat that the total consideration would be split of Rs. 99 crores as “76/23” and AO observed that the assessee had actually paid and completed the registration of the property at Rs. 76 Crores, the AO came to conclusion that the other portion is the settlement of sales consideration out of cash, outside the books of account. Accordingly, he proceeded to make the additions in the hands of the assessee and other related parties as per the respective shares.

16. We have also observed from the detailed findings of the Ld CIT(A) that he has analyzed the negotiations which was started thru WhatsApp on 26.08.2018 and till the registration of the property on 16.05.2019. He

analyzed the various chats and documents which are found seized which includes the pages 75 and 76 identified as annexure A2, wherein the details of breakup of the amount under dispute as Rs. 76 crores towards cost of purchase of property and 23 crores towards the cost of refurbishment. It also contained the detailed cost breakup of the cost of refurbishment to be carried out by the vendor. He also observed that on 10.04.2019, the board resolution was passed by the board of directors to proceed with the purchase of the property without the estimated refurbishment cost of Rs.23 crores. Accordingly, the transaction was completed. At the time of appellate proceedings, he observed that all the documents found and seized during the search proceedings identified as Annexure A2, which includes not only the sale deed but also the other documents indicating the terms of the deal and also mentions the split up of 76/23, towards cost of purchase and cost of refurbishment. The documents found during the search which substantiate the initial negotiations between the parties through WhatsApp chats. In our view, the Ld CIT(A) has rightly appreciated the concept of presumption in the case of documents found in possession of the searched parties during the search, it presumed that the contents of the such documents are true. Therefore, the documents found during the search and WhatsApp chats are presumed to be true and represent the correct details as per the provisions of the section 132(4A) and 292C of the Act. Further the statements recorded

post search proceedings were also corroborates with the documents found during the search. Even the AO in the report submitted before the first appellate authority wherein he accepted the documents found during the search, other statements and board resolutions placed on record confirms the pre and post negotiations before completion of the purchase of the property.

17. After considering the submissions of both parties and detailed as well as reasoned findings of Ld CIT(A), we are in agreement that the AO had partially agreed with the contents found during the search relating to cost of registered value as mentioned in the agreement and refused to accept the other corroborated evidences which substantiate the stand of assessee and also the transaction was completed before the search not even commenced. All the transactions were happened prior to search and the documents found during the search presumed to be true and also details found during the search are matching with the transactions carried on by the parties. Therefore, we do not see any reason to disturb the findings of Ld CIT(A), accordingly the grounds raised by the revenue are accordingly dismissed.

18. In the CO filed by the assessee includes the grounds on the issues of DIN, approval u/s 153D, since we dealt the issue raised by the revenue on merits, the CO filed by the assessee are not adjudicated at this stage, hence the same are dismissed as such.

19. In the result, the appeal filed by the revenue and CO filed by the assessee are dismissed.

20. With regard to other connected appeals and COs, the facts are exactly similar to the facts in the ITA No.1002/Del/2024 and CO No.62/Del/2024, the findings of ITA No. 1002/Del/2024 and CO No. 62/Del/2024 are applicable Mutantis mutandis to the other connected appeals and CO, we are inclined to dismiss the appeals preferred by the revenue and also the CO's filed by the assesseees.

21. In the result, all the appeals preferred by the revenue are dismissed and all the COs filed by the assesseees are also dismissed.

22. Order pronounced in the open court on this day 6th of February, 2026.

Sd/-

**(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

Sd/-

**(S.RIFAUH RAHMAN)
ACCOUNTANT MEMBER**

Dated: 06.02.2026

***Mittali Sr. PS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**