

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, MUMBAI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.1432/Mum./2022**  
**(Assessment Year : 2009-10)**

Dy. Commissioner of Income Tax  
Central Circle-6(4), Mumbai

..... Appellant

v/s

Indiabulls Real Estate Ltd.  
M-62 & 63, First Floor  
Connaught Place, New Delhi 110 001  
PAN - AABCI5194F

.....Respondent

Assessee by : Shri K. Gopal  
Revenue by : Shri Ajay Soneji

Date of Hearing - 16/02/2023

Date of Order - 31/03/2023

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The captioned appeal has been filed by the Revenue challenging the impugned order dated 25/11/2021, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-54, Mumbai, [*"learned CIT(A)"*], for the assessment year 2009-10.

2. The present appeal is delayed by 130 days. At the time of the hearing, the learned Departmental Representative (*"learned DR"*) by referring to the authorisation memo submitted that the copy of the impugned order was received on 16/12/2021, and the last date for filing of appeal, in this case, was

14/02/2022. By placing reliance upon the order dated 10/01/2022, passed by the Hon'ble Supreme Court, in M.A. no.21 of 2022, in M.A. no.665 of 2021, in Suo-Motu Writ Petition (Civil) no.3 of 2020, the learned DR submitted that the limitation period for filing the appeal was extended upto 29/05/2022, and the Revenue filed the present appeal on 27/05/2022. Thus it was prayed that the present appeal be heard on merits. The learned Authorised Representative ("*learned AR*") did not raise any objection against the prayer for condonation of delay. In view of the above, since the present appeal has been filed within the extended time granted by the Hon'ble Supreme Court during the Covid period, therefore there is no delay in filing the present appeal and we proceed to decide the same on merits.

3. In its appeal, the Revenue has raised the following grounds:–

*"(1) On the face and in the circumstances of the case and in law, the learned CIT(A) erred in directing to compute the capital gains considering Rs. 25,00,000 as total consideration received for sale of equity shares of Shivalik Land Development Limited to Virasat Agro Foods Private Limited as against Rs. 10,00,00,000 shown by the assessee in its return of come.*

*(2) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the re-negotiated sales consideration of Rs. 23,00,000/- for sale shares of Shivalik Land Development Limited to Virasat Agro Foods Private Limited as genuine, without appreciating the cost of the land held by Shivalik Land Development Limited which was mortgaged to the assessee company vide Mortgage Deed dated 12.12 2008.*

*3. The Applicant craves to leave, to add to amend and/or to alter any of the ground of appeal, if need be.*

*The appellant craves leave to amend or alter any grounds or add a new ground, which may be necessary."*

4. The only grievance of the Revenue is against the recomputation of capital gains by considering the lower value of consideration for the sale of equity shares than the consideration initially agreed among the parties.

5. The brief facts of the case pertaining to this issue are: The assessee is a company engaged in the business of real estate projects, advisory, construction, and development of real estate projects. For the year under consideration, the assessee filed its return of income on 29/09/2009, declaring total income at Rs. 22,98,44,928. In its return of income, the assessee also offered the capital gains on the transfer of shares of its wholly-owned subsidiary, i.e. Shivalik Land Development Ltd, considering the full value of consideration at Rs.10 crore. The return of income filed by the assessee was selected for scrutiny. Vide assessment order dated 26/12/2011, passed under section 143(3) of the Act, the income of the assessee was determined at Rs.27,28,75,510, after making disallowance under section 14A of the Act. In its appeal before the learned CIT(A), the assessee raised an additional ground of appeal relating to a recomputation of capital gains on the sale of shares of its wholly-owned subsidiary by revising the sale consideration from Rs.10 crore to Rs.25 lakh, on the basis that the parties have entered into Settlement Deed and Supplementary Share Purchase Agreement, whereby the total consideration of the sale of shares of the wholly-owned subsidiary company was reduced to Rs.25 lakh. The learned CIT(A) vide order dated 27/01/2014, rejected the request of the assessee to admit the additional ground of appeal. In further appeal, the Co-ordinate Bench of the Tribunal vide order dated 28/08/2017, set aside the matter on this issue to the file of the Assessing Officer ("AO") to verify the genuineness of the claim of the assessee that sale consideration has been reduced from Rs. 10 crore to Rs. 25 lakh and decide this issue *de novo*.

6. Pursuant to the directions of the Tribunal, the AO vide order dated 27/12/2018 passed under section 143(3) r/w section 254 of the Act did not agree with the submissions of the assessee that the sale consideration of shares of the subsidiary company has been reduced from Rs.10 crore to Rs.25 lakh, by observing as under:-

*"13 The submission of the assessee has been considered but not found to be tenable. As per section 48 of the Income Tax Act, the capital gain is to be computed having regard to the full value of consideration accruing to the assessee at the time of transfer of shares. Undisputedly, the consideration accruing at the time of transfer was Rs.10 crores which was thereafter reduced only to the extent of Rs.25 lakhs. A mere post facto event cannot result in reduction of full value of consideration. Further, the assessee has not been able to explain as to why the sum of Rs. 10 crores initially agreed upon by the assessee and the purchaser was reduced to a paltry sum of Rs. 25 lakhs. Thus, it seems that there is no commercial substance in the Act of executing a supplementary Share Purchase Agreement by the assessee. The assessee has failed to explain as to why the undated cheque of Rs. 9.75 crores was not presented before the bank by 31.07.2009 in accordance with the share purchase agreement. No evidence has been brought on record that the purchaser has refused to honor the cheque of Rs.9.75 crores. As a matter of fact, the petition of the assessee u/s. 264 of the Act in relation to the said issue was also rejected by the Hon'ble Pr.CIT, Delhi-IV vide his order dated 10.03.2014 for the reasons aforesaid*

*Thus, the contention of the assessee that the consideration of Rs.10 crores stood revised at Rs. 25 lakhs is clearly untenable in law and cannot be accepted. The amount of capital gain as originally returned by the assessee is being accepted."*

7. The learned CIT(A), vide impugned order, after taking into consideration various legal as well as criminal cases, the Settlement Deed and Supplementary Share Purchase Agreement entered among the parties, allowed the appeal filed by the assessee and held that the transfer of shares of the subsidiary company was settled at Rs.25 lakh and accordingly directed the AO to compute the capital gains by taking the total sales consideration of Rs.25 lakh. Being aggrieved, the Revenue is in appeal before us.

8. During the hearing, the learned DR submitted that the learned CIT(A) has not examined how the sales consideration of Rs.10 crore was reduced to Rs.25 lakh. The learned DR further submitted that the learned CIT(A) did not appreciate that the post facto event cannot reduce the sales consideration.

9. On the contrary, the learned AR by referring to the various documents, forming part of the paper book, such as initial Share Purchase Agreement, Settlement Deed, Supplementary Share Purchase Agreement, Mortgage Deed, proceedings under section 138 of the Negotiable Instrument Act, the order passed in the Civil Suit by the learned Civil Judge, Gurgaon, submitted that the parties mutually agreed to resolve and settle various legal and criminal disputes, which started after the parties came to know certain facts after the execution of the initial Share Purchase Agreement. It was further submitted that the parties also mutually agreed to revise the sale consideration of shares from Rs.10 crore to Rs.25 lakh. The learned AR further submitted the receipt of Rs.25 lakh as sale consideration of shares is nothing but a bonus to the assessee, since the title of the land, kept as a mortgage for part unpaid sale consideration, was found to be not clear and covered by the injunction order passed by the Hon'ble Debt Recovery Tribunal. As regards the loan of Rs.30 crore given by the assessee, the learned AR submitted that the same was returned substantially by Shivalik Land Development Ltd. on 08/12/2008, to the assessee.

10. We have considered the rival submissions and perused the material available on record. In the present case, on 28/07/2006, the assessee acquired 50,000 shares of Rs.10 each, being 100% share capital of Shivalik

Land Development Ltd. M/s Padmini Technologies Ltd was the owner of land admeasuring 11.42 acres situated in the revenue estate of village Kherki Daula, Distt Gurgaon. M/s Padmini Technologies Ltd approached the assessee for obtaining financial help to obtain a commercial license from the DTCP, Haryana in respect of the said land. Accordingly, the assessee through its wholly-owned subsidiary, i.e. Shivalik Land Development Ltd, had entered into Development Agreement dated 01/03/2007, with M/s Padmini Technologies Ltd. The assessee gave a loan of Rs.30 crore to its wholly-owned subsidiary as financial help. This amount of Rs.30 crore was invested by the wholly-owned subsidiary company as a licence fee for obtaining a commercial license in respect of the above-mentioned land with DTCP as per the Development Agreement. As there was a change of business plan, the assessee decided to discontinue the investment in the said land. On the request by M/s Padmini Technologies Ltd, Shivalik Land Development Ltd. made an application dated 16/04/2008, for withdrawal of licence applications and sought a refund of license fee from DTCP, Haryana. Thereafter, M/s Padmini Technologies Ltd approached the assessee and the wholly-owned subsidiary to take back the withdrawal application and find another investor. Accordingly, a new investor, M/s Virasat Agro Foods Private Limited was founded by the assessee and its wholly-owned subsidiary company. The assessee had entered into Share Purchase Agreement dated 04/12/2008, with M/s Virasat Agro Foods Private Limited to sell the shares of Shivalik Land Development Ltd. for a total consideration of Rs.10 crore. Capital gain, from the aforesaid share purchase transaction, was offered by the assessee while filing its return of income.

11. From the perusal of the Share Purchase Agreement dated 04/12/2008, forming part of the paper book from pages 1-8, it is evident that for the purchase of shares of Shivalik Land Development Ltd. from the assessee, M/s Virasat Agro Foods Private Limited had agreed to make payment of Rs.10 crore in two trenches, (i) demand draft Rs.25 lakh dated 05/12/2008, was handed over at the time of signing of the agreement, and (ii) undated cheque of Rs.9.75 crore. It was also agreed that the assessee shall be entitled to encash the undated cheque of Rs.9.75 crore on the 30<sup>th</sup> day from the Letter of Intent issued by the Competent Authority or 31/07/2009, whichever is earlier. After the transfer of shares of Shivalik Land Development Ltd., M/s Virasat Agro Foods Private Limited purchased subject land from M/s Padmini Technologies Ltd and entered into sale deed for said land. Vide Mortgage Deed dated 12/12/2008, forming part of the paper book from pages 110-114, Shivalik Land Development Ltd. agreed to mortgage the land, admeasuring 11.30 acres situated at Kherki Dhaula, Tehsil Sohna, District Gurgaon, to the assessee as a security for the payment of the balance consideration of Rs.9.75 crore by M/s Virasat Agro Foods Private Limited in terms of the aforesaid Share Purchase Agreement. It was also agreed that in the event of failure of M/s Virasat Agro Foods Private Limited to pay the balance consideration in terms of the Share Purchase Agreement for any reason whatsoever, the assessee will become entitled to have the mortgaged land sold in the manner, as it may deem fit.

12. Subsequently, it came to the knowledge of M/s Virasat Agro Foods Private Limited that the title of the aforesaid land was not clear and several litigations were going against M/s Padmini Technologies Ltd. Further, M/s

Padmini Technologies Ltd had also taken several loans from the Bank of India and for default on such loans, the Bank of India filed a recovery suit before the Hon'ble Debt Recovery Tribunal. The Hon'ble Debt Recovery Tribunal vide order dated 12/10/1999, granted an injunction against M/s Padmini Technologies Ltd. and restrain the property in question from transferring, eliminating, or otherwise dealing with until further orders, which order continues to be in the operation. Pursuant to the aforesaid information, M/s Virasat Agro Foods Private Limited filed a suit before the Hon'ble Civil Judge, Gurgaon, seeking a decree for declaration of the sale deed of the aforesaid land as illegal, null, and void. Further, decree for mandatory injunction directing M/s Padmini Technologies Ltd. to pay the amount of Rs.38,40,000, i.e. the stamp duty and expenses for exclusion and registration of the sale deed along with interest at the rate of 18% per annum from the date of execution and registration of the sale deed till full and final realisation of the decretal amount.

13. The undated cheque of Rs.9.75 crore was presented by the assessee after the agreed date of 31/07/2009, however, the same was returned unpaid due to insufficient funds. Being aggrieved, the assessee filed a complaint under section 138 of the Negotiable Instrument Act before the Hon'ble Chief Judicial Magistrate, Gurgaon.

14. On 01/02/2012, M/s Virasat Agro Foods Private Limited entered into a Settlement Deed with the assessee to mutually resolve the following disputes amongst them:-

*"(C) Thereafter, several disputes arose between the Parties and the Parties filed legal cases and criminal complaints against each other in various courts including but not limited to the cases as detailed below:*

- Indiabulls Real Estate Ltd vs. Virasat Agro Foods Pvt. Ltd. & Others (Complaint u/s 138 of NI Act bearing No 5079 dated 11.09.2009) with next date of hearing scheduled for 02-04-2012 pending in the court of Shri Sukhpreet Singh, JMIC, Gurgaon.*
- Arbitration Case No. 444/2010 titled Indiabulls Real Estate Ltd Vs Virasat Agro Foods Pvt. Ltd & Another pending before Justice P. K Bahri (Retd) with next date of hearing scheduled for 10.02.2012 (includes a claim by Indiabulls and a counter claim by Virasat).*
- Shivalik Land Development Ltd Vs Padmini Technologies Ltd. & Others (Indiabulls being Defendant No. ) Civil Suit No.369/09 pending in the court of Shri Sunil Chauhan with next date of hearing scheduled for 07-03-2012."*

15. From the perusal of the aforesaid Settlement Deed, forming part of the paper book from pages 9-13, it is evident that the parties also agreed that the consideration for the purchase of shares shall stand revised from Rs.10 crore to Rs.25 lakh and in this regard shall execute a Supplementary Share Purchase Agreement to modify the terms and conditions of initial Share Purchase Agreement. It was also agreed that the assessee shall provide the original title deed of the scheduled land to M/s Virasat Agro Foods Private Limited and cancel the Mortgage Deed dated 12/12/2008, by executing the date of discharge, release, and cancellation of the mortgage. Pursuant thereto, the parties entered into the Supplementary Share Purchase Agreement, whereby the sale consideration for shares of Shivalik Land Development Ltd. was revised to Rs.25 lakh from Rs.10 crore.

16. As per the assessee, due to the aforesaid circumstances, it raised additional ground before the learned CIT(A), in 1<sup>st</sup> round of proceedings, for the computation of the capital gains on the sale of shares by considering the

sale consideration of Rs.25 lakh instead of Rs.10 crore. As evident from the record, the learned CIT(A) rejected the request of the assessee to admit the aforesaid additional ground. However, the coordinate bench of the Tribunal vide order dated 28/08/2017, set aside the matter to the file of the AO for *de novo* adjudication after verifying the genuineness of the claim of the assessee. As evident from the record, the assessee filed the copy of Share Purchase Agreement, copy of the Mortgage Deed, copy of the Settlement Deed before the AO, during the 2<sup>nd</sup> round of proceedings, to justify the claim of re-computation of capital gains on the sale of shares of Shivalik Land Development Ltd. However, the AO did not accept the contention of the assessee on the basis that the mere post facto event cannot result in the reduction of the full value of consideration and the assessee has not been able to explain as to why the sum of Rs.10 crore initially agreed upon by the assessee and the purchaser was reduced to Rs.25 lakh. The AO also held that the assessee has failed to explain as to why the undated cheque of Rs.9.75 crore was not presented before the bank by 31/07/2009, in accordance with the share purchase agreement and the reason for refusal to honour the said cheque.

17. However, from the perusal of the aforesaid sequence of events as supported by documents forming part of the paper book, we are of the considered opinion that there is no basis of aforesaid allegations of the AO. As noted above, the assessee with the support of the aforesaid documents has duly explained as to how the sale consideration of shares was reduced from Rs.10 crore to Rs.25 lakh. As regards the allegation of the AO as to why the

undated cheque of Rs. 9.75 crore was not presented by 31/07/2009, we find that the same itself is contradictory to clause 3.3 of the Share Purchase Agreement dated 04/12/2008, which reads as under:-

*"3.3 The Seller shall be entitled to encash the undated cheque for Rs.9,75,00,000 on the 30<sup>th</sup> day from the LOI being issued by the authorities on 31.07.2009 which ever is earlier."*

18. As per the assessee, since LOI was not issued by the authorities, therefore as per the aforesaid clause the assessee could have encashed the cheque on 31/07/2009. However, as noted above the said cheque was returned unpaid due to insufficient funds, and therefore the assessee initiated proceedings under section 138 of the Negotiable Instrument Act. Nothing has been brought on record by the Revenue to show that the valuation of shares of Shivalik Land Development Ltd. is Rs.10 crore and therefore the computation of capital gains in the hands of the assessee should be done accordingly. As noted from the documents available on record, the parties agreed to a consideration of Rs.10 crore on the basis of circumstances as existing on 04/12/2008. However, subsequently, when the title of the subject land itself was found to be not clear and shrouded by litigation, the purchaser not only initiated the legal action against the seller of the land but also, on the other hand, entered into a Settlement Deed to close the transaction of sale of shares of Shivalik Land Development Ltd at Rs.25 lakh, which was already paid to the assessee. No other allegation has been made by the Revenue in the present case. Further, the Revenue has not doubted any leg of the transaction, and their plea is only limited to the revaluation of shares. There is also nothing to prove that the entire consideration of Rs.10 crore was received by the

assessee and therefore the capital gains as initially offered by the assessee be upheld. Thus, in view of the peculiar facts and circumstances of the present case, we find no infirmity in the impugned order in directing the AO to recompute the capital gains on the transfer of shares of Shivalik Land Development Ltd by taking the total sale consideration at Rs.25 lakh. As a result, the grounds raised by the Revenue are dismissed.

19. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 31/03/2023

**Sd/-**  
**M. BALAGANESH**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 31/03/2023**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai