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

\+ ITA 449/2025 CM APPL. 60012/2025 CM APPL. 60013/2025

PR. COMMISSIONER OF INCOME TAX -7 .....Appellant

Through: Mr. Ruchir Bhaia, SSC and Mr. Anant Mann, JSC

versus

POSITIVE BUILDWELL PVT. LTD .....Respondent

Through: Appearance not given

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

O R D E R

% **27.11.2025**

1. The challenge in the appeal is to an order passed by the Income Tax Appellate Tribunal (ITAT) in ITA 2028/Del/2019 dated 04.12.2023 whereby the appeal filed by the appellant Revenue has been dismissed. The said appeal relates to the Assessment year 2010-2011.

2. Mr. Anant Mann, learned JSC appearing for the appellant, has drawn our attention to page 42 to contend that re-assessment proceedings were initiated against three entities, which are similarly placed and the same became the subject matter before different authorities including the ITAT. He has placed before us the decision of this Court in ***ITA 423/2024, Principal Commissioner of Income Tax 7 Delhi v M/s Scorpio Research and Consultants Pvt. Ltd.,*** wherein one of the three entities was a party to the appeal which was dismissed by this Court.

3. He states that the respondent herein, in whose favour the ITAT has passed the order impugned in these proceedings, is also similarly placed. In fact, we find that in ***PCIT v M/s Scorpio Research and Consultants Pvt.***

Ltd. (Supra) this Court has in paragraph 2 onwards has stated as under:-

> *"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."

4. Even in paragraph 5 of the impugned order, the ITAT has stated as

under:-

> *“5. We have carefully perused the orders of the authorities below. We find force in the contention of the Counsel 'the impugned issue was also considered by this Tribunal in the Case of Vatika Limited in ITA No.3709/Del 2017. The relevant findings read as under :-*
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> > *"68. We have considered the rival submissions and perused the 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 upon certain email communications between some persons related to the Assessee 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 book 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 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.

70. In view of the aforesaid, we do not find any reason to intefere with the decision of learned Commissioner (Appeals) on this ground."

5. For parity of reasons and as no substantial question of law arises for consideration, we are not inclined to entertain the appeal. The appeal is dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

NOVEMBER 27, 2025
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