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**IN THE HIGH COURT OF BOMBAY AT GOA**

**TAX APPEAL NO.41 OF 2014**

The Commissioner of Income Tax  
“Central Circle”, Panaji, Goa.

... Appellant.

*Versus*

M/s Primeslots Properties Pvt. Ltd.,  
4<sup>th</sup> Floor, Siddharth Bandodkar Bhavan,  
Opp. Shree Mahalaxmi Temple,  
Panaji - Goa.

PAN: XXXXXXXXXX ... Respondent.

Ms Suzan Linhares, Standing Counsel *for the Appellant-Revenue.*  
Mr Nikhil Pai, Advocate *for the Respondent.*

**CORAM :**

**BHARAT P. DESHPANDE &  
VALMIKI MENEZES, JJ.**

**RESERVED ON :**

**9<sup>th</sup> February 2024**

**PRONOUNCED ON :** **10<sup>th</sup> May 2024**

**JUDGMENT: (*Per Valmiki Menezes, J.*)**

1. This is a tax appeal under Section 260A of the Income Tax Act, 1961 (the Act) by the Revenue seeking to challenge order dated 25/10/2013 of the Income Tax Appellate Tribunal (ITAT). The Appeal was admitted on 2<sup>nd</sup> December 2015 on the following substantial questions of law:

(A) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal did not err in holding that the

amount of Rs.4,99,00,000/- received by the Assessee from Smt. N. Sunitha is not income of the Assessee and as such whether the finding of the learned Tribunal is perverse?

(B) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal did err in not appreciating that the Assessee has received an amount of Rs.4.99 crores for execution of a contract and therefore assessable in the hands of the Assessee as income from other sources?

The case pertains to Assessment Year 2007-08.

2. It is the case of the Appellants that consequent to a search conducted under Section 132 of the Act at the premises of one Suryanarayan, and his wife Smt. N. Sunitha, and at other premises of one Sadiq Shaikh, certain incriminating material was found indicating that the Assessee Company had not brought to tax and disclosed certain income. Notice under Section 153C was issued to the Assessee on 9/6/2010 calling upon it to file a return of income. In response to this notice Assessee Company filed a return of income on 12/8/2011 declaring a loss of Rs.4,97,189/-.

Thereafter, on a notice dated 26/8/2011 under Section 143(2) and 142(1) of the Act being issued, the Assessee produced its books of accounts for verification and filed details of transactions done by it with Smt. Sunitha, whereby funds were transferred to the Assessee Company and utilized by it. It is the case of the Revenue that the Directors of the

Company accepted that the receipt of the disputed amount of Rs.4.99 crores was received by it by a cheque, the Assessee failed to explain the actual purpose of this receipt with evidence. It is further Revenue's case that statements were recorded of N. Suryanarayan, who admitted payment of Rs.4.99 crores to the Assessee from by N. Sunitha was towards an advance towards purchase of property, and based on this evidence, the Assessee was unable to justify and explain as to why this amount should not be brought to tax as income from other sources. The Revenue further claimed that though the Assessee raised a defence that this sum was transferred for purchase shares in the Assessee Company, the Assessee failed to produce original documents whereby a request was made by Smt. N. Sunitha for allotment of shares or any other document to substantiate such a transaction. An assessment order was passed by the Assessing Officer, i.e. A.O. on 27/12/2011 making additions of Rs.4,99,00,000/- to the income of the Assessee Company and taxing the same. The net tax payable was assessed at Rs.2,61,07,507/-.

3. The Assessment Order was challenged by the Assessee before the Commissioner Income Tax (Appeals) (CIT(A)), who rejected the appeal by order dated 18/6/2013, upholding the assessment order of the AO. Against the order of the CIT(A), a further appeal was carried by the Assessee before ITAT, which passed the impugned order dated 25/10/2013 reversing the orders of the AO and CIT(A). Whilst passing the impugned order, the ITAT has recorded that the material on record indicates that the amount of Rs.4.99 crores paid by Mrs N. Sunitha to the Assessee towards allocation of shares in the Assessee Company, which shares were in fact allocated as

evidenced from the return of allotment and annual report of the company as also reflected in the Balance Sheet and Profit and Loss Account of the Company.

4. Learned Ms Susan Linhares for the Revenue submits that the two substantial questions of law ought to be answered in favour of the Revenue and the impugned order of the ITAT be set aside since it is based upon erroneous findings of fact; she submits that the ITAT proceeded on the assumption that the burden lay upon the Revenue to prove that the amount of Rs. 4.99 crore claimed by the Assessee as a deduction, was in the nature of an income, since the amount was paid for rendering of service to Smt. N. Sunitha. Reliance was placed on a Judgment of this Court dated 14/10/2020 in Tax Appeal No.18/2014 - *CIT vs. Sadiq Shaikh* to contend that the burden lay upon the Assessee in terms of provisions of Section 68 of the Act to establish by placing material on record to sufficiently explain the nature of the transaction, and in the absence of such explanation, which includes material to show the capacity of the creditor to pay and genuineness of the transaction, the findings of the AO and CIT(A) could not be reversed.

Repelling this submission, Mr Nikhil Pai appearing for the Respondent-Assessee submits that the findings of the AO and CIT(A) not being based upon any material, as claimed to have been unearthed during the search, the findings of the ITAT that the Assessee had supported its claim to deduct the amount of Rs.4.99 crore based upon various documents referred to in para 2.3 of its order do not call for any interference. It was submitted that the two substantial questions of law on which these appeal

is admitted are to be answered in favour of the Assessee since the findings rendered by the ITAT are neither perverse nor can be termed to have been arrived *de hors* the material on record.

5. We have considered the rival submission and the material on record. The main thrust of this appeal, on the basis of which the Revenue submits the two substantial questions of law ought to be decided in his favour is based upon the contention that after enactment of Section 68 of the Act, the assessee is required to discharge the burden of proving the credit appearing in his books of account with positive material to demonstrate that such money advanced was by a person whose identity was established and who had the capacity to advance the amount. In other words, it is the Revenue's case that the burden was upon the assessee to prove the genuineness and creditworthiness of the transaction, which in the present case it has failed to discharge.

Heavy reliance was placed on *CIT vs. Sadiq Shaikh* (supra) passed by this Court to support this contention.

6. *CIT vs Sadiq Shaikh* (supra) was a case of unaccounted cash receipts shown in the hands of the assessee. In that case, the AO made additions in the income of the assessee of these unaccounted cash receipts on the basis that the assessee had no explanation to offer. This Court, referring to *CIT vs. Bikram Singh - 339 ITR 407* has held that in the case of cash/credit entries in the books of accounts, the burden is on the assessee to demonstrate each of three conditions required to be fulfilled cumulatively i.e. identity of the creditor, his capacity to pay and the genuineness of the

transaction. It is only after this burden is discharged by the assessee, by producing documents and material to substantiate these conditions, that the burden gets shifted to the Revenue to prove otherwise. We take note that in this judgment, the cash receipt was entered into the book of accounts of the assessee where the transaction was made through proper banking channels, but however, this Court rejected the assessee's contention, holding that merely because the transactions are through banking channels, the assessee's burden of demonstrating the genuineness of the transaction does not get discharged, unless requisite material is placed before the AO.

7. The facts in the present case stand on a slightly different footing. The admitted facts are that the amount in question which is Rs.4.99 crores was received by the assessee company from Mrs. N. Sunita by cheque on 26.05.2006. It is the assessee's justification that the money has been received as share application money, of which Rs.50 lakhs was refunded to her on 10.08.2006 and the balance amount of Rs.4,49 crores was allocated by applying Rs.25 lakhs for share capital subscription and the balance of Rs.424 lakhs towards share premium for purchase of 50,000 shares of Rs.50/- (partly paid up) shares at a premium of Rs.848/- per share. This transaction was recorded in the books of accounts of the company followed by all statutory compliances under the Companies Act including filing return of allotment in Form 2 and Annual Report in Form 20B which was filed before the Registrar of Companies.

It is further the case of the assessee in reply that Form 23AC which has the Balance Sheet and Profit & Loss Account of the Company also reflects this fact. All these documents were placed on record of the AO to

reflect that the allotment of shares was shown as on 14.03.2007 while the transactions for allotment of shares to Mrs. N. Sunita were also recorded during the annual general meeting of the company on 29.09.2008.

8. It was further the case of the assessee in reply that since the shares allotted as partly paid, to Mrs. N. Sunita, the Company forfeited the shares on 01.03.2008 as calls made on the shares on 23.07.2007 remained unpaid by Mrs. Sunita; Writ Petition came to be filed by Mrs. N. Sunita before the High Court of Bombay at Goa and therein, a consent order was passed, on the basis of which the shares were allotted to Mrs. Sunita. All these records including the copies of the petition and orders of the Court were placed before the AO.

9. From this record, therefore, the entire transaction, supported by the above-referred documentation was before the AO, who, if one peruses the assessment order, does not dispute the genuineness of any of these documents but only make notes that the assessee failed to produce original papers indicating requests for share allotment from Sunita.

On examining all this material, the ITAT concluded that there was no material with the Revenue to conclude that this money was received from Mrs. Sunita against rendering of service by the Company to treat this transaction as a revenue receipt in the hands of the assessee. The ITAT has applied the settled principle that when a receipt is sought to be taxed as income, and in this case there was no evidence to show that this receipt was towards rendering of services by the Company, in the light of the various documents produced by the assessee as proof of the transaction of

allotment of shares against the amount received, it set aside the assessment order, insofar as the addition of Rs.4.99 crores to the income of the assessee. The reasoning adopted by the ITAT is based upon a sound legal principle and reflected from the documents placed by the assessee before the assessment officer. The documents, which consist of return of allotment of shares, resolutions of the company, and other documents filed in terms of the Companies Act before the Authorities to substantiate the transaction had not been doubted.

10. In addition, the record of the company petition No.17/2009 filed by Mrs. N. Sunita before the High Court, which was ultimately disposed by consent terms filed by the parties by which Sunita was made 25% shareholder in the Company was also produced, but not considered by the AO. The CIT(A) considered these documents, including the copy of the company petition and though it records that according to the consent terms, shares were allotted to N. Sunita to the extent of 25% of shareholding of the Company, it holds that the amount advanced was towards some other purpose such as against execution of a contract and not meant to be returned, resulting in the litigation. The ITAT, on considering all this material, has concluded that there is no evidence found on the record that the amount was paid for availing of any service from the Company to treat the transaction as a revenue receipt in the hands of the Company. We are unable to disagree with the findings arrived at by the ITAT which appears to be fully based upon the material on record, and cannot be termed as perverse.

11. *CIT vs. Sadiq Shaikh* (supra) would not apply to the facts of the

present case as in the present case, as held by the ITAT on the basis of documentary evidence on record, the genuineness of the transaction was proved by the assessee who had discharged the burden which rested on it. The view taken by the ITAT cannot be faulted and is accordingly upheld. The two substantial questions of law are therefore answered in favour of the Respondent, and against the Revenue.

12. For these reasons, we dismiss this appeal with no order as to cost.

**VALMIKI MENEZES, J.**

**BHARAT P. DESHPANDE, J.**