$~68

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

\+ ITA 423/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 7 DELHI .....Appellant

Through: Mr. Sunil Agarwal, SSC with Mr. Shivansh B. Pandya, Mr. Viplav Acharya, JScs & Mr. Utkarsh Tiwari, Adv.

versus

M/S SCORPIO RESEARCH AND CONSULTANTS PVT. LTD. .....Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **07.08.2024**

CM APPL. 44891/2024 (Ex.)

Allowed subject to all just exceptions.

Application stands disposed of.

CM APPL. 44890/2024 (214 Days Delay)

Bearing in mind the disclosures made, the delay of 214 days in filing the appeal is condoned.

Application stands disposed of.

ITA 423/2024

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal ["**Tribunal**"] dated 20 April 2023 and posits the following questions of law for our consideration:

> "3.1 Whether on the facts, circumstances and in law, the Hon'ble ITAT erred in deleting the addition of Rs. 15,00,00,000/- on account of cash payments on the basis of seized documents and not appreciating the findings of the AO who has corroborated these

documents with books of accounts of the assessee company?

3.2 Whether on the facts, circumstances and in law, the Hon'ble ITAT erred in holding that email relied upon by the AO may give rise to suspicion that there may be cash payment in addition to the recorded sale consideration, however, such suspicion, however, strong, cannot take place of evidence although AO has corroborated the email and seized documents with books of accounts of the assessee company?"

2. We, however, find that the source of cash which was seized during the course of the search appears to have been duly explained by the assessee and which position came to be accepted both by the Commissioner of Income Tax (Appeals) as well as the Tribunal. This is evident from a reading of paras 68 & 69 of the order impugned before us:-

"**68.** We have considered rival submissions and perused materials on record. From the observations of the Assessing Officer in the assessment order, it is clearly evident, relying upon certain email communications between some persons related to the assessee company and other entities, the Assessing Officer has concluded that in addition to the amount recorded in the agreement towards consideration for sale of land in Sector 84 and 85 of Gurgaon, the assessee received money in cash, as, the information in the email suggests that the total consideration paid towards purchase of land by different entities was to the tune of Rs.150 crores and not the recorded amount of Rs.105 crores. Accordingly, he has inferred that the assessee has received an amount of Rs.45 crores in cash outside the books towards sale consideration of land, which was added back to the income of the assessee. It is observed from the materials on record, except the email communications, the Assessing Officer has no other corroborative evidence to conclusively prove that money in cash had actually changed hands. Except the email communications, no other documents have been seized, either from the assessee or from other entities to indicate that cash payment was actually made. Apart from relying upon the email communication, the Assessing Officer has not made proper inquiry to establish on record that cash payments were actually made to the assessee. As rightly observed by learned Commissioner (Appeals), the emails on which the Assessing Officer placed reliance, essentially, do not patently show any agreement or discernible consent arrived at between the buyer and seller regarding the land to be purchased or the rate per sq. yards. The emails are in the nature of discussions and proposals to a planned purchase transaction. It has been factually found by learned Commissioner (Appeals) that the figures relating to the alleged total deal vary in different emails. Learned Commissioner (Appeals) has also given a factual finding that no seized materials were found conclusively establishing that any amount in cash was actually paid or any such sum was adjusted against the final sale consideration.

69. We must say, the Revenue has failed to controvert any of the factual findings recorded by learned Commissioner (Appeals). Though, email relied upon by the Assessing Officer may give rise to suspicion that there may be cash payment in addition to the recorded sale consideration, however, such suspicion, howsoever strong, cannot take place of evidence. It is a fact on record that the Assessing Officer has not brought any evidence to establish that cash payments were actually made to the assessee."

3. In view of the above, we find that the appeal fails to raise any substantial question of law.

4. The appeal shall, consequently, stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 7, 2024/kk