

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 654/MUM/2024  
Assessment Year: 2012-13**

Shri Nirmal Parmanand Anand,  
25/26, Kailash Darshan Kennedy  
Bridge, Gant Road,  
Mumbai-400 007.

**PAN NO. AENPA 2374 Q**  
**Appellant**

CIT(A), NFAC ACIT Circle  
16(1),  
Aayakar Bhavan,  
Mumbai-400020.

**Vs.**

**Respondent**

Assessee by : Mr. Mukesh Advani  
Revenue by : Mr. Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 24/06/2024  
Date of pronouncement : 30/08/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 09/01/2024 passed by the learned Commissioner of Income-tax(Appeals)-National Faceless Appeal Centre , Delhi [in short 'the Ld. CIT(A)'] for assessment year 2012-13, raising following grounds:

*1) The Commissioner of Income Tax (Appeal) i.e. NFAC has erred in confirming the addition of Rs.1,61,00,000/- which was made by the*



*Assessing Officer while passing his Assessment Order u/s 143(3) r.w.s. 147 dated 23rd December 2019 under the pretext that the Appellant had received cash of Rs.1,61,00,000/- from the buyer Mr. Prashant M. Devnani who bought the Residential Property from the Appellant situated at Bandra, Mumbai for a consideration of Rs.4,61,00,000/- but the Appellant had shown Sale Consideration of this Residential Property at Rs.2,90,00,000/- in his Sale Deed. (Difference of Rs. 10,00,000/-)*

*2) The only reason why the Commissioner of Income Tax (Appeals) erred in confirming the above addition of Rs. 1,61,00,000/- is because of the fact that in case of the buyer i.e. Mr. Prashant M. Devnani whose case was also Re-opened u/s 147 of the Income Tax Act 1961 for the same Assessment Year 2012-13 due to the same reason that he had given cash to the Appellant amounting to Rs.1,61,00,000/- for buying the above mentioned Residential Property at Bandra, Mumbai.*

*Since no addition of Rs.1,61,00,000/- has been made by the Assessing Officer while passing the Assessment Order u/s 143(3) r.w.s. 147 in case of the buyer i.e. Mr. Prashant M. Devnani for the same Assessment Year 2012-13, hence, there is no reason why the same addition of Rs.1,61,00,000/- has been confirmed by Commissioner of Income Tax (Appeals) in case of the Appellant when no cash of Rs.1,61,00,000/- has been paid by the buyer i.e. Mr. Prashant M. Devnani for sale of the same Residential Property to the Appellant.*

*3) Hence the Addition of Rs. 1,61,00,000/- made by the Assessing Officer while passing the Assessment Order u/s 143(3) r.w.s. 147 and is also confirmed by the Commissioner of Income Tax (Appeals) NFAC is absolutely wrong and baseless as no addition has been made in the case of the buyer i.e. Mr.*

*Prashant M. Devnani which was Re-opened due to the same reason and for the same Assessment Year, hence the addition which is confirmed by Commissioner of Income Tax (Appeals) is null & void.*

2. Briefly stated facts of the case are that the assessee filed its return of income for the year under consideration on 18/09/2012 declaring total income at ₹59,47,870/-, which included short-term capital gain of ₹58,90,000/- on sale of a flat located at Bandra(west), Mumbai. Subsequently, the Assessing Officer received information from another Income-tax officer namely Income-tax officer-ward 23(2)(5), Mumbai that assessee had sold an immovable property situated by Bandra for a consideration of Rs.4,61,00,000/- on



18/07/2011 as against registered sale deed value shown of ₹2,90,00,000/- and the purchaser Sh Prasant Devnani stated element of cash component involved in the transaction at ₹1,61,00,000/-. In view of the information received, the Assessing Officer recorded reasons to believe that income escaped assessment and accordingly, he reopened the assessment by way of issue of notice under section 148 of the Income-tax Act, 1961 ( in short 'the Act') dated 29<sup>th</sup> of March 2019. In response, the assessee filed return of income declaring the same income which was offered in the original return of income filed on 18/09/2012. Thereafter, the Assessing Officer followed due procedure under the law and commenced re-assessment proceedings. During re-assessment proceeding, the Assessing Officer confronted the material which was forwarded to him by the Income-tax officer ward (23)(2)(5), Mumbai, who happened to be the Assessing Officer of purchaser Sh Prasant Devnani. According to the assessee, he had not received any cash payment other than the sale consideration recorded in the sale deed registered before the stamp duty authorities, which was of ₹2,90,00,000/- only. The Assessing Officer rejected the contention of the assessee and brought the amount of ₹1,61,00,000/-to tax as unaccounted income of the assessee. On further appeal, the Ld. CIT(A) also upheld the addition. Aggrieved, the assessee is in appeal before the Income-tax Appellate Tribunal (in short the 'Tribunal'), raising the grounds as reproduced above.



3. Before us the assessee filed a paperbook containing pages 1 to 252 and also filed copy of the judgments relied upon.

4. All the grounds raised by the assessee are in relation to the sole issue of addition of ₹1,61,00,000/-. In the grounds, the main contention raised is that since no addition has been made by the concerned Assessing Officer in the case of buyer namely “Mr Prasant M Devnani”, therefore no addition is called for in the case of the assessee.

4.1 The brief facts qua the issue in dispute are that assessee had purchased a residential property being flat No. 11 in Viraj Building, St Andrew’s Road, Bandra(West), Mumbai for a consideration of ₹2,15,00,000/-and further incurred stamp duty charges of ₹10,75,000/- and legal charges of ₹1,25,000/- and in this manner total cost of acquisition of the property was computed at ₹2,27,00,000/-. The assessee sold this property and recorded sale consideration at ₹2,90,00,000/- in the sale deed registered before the Stamp Duty Authorities and further paid brokerage of Rs.2,90,000/- and legal fee of ₹1,20,000/- at the time of the sale of the property. Since the property was sold within three years from the date of the purchase, the assessee declared short-term capital gain of ₹ 58, 90, 000/- on sale of property.

4.2 The Assessing Officer, however, noted that sh Devnani took loan in the form of gold bars from two persons for financing cash



portion of consideration of the property. He referred to the letters dated 08/06/2011 & 17/06/2011, written by the purchaser Sh Devnani to two lender parties namely M/s SCN Club P Ltd and Shri Vikram Choudhary , wherein Sh Devnani stated that he would pay a sum of ₹ 3 crore by cheque and a sum of ₹ 1.61 crore by cash for purchase of above referred property. In those letters, it is also mentioned that sh Devnai proposed to take cash loan by way of gold from those two lender parties for payment of cash portion for purchase of property under reference. Subsequently, Sh Devnani did not return the cash loan to concerned parties and therefore, those parties reported matter to police and sued him for recovery of cash loan.

4.3 The Assessing Officer in impugned assessment order has reproduced scanned copy of those letters, which are kind of a 'promissory note' issued by the purchaser of property sh Devnani to the lender of Gold bars. In the letter, which was addressed /sent by Shri Prashant Manohar Devnani to the Director of SCN Sport Club Pvt. Ltd. dated 8th June 2011, the subject has been mentioned as "Friendly Loan in form of Gold". In para 2 of the same letter, he stated that he had finalized the deal with the "above seller" and the flat would be costing him Rs.4,61,00,000/- (Rupees Four Crore Sixty One Lakhs Only) and the same would be paid in the proportion of cheque of Rs.3,00,00,000/- (Rupees Three Crores Only) and cash of Rs.1,61,00,000/- (Rupees One Crore Sixty One



Lakhs Only) as demanded by the seller. In para 3 of the same letter he stated that he was arranging the funds in form of **i) own contribution of Rs.1,50,00,000/- ii) borrowed fund from Vedanta Agro Pvt. Ltd. of Rs.1,50,00,000/- in cheque** and **(iii) cash component of Rs.1,61,00,000/-partly from own fund and balance by borrowings.** In para 4 and para 5 of the same letter, he confirmed that he had received and taken physical possession of 4 kgs. (4 bars of one kilogram each) of gold having purity of 0.995 from SCN Sports Club Pvt. Ltd. for the above purpose as Loan to be repaid as mentioned herein. In para 5 of the same letter, he stated that he had already received 4 kgs (4 bars of 1 kg each ) of gold having purity of 0.995, from SCN Sports Club Pvt. Ltd., which was in his physical possession. He further stated that the approximate market value of that 4 kgs of Gold was Rs.92 Lakhs i.e. per kg at the rate of Rs.23,00,000/-, hence per 10 gms is Rs.23,000/-." In para 6 of the letter, he stated that "he agreed and promised to repay/return the entire gold of 4 kgs. having purity of 0.995 and further additional gold of 400 gms i.e. 0.4 kgs of Gold having purity of 0.995 in physical within 15 days when the SCN Sports Club Pvt. Ltd. raised a demand or 3 years whichever was earlier for return loan." In para 8 of the letter, he stated that "since he has borrowed the loan in form of Gold, he shall repay back in the same form of gold only irrespective of any changes in the market rates at the time of repayment." In para 9,10 & 11 of the letter, he stated that he would not sell the flat which he intended to purchase in Bandra (W)



to any third party nor would transfer that flat to his children unless and until he repays back the entire loan of Gold which he had borrowed from SCN Sports Club Pvt. Ltd. along with 400 gms being the cost of borrowing.

4.4 Further the Assessing Officer also extracted scanned copy of promissory note issued by Shri Prashant Manohar Devnani through Letter dated 17th June 2011, and sent to Mr. Vikram Choudhary, wherein subject of the Letter has been mentioned as "Friendly Loan in form of Gold". Further the contents of the paras 1,2 & 3 of the letter are identical to contents which are mentioned by Shri Prashant Manohar Devnani in Letter (promissory note ), which was addressed to the Director of SCN Sports Club Pvt. Ltd. vide letter dated 8th June 2011. In para 4 of the letter, he stated that he has confirmed of receiving and taking physical possession of 1 kg. of gold having approx.23 carats from 'Vikram Choudhary' as a loan. In para 5 of this letter, he stated that the market value of the gold bar/coin was Rs.23 Lakhs. Further, the contents of Para 6,7,8,9,10 & 11 of this Letter dated 17/06/2011 are identical to contents which are mentioned by the same buyer in letter dated 8th June 2011, which was addressed to SCN Sports Club Pvt. Ltd.

4.5 Further, the Assessing officer also reproduced scanned copy of a Letter dated 8th June 2011, which is written by Shri Prashant Manohar Devnani and submitted to Mr. Rajesh Desai, wherein subject of the Letter has been stated as "Friendly Loan in form of



Gold". Further the contents of the paras 1,2 & 3 of the letter are same contents which are mentioned by Shri Prashant Manohar Devnani in Letter which is addressed to the Director of SCN Sports Club Pvt. Ltd. vide his letter dated 8th June 2011. In para 4 of the letter he stated that he has confirmed receiving and taking physical possession of 1 kg. of gold having approx.23 carats from Vikram Choudhary as a loan. In para 5 of the letter he stated that the market value of the gold bar/coin is Rs.23 Lakhs. Further, the contents of Para 6,7,8,9,10 & 11 of this letter dtd.17/06/2011 are the identical to contents which are mentioned by the same buyer, which was addressed to SCN Sports Club Pvt. Ltd. vide his letter dated 8th June 2011.

4.6 Further, in all these letters or promissory note, the signature of buyer sh Devnani has been authenticated by the Assisstant General Manger of Bank of Baroda, Pune camp Branch.

4.7 The Assessing Officer issued show cause notice on 25/11/2019 to the assessee as why the said cash component received for sale of the property might not be assessed as unaccounted income of the assessee. In response, it was submitted on behalf of the assessee that case of the assessee has been reopened on the basis of information in the case of the buyer sh Prashant Devnani and since whose scrutiny matter was undergoing , so any reply would be only submitted after only completion of his assessment. As the scrutiny assessment of the assessee was getting barred by limitation on



31/12/2019, but no reply was filed by the assessee, hence, the assessing officer completed the assessment based on the material available on record and made addition for entire cash amount of Rs. 1,61,00,000/- as unaccounted income of the assessee.

5. On further appeal, the Id CIT(A) upheld validity of the re-assessment. As far as merit of addition is concerned, the Id CIT(A) upheld the addition observing as under:

*"6.3 I have gone through the grounds of appeal, assessment order and the submissions of the appellant. It is a fact that during the year under consideration the appellant had sold the flat No. 11, in Viraj Building, St. Andrews Road, Bandra (W) Mumbai 400050 for a total consideration of Rs. 2,90,00,000/- (FMV as per section 50C was Rs. 2,78,11,015/-). As per the information received from the ITO 23(2)95, Mumbai wherein it is stated that the assessee has sold immovable property situated at Bandra for the consideration of Rs. 4,61,00,000/- on 18.7.2011 but as per sale deed the value of the property has been shown at Rs. 2,90,00,000/- The purchaser of this property Mr Prashant M Devnani who is assessed to tax with ITO 23(2)95) Mumbai has vide his letter dated 8.6.2011 and 17.6.2011 had stated that cash component in the purchase of property at Bandra of Rs. 1,61,00,000/- would be met partially by own fund and partially by borrowed funds. The appellant had filed the copy of the assessment order of Sri Prashant Manohar Devnani for the A.Y. 2012-13 who is the purchaser of the property from the appellant. In the said assessment order of Sri Prashant Manohar Devnani, it was mentioned that -*

*" A piece of information was received from the DDIT (Inv), Unit 1(3), Pune vide letter dtd. 30.08.2016 that during the F.Y. 2011-12 the assessee had taken a loan in the form of gold from Mrs. Sharada D. Choudhary / Vikram choudhary, Mumbai and SCN Sports Club P Ltd. Mumbai of 1 Kg. (Rs. 23 lakh) and 4 Kg. (92 lakhs) respectively. Since the assessee had refused to return the loans, the petitioners have filed police complaints against the assessee and furnished a copy of FIR. It has been further alleged that the assessee has utilized the said loans for purchase of flat in Bandra worth Rs. 4.61 crores and for which he has paid Rs.3.00 crore by cheque and Rs. 1.61 crore in cash.."*

*6.3.1 The appellant has denied to sale the property to Sri Prashant Manohar Devnani and also not rebutted the facts narrated in the assessment order, wherein it was mentioned that the said loans were*



*utilized for purchase of flat in Bandra worth Rs. 4.61 crores. In the appellate proceedings, burden of proof lies on the assessee to prove that facts and findings of the AO are incorrect. Assessee contested in appeal that the assessment order is totally arbitrary and not proper and justified: The appellant has to prove or rebut with cogent evidence against the facts and findings of the AO in the assessment order. In the present appeal, the issue is with regard to the cash component of Rs. 1.61 crores and the taxation of such cash receipt. During the course of appellant proceedings also the appellant has neither rebutted the issue nor asked for cross examination of the purchaser.*

*6.3.2 Since, the appellant could not submit any material evidences/additional evidences during appeal proceedings substantiating his grounds which could not be produced before the assessing officer, except the documents produced before AO earlier, it clear that the appellant has no strong evidences on his to substantiate his grounds of appeal. Further, it is held by the AO in the Assessment order that the onus is on the assessee to establish the genuineness of the transactions, which in the instant case the assessee has not discharged. The appellant failed to discharge the onus vested on him by not filing necessary explanation. In view of the foregoing discussion, I am of the considered opinion that the addition of Rs. 1,61,00,000/- made by the AO is justified and I hereby confirm the addition. Ground No. 3 is dismissed.”*

5.1 Thus, before the 1d CIT(A) the assessee filed copy of the assessment order in the case of buyer sh Prasahant Devnani. No other documents were filed before the 1d CIT(A). The 1d CIT(A) noted that the assessee did not discharge burden of disproving the fact recorded by the AO that the buyer utilised loan under reference for purchase of property from the assessee. The Ld CIT(A) further noted that neither the assessee rebutted the factual finding of the AO nor asked for cross examination of the purchaser. Accordingly, in absence of any evidence by the assessee to disprove factual finding of the AO, he upheld the addition.

6. Before us, the learned counsel for the assessee filed a paper book containing pages 1-152 certifying that papers filed in



paperbook were submitted before the lower authorities. The ld Counsel mainly relied on the assessment order in the case of Mr Prasant M Devnanai, who is buyer of the property and whose case for assessment year 2012-13 was also reopened under section 147 of the Act. The learned counsel submitted that in assessment order in the case of sh Devnani dated 27/12/2019, no addition of ₹ 1.61 crores has been made by the concerned Assessing Officer. He submitted that the only reason, for which the case of the assessee has been reopened, was on account of the alleged loan of ₹ 1.61 crores taken by sh Devnanai. In the case of sh Devanani, the concerned Assessing Officer received information from the deputy director of income tax (investigation Wing), Pune that he had taken loans in the form of gold from Mrs Sharada D Choudhary/Vikram Choudhary , Mumbai and SCN Sports Club Pvt Ltd, Mumbai of 1 kg ( Rs. 23 lakhs) and 4 Kgs( Rs. 92 lakhs) respectively, but he refused to return those loans, therefore, the lenders filed a police complaint against Mr Devnani. M/s SCN Sports Club P ltd and Vikram Choudhary submitted a copy of letters dated 08/06/2011 and 17/06/2011 to the Investigation wing of income-tax department, which were issued by Sh Devanani.

6.1 The learned counsel for the assessee submitted that the assessment order in the case of Sh Devnani was received on 27/12/2019, which is subsequent to the assessment order in the case of the assessee, which is dated 23/12/2019, therefore copy of



the assessment order in the case of Shri Devnani was submitted before the Ld. CIT(A), but the Ld. CIT(A) did not consider the same.

6.2 The learned counsel submitted that if sh. Devnani had taken cash loan or advances exceeding ₹ 20,000, then action should have been taken in the case of Sh Devnani under section 269SS of the Act but there is no reason for making addition in the case of the assessee under the presumption that the buyer had given him cash to the extent of ₹ 1,61,00,000/-.

6.3 The learned counsel further submitted that total loan received by sh Devanai from three parties by way of gold amounted to ₹1,38,00,000/- [4 kgs gold equivalent to Rs. 92 lakhs from SCN sports, 1 kg gold equivalent to Rs 23 lakhs from Vikram Choudhary and 1 kg gold equivalent to Rs. 23 lakhs from Sh Rajesh Desai]. According to the learned counsel, since no cash loan was taken by Sh Devnanai to the extent of ₹ 1, 61, 00, 000/-, therefore, there is no reason for the Assessing Officer to presume that cash loan was taken by the buyer sh Devnanai and paid to the assessee for buying the residential property.

6.4 Further, the learned counsel submitted that in the registered sale deed there is no mention of any amount of cash received from Sri Devnani, and only amount which could be brought to tax in the hands of the assessee, is the amount of sale consideration mentioned in the registered sale deed. He further submitted that



Income-tax Department has no evidence nor any confirmation from the buyer Sh Devnani that he had given either the gold bar or cash equivalent to the assessee for buying the property and the addition made in the case of the assessee is on the basis of the presumption that the buyer had paid to the assessee a sum of ₹1,61,00,000/-in cash for buying the property.

6.5 The ld counsel further submitted that no inquiry was done from the person, i.e. buyer, who is alleged to have paid cash to the assessee and no addition has been made in his case.

6.6 Alternatively, the ld counsel submitted that addition if any to be made, then same should be added to the sale consideration and capital gain should be computed accordingly, but addition is not warranted as unaccounted income u/s 68 of the Act.

6.7 Before us the ld counsel for the assessee relied in the decision of Hon'ble Bombay High Court in the case of Additional CIT vs Lata Mangeshkar reported in 97 ITR 696 (Bom).

7. The arguments of the Ld. counsel for the assessee have been considered. He has assailed finding of the Ld. CIT(A) on various grounds, which are dealt as under:

**7.1 Firstly**, the Learned Counsel for the assessee contended that the assessment of the assessee was reopened based on information pertaining to the buyer, Shri Devnani, wherein it is alleged that Shri



Devnani had received a gold/cash loan from two parties for the purpose of making payment to the assessee. The Counsel further argued that no addition was made in the assessment order of Shri Devnani, thus rendering the basis for the addition in the assessee's case untenable.

7.1 We, however, find the arguments of the Learned Counsel to be unconvincing. The addition in the assessee's case arises from the understatement of sale consideration of property under reference by an amount of ₹1,61,00,000/-. In contrast, in the case of Shri Devnani, the source of ₹1,61,00,000/- was satisfactorily explained as having been received through cash/gold loans from two entities, namely Shri SCN Sport Club Pvt. Ltd. and Shri Vikram Choudhary. Consequently, this amount was not deemed unexplained in the hands of Shri Devnani, which may explain the absence of additions under sections 68 or 69A of the Act in his case. In the assessee's case, however, this cash component forms a part of the sale consideration. As such, it must be included in the computation of short-term capital gains. The addition of ₹1,61,00,000/- is properly attributable to the sale consideration and should be treated as such liable for capital gains computation purposes, rather than as unexplained cash credit under sections 68 or 69A of the Act. To that extent, the alternative plea of the assessee for assessing the addition as part of sale consideration is allowed.



7.2 **Secondly**, The learned counsel for the assessee submitted that a confirmation letter from Shri Prasant M. Devnani, addressed to the assessee, was filed before the Assessing Officer on 18/12/2019, a copy of which is available on paper book page 98. . In this letter, Shri Devnani confirmed the payment of Rs. 2,90,00,000/- for the purchase of the property in question. However, in our considered opinion, the mere filing of such a confirmation letter does not suffice to discharge the onus placed upon the assessee. In light of the letter addressed by Sh Devnani to M/s SCN Sport Club Pvt. Ltd. and Shri Vikram Choudhary, as well as the police complaint filed by them, it is apparent that Shri Devnani had indeed obtained gold loans. Therefore, he was required to adequately explain the purpose of those loans, other than for the investment in the property, if any. The onus was on the assessee to produce Shri Devnani to clarify the purposes for which those gold loans were utilized, along with supporting documentary evidence. In the absence of any such documentary evidence demonstrating that the gold loans were used for purposes other than the purchase of the property. Since, the assessee has not discharged his onus, therefore, the arguments advanced by the learned counsel for the assessee stand rejected. In the circumstances of the case and in the interest of justice, we feel it appropriate to provide one more opportunity to the assessee to produce sh Prashant Devani as his witness, for cross examination by the Assessing officer.



7.3 **Thirdly**, the learned counsel for the assessee contended that the name of the assessee and the address of the property in question were not mentioned in the letters sent by sh Devnani. However, in our considered view, the assessee has failed to provide any evidence that Shri Prasant M. Devnani had purchased any property other than the one under reference during the relevant period. However, in the interest of justice, we feel it appropriate to provide one more opportunity to the assessee to produce sh Prashant Devani as his witness, for cross examination by the Assessing officer.

7.4 **Fourthly**, the learned counsel for the assessee submitted that no action has been taken under Section 269SS of the Act regarding the alleged cash loan obtained by Shri Prasant M. Devnani, which, according to the counsel, supports the assessee's claim that no such loans were taken by him. However, in our considered opinion, there is no evidence on record to substantiate the counsel's assertion that the Assessing Officer of Shri Devnani failed to take action for the violation of Section 269SS of the Act. Even in the absence of such information, and assuming that the Assessing Officer of Shri Devnani did indeed fail to take action under Section 269SS, this does not preclude taking of appropriate action in the hands of the assessee. The Hon'ble Supreme Court, in the case of *Distributors (Baroda) Pvt. Ltd. vs. Union of India* [(1985) 155 ITR 120 (SC)], held that there is no merit in perpetuating an error and that it



should be rectified at the earliest opportunity. Therefore, we are of the view that even if the Assessing Officer of Shri Devnani erred in not taking action for the violation of Section 269SS of the Act, the assessee is still liable for the addition concerning the unreported cash consideration of Rs. 1,61,00,000/-, in accordance with the law. Furthermore, the argument advanced by the learned counsel for the assessee, that the said amount should be taxable in the hands of Shri Devnani as a gift due to the non-repayment of the loan, is also rejected in light of the findings above.

7.5 **Fifthly**, the learned counsel for the assessee submitted that the loan obtained by way of a gold bar amounted to Rs. 1,38,00,000/- only, and therefore, any addition should be restricted to this amount. We find no merit in this contention. The amount stated to have been received, as indicated in the letters, is Rs. 1,61,00,000/-. Shri Prasant M. Devnani has explained the sources of this amount as being derived from both loans and his own funds. Therefore, the relevant amount concerning the assessee's case is Rs. 1,61,00,000/-. The specific amount received by Shri Devnani through gold loans is not pertinent for determination of assessee's liability in this matter. Consequently, the argument advanced by the learned counsel is rejected.

7.6 **Sixthly**, in the letter to m/s SCN sports ltd dated 8/06.2011 by sh Prashant Devnani, it is mentioned that amount of loan of Rs. 1,50,00,000/- will be arranged from M/s Vedanta Agro p ltd. This



statement has been confirmed from the assessment record of Buyer sh Devnani, and he actually received said loan by cheque. In such circumstances, if one part of letter is found to be true, then, the other part of the letter is also must be true and it for sh Devnani to rebut as why the other part of the text of the letter regarding cash component of sale consideration is not true.

7.7 **Lastly**, we find that assessee in his paper book has filed copy of the interim order of Hon'ble High Court, available on paper book page 144 to 146, wherein the defendant i.e. sh Devnani has been directed to pursue the suit filed by the petitioners i.e. the lenders. The assessee has not filed updated status of the litigation between purchaser of property and lenders.

7.8. In the case of Lata Mangeshkar (supra) cited by the assessee before us, the Hon'ble high Court held that conclusion reached by the Tribunal purely rests on the appreciation of evidence and hence no question of law arise. Thus, the ratio of said case does not apply over the facts of the case and distinguishable.

7.9 In view of the above discussion, we feel it appropriate to set aside the order of lower authorities and restore the matter back to the file of the Assessing Officer for deciding afresh keeping in view our directions above for ascertaining whether payment of Rs.1,61,00,000/- in cash was received by the assessee from the



purchaser sh Devnani. The grounds raised by the assessee are accordingly allowed for statistical purpose.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

**Order pronounced in the open Court on 30/08/2024.**

**Sd/-  
(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 30/08/2024  
Dragon Legal/Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**