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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **ITA 336/2017**

PR. COMMISSIONER OF INCOME TAX-9 ..... Appellant
Through: Mr. Rahul Chaudhary, Advocate

Versus

PUNIT BERIWALA ..... Respondent
Through: None.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

ORDER
% **24.05.2017**

C.M.No.16651/2017 (delay in filing)

1. For the reasons explained in the application, the delay in filing the appeal is condoned. The application is disposed of

ITA No.336/2017

2. This is an appeal by the Revenue against an order dated 24th August, 2016 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No.964/Del/2012 for the Assessment Year (AY) 2006-07.

3. The question sought to be urged by the Revenue is whether the ITAT was in error in upholding the deletion by the Commissioner of Income Tax (Appeals) [CIT (A)] of the addition of Rs.7,33,50,000/- made by the Assessing Officer (AO) on account of the undisclosed income?

4. A search was carried out in the Vipul Group of cases under Section 132 of the Income Tax Act, 1961 (the Act) on 1st June 2006. On the same day, the residence of the Assessee was also searched. It is stated that during the course of the search the Assessee had surrendered additional income of Rs.1,01,05,976/- for the AY in question. Notice under Section 153A of the Act was issued to the Assessee on 20th March, 2017.

5. In making an addition of Rs.7,33,50,000/- to the income of the Assessee by the assessment order dated 30th December 2008, the AO principally relied upon one document which was seized from the residence of the Assessee's younger brother Mr. Vinit Beriwala. This document is referred to as Annexure-A-1 consisting of 109 pages. The description in the assessment order of the notings in this particular page are as under:

> "Page No.105-107 is under the heading Steps for implementing understanding reached on 11.04.2006 and pending position as on 11.04.2006 arising from family settlement of 12.09.2005 between the family members. At item no. 7, on page 106, it is mentioned that PB will pay cash to VB/SSB @ Rs.50,00,000/- per week at least to complete by 31st May.
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> Page No.107 contain details of pending actions of the family settlement reached between three groups of Beriwala family, It has been mentioned in item no. 15 that payments till date PB -> SSB -- 1.25, PB ->VB- 6.0850.
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> In light of the above documents, the assessee was accorded opportunity vide letter dated 10.10.2008 to explain the source of payment ofRs.7,33,50,000/- (1.25 + 6.0850) made in cash to brother Sh. Vinit Beriwala group and father Sh.S.S. Beriwala group and as to why the same should not be added as expenditure out of undisclosed sources. The assessee has filed a

> detailed reply and has contended that no cognizance should be taken of the notings on the above referred documents."

6. The AO concluded that "The documents clearly shows that to arrive at equal distribution of assets between VB group, PB group and SSB group the amount of Rs.7.33 crores has been paid which becomes evident in light of overall facts, emerging from the seized documents and the assessment records".

7. In the order dated 12th December, 2011 allowing the Assessee's appeal, the CIT (A) noted the following submissions on behalf of the Assessee in regard to the same document as under:

> "From the above it is apparent that, the seized material contained only a proposal as is evident from the period i.e. 01.04.2006 to 12.09.2006 during which the proposal had to be implemented by the family. However, the said proposal was never acted upon by the family and no such alleged payment of Rs.7,33,50,000/- has been made by the assessee. Moreover, none of the documents so seized were signed by any of the family members of the family.
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> If we give a fresh look to the papers allegedly found and seized from the premises of Shri Shyam Sunder Beriwala, it would be evident to note that the pages are loose, hand written, ruled sheet of paper which are actually rough documents. These pages have not been signed by any of thy; members of the family i.e. Shri Shyam Sunder Beriwala, Shri Puneet Beriwala or Shri Vineet Beriwala.
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> If we carefully analyse the jottings on these pages it would be noticed that there was a negotiation going on which was not final. This is evident from the fact that on all the pages there were many corrections, scribbling, striking off the points at various places has been done.

Moreover, if we observe on page 107, it would be noticed that against "PB --- SSB", some figure was written which has been struck off and again re-written as "1 .25". This also confirms that there was some negotiation going on which was not accepted by either of the parties to the settlement and therefore it is not correct to say that these pages represent any payment being made by the assessee. On the analysis of the period for which the discussion on these pages is being done is after the date of the search i.e. 01.04.2006 to 12.09.2006 as is also mentioned by the Ld/- AO in his questionnaire.

It can be noticed from the various seized material that the negotiation for family settlement were going on since April 2005 and many draft papers were prepared, but due to one or the other reason the settlement among family members did not materialize and meetings between the family kept on taking place. Such draft papers were prepared by one of their consultant who jotted down the steps to be implemented. However, search took place on different premises of the family members of the group and therefore, the conclusion to the understanding could not be brought. The search took place on 01.06.2006 and no cash pertaining to any of the intended transactions was detected. Moreover these papers were seized in the absence of Sh. S.S.Beriwala and Vinit Beriwala and no questions were asked to them about these papers. Also, this action plan does not convey that the assessee had given any cash payment to Sh. S.S.Beriwala or Vinit Beriwala."

8. The CIT(A) then recorded the following finding:

"Coming to the contents of the document referred to in Annexure A-1(Pages 1-109) the appellant in his submission has inter-alia stated that these pages mainly related to the deeds of family settlement of Beriwala group at different point of time. Referring to page no 106 it is stated that this page contains an action plan as it records "understanding reached on 11.04.06". That against point no. 7 on this page it is written that "PB will pay cash to VB/SSB@ 50,00,000/- per week at least to complete by 31st May." That this paper appears to be written on

11.04.06 and that negotiation for family settlement were going on since April., 2005 and many drafts papers were prepared, but due to one or other reason the settlement among the family members did not materialize. Referring to page 1 07 the appellant has submitted that this page is dated 12.09.06 and contains details of "pending portion arising from family settlement of 12.09.06". Referring to the last para on this page wherein notings of "payments till date PB->SSB->1.25 and PB ->VB 6.0850 the argument being made by the appellant is that from the fact that this is written under the heading "pending portion arising from family settlement" therefore it is not clear whether the narration meant that the "payments that were to be made till date" or "payments made till date." That interpretation can be made either way since this narration forms part of the paper consisting of pending portion arising from family settlement. The appellant has further argued that no source and no availability is reflected from where the payments could have been made in cash. That these papers are only draft papers where jottings have been made relating to steps to be implemented. Referring to page 104 the submission is that this page is regarding Division of assets Beriwala Group as on 31.03.05 and in the three columns the assets under the control of Shri SS Beriwala, Punit Beriwala and Vinit Beriwala have been mentioned. That the statement on this page reveals that there is no availability of funds because the asset allocation does not allocate any liquid funds in any of these groups stated in the settlement papers. It has lastly been argued that there is no presumption about earning of income and the AO cannot make addition based on incomplete entries and notings made on unsigned, rough paper which does not clearly reveal that the assessee has earned income. That accordingly no reliance can be placed on such dumb document. Reliance has been placed on the decision of Delhi High Court in case of *CIT vs. Kulwant Rai 291 ITR 36* and it has been submitted that the addition made by the AO without any corroboration of the seized rough papers based on any direct/circumstantial evidence is not in accordance with law and therefore may be deleted.

> The contents of the documents have been gone through which are cryptic in nature. Even the deciphering of the figure of 1.25 and 6.0850 into Rs. 1.2.5Crores and Rs. 6.0850 Crores is based on assumption. Moreover no dates are recorded against these narrative and that on the top of page 107 (which in my view should be correctly read as "pending portion 12.04.2006) refers to arising from family settlement of 12.04.06". It is also a matter of record that the impugned documents have not been seized from possession or control of the appellant but rather have been seized from the residential premises of Sh. Vineet Beriwala, the younger brother of the appellant. As already noted above there is no evidence to the effect that the seized documents are in the hand writing of the assessee. No statement has been recorded from the person in whose possession /control these documents are found/seized and therefore the issue of confronting/cross examination to the appellant does not arise, which was a basic legal requirement. Moreover there has been no addition to income in hands of either Sh. Vineet Beriwala or Sh. SS Beriwala for A.Y.2006-07 (based on the above narrative), copy of assessment order for which has been enclosed. Further there is no record of any cash for Rs.7,33,50,000/- or a lesser amount found at any of the premises of Sh. Vineet Beriwala or Sh. SS Beriwala , nor any details of any investment/ expenditure having been made out of this supposed amount of Rs. 7,33,50,000/- found in search on Sh. Vineet Beriwala or Sh. SS Beriwala. It is relevant to note that the search has been conducted on 01.06.06, which is barely 50 days from the date of written on page 12.04.06. Thus there has been no corroborative evidence found in search or post search investigation to substantiate the fact that the appellant has made unaccounted cash payment for Rs.7,33,50,000/- to Sh.Vineet Beriwala or Sh. SS Beriwala during the year."

9. The Revenue then took up the matter in appeal in ITAT which concurred with the view expressed by the CIT(A). It was concluded by the ITAT in para-9 of the impugned order as under:

"9. We have considered the rival contentions and gone through the entire material available on record and we find that there is no corroborating evidence on record to justify the payment of Rs.7,33,50,000/- by the assessee to other family group. No statement has been recorded of the person (s) from whose possession these documents were found. The ld. CIT(A) has categorically mentioned that there has been no addition to income in hands of either Sh. Vineet Beriwala or Sh. SS Beriwala for A.Y.2006-07 based on the narration found made on the seized papers or that they have anywhere declared the receipt of payments from the assessee. There is nothing on record to contradict the findings of the ld. CIT(A) that no cash for Rs.7,33,50,000/- or a lesser amount found at any of the premises of Sh. Vineet Beriwala or Sh. SS Beriwala, nor any details of any investment/ expenditure having been made out of this supposed amount of Rs.7,33,50,000/- were found in search on Sh.Vineet Beriwala or Sh. SS Beriwala. Thus there being no corroborative evidence found in search or post search investigation to substantiate the fact that the appellant has made unaccounted cash payment for Rs.7,33,50,000/- to Sh. Vineet Beriwala or Sh. SS Beriwala during the year, the assumption of payment of cash derived from alleged paper seized cannot be supported. Therefore, ld. CIT(A) has rightly deleted the addition. The ld. CIT(A) has also recorded the findings on legal aspect of the case also, inasmuch as the alleged paper was not found from the possession of assessee and there was no corroborating evidence to show that the said papers seized from third party belong to the assessee. He has also relied on several decisions of Hon'ble Higher courts. The Revenue has not brought any material on record contrary to the findings reached by the ld. CIT(A) on this aspect also. We accordingly, do not find any justification to interfere with the findings reached by the ld. CIT(A) on this issue. Accordingly, the ground No. (ii) of appeal of the Revenue also deserves to be dismissed."

10. Having heard Mr. Rahul Chaudhary, the learned Senior standing counsel for the Revenue and having examined the above orders carefully, the Court

is of the view that the concurrent findings returned by both the CIT(A) and ITAT are factual and do not give rise to any substantial question of law.

11. The appeal is accordingly dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 24, 2017
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