2024:DHC:8694-DB

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 12.11.2024

\+ **ITA 978/2018**

THE PR. COMMISSIONER OF INCOME TAX-6.....Appellant

versus

NUCLEUS STEEL PVT. LTD. ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Sunil Kumar Agarwal, Mr. Shivansh B. Pandya, Mr. Viplav Acharya, Junior Standing counsels and Mr. Utkarsh Tiwari, Advs.

For the Respondent : Mr. Sameer Rohtagi & Mr. Kartikey Singh, Advs.

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HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MS JUSTICE SWARANA KANTA SHARMA

JUDGMENT

VIBHU BAKHRU, J.

INTRODUCTION

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 23.03.2018 (hereafter *the impugned order*) passed by the Income Tax Appellate Tribunal (hereafter *ITAT*) in ITA No.369/Del/2015 captioned

The Income Tax Officer v. M/s Nucleus Steel Private Limited, whereby the Revenue's appeal under Section 253 of the Act was rejected.

2. The Revenue had appealed the decision of the Commissioner of Income Tax (Appeals) [hereafter *CIT(A)*] allowing the respondent's appeal against the assessment order dated 28.03.2013 in respect of the assessment year (AY) 2010-11. The Assessing Officer (hereafter *AO*) had made an addition to the income as returned by the respondent (hereafter *the Assesssee*) under Section 68 of the Act and disallowed the addition made under Section 14A of the Act.

3. The Assessee had filed its return of income for AY 2010-11 declaring a total income of ₹11,145/-. The said return was initially processed under Section 143(1) of the Act. However, thereafter, the same was picked up for scrutiny and a notice under Section 143(2) of the Act was issued on 25.08.2011. The balance sheet of the Assessee for the relevant previous year reflected M/s Unitech Ltd. (hereafter *Unitech*) as a creditor for an amount of ₹67.50 crores. In the aforesaid context, the AO issued a notice under Section 143(2) of the Act calling upon the assessee to furnish details of the transactions with Unitech, which had resulted in an outstanding amount of ₹67.50 crores as reflected in its books of accounts. In response to the same, the Assessee furnished certain details including confirmation of balance by Unitech. The AO issued a notice dated 07.12.2012 under Section 133(6) of the Act to Unitech. In response to the said notice, Unitech's Authorized

Representative (AR) appeared before the AO and explained the nature of the transactions.

4. According to the Assessee, it had received a sum of ₹67.50 crores from Unitech as an advance against sale of certain lands in Maharashtra. The Assessee had executed an Agreement to Sell dated 12.03.2010 on a stamp paper. The AO found that the stamp paper was issued on 23.03.2012 – that is, after the date on the deed – and concluded that the same was executed on a fake and bogus stamp paper. In view of the said finding, the AO held that the credit of ₹67.50 crores standing on the books of accounts of the Assessee was unexplained credit and liable to be included in the total income of the Assessee under Section 68 of the Act. Accordingly, the AO added the said sum to the Assessee's declared income chargeable to tax during the AY 2010-11.

5. The AO also disallowed expenses amounting to ₹33,38,350/- under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (hereafter *the Rules*).

6. Accordingly, the AO framed an assessment order dated 28.03.2013 assessing the Assessee's total income at ₹67,83,49,495/-.

7. The Assessee filed an appeal (being Appeal No.105/13-14) against the order dated 28.03.2013 before the learned CIT(A). The learned CIT(A), by an order dated 31.10.2014, substantially allowed the Assessee's appeal. The learned CIT(A) found that addition of a sum of ₹67.50 crores was unsustainable and accordingly deleted the said

addition. The disallowance under Section 14A of the Act was also reduced from an amount of ₹33,38,350/- to ₹27,615/-.

8. The Revenue appealed the order dated 31.10.2014 before the learned ITAT, which was rejected by the impugned order.

QUESTIONS OF LAW

9. The above appeal was admitted by this Court on 05.02.2024 on the following questions of law as projected by the Revenue:

> "(a) Whether Income Tax Appellate Tribunal [**"ITAT"**] is legally justified in confirming deletion of addition on account of unexplained credit under Section 68 of the Income Tax Act, 1961 [**"Act"**] even when the assessee has failed to discharge its initial onus to prove creditworthiness and genuineness of transaction under Section 68 of the Act?
>
> (b) Whether the ITAT is justified in confirming deletion of addition on account of unexplained credit under Section 68 of the Act only on the basis of paper work filed by the assessee like PAN details, income tax return and bank account and by ignoring on important fact that there was no evidence to prove creditworthiness of the lender under Section 68 of the Act?"

10. The principal question to be addressed is whether in the given facts, the sum of ₹67.50 crores reflected as outstanding in the final books of accounts of the Assessee is liable to be included in the total income of the Assessee chargeable to tax, as unexplained credit under Section 68 of the Act.

FACTUAL CONTEXT

11. Before proceeding further, it would be necessary to briefly note the facts as obtaining in the present case.

12. As noted above, a sum of ₹67.50 crores was shown outstanding as on 31.03.2010 in the books of accounts of the Assessee. The Assessee had explained that the said amount was received from Unitech as a part consideration for the sale of certain lands in the State of Maharashtra. The transactions had not been consummated as Unitech had not paid the balance amount.

13. The AO issued a notice dated 07.12.2012 under Section 133(6) of the Act to Unitech. Pursuant to the said notice, Unitech's Authorised Representative (AR) appeared before the AO and furnished the details explaining the nature of transaction as under:

> "Nature of transaction of Rs.67.50 crores:-
>
> *1. M/s Unitech ltd. has paid an advance of Rs.67.50 crores for purchase of lands situated at Village Savroli Dhamini, Taluka Khanpur, Dist. Raigad, Maharashtra to MIs Nucleus Steel Pvt. Ltd.*
>
> *2. Enclosed copy of agreement to sell entered with the company for payment of advance of Rs. 67.50 crores for purchase of and as mentioned above.*
>
> *3. M/s Unitech Ltd. has to pay balance consideration of Rs.67.50 crores for purchase and registration of land parcel mentioned therein but due to shortage of funds and huge repayment obligations of debts, company is unable to pay the balance amount and, therefore, amount is still outstanding."*

14. The AR (Sh. Surender Kumar) of the Assessee also confirmed the above. He stated that the Assessee had entered into an Agreement to Sell in respect of immovable property being lands described as 3-03-40 hectares and 8-25-2 hectares, situated at Taluka Khalapur, District Raigad, Maharashtra (hereafter *the subject property*), for a sum of ₹135 crores. Against the said amount, the Assessee had received a sum of ₹67.50 crores, which was reflected in its books of accounts as outstanding as on 31.03.2010. The relevant extract of the letter dated 21.12.2012 submitted by the AR of the Assessee to the AO and as noted in the assessment order dated 28.03.2013 is set out below:

> *"In this connection, the following information / explanations / documents are being filed herewith for Your Honour's kind verification and perusal:*
>
> *(1) Details of sundry creditor aggregating to Rs. 68.36crores are being enclosed herewith A review of the same would reveal that in particular the same includes a sum of Rs.67.50 crores received from M/s Unitech Limited, 6 Community Centre, Saket, New Delhi. In this connection it is submitted that the assessee company owned a piece of land measuring 3-03-40 hectors & 8-25-2 hectors situated at Taluka Khalapur, Distt. Raigad, Maharashtra, which was purchased during the year ended 31.03.2004 for a sun of Rs.4592023 and which stands duly reflected in the Annual Accounts of the company. The assessee company had entered into an agreement to sell dated 12.03.2010 with respect to the said property with M/s Unitech Limited (copy of the duly executed Agreement to sell is enclosed). The said land was sold for an aggregate ice (sic price) of Rs.135,00,00,000/- (Rupees One hundred thirty five crores only) against which a sum of Rs.67,50,00,000/- was to be paid as an advance in one or more tranches on or before March 31, 2010. The amount received by the Assesses Company in terms of the said Agreement till 31st March aggregating to*

Rs.67.50 crores has been disclosed under the head "Sundry Creditors" copy of account duly confirmed by M/s Unitech Ltd. is being enclosed herewith."

15. The Assessee explained that it had received an amount of ₹67.50 crores through banking channels. It explained that the said sum was transferred online by Unitech through RTGS (Real Time Gross Settlement) in the following manner:

"Date	*Amount (in crore)*
18.03.2010	*17.00*
19.03.2010	*24.00*
22.03.2010	*16.50*
22.03.2010	*10.00*
Total	*67.50"*

16. The AO embarked upon an investigation as to the engrossing of the Agreement to Sell on the non-judicial stamp paper. The rear of the stamp paper reflected that it was sold to Unitech by one Mr. Sandeep Kumar, Stamp Vendor, License No.584, Parliament Street, New Delhi.

17. The AO sought information from the Delhi Treasury, Tis Hazari Court, Delhi with regard to issuance of the stamp paper (Stamp Paper bearing No.S739345). The Delhi Treasury, Tis Hazari Court, Delhi informed the AO that the stamp paper in question (Stamp Paper bearing No.S739345) was issued to stamp vendor Mrs. Veena Malhotra, License No.374 on 22.03.2012 and her vending place is the Supreme Court premises, New Delhi.

18. On the basis of the said information, the AO issued a notice to Ms Veena Malhotra and she confirmed that the stamp paper in question

was issued to her on 22.03.2012 but she had misplaced the same. The AO also made enquiries as to the vendor who had been assigned the License No.584. Apparently, the said license was issued to one Mr Lalit Kumar Sharma. The AO issued notice to him as well. And, he was also examined by the AO. He stated that he has no concern with the stamp paper in question and did not know any Sandeep Kumar whose name was printed on rear side of the stamp paper in question.

19. The Agreement to Sell in question was witnessed by Mr Pankaj Kumar and Mr Kaushal Nagpal. At the material time, Mr Pankaj Kumar was holding the post of Vice President (Accounts) in M/s Bhushan Steel Ltd., which is the holding company of the Assessee, and Mr. Kaushal Nagpal was holding the post of Deputy General Manager (Finance) of Unitech.

20. Both the said persons were examined. They confirmed their signatures on the Agreement to Sell. Whilst, Mr. Pankaj Kumar did not recollect the date on which the Agreement to Sell was signed, Mr. Kaushal Nagpal confirmed that Managing Director of Unitech had signed the Agreement in his presence on 12.03.2010.

21. The assessment order indicates that on 04.03.2013 the AR of the Assessee was granted an opportunity to cross-examine the witnesses whose statements were recorded under Section 131 of the Act. However, neither the AR nor the Assessee had availed of the said opportunity.

22. Subsequently, on 22.03.2013 (mentioned as 26.02.2013 in the impugned order), the AR of the Assessee filed his submissions stating that sometime in the year 2009-10, Unitech had approached the Assessee for sale of a parcel of land (the subject property) and the Assessee had agreed to sell the same at a sale consideration of ₹135 crores. One half (50%) of the said amount was paid in advance. The Agreement to Sell was executed on a plain paper between the Assessee and Unitech on 12.03.2010. Subsequently, the parties agreed to engross the said Agreement to Sell on a non-judicial stamp paper and resultantly the same was typed on a non-judicial stamp paper. The Assessee explained that since the parties were entering into the *"mirror agreement of the earlier Agreement dated 12.03.2010"*, the date as mentioned in the Agreement to Sell – which was executed on a plain paper – was also mentioned in the Agreement to Sell as transcribed on the judicial stamp paper. The Assessee explained that, in fact, the Agreement to Sell on the non-judicial stamp paper was executed in the year 2012 and the date as mentioned remained unnoticed.

23. It is apparent from the above, that there is no dispute as to the following facts:

(a) That Unitech had paid an aggregate sum of ₹67.50 crores to the Assessee during the previous year relevant to the AY 2010-11.

(b) The said sum of ₹67.50 crores was received by the Assessee in four tranches – ₹17 crores on 18.03.2010; ₹24 crores on

19.03.2010; ₹16.50 crores on 22.03.2010; and, ₹10 crores on 22.03.2010 – through banking channels.

(c) That an Agreement to Sell was typed on a non-judicial stamp paper of ₹100/-, sometime after 22.03.2012.

(d) The Agreement to Sell was signed by the AR of Unitech \ and the Assessee.

(e) In terms of the said agreement, Unitech had agreed to purchase tracks of land in Taluka Khalapur, Distt. Raigad, Maharashtra for a total consideration of ₹135 crores.

(f) The said agreement was also witnessed by one official of Unitech and one official of the assessee company.

24. There is undoubtedly a controversy as to the date on which the Agreement to Sell was executed as the stamp paper on which it was engrossed was issued on 22.03.2012, which was prior to the date mentioned in the said agreement. There is also an issue as to how the stamp paper was sold to the parties.

25. The key question to be addressed is whether the same is sufficient to tax the receipt of ₹67.50 crores as income in the hands of the Assessee.

26. At this stage, it would be relevant to refer to Section 68 of the Act, which is reproduced below:

> "**68. Cash credits**.—Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:
>
> Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee company shall be deemed to be not satisfactory, unless—
>
> (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
>
> (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:
>
> Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10."

27. As apparent from the plain language of Section 68 of the Act, a credit standing to the books of an assessee can be brought to tax if the assessee does not offer any explanation about the "nature and source" of the same or if the explanation offered by him is not satisfactory in the opinion of the AO.

28. In the present case, there is no dispute as to the source of the credit in question. The Assessee had clearly explained that the source

of the funds of ₹67.50 crores standing in its books is Unitech. There is no dispute that the aggregate sum of ₹67.50 crores was remitted by Unitech through banking channels to the Assessee during the previous year relevant to the AY 2010-11. Concededly, there is no dispute that Unitech had the wherewithal, at the material time, to make the said payment.

29. In view of the above, the condition as mentioned in the first limb of Section 68 of the Act, which contemplates the situation where the assessee offers no explanation as to the nature and source of the amount found credited, is not satisfied. The Assessee has clearly explained the source of the fund and there is no dispute regarding the same. It had also explained the nature of the receipt as being an advance against the transaction for sale and purchase of the subject property. The only aspect to be examined is whether the Revenue's contention that the explanation provided by the Assessee was unsatisfactory, is sustainable.

30. In ***Commissioner of Income Tax v. P. Mohanakala***[1] the Supreme Court had explained the scope of Section 68 of the Act in the following words:

> "16. The question is what is the true nature and scope of Section 68 of the Act? When and in what circumstances Section 68 of the Act would come into play? That a bare reading of Section 68 suggests that there has to be credit of amounts in the books maintained by an assessee; such credit has to be of a sum during the previous year; and the assessees offer no explanation about the nature and

[1] (2007) 291 ITR 278

> source of such credit found in the books; or the explanation offered by the assessees in the opinion of the assessing officer is not satisfactory, it is only then the sum so credited may be charged to income tax as the income of the assessees of that previous year. The expression "the assessee offers no explanation" means where the assessees offer no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessees. It is true the opinion of the assessing officer for not accepting the explanation offered by the assessees as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the assessing officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion."

31. As held by the Supreme Court in ***CIT v. P. Mohanakala***[1], the opinion of the AO to reject the explanation provided by the assessee as unsatisfactory is required to be based on proper appreciation of material as well as the attending circumstances.

32. The initial onus of establishing or proving the source and the nature of the funds credited in the assessee's account rests on the assessee. However, once the assessee has discharged its onus of establishing the source of the funds and has also provided the explanation as to the nature of the funds, the onus to substantiate that the explanation provided by the assessee as to the source and the nature, is unsatisfactory, shifts to the AO.

33. In ***Principal Commissioner of Income Tax (Central-1) v. NRA Iron and Steel (P.) Ltd***.[2], the Supreme Court held that in case of cash credit entries, "*it is necessary for the assessee to prove not only the identity of the creditors, but also the capacity of the creditors to advance money, and establish the genuineness of the transactions*".

34. In ***Sumati Dayal v. Commissioner of Income Tax***[3], the Supreme Court had considered a case of addition of receipts from ostensibly from winnings from horse races as unexplained credit under Section 68 of the Act. In that case, the assessee claimed that she had won an amount of ₹3,11,831/- during the previous year 1970-71 relevant to assessment year 1971-72. The said winnings were aggregate of winnings on thirteen occasions, out of which ten were from jackpots and three were from treble events. Similarly, in the previous year 1971-72, the assessee had won races on two occasions from jackpot. Further, the assessee had never claimed any loss in races and had shown only winnings. The winnings from horse races were at the material time not within the net of tax. In the given facts, the two members of the Settlement Commission did not accept the assessee's explanation and came to the conclusion that what was apparent was not real and the assessee's claim was found to be contrived and not genuine for various reasons including that his knowledge of racing was meagre. The jackpot could be won on rare occasions, but in the present case, the assessee had won a number of jackpots in three out of four seasons and at different centres. The

[2] (2019) 15 SCC 529
[3] (1995) 214 ITR 801

court found the same to be contrary to statistical theories and probability. Further, the assessee's books did not show any drawings on the race days or immediately preceding those days. The assessee's capital account was credited with gross amount without any debit for expenses for the purchase of tickets or for losses. The assessee had not participated in the race after the winnings became chargeable to tax with effect from 01.04.1972.

35. One of the members of the Settlement Commission did not agree with the majority view. He held that since the assessee had produced certificates from racing clubs and the amount had been received through account payee cheques, the source and nature was established. The Supreme Court held that the approach of the dissenting member was superficial. The Court held that the inference whether the purchase was genuine or not was required to be considered having regard to the conduct of the assessee and the other material on record. The Court held that the view that assessee had purchased the winning ticket after the event, was a reasonable inference. The relevant extract of the said decision is set out below:

> "9. Having regard to the said statement of the appellant, the two members, constituting the majority on the Settlement Commission, came to the conclusion that the apparent is not the real and that the appellant's claim about her winning in races is contrived and not genuine for the following reasons:
>
> (i) The appellant's knowledge of racing is very meagre.
>
> (ii) A Jackpot is a stake of five events in a single day and one can believe a regular and experienced punter clearing a Jackpot occasionally but the claim of the appellant to have

won a number of Jackpots in three or four seasons not merely at one place but at three different centres, namely, Madras, Bangalore and Hyderabad appears, prima facie, to be wild and contrary to the statistical theories and experience of the frequencies and probabilities.

(iii) The appellant's books do not show any drawings on race days or on the immediately preceding days for the purchasee of Jackpot combination tickets, which entailed sizeable amounts varying generally between Rs 2000 and Rs 3000. The drawings recorded in the books cannot be correlated to the various racing events at which the appellant made the alleged winnings.

(iv) While the appellant's capital account was credited with the gross amounts of race winnings, there were no debits either for expenses and purchase of tickets or for losses.

(v) In view of the exceptional luck claimed to have been enjoyed by the appellant, her loss of interest in races from 1972 assumes significance. Winnings in racing became liable to income tax from 1-4-1972 but one would not give up an activity yielding or likely to yield a large income merely because the income would suffer tax. The position would be different, however, if the claim of winnings in races was false and what were passed off as such winnings really represented the appellant's taxable income from some undisclosed sources.

10. The majority opinion concludes that it would not be unreasonable to infer that the appellant had not really participated in any of the races except to the extent of purchasing the winning tickets after the events presumably with unaccounted funds.

11. The Chairman of the Settlement Commission, in his dissenting opinion, has laid emphasis on the fact that the appellant had produced evidence in support of the credits in the form of certificates from the racing clubs giving particulars of the crossed cheques for payment of the amounts for winning of Jackpots etc. The Chairman has rejected the contention regarding lack of expertise in respect of the appellant and has observed that the expertise is the last thing

that is necessary for a game of chance and anybody has to go and call for five numbers in a counter and obtain a Jackpot ticket and that books containing information are available which are quite cheap.

12. This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities. The Chairman of the Settlement Commission has emphasised that the appellant did possess the winning ticket which was surrendered to the Race Club and in return a crossed cheque was obtained. It is, in our view, a neutral circumstance, because if the appellant had purchased the winning ticket after the event she would be having the winning ticket with her which she could surrender to the Race Club. The observation by the Chairman of the Settlement Commission that "fraudulent sale of winning ticket is not an usual practice but is very much of an unusual practice" ignores the prevalent malpractice that was noticed by the Direct Taxes Enquiry Committee and the recommendations made by the said Committee which led to the amendment of the Act by the Finance Act of 1972 whereby the exemption from tax that was available in respect of winnings from lotteries, crossword puzzles, races, etc., was withdrawn. Similarly the observation by the Chairman that if it is alleged that these tickets were obtained through fraudulent means, it is upon the alleger to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase has to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion. In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winnings from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said

> amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence."

36. It is settled law that the credit in the books of accounts may be taxed under Section 68 of the Act if the AO on the basis of evidence and material on record can reasonably infer that the assessee's explanation regarding the transaction reflected as credit in his books, is a subterfuge and the transaction as disclosed, is not genuine.

37. Having stated the above, it is also necessary to observe that the AO is not required to examine the commercial expediency of the transaction and supplant its view in place of the transacting parties. The AO is required to give a wide latitude to the commercial discretion of the contracting parties to enter into a transaction. And, unless the AO finds, on the basis of cogent material, that the transaction is a subterfuge and is not genuine, the AO must accept the same.

38. In view of the present case, there is no dispute as to the creditworthiness of Unitech and that it had paid the amount of ₹67.5 crores to the Assessee. There are no attendant circumstances, which would suggest that the Assessee had camouflaged its taxable income as an advance against the sale of property. It is material to note that Unitech has also not reflected the payment as an expense and has derived no tax advantage by making a payment of ₹67.5 crores to the Assessee. The transaction is, thus, tax neutral.

39. Both the parties (Unitech as well as the Assessee) have claimed that the said amount was paid and received as an advance for purchase of the subject property. The AO has found fault with the documentation as the stamp paper had been issued prior to the date of the Agreement as typed on the non-judicial stamp paper. Whilst in some cases the finding to the said effect may be of significant relevance in determining the genuineness of the transaction, but may not be dispositive in other cases. Whether a flaw in documentation is indicative of a subterfuge must necessarily be determined bearing in mind other attendant facts of the case. In a case where the attendant facts and material indicates that the assessee has taxable income/ undisclosed assets, which would have been brought to tax but for being disguised as another transaction, any irregularity or flaw in the documentation may be of significance. However, in absence of any material indicating that the credit reflected in the books, but for being so reflected, may be chargeable to tax, it would not be reasonable for the AO to reject the Assessee's explanation on account of any irregularity or flaw in the documentation of the transaction. As explained by the Supreme Court in ***Sumati Dayal v. Commissioner of Income Tax***[3], the apparent transaction may be rejected if there are reasonable grounds to indicate that the same is not real. Thus, it may also be apposite for the AO to draw an inference as to what is the real, while considering rejection of what is apparent.

40. The learned CIT(A) had examined the transactions and had accepted the Assessee's claim as to the nature and source of the transaction. It accepted that the Assessee company had established the

identity and creditworthiness of the payer and the genuineness of the transactions. The relevant extract of the order dated 31.10.2014 passed by the learned CIT(A) is set out below:

> "4.1.2 There is no dispute that the Appellant Company was and is the legal and beneficial owner of land measuring 3-03-40 hectares and 8-25-2 hectares situated at Taluka Khalapur, District Kaigad, State of Maharashtra. The land proposed to be sold is duly reflected in the balance sheet of the appellant company. The fact that land was purchased by the appellant company during the year ended 31.03.2004 was also confirmed by Addl. DIT (Inv.) who reported that the same was purchased in Aug, 2003 for a consideration of Rs. 48.44 lacs. Both the parties have confirmed that the Appellant Company agreed to sell and M/s Unitech Limited agreed to purchase the said land and all rights, interests and title therein, for a total consideration of Rs.135.00 crores, out of which one- half amounting to Rs.67.50 crores was agreed to be paid as an advance. It was confirmed by both the parties that the said understanding was reduced to writing in the form of an Agreement to Sell which was executed into between the Appellant Company and M/s Unitech Limited on 12.03.2010. Pursuant thereto; advance consideration of Rs.67.50 crores was received by the Appellant Company from M/s Unitech Limited and which was transferred online through RTGS. Appellant submitted that subsequently, in order to guard against any significant movement in the market rate of the said land, the parties, in order to protect their respective interests, decided to execute the aforesaid Agreement on non-judicial stamp paper. Accordingly, identical agreement was executed on non-judicial stamp paper to incorporate fully and completely all the terms of the Agreement entered into on 12.03.2010. Appellant explained that since the Appellant Company and M/s Unitech Limited were merely entering into a mirror agreement of the earlier Agreement dated 12.03.2010, the error of the wrong date being mentioned on the first page of the Agreement to Sell went unnoticed. Appellant reiterated that the aforesaid "Agreement-to-Sell" on the non-judicial stamp paper was actually executed/signed in year, 2012.

> 4.1.3 There is also no dispute that the liability of Rs. 67.50 crores is existing in the books of the appellant company as on 31.03.2010. The entire amount was received by the assessee company through RTGS through normal banking channels from a listed, widely held, publicly owned company viz. M/s Unitech ltd. Further, to prove the genuineness of the transactions and the credit worthiness of the parties from whom the moneys were received the appellant during the course of assessment proceedings duly filed confirmations, copy of bank accounts statements, copy of acknowledgement for filing ITR return and copy of balance sheet of M/s Unitech ltd. From the bank account statements of M/s Unitech ltd. and the appellant company all the above transactions are duly verifiable. Further in response to requisition u/s 133(6) issued by the AO to M/s Unitech Ltd., Shri Kaushal Nagpal AR and DGM (Finance) of M/s Unitech Ltd. who is also one of the witness of the agreement to sale attended the assessment proceedings and confirmed that M/s Unitech ltd. has paid the sum of Rs. 67.50 crores as advance for purchase of lands and that it has to pay balance consideration of Rs. 67.50 crores for purchase and registration of land parcel but due to shortage of funds it is unable to pay the balance amount and, therefore, amount is still outstanding. It is not the case of the AO that M/s Unitech ltd. is not existing. It is also not the case that M/s Unitech ltd. has no credit worthiness. The transaction are also duly disclosed in the regular books of accounts of both the parties i.e. the Appellant Company as well as M/s Unitech Limited. The transactions are proved from the bank account statement of both the appellant and M/s Unitech ltd. The existence and creditworthiness of M/s Unitech ltd. is also proved from the above. Thus, as a result the documents/explanations filed/furnished during the course of assessment proceedings, the onus cast upon the Appellant Company to prove the identity/creditworthiness of the cash creditors and the genuineness of the transactions stood completely discharged."

41. The learned ITAT has concurred with the aforesaid view. And, we find no infirmity with the learned ITAT's decision.

42. It is material to note that the questions of law as projected by the Revenue and as noted at the outset are premised on the assumption that the creditworthiness of Unitech was in doubt. But as noted before there is no cavil that Unitech had sufficient funds to make the payment that it had.

43. In view of the above, the questions as framed are answered in favour of the Assessee and against the Revenue.

44. The present appeal is dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 12, 2024
'gsr'