



2025:DHC:5427-DB



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

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Date of Decision : 09.07.2025

(3)

+ ITA 176/2025 & CM APPL. 39611/2025, CM APPL. 33463/2025
SNEREA PROPERTIES PVT. LTD.Appellant
Through: Mr. Gautam Jain, Mr. Shaantanu Jain,
Mr. Manish Yadav, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE -18Respondent
Through: Mr. Siddhartha Sinha, Sr. Standing
Counsel.

(4)

+ ITA 177/2025 & CM APPL.33522/2025, CM APPL.39610/2025
SHREY PROPERTIES PVT. LTD.Appellant
Through: Mr. Gautam Jain, Mr. Shaantanu Jain,
Mr. Manish Yadav, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE-18Respondent
Through: Mr. Siddhartha Sinha, Sr. Standing
Counsel.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. Issue notice.



2. The learned counsel for the Revenue accepts notice.
3. The Assesseees have filed the respective appeals under Section 260A of the Income Tax Act, 1961 [**the Act**] impugning an order dated 19.01.2025 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No. 5181/Del/2017 captioned *Assistant Commissioner of Income Tax v. Snerea Properties Private Limited* and ITA No. 5182/Del/2017 captioned *Assistant Commissioner of Income Tax v. Shrey Properties Private Limited*.
4. The Revenue had preferred the said appeals against separate orders passed by the Commissioner of Income Tax (Appeals) 27 [**CIT(A)**] in the respective appeals preferred by the Assesseees against separate assessment orders dated 29.12.2016 passed under Section 143(3)/147 of the Act.
5. During the search proceedings conducted in the case of Aerens Group of Companies, a Memorandum of Understanding [**MoU**] was found and seized from the residence of one Sh. Surender Kr. Gupta. The said MoU reflected that 50% of the share in the property bearing the address 15/1, Prithviraj Road, New Delhi [**Prithviraj Road Property**], which was jointly held by the Assesseees had been transferred to M/s Om Shivay Real Estate Private Limited [**Transferee**] during the Financial Year [**FY**] 2010-11. The information indicated that the market price of the Prithviraj Road Property was estimated at around ₹150 Crores, however, the transactions were conducted at a value of ₹5 Crores each.
6. On the aforesaid basis, the assessments of the Assesseees were reopened by issuance of a notice under Section 148 of the Act on 01.04.2015.
7. The Assessing Officer [**AO**] found that the each of the Assesseees held



50% share in the Prithviraj Road Property and the same has been transacted at an undervalue. Reference was made to the District Valuation Officer [DVO], who reported as under:

“With reference to above regarding estimation of cost investment in land/or building at 15, Prithviraj Road, New Delhi it is inform that the said property was inspected by me dated 25.12.2016. During the inspection it was found that there was an old single story load bearing residential building whose description is as under:-

According to your reference, you have requested to this office to submit the investment made by the assessee during the F.Y.2011-12. Since according to inspection of property of assessee and according to report etc. there is no investment made by the assessee in F.Y.2011-12. It is further hereby stated that no investment has been made by the assessee for major changes or additions/alterations in the structures of existing building as no such work are done by assessee. This is for kind information and necessary action.”

8. Although the DVO reported that no investment had been made by the Assessee during the FY 2011-12 and no major additions, changes or alterations in the structure were made during the said period; the AO proceeded to observe the market value of the Prithviraj Road Property was ₹150 Crores. The AO further observed that the Assessee was dealing in the real estate, therefore, the entire consideration for the Prithviraj Road Property was required to be treated as income from the undisclosed source under Section 68 of the Act. The operative part of the assessment order [in the case of Snerea Properties Private Limited] is reproduced below:

“As Per assessee company Memorandum of Article & Association, the assessee company is in the business of real estate and it has been to purchase, sell, develop, take in exchange, or on lease or otherwise



acquire for sale any real estate including interest in or with respect to any immovable property for the purpose of the company in consideration for a gross sum or rent or partly in one way and partly in the other or for any other consideration and to carry on business as properties of flats and building and to let on rent apartments therein and to provide for the conveniences commonly provided in flats, suits and residential and business quarters, to enter into agreement with any company persons for obtaining by grant of license or on such other terms of all types, formulae and such rights.

The assessee company was formed with its main abject being the deal in real estate. Rather than developing the land on its own, the assessee company has sold the land on the basis of valuation of shares during F.Y.2010-11. This is very clear example of an adventure in nature of trade and the transaction of business activity of the assessee company and are to be assessed as business income. Thus, the assessee purchased land and sold it rather than undertaking development activity with the sole object of deriving profit out of it. It has been concluded that the income out of the transaction is the business income of the assessee company which was not recorded in the books of accounts and the sale proceeds of land as per the sales of an independent residential house parameters is taken market value Rs.1,50,00,00,000/- as sale consideration of the said property in question. The share of the assessee company 50% taken at Rs.75,00,00,000/- is treated as undisclosed sources of income u/s 68 of the I.T. Act, 1961 and is to be taxed as such in the hands of the assessee company.

Addition of Rs.75,00,00,000/-

Penalty proceeding u/s 271(l)(c) of I.T. 1961 have been initiated separately for the concealment of the income and furnishing the inaccurate particulars of its income.

The income of the assessee is recomputed as under:-

i.	Income declared by the assessee	:	(-)Rs.15,875/-
ii.	Added back:- As discussed above.	:	Rs.75,00,00,000/-
	Total	:	Rs.74,99,84,125/-



9. The AO's conclusion in the case of Shrey Properties Private Limited is also in similar terms.

10. The Assessee appealed the respective assessment orders before the CIT(A). The CIT(A) noted that none of the Assessee had transferred their title or sold their interest in the Prithviraj Road Property during the relevant financial year. The transactions were consummated by the sale of shares by the existing shareholders of the Assessee to Transferee. The Transferee had acquired shares in the Assessee companies. According to the AO, the corporate veil of the Assessee was required to be lifted. It is on this basis it was alleged that the Transferee had acquired 50% share in the Prithviraj Road Property by virtue of acquiring 50% outstanding shares as on 31.03.2011.

11. The Assessee challenged the assessment orders on several grounds including that the reopening of the assessment was invalid. The Assessee also challenged the additions made under Section 68 of the Act, *inter alia*, on the ground that the Assessee had not entered into the transaction on which any tax could be levied. They were also not involved in any transaction for sale or transfer of their interest in the Prithviraj Road Property to any third party [ground number 3].

12. The CIT(A) found merit in the aforesaid challenge and accepted the same. The relevant finding of the CIT (A) are reproduced below:-

“7. I have considered the appellant's contention, carefully gone through the order of ACIT/DCIT, Central circle-18 and deliberated case laws referred by the AR of the appellant during the course of hearing before me. I have found that in the said case without any corroborative evidence only on the basis of presumption addition had been made neither assessing officer has made proper enquiry in this regard nor he has produced any corroborative evidence.



7.1 I have considered the issue from all possible angles and by applying the parameters of Section 68 of the Act. I could not find single evidence which could lead to the entire transaction as sham. Therefore, considering the entire issue in the light of the material evidence brought on record, in my considered view, the assessing officer have erred in treating advance as income of the assessee, as per financial statement and submitted record during assessment proceeding it is clear that the said case there are no matter involved for concealment of income. In my considered view, for the reasons discussed hereinabove, I do not find it necessary to apply the provisions of Sec. 68 of the Act. Except for this if it is considered in view of the newly inserted Section 50CA w.e.f. 01.04.17 if any taxability will be determined that will be in hand of Shareholders not in hand of Assessee Company. I, therefore, direct the AO to delete the addition of Rs.75,00,00,000/-. Ground No. 3 is accordingly allowed.

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9. That the said case between shareholders transaction, purchase consideration of share had been determined by the above mentioned company as per Rules 11U and 11UA under the Income Tax Rules, 1962 (the Rules) which provided the methodology of calculating the FMV of equity shares of an unlisted company. The said transaction of sale of shares had been executed on dated 30/05/2010 whereas section 56(2) clause (viia) of the Income tax Act, 1961 w.e.f. 01.06.2010. As per Rules 11U and 11UA under the Income Tax Rules, 1962 (the Rules) which provided the methodology of calculating the FMV of equity shares as per FMV method fair market value of each equity share is below face value whereas, share of assessee company has been transferred @ 25 per share. This is already surplus as per method of FMV hence, no adverse inference can be drawn under section 56 (2) (vii) of the Act.”

13. The Revenue had filed appeals against the decision of the CIT(A) before the learned ITAT on the following grounds:

“1. On the facts and in the circumstance of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 75 Cr. without appreciating the facts that the shares of the assessee company were transferred



during the year for a meagre amount of Rs. 5 Cr. whereas the valuation of the company due to the $\frac{1}{2}$ share of ownership of land at Prithvi Raj Road, was land worth Rs. 75 Cr. implying that the substantially part amount of the consideration has been received in cash which is evident by the MOU dated 10.08.2011 entered into between Sh. D.K. Gupta and Sh. Sanjeev J Aerens the substantive share holder and director of the company.

2. The Ld. CIT(A) has erred in holding that the A.O has not recorded a proper satisfaction note and passed the order u/s 147/143(3) of the Act without providing proper opportunity to the assessee whereas It is evident from the assessment record that before issuing notice u/s 148 of the Act to the assessee the A.O. has properly recorded reasons for re-opening of the case and the order was passed after providing sufficient opportunity to the assessee.

3. The Ld. CIT(A) has erred in holding that forwarding of matter to the valuation cell is bad interpretation of the Act the A.O. has discretion to refer the matter of valuation of assets by valuation officer.

4. The appellant crave leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

14. There is no dispute that the Assesseees have not transferred any part of their interest or title in the Prithviraj Road Property to any third party. The interest, if any, acquired by the Transferee in M/s Om Shivay Real Estate Private Limited is by virtue of acquiring the shares of the Assessee. The Assesseees reiterated their contentions before the learned ITAT that no additions under Section 68 of the Act could be made on the basis of the estimation of the market value of the property that had neither been sold or transferred by the Assesseees. The transaction in regard to the Prithviraj Road Property, if any, had taken place between the shareholders by transferring the shares to the Transferee. Therefore, the income or deemed income had arisen in the hands of the transferors and not the Assesseees.



15. The fundamental error committed by the AO is proceeding on the assumption that the acquisition of indirect interest in the subject property by transfer of shares or allotment of shares of the Assessee results in the Assessee being divested of any interest or title held by them in the subject property.

16. Whilst the learned ITAT accepted the Assessee's contentions, the learned ITAT faulted the CIT(A) for not bringing in detail facts as to how the Prithviraj Road Property was held as stock-in-trade, and, accordingly, remanded the matter to the CIT(A).

17. Assuming that the facts, as found by the AO are correct, that is, the value of the Prithviraj Road Property is ₹150 Crores, the transaction of sale and purchase of shares of the Assessee companies would not result in any income in the hands of the Assessee as the Assessee have not transferred any of their properties during the relevant Assessment Year. The incidence of tax, if any, would be confined to the transacting parties, that is, the then existing shareholders of the Assessee and the transferees to whom the shares have been allegedly sold at an undervalue.

18. The question whether the Prithviraj Road Property is held by the Assessee as stock-in-trade or any other asset is not relevant in considering whether any addition could be made to the income of the Assessee under Section 68 of the Act on account of the sale/purchase of the shares of the Assessee company by its shareholders or by otherwise acquisition of shares. The Assessee continues to hold the title and interest in the Prithviraj Road Property and had not alienated their interest or title in favour of any other person.



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19. There is no ambiguity in the findings of the CIT(A) and we find no justification for the learned ITAT to have remanded the matter to the CIT(A).

20. In view of the above, the appeals are allowed and the impugned order is set aside. The pending applications are also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

JULY 09, 2025

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Click here to check corrigendum, if any