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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 803/2016

PR. COMMISSIONER OF INCOME TAX,
CENTRAL- II ..... Appellant
Through: Mr. Ashok K. Manchanda, Adv.

versus

PRIME INFOWAYS PVT. LTD. ..... Respondent
Through: Mr. Inder Paul Bansal and Mr. Vivek Bansal, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**<u>O R D E R</u>**
% **06.01.2017**

In this case the Revenue urges that deletion of two amounts i.e. ₹ 50 lacs and ₹ 47.02 lacs, added in the course of the assessment under Section 68 of the Income Tax Act, 1961 (in short the Act) is erroneous.

Further to search and seizure proceedings, in respect of unrelated party, based upon materials seized, queries were made in the course of the regular proceedings in the present case for Assessment Year (AY) 2009-10. The Assessing Officer (AO) added ₹ 47.02 lacs on account of suspect and allegedly bogus transactions based upon the chart seized in search and seizure proceeding, of the third parties out of the 66 names found therein. Another amount of ₹

50 lacs was added on account of suspect payment attributed to M/s Stalwarts Realtors Pvt. Ltd.

The assessee, however, succeeded in the appeal before the Income Tax Appellate Tribunal (ITAT). As to the amount of ₹ 47.02 lacs it was firstly observed that the material was seized in respect of a third party and its evidentiary value could not have been facial. In other words, the AO and the other parties were under a duty to make appropriate further inquiries. Moreover, the ITAT also noticed that the chart contained details of amounts paid by cheques by third parties which were never subjected to investigation. In addition, the inquiries made from searched parties or the statements were made available to the assessee. In these circumstances, the mere assumption that some of the parties were bogus and that the amounts attributed to them were suspect could not be sustained.

So far as M/s Stalwarts Realtors Pvt. Ltd. and the amount of ₹ 50 lacs added to its account was concerned, the ITAT noticed that the said amount had been assessed to income and relied upon its own order in ITA No. 2466/Del/2013 dated 13.06.2016. It was, therefore, concluded that since the amount was shown by M/s Stalwarts Realtors Pvt. Ltd. and in fact accounted for, the question of it being bogus or suspect in the hands of the assessee did not arise.

This Court has carefully considered the submissions on behalf of the Revenue and the grounds urged in support of the appeal, and is of the opinion that findings on both questions are entirely factual. Sans any manifest perversity – of which there is none, the Court does not wish to interfere with the findings of fact of a final order like the

ITAT. No substantial question of law arises. The appeal is, therefore, dismissed.

**S. RAVINDRA BHAT, J**

**NAJMI WAZIRI, J**

**JANUARY 06, 2017**/kk