IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 18 OF 2014

The Commissioner of Income Tax
Karnataka (Central), Bangalore. ... Appellant

Versus

Sadiq Sheikh,
FR5, 4th floor, Souza Towers,
Opp. Municipal Garden,
Panaji-Goa.
PAN: AMFPS2073J
& major in age ... Respondent

Ms. Susan Linhares, Advocate for the Appellant.
Mr. S. S. Kantak, Senior Advocate along with Mr. Nikhil Pai, Advocate for the Respondent.

AND

TAX APPEAL NO. 19 OF 2014

The Commissioner of Income Tax
Karnataka (Central),
Bangalore. ... Appellant

Versus

Sadia Sheikh,
FR5, 4th floor, Souza Towers,
Opp. Municipal Garden,
Panaji-Goa.
PAN: AKQPS9076A
& major in age ... Respondent

Ms. Susan Linhares, Advocate for the Appellant.
Mr. S. S. Kantak, Senior Advocate along with Mr. Nikhil Pai, Advocate for the Respondent.

Coram:- M. S. SONAK &
DAMA SESHADRI NAIDU, JJ.

Reserved on:- 29th September, 2020

Pronounced on:- 14th October, 2020

JUDGMENT (Per M. S. Sonak, J.):

Heard Ms. Susan Linhares, for the appellants and Mr. Kantak, learned Senior Advocate along with Mr. Nikhil Pai for the respondents.

2. The learned counsel state that both these appeals may be disposed of by a common judgment and order since, the issues involved in both these appeals are virtually identical and also the substantial questions of law as framed, are identical.

3. Tax Appeals were admitted on 25.09.2014 on the following substantial questions of law:-

(A) Whether on the facts and circumstances of the case, the Tribunal was correct in law and not perverse in its findings in deleting the amount of Rs.11,26,50,112/- made by the Assessing Authority towards unaccounted cash receipts?

(B) Whether on the facts and circumstances of the case, the Tribunal was correct in law and not perverse in its findings

deleting the amount of Rs.8,49,49,888/- made by the Assessing Authority towards unaccounted cash receipts?

4. The assessees in these appeals are individuals. They are in fact, spouses of one another. Since they were found to be eligible for the benefits under Section 5A of the Income Tax Act, 1961 (said Act), 50% of their income was brought to tax in the hands of the spouse. Hence, there were two separate but identical assessment orders and consequently, there are these two appeals, which can as well be considered and disposed of by a common judgment and order.

5. The assessees filed their return of income declaring total income of ₹7,36,911/- for the year previous to the relevant assessment year.

6. Thereafter, on 25.02.2010, a search was conducted under Section 132 of the said Act in the residential premises of the assessees at Dona Paula, Goa. The case was then centralized vide the Commissioner's order dated 16.07.2010 and notices dated 20.01.2011 under Section 153(A) of the said Act were served upon the assessees on 25.01.2011 calling for their returns for the relevant assessment years.

7. After reminders, the assessees filed their returns, again declaring total income of ₹7,36,910/- and agricultural income of ₹30,000/-.

8. Notices were issued under Section 142(2) and 143(1) of the said Act to the assessees. The assessing officer (AO) vide order dated

29.12.2011 finalized the assessment by adding an amount of ₹19,76,00,000/- on account of the unaccounted cash receipts from Shri N. Suryanarayana and ₹30,00,000/- on account of unexplained investments by the assessees.

9. The assessees, aggrieved by the aforesaid additions to the declared income, appealed the assessment order dated 29.12.2011 to the Commissioner (Appeals), who partly allowed the assessees' appeal. From out of the addition of ₹19.76 crores, addition to the extent of ₹8,49,49,888/- was sustained. However, the addition to the extent of ₹11.76 crores was deleted. Similarly, the Commissioner (Appeals), sustained the addition of ₹30 lakhs on account of unexplained investments by the assessees. This is evident from the order dated 27.03.2013 made by the Commissioner (Appeals).

10. Both the assessees as well as the Revenue appealed to the Income Tax Appellate Tribunal (ITAT) against the order dated 27.03.2013 made by the Commissioner (Appeals). The ITAT, by its impugned order dated 31.07.2013, allowed the assessees' appeal and dismissed the appeal instituted by the Revenue. Hence, the present appeals on the aforesaid substantial questions of law.

11. Ms. Linhares, the learned counsel for the Revenue submits that the ITAT has misconstrued the provisions of Section 68 of the said Act and the finding recorded by the ITAT reversing the concurrent

findings by the assessing officer and the Commissioner (Appeals) is vitiated by perversity. She, therefore, submits that the two substantial questions of law as raised be answered in favour of the Revenue and against the assessees.

12. Ms. Linhares submits that in this case, the ITAT has only taken into consideration the circumstance that the amount of ₹8,49,49,888/- was credited by M/s. Prasad Properties into the accounts of the assessees by cheque and further one of the partners of M/s. Prasad Properties had owned up to making such payment to the assessees by way of loan. Ms. Linhares submits that there is overwhelming evidence on record which establishes beyond reasonable doubt that the firm M/s. Prasad Properties could never have made such a huge payment to the assessees and the partners of this firm were virtually persons of straw. She points out that this firm was never registered and was dissolved within a period of hardly one year from its alleged incorporation. She pointed out that this firm had neither any bank account nor permanent account number (PAN) issued to it.

13. Ms. Linhares submits that the explanation about the huge amount of ₹8.49 crores being carried in cash from Chennai to Goa was too fantastic to deserve any credit. She pointed out that there is no explanation as to why this cash was allegedly carried by road for 1046 kms. and thereafter deposited in Goa. She pointed out that it is quite evident that all these transactions could not have been carried out in

the normal course of business and therefore, both the assessing officer and Commissioner (Appeals), quite correctly held that the explanation offered by the assessees was far from satisfactory.

14. Ms. Linhares submits that the ITAT by ignoring all this material evidence has accepted the assessees' explanation and ordered the deletion of ₹8.49 crores added to the income of the assessees. She pointed out that the finding recorded by the ITAT is vitiated by perversity and misconstruction of the provisions of Section 68 of the said Act. She relies on ***CIT v. M/s. Mussadilal Ram Bharose – 1987(2) SCC 39*** in support of her submissions.

15. Mr. Kantak, learned senior advocate for the assessees submits that once the assessees indicate the source from whom the amounts were received by cheque and further, such source confirms the payment, the burden which the law casts upon the assessees is fully discharged. He submits that thereafter, onus shifts upon the Revenue to establish that nevertheless, the amount represents an unexplained income of the assessees.

16. Mr. Kantak submits that in this case, both the assessing officer and Commissioner (Appeals) had raised certain doubts about the source from which M/s. Prasad Properties may have arranged for the amount of ₹8.49 crores. He submits that the source of the source is not at all relevant consideration in such matters. If at all, there are any

doubts about the source of the source, then, it is for the Revenue, to take out appropriate proceedings against the source and not against the assessees in the present case. Mr. Kantak submits that this error on the part of the assessing officer and Commissioner (Appeals) was quite correctly set right by the ITAT relying upon the decisions in ***CIT v. Tania Investments P. Ltd. – 322 ITR 394, CIT v. Daulat Ram Rawatmull – (1973) 3 SCC 133, Aravali Trading Co. v. ITO – 187 Taxman.com 338 (Raj), Nemi Chand Kothari v. CIT – 264 ITR 254 (Gau)***. Mr. Kantak, therefore, submits that no substantial questions of law as framed arise in this matter and both these appeals be therefore dismissed.

17. The rival contentions now fall for our determination.

18. At the outset, we may deal with the first substantial question of law, which relates to the deletion of the amount of ₹11,26,50,112/- towards unaccounted cash receipts. This will have to be answered against the Revenue and in favour of the assessees by accepting the reasoning of the Commissioner (Appeals) in his order dated 27.03.2013. The Commissioner (Appeals), has not held that this amount was accounted for by the assessees but the Commissioner (Appeals) has held that no inferences need to be drawn about this amount simply because there is material on record that this amount was paid to M/s. Good Earth Developers and M/s. Raj Hospitality Pvt. Ltd. Therefore, the nature of such amounts can be very well assessed

in the hands of said recipients and need not be assessed in the hands of the assessees.

19. Since, there is material on record, that this amount of ₹11.26 crores or thereabouts was paid by the assessees to the aforesaid two entities and since there is evidence on record that the aforesaid two entities had admitted to the receipt of the said amount, the Commissioner (Appeals), was quite right in taking the view that such amounts are best assessed in the hands of the two entities and not in the hands of the assessees.

20. Ms. Linhares was unable to satisfy us that there was any illegality in the view taken or any perversity in the approach of the Commissioner (Appeals) in so far as the treatment of this amount of ₹11.26 crores was concerned. Accordingly, the first substantial question of law needs to be answered against the Revenue and in favour of the assessees. However, by clarifying that such an answer ought not to be construed to mean that the assessees have explained satisfactorily the nature and source of this amount. This question is answered against the Revenue only because we agree with the view taken by the Commissioner (Appeals) that it is only appropriate that this amount is assessed in the hands of the two recipient entities as aforesaid and not the assessees.

21. The answer to the second substantial question of law depends

upon the application of the provisions of Section 68 of the said Act to the facts and circumstances as borne out of the record in this case.

22. Section 68 of the said Act, *inter alia* provides that where any sum is found credited in the books of assessees maintained for any previous year, and the assessees offer no explanation about nature and source thereof or explanation offered by him is, not found to be satisfactory, the sum so credited may be charged to income tax as the income of the assessees of that previous year. Two provisos are dealing with the share application money and venture capital fund, with which we are not concerned in these appeals.

23. The record, in this case, indicates that hardly any explanation as such was offered by the assessees when called upon to explain the transactions leading to the transfer of this huge amount of ₹8.49 crores into their bank accounts on 10.03.2007. Even the source was not indicated by the assesses but the same was unearthed by the Revenue by probing the bank accounts and the money trail.

24. The assessees neither cooperated nor were they candid. It is only as the probe deepened, the assessees and their alleged sources began to offer some halfhearted explanations, which, as found by the AO and the Commissioner (Appeals) were far from satisfactory.

25. The ITAT, in its impugned order dated 31.07.2013, has,

however, purported to accept the assessee's' so-called explanation relying almost entirely upon the following three circumstances:-

> *(a) That this amount of ₹8.49 crores was transferred into the assessees' bank account at Development Credit Bank, Panaji Goa on 10.03.2007. The ITAT regards this as a transfer through a "normal banking channel".*
>
> *(b) That this amount of ₹8.49 crores was transferred from out of the bank accounts of Siraj Sheikh (assessees' brother/brother in law) and Vijay Kumar Rao (assessees' close friend) held in the same bank. The ITAT has held that the identity of the source was thus established.*
>
> *(c) That the identified sources have confirmed having made these payments to the assessees.*

26. Based almost entirely upon the aforesaid three circumstances and virtually ignoring all other circumstances emanating from the record, the ITAT, in its impugned order dated 31.07.2013, has rather abruptly concluded that *".....therefore, in our opinion, the requirement u/s 68 is proved beyond any doubt by the Assessee. Therefore we are of the view that no addition is required/sustainable"*. The ITAT, by reference to the rulings in *Tania Investment P. Ltd. (supra), Aravali Trading Co. (supra),* and *Nemi Chand Kothari (supra)*, has held that if the identity of the creditor is established and the monies are received through banking channel, then, the assessees are not required to prove the source of the source in such matters.

27. According to us, the ITAT, in this case, has grievously erred both

on facts as well as in law, in interfering with the well-reasoned analysis reflected in the orders of the AO and Commissioner (Appeals) in these matters.

28. The three circumstances relied upon by the ITAT in the impugned judgment may not be irrelevant circumstances, But they were certainly not the only circumstances on basis of which and by ignoring other numerous circumstances, the ITAT could have abruptly concluded that the assesses had proved the so-called explanation beyond the reasonable doubt for Section 68 of the said Act.

29. In ***Oceanic Products Exporting Co. v. CIT – 241 ITR 497 (Ker)*** it is held that after the enactment of Section 68, the burden is placed on the assessees to prove a credit appearing in its books of accounts. That burden has to be discharged with positive material. When it is contended that a person had advanced money or had given a loan, it has to be established that the person was not a man of straw and had the capacity to give the money.

30. In ***CIT v. Bikram Singh – 399 ITR 407***, it is held that each of the three conditions i.e. identity of the creditor, capacity of the creditor, and genuineness of the transaction had to be fulfilled cumulatively. Merely because the transactions were through banking channels, it cannot be said that such transactions were genuine when the assessees were not in a position to show the credit-worthiness of the

creditors, there was no question of accepting the explanation of the assessees.

31. In ***CIT v. P. Mohanakala – 291 ITR 278 (SC)***, it is held that the mere furnishing of particulars or the mere fact of payment by an account payee cheque or mere submissions of a confirmatory letter by the creditor, is, by itself, not enough to shift the onus on the Revenue.

32. To the same effect are the observations in ***Yashpal Goel v. CIT – 310 ITR 75 and Mangilal Jain v. CIT – 315 ITR 105, CIT v. United – 187 ITR 596***.

33. Even in *Tania Investments P. Ltd. (supra)* upon which reliance was placed by the ITAT and by Mr. Kantak before us, this court has tacitly accepted the legal position that in case of cash credit entries in the books of account, the assessee has to establish (i) identity of the party; (ii) capacity, and (iii) the genuineness of the transaction. In the said case, the assessee had established the identity and perhaps the genuineness of the transaction. On the aspect of 'capacity', this court agreed with the finding of the ITAT in the said case, that books of account of the said party were very much available with the AO. Such books of account itself would indicate the capacity of the party to advance loans. Therefore, without examining such books of account the AO could not have rejected the assessees' explanation.

34. *Tania Investment P. Limited (supra)* is not an authority for the omnibus proposition relied upon by the ITAT and Mr. Kantak. In fact, even this decision accepts that to discharge the burden which Section 68 of the said Act casts upon an assessee, the assessee has to not only establish the identity of the source but also establish at least *prima facie* the capacity of such source and the genuineness of the transaction.

35. In the present matters, the assessees quite reluctantly, may have indicated, but not established the identity of the source. In any case, the assessees have failed to establish the capacity of the source and the genuineness of the transaction. Therefore it is clear that *Tania Investments P. Limited (supra)* was quite mechanically relied by the ITAT to accept the assessees' so-called explanation in these matters. It is possible that the ITAT merely went by the headnotes which, at times, may not accurately represent the ratio of the decision.

36. Similarly, even *Nemi Chand Kothari (supra)* rendered by learned Single Judge of the Gauhati High Court has laid down the following propositions, which, support the case of the Revenue than the assessees:-

> *(i) The inquiry under Section 68 need not necessarily be confined by the Assessing Officer to the transactions, which took place between the assessee and his creditor, but that same may be extended to the transactions, which may have taken place between the creditor and his sub-creditor;*

(ii) There can be no doubt that to establish the receipt of cash credit as required under Section 68, the assessee must satisfy three important conditions, namely, (a)identity of the creditor, (b) the genuineness of the transaction, and (c) financial capacity of the person giving the cash credit to the assessee, i.e., the creditworthiness of the creditor;

(iii) Once, the assessee fulfills the aforesaid two conditions, thereafter there is no further burden upon the assessee to establish the creditworthiness of the sub creditor or the creditor's creditor. The onus then shifts upon the Revenue.

37. In the present matters, the assessees have failed to discharge the burden of establishing the creditworthiness of the creditors i.e. Siraj Sheikh and Vijay Kumar Rao. The assessees have miserably failed to establish the genuineness of the transaction between said Siraj Sheikh and Vijay Kumar Rao on one hand and the assessees on the other. In fact, there is no reference to any transaction between these apparent sources/creditors and the assessees. These apparent sources at one stage chose to call themselves as *'conduits'* on behalf of M/s. Prasad Properties to the transaction projected in the agreement dated 22.12.2006. If the apparent sources i.e. Siraj Sheikh and Vijay Kumar Rao are mere conduits as claimed by them, then the creditor or the source is M/s. Prasad Properties. The burden, therefore, lay upon the assessees to establish the capacity of such source i.e. M/s. Prasad

Properties and the genuineness of the transactions with M/s. Prasad Properties. The assessees have failed miserably on both these aspects.

38. In *Aravali Trading Co. (supra)*, the firm of creditors who had advanced the amounts to the assessees had not only admitted to the making of such advances but further, there was material on record to establish the creditworthiness of such creditors. Such creditors were themselves taxpayers who had been assessed for income tax for the relevant years. In these factual circumstances, the court held that the capacity of creditors had been established and therefore the burden was discharged. In contrast, in the present matters, neither is the capacity of Siraj Sheikh and Vijay Kumar Rao nor M/s. Prasad Properties established, even prima facie. The genuineness of the transaction, if any, is also far from established. The material on record suggests that there was no transaction worth the name and the agreement dated 22.12.2006 executed on stamp papers dated 03.04.2000 was nothing but a desperate attempt to create a facade. The ruling in *Aravali Trading Co (supra)* can, therefore, in no manner, assist the assessees in these matters.

39. Even according to us, merely pointing out to a source and the source admitting that it has made the payments is not, sufficient to discharge the burden placed on the assessees by Section 68 of the said Act. If this were so, then, it would be sufficient for assessees, to simply persuade some credit- less person or entity to own up having made

such huge payments and thereby evade payment of property tax on the specious plea that the Revenue, can always recover the tax from such credit- less source, if possible. To discharge the burden which Section 68 casts upon assessees, at least some plausible explanation is required to be furnished, which must be backed by some reliable evidence. If the circumstances listed above are to be taken into consideration, then, it can hardly be said that the assessees in the present case, has discharged the burden which was cast upon it by Section 68 of the said Act.

40. Now coming to the perversity in the findings of fact that the explanation furnished by and on behalf of the assessees was acceptable, reference is necessary to some of the circumstances which emanate from the record in these matters. These circumstances were considered in some details by the AO and Commissioner (Appeals). Even the ITAT, has not disbelieved any of these circumstances but the ITAT, has simply ignored or bypassed all such circumstances by observing that the Revenue was not entitled to inquire into the source of the source. Some of such circumstances which emanate from the record are as follows:

(a) Mr. Siraj Sheikh (brother/brother-in-law of the assesses) and Mr. Vijay Kumar Rao, (a close friend of the assessees) are not at all clear about their precise role in this transaction involving the amount of ₹8.49 crores;

(b) At one stage, they refer to themselves as the source of this amount but at another stage, they claim to be mere "conduits" or "facilitators" for the transfer of this amount of ₹8.49 crores from M/s. Prasad Properties to the assessees;

(c) Mr. Siraj Sheikh and Mr. Vijay Kumar Rao have not produced even shred of evidence to establish even prima facie their capacity to raise such a huge amount of ₹8.49 crores. There is no explanation as to how this amount became payable to them by M/s. Prasad Properties on 10.03.2007, when, on 03.04.2006 i.e. hardly a year ago, they had allegedly invested an amount of ₹10,000/- each to the capital of the firm M/s. Prasad Properties;

(d) There is no clarity as to whether this amount of ₹8.49 crores was a "loan" or an "investment" by M/s. Prasad Properties to or with the assessees;

(e) In either case, there is no explanation on the issue of repayment of this huge amount of ₹8.49 crores or about the securities to secure repayment of such amount;

(f) The ledger accounts maintained by M/s. Prasad Properties at Chennai indicated that Mr. Siraj Sheikh made a cash withdrawal of ₹6,30,00,000/- and Mr. Vijay Kumar Rao made a cash withdrawal of ₹2,20,08,700/-. However, Mr. Siraj Sheikh

deposited an amount of ₹2,19,50,000/- in his bank account at Goa and Mr. Vijay Kumar Rao deposited an amount of ₹6,30,00,000/- in his bank account at Goa. Both these amounts were deposited in cash. This discrepancy is never explained and establishes the extent to which the ledgers came to be fabricated;

(g) The firm M/s. Prasad Properties was constituted on 03.04.2006 and dissolved on 29.03.2007 i.e. hardly within the same financial year;

(h) Though, the assessees would like the Revenue to believe that M/s. Prasad Properties was dealing in crores of rupees, the record establishes that M/s. Prasad Properties had neither any PAN card in its name nor did M/s. Prasad Properties ever filed any returns of income;

(i) That though the firm M/s. Prasad Properties was supposed to be dealing in transactions involving crores of rupees, it did not even have a bank account in its name i.e. at Chennai or Goa;

(j) The assessees had relied upon only four documents in support of their so-called explanation. The first was the Partnership Deed dated 03.04.2006 which was typed on stamp paper of 20.03.2002; second, the agreement dated 22.12.2006, which was typed on stamp paper dated 03.04.2000; third, the

agreement inter se between the partners dated 22.01.2007, which was typed on stamp paper dated 20.03.2002; and fourth the Deed of Dissolution dated 29.03.2007 typed on stamp paper dated 20.03.2002. Again, there is no explanation as to why these documents were typed on stamp paper of the year 2000-2002 when the documents were allegedly prepared in 2006-07;

(k) Mr. A. Manohar Prasad claimed that ₹8.49 crores were transported in cash in a shooting vehicle by road for a distance of over 1046 km. from Chennai to Goa. No details of the vehicle number etc. were furnished;

(l) If ultimately, this amount of ₹8.49 crores was to be paid through banking channels to the assessees, there is no explanation as to why this amount was not deposited in a bank in Chennai and thereafter transferred into the bank account of the assessees;

(m) The explanation offered by Mr. A. Manohar Prasad was that Mr. Sadiq Sheikh had promised him a 40% discount in the land transaction if payments were made in cash. This is not something which is reflected in the agreement dated 22.12.2006, which is the document relied upon by the parties. In any case, if this was so, there is no explanation as to why the huge amount was deposited in the bank account of Mr. Siraj

Sheikh and Mr. Vijay Kumar Rao and thereafter transferred into the bank account of the assessees;

(n) There are absolutely no documents to secure this loan or investment of ₹8.49 crores executed by the assessees in favour of M/s. Prasad Properties. The only lame explanation offered by Mr. A. Manohar Prasad was that Mr. Sadiq Sheikh had orally confirmed the repayment and had already shown him the property belonging to his family.

(o) There are no documents to indicate whether interest, if any, was payable on this loan of ₹8.49 crores. There are no documents to indicate the return which M/s. Prasad Properties was to expect on this huge investment of ₹8.49 crores.

41. If the ITAT were to have considered the aforesaid circumstances, which, according to us, the ITAT was duty-bound to, we are quite sure that the ITAT would not have, nevertheless, found the so-called explanation of the assessees acceptable or in compliance with the provisions of Section 68 of the said Act. Rather we are inclined to believe, that the ITAT too, would have found the so-called explanation of the assessees too fantastic to deserve any acceptance. In *Mussadilal Ram Bharose (supra)*, the Hon'ble Supreme Court has cautioned against acceptance of any '*fantastic*' or '*unacceptable'* explanations in tax matters.

42. In *Mussadilal Ram Bharose (supra)*, the Hon'ble Supreme Court agreed with the view taken by the Full Bench of the Patna High Court in the case of ***CIT v. Nathulal Agarwala & Sons – 153 ITR 292*** (Pat), which reiterated that the onus to discharge the presumption raised by the explanation to Section 271(1)(c) was on the assessees and it was for him to prove that the difference between the returned income and the assessed income did not arise from any fraud or gross or willful neglect on his part. The court should come to a clear conclusion whether the assessees had discharged the onus or rebutted the presumptions against him. The Full Bench emphasized that as to the nature of the explanation to be rendered by the assessees, it was plain on the principle that it was not the law that the moment any '*fantastic or unacceptable*' explanation was given, the burden placed upon him would be discharged and the presumption rebutted. After specifically adverting to these observations of the Full Bench, the Hon'ble Apex Court observed as follows:-

> *"We agree. We further agree that it is not the law that any and every explanation by the assessees must be accepted. It must be an acceptable explanation, acceptable to a fact-finding body."*

43. In this case as well the assessees want the fact-finding authorities to believe that this amount of ₹8.49 crores credited into their accounts was indeed sourced from Siraj Sheikh and Vijay Kumar Rao and M/s. Prasad Properties. This explanation is purported to be backed by some 4 documents of absolutely dubious origins executed in the year 2006-07 but on stamp papers of the year 2000-02 for which there is no

explanation whatsoever. This firm M/s. Prasad Properties was allegedly founded on 03.04.2006 and stood dissolved on 29.03.2007 i.e. within a single financial year. This firm had neither any bank account nor any PAN card. This firm has never filed any return of income nor paid any income tax. All this even though this firm and its partners including Siraj Sheikh and Vijay Kumar Rao claim to have transacted the business of 'crores of rupees'. Above all, this explanation furnished on behalf of the assessee involves transportation by road from Chennai to Goa (a distance of over 1046 km.) a cash stash of ₹8.50 crores. This is exactly what the Hon'ble Apex Court refers to as *'any fantastic or unacceptable explanation'*. Yet, the ITAT, by virtually ignoring all these circumstances and further by applying incorrect legal principles, has chosen to accept such fantastic and unacceptable explanation put forth, not by the assessees themselves but on behalf of the assessees.

44. In these matters, even if we were to accept that the assessees, by pointing out to Mr. Siraj Sheikh, Vijay Kumar Rao, and M/s. Prasad Properties had discharged the initial burden cast upon them by Section 68 of the said Act, we find that the onus which had shifted upon the Revenue, has been appreciably discharged by the Revenue. This is not a case where the Revenue, halted its probe soon after the so-called sources were indicated by the assessees. The Revenue, in these matters, probed further and unearthed quality material to establish that the so-called sources completely lacked the capacity or credit-worthiness to advance such a huge amount of ₹8.49 crores to the assessees. Further,

the Revenue, in these matters, established that there was no genuineness in the transactions sought to be projected on behalf of the assessees. Therefore, the Revenue, in these matters, has discharged the onus, assuming that such onus had indeed shifted upon the revenue. Again, this is an aspect, which was ignored by the ITAT.

45. The finding recorded by the ITAT in these matters is based upon the wholly erroneous view of law and perversity on account of ignoring completely, vital and relevant circumstances emanating from the record. Such a finding can be interfered in an appeal under Section 260A of the said Act. The legal position is quite settled that where the findings arrived at by the Tribunal are based upon the wholly erroneous view of the law or are vitiated by perversity, a substantial question of law indeed arises and is required to be addressed in an appeal under Section 260A of the said Act. If at all, any authority is necessary for this proposition, then reference can be usefully made to *Nemi Chand Kothari (supra)* relied upon by the assessees themselves. Even otherwise, this position is settled in several rulings including *CIT v. Antartica Investment Pvt. Ltd. - 262 ITR 493; Bhola Shankar Cold Storage P. Ltd. v. Joint Commissioner of Income-Tax – 270 ITR 487; and Hindusthan Tea Trading Co. Ltd. vs Commissioner of Income Tax – 263 ITR 289*.

46. Therefore, for all the aforesaid reasons, we answer the second substantial question of law in favour of the Revenue and against the

assessees. As a consequence, we reverse the order of ITAT and restore the order made by the Commissioner (Appeals) in these matters.

47. These appeals are accordingly disposed of by making the following order:

(a) The first substantial question of law is answered against the Revenue and in favour of the assessees. However, we clarify that such an answer is not to be construed as acceptance of assessees' explanation in respect of the amount of ₹11.26 crores. We have only agreed with the reasoning of the Commissioner (Appeals) in his order dated 27.03.2013 that it is only appropriate that this amount is assessed in the hands of the two recipients and not in the hands of the assessees;

(b) The second substantial question of law is answered in favour of the Revenue and against the assessees and the ITAT's order dated 31.07.2013 is set aside and the order of the Commissioner (Appeals) dated 27.03.2013 is hereby restored, insofar as the addition of the amount of ₹8,49,49,888/- to the assessees' income.

48. The two appeals are disposed of accordingly. There shall be no order as to costs.

DAMA SESHADRI NAIDU, J. *M. S. SONAK, J.*

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