

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

समक्ष श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य एवं श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य के समक्ष।
BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

Sl. No	ITA No.	AY	Appeal(s) by	
			Appellant(s)	Respondent
1	2785/Ahd/2017	2014-15	Ardor Overseas Pvt. Ltd. A/2, New Sanjay Apartment, Panchwati, 2 nd Lane, Ambawadi, Ahmedabad-380015 PAN : AAJCA 2456 J	The DCIT, Circle-1(1)(2), Ahmedabad
2	2812/Ahd/2017	2014-15	The ITO, Ward 1(1)(3), Ahmedabad	Ardor Overseas Pvt. Ltd. Ahmedabad-380015 PAN : AAJCA 2456 J
3	206/Ahd/2018	2014-15	Nikshal Properties Pvt. Ltd. 2/21, Bharthana, Tal: Karjan, Vadodara-391244 PAN : AADCN 3151 F	The ITO, Ward - 3(1)(1), Ahmedabad
निर्धारिती की ओर से / Assessee (s) by :			Sr. No. 1 & 2 - Shri S.N. Soparkar, Sr. Advocate & Shri Parin Shah, AR Sr. No. 3 - Shri P.F. Jain, AR	
प्रत्यर्थी की ओर से / Revenue by :			Shri Kamlesh Makwana, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 16.10.2024
घोषणा की तारीख /Date of Pronouncement: 18.10.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

The impugned appeals relating to two different assessees arise against orders passed by separate Commissioners of Income Tax (Appeals)(CIT(A) for short) u/s 250(6) of the Income Tax Act, 1961, (hereinafter referred to as "Act") pertaining, in both cases, to assessment year (A.Y) 2014-15.

The two assessees before us are:

- M/s. Ardor Overseas Private Limited, &
- M/s. Nikshal Properties Private Limited.

2. While in the case of M/s. Ardor Overseas Private Ltd. there are cross appeals of the assessee and Revenue in ITA Nos. 2785 and 2812/Ahd/2017 respectively, in the case of M/s. Nikshal Properties Private Limited it is only the assessee which has come up in appeal before us in ITA No. 206/Ahd/2018.

3. It was common ground that the issues arising in the appeals of both the assesseees are interrelated stated to be emanating on account of a transaction of sale of land involving both the assesseees - with one assessee before us i.e. M/s. Ardor Overseas Pvt. Ltd. being the purchaser of land while the other assessee M/s. Nikshal Properties Pvt. Ltd. being the seller of the land. That while the seller of land claims the said transaction to be a mere accommodation entry, the purchaser on the other hand claims it to be a genuine transaction. Therefore, the appeals relating to the two assesseees were taken up together for hearing and are being dealt with by this common consolidated order.

4. Both the parties were heard at length; orders of the Revenue Authorities below were gone through, and the various documents referred to during the course of hearing were considered.

5. The background leading to the present appeals is that during the impugned year M/s. Nikshal Properties Pvt. Ltd. (NPPL) had sold land to M/s. Ardor Overseas Pvt. Ltd.(AOPL).In the return of income filed by NPPL, capital gain on account of the said transaction was shown and the same entirely set off against loss incurred on commodity transaction. During assessment proceedings, NPPL, the assessee, was asked to prove the genuineness of the commodity loss claimed by it, which the assessee contended was bogus. It was further stated that even the capital gain returned

by it on the transaction of the sale of land was a mere accommodation entry which it had provided to M/s. Ardor Overseas Pvt. Ltd. The Assessing Officer recorded the statements of the Directors of M/s. Nikshal Properties Pvt. Ltd., on oath who reiterated that M/s. Nikshal Properties Pvt. Ltd. was a dummy entity and it was only providing accommodation entry and this capital gain reflected in its return of income on sale of land to M/s. Ardor Overseas Pvt. Ltd. was one such accommodation entry transaction only. The entire modus-operandi providing the accommodation entry was revealed to the Assessing Officer pointing out how the transaction of both the purchase of land by M/s. Nikshal Properties Pvt. Ltd. from a third party was financed by M/s. Ardor Overseas Pvt. Ltd. and the sale consideration received by M/s. Nikshal Properties Pvt. Ltd. from M/s. Ardor Overseas Pvt. Ltd. was routed back again to M/s. Ardor Overseas Pvt. Ltd. – all for a commission earned by M/s. Nikshal Properties Pvt. Ltd. It was explained that while M/s. Nikshal Properties Pvt. Ltd. had purchased the land for Rs.8 crores odd, the same was sold to M/s. Ardor Overseas Pvt. Ltd. for Rs.44 crores odd, within 2-3 days' of purchase; and it was contended that M/s. Ardor Overseas Pvt. Ltd. had, in truth, acquired the property for Rs.8 crores only, with M/s. Nikshal Properties Pvt. Ltd. being a conduit in the transaction and the Rs.44 crores paid by M/s. Ardor Overseas Pvt. Ltd. to M/s. Nikshal Properties Pvt. Ltd. for buying the said land from it was only a camouflage, the same having been returned back by M/s. Nikshal Properties Pvt. Ltd. to M/s Ardor Overseas Pvt. Ltd. by layering through two entities whose names were also disclosed. Thus, the assessee, M/s. Nikshal Properties Pvt. Ltd, repeatedly contended to its Assessing Officer that both the transactions of short term capital gains on sale of land and the loss on commodity transaction, set off against the same, was bogus and only commission income ought to be subjected to tax. The Assessing Officer, however, treated only the loss incurred on commodity

transaction to be bogus and taxed the short term capital gains returned by the assessee, rejecting its explanation of the same being a mere accommodation entry.

6. At the same time, on the basis of the information obtained by the Assessing Officer of M/s. Nikshal Properties Pvt. Ltd., i.e. the statement of the Directors of the M/s. Nikshal Properties Pvt. Ltd. and others associated with the transaction, the Assessing Officer of M/s. Ardor Overseas Pvt. Ltd., during assessment proceedings, asked the assessee i.e. M/s. Ardor Overseas Pvt. Ltd. to justify the cost of land purchased by it from M/s. Nikshal Properties Pvt. Ltd. for Rs.44 crores in the light of the Directors of M/s. Nikshal Properties Pvt. Ltd. stating that the value of the land was only Rs.8 crores, and Rs.44 crores was only an accommodation entry provided, and that M/s. Nikshal Properties Pvt. Ltd. was a conduit in the transaction. The assessee filed due reply denying what was stated by the Directors of M/s. Nikshal Properties Pvt. Ltd. The Assessing Officer, however, was not convinced with the reply of the assessee and he held the cost of land acquired by the assessee to be of Rs.8 crores only and accordingly directed a reduction in its value from Rs.44 crores to Rs.8 crores which approximated to around Rs.36 crores.

7. The Assessing Officer of AOPL, being also in possession of information relating to the modus-operandi of this entire accommodation entry provided to the assessee, noted that Rs.44 crores paid by M/s. Ardor Overseas Pvt. Ltd. to M/s. Nikshal Properties Pvt. Ltd. had been routed back to the assessee M/s. Ardor Overseas Pvt. Ltd. through an entity M/s Matrix International, and finding Matrix International to have advanced loan during the year, he treated the loan so advanced to be from unexplained sources and thus added to the income of the assessee in terms of the provisions of Section 68 of the Act.

However, noting that he had already affected the adjustment to the cost of land acquired by the assessee by reducing it by Rs.36 crores odd, he added the balance amount of Rs.8 crores to the income of the assessee u/s 68 of the Act as loan from Matrix International received by the assessee - source of which remained unexplained.

8. The assessee, M/s. Ardor Overseas Pvt. Ltd., had also paid interest on loan taken from Matrix International, a part of which was capitalized as asset with the cost of land acquired and part of the same claimed as revenue expenditure. The Assessing Officer, since he had held the loan received from Matrix International to be the undisclosed income of the assessee, reduced the cost of land by interest element added thereto and further disallowed the interest paid to Matrix International claimed by the assessee while computing its income under the head 'Income from Business & Profession'.

Besides, disallowance of expenses u/s 14A of the Act was also effected in the assessment made of AOPL.

9. These being the facts of the case, it is evident that the issues relating to both the assesseees are closely intertwined and arise on account of a transaction of sale of land by M/s. Nikshal Properties Pvt. Ltd. to M/s. Ardor Overseas Pvt. Ltd., which M/s. Nikshal Properties Pvt. Ltd. claimed to be a mere accommodation entry - which explanation was not accepted by the Assessing Officer of M/s. Nikshal Properties Pvt. Ltd., but surprisingly this very explanation was picked up by the Assessing Officer of M/s. Ardor Overseas Pvt. Ltd to reduce the value of the cost of land purchased by it from M/s. Nikshal Properties Pvt. Ltd. Thus both the assessing officers have taken contradictory stand on the issue of the transaction of sale/purchase of land.

10. Before going further, the fate of the addition/disallowance made in the case of M/s. Nikshal Properties Pvt. Ltd. and M/s. Ardor Overseas Pvt. Ltd. in appeal before their respective CIT(A)'s also needs to be brought out, which is that:-

- (i) In the case of M/s. Nikshal Properties Pvt. Ltd., the disallowance of commodity loss was confirmed by the Id. CIT(A) and the assessee's plea of taxing only commission earned by it on purported accommodation entry provided by it to M/s. Ardor Overseas Pvt Ltd. be taxed, was rejected.
- (ii) In the case of M/s. Ardor Overseas Pvt. Ltd.,
 - (a) the reduction in cost of land effected by the Assessing Officer by Rs. 36 crores was confirmed by the Id. CIT(A);
 - (b) the addition of Rs.8 crores of loan received from Matrix International was deleted by the Id. CIT(A);
 - (c) the disallowance of interest paid to Matrix International was confirmed by the Id. CIT(A), and
 - (d) the disallowance of expenses u/s 14A of the Act was deleted by the Id. CIT(A).

11. It is because of the above orders of the Id. CIT(A) that these appeals have been filed before us - with the assessee challenging the order of the Id. CIT(A) in the case of M/s. Nikshal Properties Pvt. Ltd., and both the assessee and Revenue challenging the order of the Id. CIT(A) in the case of M/s. Ardor Overseas Pvt. Ltd.

12. We reiterate that since the issue arising in both the appeals emanates from the same transaction of land sale *inter se* both the assessees before us

therefore, we shall be dealing with the issue by way of common order. What is to be adjudicated is the genuineness of the transaction of land sale for which there are contrary findings of the Revenue Authorities in both the cases - with the Revenue accepting the transaction of sale of land as genuine in the case of M/s. Nikshal Properties Pvt. Ltd. and subjecting capital gain earned thereon to tax while in the case of M/s. Ardor Overseas Pvt. Ltd. treating the transaction to be a mere accommodation entry.

13. For adjudicating the issue, it is pertinent to first bring out the facts relating to the transactions of land as recorded by the authorities below and which are not disputed.

- M/s. Nikshal Properties Pvt. Ltd. had **purchased** land for Rs.8,50,03,785/- from the Sakar Co-operative Housing Society Limited vide registered deed No.AHD/09/BPL/486/82/2014 on **23.01.2014**.
- This land, in turn, was **sold** to M/s. Ardor Overseas Pvt. Ltd. vide six deeds registered on **27.01.2014** for a consideration of Rs.44,34,65,750/-. The details pertaining to the sale of property are contained at paragraph No.2.6 of the assessment order as under:-

“2.6 Further, the details pertaining to sale of the aforesaid property was also obtained and it was found that the assessee had sold the above mentioned immovable properties to M/s. Ardor Overseas Pvt. Ltd. the transactions of registration of which are as under:-

Sr. No.	Registration No.	Date	Cost
1	526/2014	27.01.2024	8,68,50,000
2	527/2014	- do -	8,68,50,000
3	528/2014	- do -	8,68,50,000
4	529/2014	- do -	6,09,88,000
5	530/2014	- do -	6,09,88,000
6	531/2014	- do -	6,09,39,750
<i>Total</i>			44,34,65,750

- M/s. Nikshal Properties Pvt. Ltd. had shown the profit on sale of land in its books of accounts and had set off this amount against 'loss on sale of commodities' of Rs. 33,52,72,458/-.
- This claim of loss on sale of commodities was disallowed by the Assessing Officer of NPPL,
- while the AO of AOPL reduced the value of land purchased to Rs. 8,50,03,785/- as opposed to Rs. 44,34,65,750 shown by AOPL

These are the facts pertaining to the transactions of land affected between both the assesseees before us which are undisputed.

14. As noted above, during assessment proceedings in the case of M/s. Nikshal Properties Pvt. Ltd., when the said assessee was asked by the AO to prove the genuineness of the loss on sale of commodities of Rs.33.52 crores, no details or evidences were filed by the assessee. Therefore, the Assessing Officer issued summons u/s 131(1) of the Act to the Directors of M/s. Nikshal Properties Pvt. Ltd., i.e. Shri Neeraj Sharad Chandra Merchant and Shri Dharmesh Ishvarbhai Patni. Their statements recorded were made part of the assessment order as Annexure A1 and A2, but what the two Directors stated finds no mention in the assessment order. The same, we find, was noted by the Assessing Officer of M/s. Ardor Overseas Pvt. Ltd., who has reproduced their statements in his assessment order which is reproduced at page Nos. 4 & 5 of the assessment order of M/s. Ardor Overseas Pvt. Ltd. A perusal of the same reveals that the director, Shri Neeraj Sharad Chandra Merchant, stated to have nothing to do with M/s. Nikshal Properties Pvt. Ltd. and to have become Director in the same only because of his friend, Shri Hitesh Mahendrabhai Panchal, who asked him to do so and which he stated in turn would help him financially also to improve. Shri Neeraj Merchant stated that

it was Shri Hitesh Panchal who introduced him to one Shri Chintan P. Shah who helped to open the bank account of the M/s. Nikshal Properties Pvt. Ltd. in Rajkot Nagrik Sahakari Bank Ltd., wherein transactions of M/s. Nikshal Properties Pvt. Ltd. were made by Shri Neeraj Merchant keeping Shri Chintan P. Shah together. Shri Neeraj Merchant admitted to have signed many times on the registered documents of immovable properties as a Director of the company only on the instructions of Shri Chintanbhai and Shri Jigarbhai with whom the documents were available. When confronted with the registered sale deed of purchase of land by M/s. Nikshal Properties Pvt. Ltd. from the Sakar Co-operative Housing Society Ltd, which he had signed as a Director, he stated to be unaware of where the resources for buying the property were raised from, being unaware of the location of the land, being unaware of the financial transactions mentioned in the document and admitted to having met the Members of the society only at the time of preparation of the documents. He denied meeting the members any time before that, nor made any negotiations regarding the documents. He categorically stated to have not decided the price of the land purchased and being present only at the time of signing of the documents. He stated to have gone there only at the behest of the Shri Chintanbhai and Shri Jigarbhai. **Thus, during the assessment proceedings of M/s. Nikshal Properties Pvt. Ltd. the Directors of the assessee-company, in effect, stated to have nothing to do with the company or the transactions carried out by it and attributed the knowledge of all the transactions carried out therein to one Shri Chintanbhai Shah, Shri Jigarbhai Shah and Shri Hitesh Panchal.**

15. The assessment order of the M/s. Nikshal Properties Pvt. Ltd. further reveals that after taking on record the statement of the Director of the company, as noted above, another notice u/s 133(6) of the Act was issued to Shri Vishves A. Shah, CA and Authorized Representative of the assessee who

had audited the accounts of the assessee-company during the year. In response thereto, Shri Dharmesh Patni, the Director of the assessee-company, filed a reply categorically admitting that all receipts and outgoings in the books of M/s. Nikshal Properties Pvt. Ltd. were simply book entries and they were neither real receipts giving rise to real income nor real expenses. Shri Dharmesh I. Patni further went on to clarify the transactions carried out by M/s. Nikshal Properties Pvt. Ltd. with M/s. Ardor Overseas Pvt. Ltd. as being only accommodation entry for M/s. Ardor Overseas Pvt. Ltd. He pointed out that this was evident from the unusual facts of the transaction itself wherein property was purchased from the members of the Sakar Co-operative Housing Society Ltd on 27.01.2014 for Rs.8,50,03,785/- and sold the same very next day on 28.01.2014 for Rs.44,34,65,750/- which was against all human probabilities, for the price of the land appreciating 5 times in a single day from Rs.8 crores to Rs.44 crores. The other unusual fact which he pointed out was that the sale consideration was paid by M/s. Ardor Overseas Pvt. Ltd. to M/s. Nikshal Properties Pvt. Ltd. even prior to the purchase of land by M/s. Nikshal Properties Pvt. Ltd. from Sakar Co-operative Housing Society Ltd. He pointed out that the sale consideration of Rs.40,26,76,000/- was received in the month of October 2013 and balance of Rs.4,07,89,750/- was received in the month of January, 2014 while M/s. Nikshal Properties Pvt. Ltd. had purchased the land for Rs.8,50,03,785/- on 27.01.2014. Thus, the sale consideration for sale of land, he demonstrated, was received by NPPL much earlier to the purchase of land by it. He also stated that this sale consideration of Rs.44 crores received from M/s. Ardor Overseas Pvt. Ltd. was given to M/s. Manibhadra Securities Services Pvt. Ltd. who in turn had given it to M/s. Matrix International which was a proprietorship concern of Shri Bharatbhai Shah who was a Director in M/s. Ardor Overseas Pvt. Ltd. He also stated that Shri Bharatbhai Shah, the Director of M/s. Ardor Overseas Pvt. Ltd., had used

Manibhadra Securities Services Pvt. Ltd., and M/s. Nikshal Properties Pvt. Ltd. as a conduit for these transactions, infusing money through Matrix International into Manibhadra Securities Services Pvt. Ltd. who in turn paid to M/s. Nikshal Properties Pvt. Ltd. from where the money went back to Manibhadra Securities Services Pvt. Ltd. and then back to Matrix International, the proprietorship concern of Shri Bharatbhai Shah. He stated that, in effect, the land was purchased by M/s. Ardor Overseas Pvt. Ltd. for Rs.8.50 crores only, but by virtue of effect of initial purchase transaction through M/s. Nikshal Properties Pvt. Ltd. and, M/s. Nikshal Properties Pvt. Ltd. thereafter selling the land to M/s. Ardor Overseas Pvt. Ltd., M/s. Ardor Overseas Pvt. Ltd. managed to inflate the cost of land from Rs.8.5 crores to Rs.44 crores; and M/s. Ardor Overseas Pvt. Ltd. had finalized the transactions of Rs.8.50 crores and the excess paid by M/s. Ardor Overseas Pvt. Ltd. to M/s. Nikshal Properties Pvt. Ltd. in the sale consideration of Rs.44 crores was routed back to M/s. Ardor Overseas Pvt. Ltd. through Manibhadra Securities Services Pvt. Ltd. and Matrix International. In the assessment order of M/s. Nikshal Properties Pvt. Ltd. all these facts stand recorded at paragraph No. 2.10 of the assessment order. **Thus the director of Nikshal properties disclosed the entire modus operandi adopted by M/s Ardor Overseas for purchasing land at an inflated price using NPPL and other entities as conduits.**

16. The assessment order of M/s. Nikshal Properties Pvt. Ltd. at paragraph No. 2.11 further records the fact that the statement of Chintan Shah and Hitesh Panchal were also recorded and annexed as Annexure A/3 and A/4 of the order. The contents of the same have not been reproduced in the assessment order, but again the Assessing Officer of M/s. Ardor Overseas Pvt. Ltd. has reproduced the statement in his assessment order at paragraph No. 4.6 (i.e. of

Shri Hitesh Panchal) and at paragraph No. 4.7 (i.e. of Chintan Pinakin Shah). The statement of Shri Hitesh Panchal reproduced at paragraph No. 4.6 of the assessment order in the case of M/s. Ardor Overseas Pvt. Ltd. reveals that when asked as to what did he know about M/s. Nikshal Properties Pvt. Ltd he stated to have purchased M/s. Nikshal Properties Pvt. Ltd. from Shri Ajit Santogi in 2010-11 and having appointed Shri Niraj Merchant and Shri Paresh Haribhai Pandya as the Directors; that he also stated that on behalf of the M/s. Nikshal Properties Pvt. Ltd., Chintan Shah and Jigar Shah purchased the land from the Sakar Co-operative Housing Society Ltd. for Rs.8.50 crores and sold it subsequently after 4 days to M/s. Ardor Overseas Pvt. Ltd. for Rs.44 crores; that set off of the short term capital gain so earned by M/s. Nikshal Properties Pvt. Ltd., bogus claim of commodities loss was made. He admitted all financial transactions to be on paper only; he admitted to having purchased M/s. Nikshal Properties Pvt. Ltd. only for wrong financial transactions and admitted M/s. Nikshal Properties Pvt. Ltd. to be only a company on paper in which no business transactions took place. That the entire responsibility for the financial transactions was stated to be that of Chintan Shah and Jigarbhai Shah and for that they had earned 2% commission on the same with Chintanbhai Shah and Jigarbhai Shah earning a commission of 0.50% and remaining commission of 1.5% being earned by him in cash. He categorically stated the financial transactions in M/s. Nikshal Properties Pvt. Ltd. to be only for the purpose of earning commission. Paragraph No. 4.7 of the assessment order of M/s. Ardor Overseas Pvt. Ltd. notes the contents of the statement of Shri Chintanbhai Shah who, put it briefly, reiterated the fact that the transactions of purchase and sale of land was only an accommodation entry for the benefit of Shri Bharatbhai Shah, director of M/s. Ardor Overseas Pvt. Ltd. - with the M/s. Nikshal Properties Pvt. Ltd. being only a conduit in the transactions. **Thus two other persons, stated to be connected to the**

transaction of land, Sh Hitesh Panchal & Sh. Chintan Bhai Shah, admitted and reiterated the said transaction to be a mere accommodation entry undertaken on the request of Sh. Bharat Shah, director of M/s Ardor Overseas Ltd, for commission income earned.

17. The auditor of the assessee-company, M/s Nikshal Properties Pvt. Ltd., also reiterated these contentions to the Assessing Officer.

18. While the Assessing Officer of M/s. Nikshal Properties Pvt. Ltd. ignored all these statements of the Directors of M/s. Nikshal Properties Pvt. Ltd. and all the persons stated to be involved in these land transactions and treated only the loss on commodity transactions to be bogus, the Assessing Officer of M/s. Ardor Overseas Pvt. Ltd. took cognizance of these statements and culled out the facts emerging from the same at paragraph No. 4.9 of his order as under:-

"4.9 From a perusal of the above statements deposed by Shri Neeraj Sharadchandra Merchant the dummy Director of the Nikshal Properties Pvt. Ltd., Shri Chintan P. Shah and Shri Hitesh Mahendrabhai Shah, the following facts emerge:

- *6 plots of land was purchased by the assessee company (M/s Ardor Overseas Pvt. Ltd.) for a stated consideration at Rs. 44,34,65,750/-. From Nikshal Properties Pvt. Ltd.*
- *Shri Neeraj Sharadchandra Merchant has stated in his statements that he was made director of M/s Nikshal Properties Pvt. Ltd. only on paper and was not in knowledge of the affairs of the company. He was made director by Shri Chintan P. Shah.*
- *Shri Chintan P. Shah admitted that 'M/s Ardor Overseas P. Ltd.' required an accomodation entry provider' company and then their Managing Director Shri Bharatbhai Shah had called him and told that his company required an 'Entry Provider company and had assigned him to find such company. Hence, he contacted Hitesh Panchal and Niraj Merchant of 'NPPL' and had informed them that 'Ardor Overseas P. Ltd.' required an 'Entry Provider company. So they discussed on what terms and conditions would they work ahead.*

- *Shri Chintan P. Shah has admitted in reply to question no. 8, that the deal for the purchase of land situated in Ambli (6 plots) was processed long before the actual purchase from Nikshal Properties Pvt. Ltd. NPPL played are role of dummy company and as entry provider and enabled the assessee to benefit from purchase of land the assessee has purchased these land at Rs. 44,34,65,750/- which was only on paper. The amount of consideration was shown as paid on October 2013 whereas the documents were made on 27.01.2014. He has categorically stated that the NPPL has been used as an entry provider company. He has also stated that the NPPL was paid 1.5% from total amount of commission which was decided @2% with Shri Bharatbhai Shah.*
- *M/s Nikshal Properties Pvt. Ltd. has shown short term capital gains of Rs. 33,70,95,365/- from the sale of land as per the sale deed. However, in its return NPPL has claimed a bogus loss of Rs. 33,52,72,458/- in commodities and hence has wrongly neutralized any tax liability on sale of land.*
- *NPPL had purchased the land from Sakar Co. Op. Housing Society Ltd. on 24.01.2014 for Rs. 8,50,03,785/- and sold it to the assessee on a manipulated cost 27 & 28.01.2014 for Rs. 44,34,65,750/- (the land was purchased for consideration of Rs. 8,50,03,785/- and just after four days the land was sold out for Rs. 44,34,65,750/-).*
- *The assessee has used NPPL, which is a bogus company as a conduit and as an accommodation entry provider to facilitate routing of its own money and consequential artificial inflation of price of capital asset.*
- *Shri Chintan P. Shah, in his statement dated 10.12.2016, has admitted that it was decided with Shri Bharat Shah, MD of M/s Ardor Overseas Pvt. Ltd. that an amount of Rs. 443465750/- was to be returned to the assessee and that it was the responsibility of Shri Chintan P. Shah. Accordingly, the amounts were then routed through different companies and entities and later on returned to the assessee company."*

19. The Assessing Officer of M/s. Ardor Overseas Pvt. Ltd. verified the contentions of the Directors of M/s. Nikshal Properties Pvt. Ltd. that the money for the transactions was funded by and routed back to M/s. Ardor Overseas Pvt. Ltd. through Matrix International - a proprietorship concern of Shri Bharatbhai Shah, director of M/s. Ardor Overseas Pvt. Ltd. He noted

from the copy of the accounts of Matrix International, as in the books of M/s. Ardor Overseas Pvt. Ltd., to reflect unsecured loans given to M/s. Ardor Overseas Pvt. Ltd. of Rs.67,08,18,308/- and repayment of Rs.40,30,94,817/-. He noted Matrix International to have confirmed the loans. These facts find mention at paragraph No. 4.12.3 of the assessment order of M/s. Ardor Overseas Pvt. Ltd. as under:-

"4.12.3 The assessee company has produced the account of Matrix International as held in the books of assessee company, as per which there was opening balance of Rs. 19,21,27,933/-. During the year under assessment the assessee has received unsecured loan of Rs.67,08,18,308/- and has paid an amount of Rs. 40,30,94,817/-. Matrix International has confirmed the loan given to the assessee company."

20. What emerges from the above is that a piece of land bought by M/s. Nikshal Properties Pvt. Ltd. from the Sakar Co-operative Housing Society Ltd. for Rs.8.50 crores was sold within 4 days to M/s. Ardor Overseas Pvt. Ltd. for Rs.44 crores. The Directors of M/s. Nikshal Properties Pvt. Ltd., in their statements recorded on oath to the Assessing Officer of M/s. Nikshal Properties Pvt. Ltd., stated the entire transaction of purchase and sale of land undertaken by it to be only an accommodation entry on behalf of M/s. Ardor Overseas Pvt. Ltd. The fact of the sale consideration of Rs.44 crores being paid prior to the purchase of land was pointed out by them. It was also pointed out that M/s. Nikshal Properties Pvt. Ltd. was financially not sound to purchase the land and the same was funded by Shri Bharatbhai Shah, director of M/s. Ardor Overseas Pvt. Ltd. through his proprietorship concern M/s. Matrix International by giving sale consideration of Rs.44 crores – first to M/s. Nikshal Properties Pvt. Ltd. in October 2013 and from which the purchase consideration of land was paid by M/s. Nikshal Properties Pvt. Ltd. to the Sakar Co-operative Housing Society Ltd. and the balance of Rs.36 crores was routed back through the proprietary concern of the director of AOPL i.e M/s.

Matrix International, who in turn gave the money back to M/s. Ardor Overseas Pvt. Ltd. by way of loan transactions which fact was corroborated from the copy of account of M/s. Matrix International in the books of M/s. Ardor Overseas Pvt. Ltd.

21. Before us, the fact of the transactions of purchase and sale of land being effected in a period of 4 days, that too the sales being effected at 5 times the purchase price, has not been disputed. In fact, it is an admitted fact. The directors of M/s. Nikshal Properties Pvt. Ltd. and other persons who carried out the transactions have stated on oath repeatedly the transactions to be a mere accommodation entry. Even the entire *modus-operandi* has been explained by them pointing out the fact that the sale consideration was first paid by M/s. Ardor Overseas Pvt. Ltd. to M/s. Nikshal Properties Pvt. Ltd., even before the land was purchased by M/s. Nikshal Properties Pvt. Ltd. and the purchase of land was financed therefore from the sale consideration, that the balance was routed back to M/s. Ardor Overseas Pvt Ltd through M/s. Matrix International, and the accounts of M/s Matrix International reflected the fact of unsecured loans being given to M/s. Ardor Overseas Pvt. Ltd. during the year. These statements have never been retracted. Nor we find has M/s Ardor Overseas Ltd. made any attempt whatsoever to negate these contentions. Thus, the facts and records before us show that the Revenue has made a water-tight case of the impugned transactions being a mere accommodation entry for M/s. Ardor Overseas Pvt. Ltd.

22. Before us, the solitary contention of the Id. Counsel for the assessee for M/s. Ardor Overseas Pvt. Ltd. was that it is merely on the basis of the statements of the Directors of M/s. Nikshal Properties Pvt. Ltd. that the transaction has been held to be a bogus accommodation entry. But we do not find any merit in this contention of the Id. Counsel for the assessee. As noted

above, the Revenue's investigation has revealed the entire modus-operandi of the transactions .And the unusual facts & circumstances of the purchase and sale transaction coupled with the modus-operandi revealed which is corroborated by the entire money trail revealed from and back to M/s. Ardor Overseas Pvt. Ltd. through M/s. Matrix International, seals the case of the Revenue of the impugned transactions being the mere accommodation entry for M/s. Ardor Overseas Pvt. Ltd. and M/s. Nikshal Properties Pvt. Ltd. being only a conduit therein. M/s Ardor Overseas Pvt. Ltd. has made no attempt whatsoever to negate the admission by the directors of M/s Nikshal Properties Pvt. Ltd and the other parties involved in the transaction of the same being only an accommodation entry. These parties were not third parties completely unrelated with M/s Ardor Overseas Pvt. Ltd., in fact they were parties to the transaction and M/s Ardor Overseas could very well have brought some evidence on record controverting their aforesaid admission. There is no question of the Department producing these parties/ persons for cross examination by M/s Ardor Overseas Ltd. also since NPPL is not a third party, but a party with which AOPL itself had entered into a transaction and therefore could have approached the said party themselves for negating the contentions made by their directors during assessment. Even the entire money trail explained by the directors/parties of M/s Nikshal Properties Pvt. Ltd., and found to be true has not been controverted by M/s Ardor Overseas.

23. The admission of the transaction being accommodation entry by the directors/ parties of M/s Nikshal Properties Pvt. Ltd. coupled with the revelation of the modus operandi adopted for this accommodation entry duly corroborated, sufficiently make out a case against M/s Ardor Overseas Ltd. and the onus shifted to them to prove otherwise of the transaction not being an accommodation entry. Mere filing of documents of purchase and sale of land, without controverting the factual averments of the modus operandi of

the transaction or for that matter the admission by the directors/ parties of M/s Nikshal Overseas Pvt. Ltd. of the transaction being accommodation entry, we hold, does not discharge the onus of the assessee to prove the genuineness of the transaction.

24. In view of the same **we concur with the Ld.CIT(A) in the case of M/s Ardor Overseas Pvt. Ltd.** holding the transaction of purchase and sale of shares effected between the two parties before us as a mere accommodation entry for the benefit of M/s Ardor Overseas Pvt. Ltd. **Accordingly, we confirm the order of the Ld. CIT(A) in the case of M/s Ardor Overseas Pvt. Ltd. reducing the cost of land acquired by M/s. Ardor Overseas Pvt. Ltd. by Rs.35 crores and treating its cost to be Rs.8.5 crores only.**

25. At the same time, we are not in agreement with the Ld. CIT(A) in the case of M/s. Nikshal Properties Pvt. Ltd. to have rejected the plea of the assessee of taxing only the commission earned on the impugned transactions by M/s. Nikshal Properties Pvt. Ltd. The Ld. CIT(A), though was correct in treating the commodity loss incurred by the assessee as bogus, but at the same time since we have found the transactions of purchase and sale of land by M/s. Nikshal Properties Pvt. Ltd. to be a mere accommodation entry, the capital gains earned therein also cannot be brought to tax and it is only the commission element embedded therein which is to be subjected to tax which the statements revealed to be to the tune of 2% of the financial transactions carried out in M/s. Nikshal Properties Pvt. Ltd. The Assessing Officer in the case of M/s. Nikshal Properties Pvt. Ltd. is accordingly directed to tax commission income to the extent of 2% of the financial transactions carried out therein after verifying the said facts from the assessee.

26. Having so held, the land transactions between M/s. Nikshal Properties Pvt. Ltd. and M/s. Ardor Overseas Pvt. Ltd. to be a mere accommodation

entry, we shall not proceed to deal with the aspect of addition made u/s 68 of the Act of income from undisclosed sources, of the amount allegedly returned to M/s. Ardor Overseas Pvt. Ltd. by M/s. Nikshal Properties Pvt. Ltd. through M/s. Matrix International as unsecured loans amounting to Rs.44 crores. The AO, we find, having noted necessary adjustment in this regard to have been made to the tune of Rs.35 crores by reducing the value of cost of asset therefore made no separate addition u/s 68 of the Act to this extent but went on to make addition of the balance Rs.8 Crs u/s 68 of the Act. The Ld.CIT(A) however deleted the same finding all ingredients of section 68 of the Act to be satisfied, vis a vis identity, creditworthiness and genuineness of the transaction.

27. We have considered the entire facts of the case and we see no merit in the addition made by the AO in the hands of AOPL of Rs. 8.5 Crs of loan received from M/s Matrix International treating it as unexplained credit. The reason being the case of the Revenue itself is that M/s Matrix International is only a conduit of M/s AOPL for enabling purchase of land at many times its actual price. That M/s Matrix International is a proprietary concern of the director of AOPL who has transferred funds from M/s Matrix for purchasing land at inflated price and also taken the extra money back through the same route. Money in effect, for funding the bogus purchase transaction from Nikshal Properties, moved from and to M/s Matrix International. And from Matrix International to M/s AOPL as loan. This modus operandi was found to be true. We have agreed with the Revenue on this count while adjudicating the issue of genuineness of transaction of land sold/purchased between AOPL & NPPL, above.

In the light of the above facts there is no doubt of the source of money coming into AOPL from M/s Matrix International being genuine. The

Ld.CIT(A), we hold, has rightly deleted the addition made u/s 68 of the Act in the hands of AOPL of Rs. 8.5 Crs.

The order of the Ld.CIT(A) of M/s Ardor Overseas Pvt. Ltd. deleting the addition made u/s 68 of the Act of Rs. 8Crs odd is accordingly upheld.

28. On the aspect of interest disallowance relating to interest paid on unsecured loans from M/s. Matrix International, since the amount introduced by way of unsecured loans from M/s. Matrix International, has been held to be genuine, **we have no hesitation in deleting the disallowance of interest made u/s 36(1)(iii) of the Act.**

29. With regard to the last issue relating to the disallowance u/s 14A of the Act, the fact on record is that no exempt income was earned by the assessee. It is settled law now that where no exempt income is earned, no disallowance u/s 14A is warranted. **Therefore, the deletion of disallowance of expenses u/s 14A of the Act by the Id. CIT(A) in the case of M/s Ardor Overseas Ltd. is hereby confirmed by us.**

30. Having so dealt with the issues involved in both the appeals we shall now adjudicate the grounds raised in the appeals of both the assesseees before us.

31. Taking up first, the cross-appeals filed in the case of M/s Ardor Overseas Ltd. We shall first take up the appeal of the assessee in

ITA No. 2785/Ahd/2017 - By Assessee in Ardor Overseas Pvt Ltd.

Ground No.1-4 relate to the issue of reduction of cost of acquisition of land by Rs. 36,13,01,242/- and read as under :-

"1. The Id. Commissioner of Income Tax (Appeals) has grossly erred in law and on facts of the case in confirming the action of Id. Assessing Officer in reducing the cost of 6 Plots at Ambli by Rs.36,13,01,242/- out of total amount of Rs.44,34,65,750/- after holding that cost of plots were inflated by amount of Rs.36,13,01,242/-.

2. Both the lower authorities have reduced the cost of plots after relying on the assessment order of Nikshal Properties Pvt. Ltd. from whom the plots were purchased by the Appellant at Rs.44,34,65,750/-.

3. Both the lower authorities have failed to appreciate that the Assessing Officer of Nikshal Properties Pvt. Ltd. has accepted the sale consideration of such plot at Rs.44,34,65,750/- without reducing the sale consideration by Rs.36,13,01,242/- while computing the total income of Nikshal Properties Pvt. Ltd., and in that case, the cost of such plots should not have been reduced in the hands of the Appellant.

4. The Id. CIT(A) has grossly erred in law and on facts of the case in not appreciating the facts that the Id. AO has not provided opportunity to the Appellant to cross-examine the statements of the persons which were recorded during the course of the assessment proceedings in the case of Nikshal Properties Pvt. Ltd. on the basis of which the assessment proceedings of the Appellant was carried out and on the basis of which the impugned cost of the plots was reduced by Rs.36,13,01,242/- on the allegation of inflate cost."

32. This issue has been adjudicated with by us at para 24 of our order above wherein we have found the transaction of purchase of land by the assessee for Rs. 44Crs odd from M/s Nikshal Properties Pvt. Ltd. to be mere accommodation entry and have held the true value of purchase of land therefore to be Rs. 8 Crs odd only. The reduction in cost of purchase of land by Rs.36 Crs odd, confirmed by the Ld.CIT(A) is upheld by us

Ground No.1-4 raised by the assessee are accordingly dismissed

33. Ground No.5 reads as under;

"5. The Id. Commissioner of Income Tax (Appeals) has grossly erred in law and on facts of the case in confirming the action of Id. AO in disallowing the interest u/s 36(1)(iii) to the extent of interest amount attributable to unsecured loan of Rs.36,13,01,242/-."

34. The issue of disallowance of interest u/s 36(1)(iii) of the Act raised in the above ground stands adjudicated by us at para 28 of our order above wherein we have held the disallowance to be not in accordance with law and directed deletion of the same.

Ground of appeal No.5 therefore is allowed.

35. Ground No.6 reads as under;

"6. Both the ld. authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order."

This issue with respect to non-appreciation of the submissions/ explanations of the assessee by the Ld.CIT(A), raised in the above ground, stands dealt alongwith the pleadings made on merits dealt with by us in the earlier grounds raised above. This ground therefore needs no separate adjudication.

36. Ground No.7 reads as under;

"7. The learned CIT(A) has erred in law and on facts of the case in confirming action of the ld. AO in levying interest u/s 234A/B/C of the Act."

The issue of levy of interest u/s 234A/B/C being consequential is not been adjudicated by us.

37. Ground No.8 reads as under;

"8. The learned CIT(A) has erred in law and on facts of the case in confirming action of the ld. AO in initiating penalty u/s 271(1)(c) of the Act."

The issue of initiation of penalty proceedings u/s 271(1)(c) of the Act being premature needs no adjudication.

The appeal of the assessee is accordingly partly allowed in above terms.

38. We shall now take up the Revenue's appeal in

ITA No. 2812/Ahd/2017 in the case of assessee Ardor Overseas Pvt Ltd.

39. The ground Nos. 1 to 5 raised by the Revenue read as under:-

"(1) That the ld. CIT(A) has erred in law and/or on facts in failing to uphold that entire sum of Rs. 44,34,65,750/- is rightly disallowed u/s 68 of the Act.

(2) That the ld.CIT(A) has erred in law and/or on facts in not considering the findings of the AO that the sum of Rs.44,34,65,750/- represents assessee's own money which has been routed through conduits and that the assessee has failed to establish that such money represents disclosed income.

(3) That the ld.CIT(A) has failed to consider the findings of the AO in para 6.1, 6.2, 7.2 and para 4.15 that the entire sum of Rs.44,34,65,750/- has been disallowed u/s 68 of the Act being unexplained cash credits.

(4) That the ld.CIT(A) has failed to consider that the AO had not made the adjustment of Rs.36,13,01,242/- in the computation of income only for the reason that the adjustment had already been made under a different head and including in the computation again would lead to double jeopardy.

(5) That the ld.CIT(A) has erred in law and on facts in not upholding the balance addition of Rs.8,21,64,508/-u/s 68 of the Act."

The Revenue, in the above grounds, in effect challenge the Ld. CIT(A)'s order deleting the addition made by the AO u/s 68 of the Act of Rs.8,21,64,508/-.

This issue has been adjudicated by us at para 27 of our order above confirming the order of the Ld.CIT(A)'s on this issue .

Ground of appeal No.1-5 is accordingly dismissed.

40. Ground No.6 reads as under;

"(6) That the ld.CIT(A) has erred in law and on facts in deleting the disallowance u/s 14A of Rs. 12,54,311/-."

The issue of deletion by the Ld. CIT(A) of disallowance made u/s 14A of the Act has been dealt with by us at para 29 of our order above upholding the order of the Ld.CIT(A).

Ground of appeal No.6 is accordingly dismissed.

41. Ground Nos.7 & 8 read as under;

“(7) That the ld.CIT(A) has erred in law and on facts in directing the AO to allow part of the interest expenses of Rs. 1,11,72,814/-.

“(8) That the ld.CIT(A) has erred in law and on facts in further directing the AO to capitalize the part of interest expenses so allowed.”

The issue of disallowance of interest u/s 36(1)(iii) of the Act has been dealt with by us at para 28 of our order above wherein we have agreed with the Ld.CIT(A) that the disallowance was not warranted as per law.

Ground of appeal No.7&8 is accordingly dismissed.

In effect appeal of the Revenue is dismissed.

42. We shall now take up the appeal of the assessee in

ITA No. 206/Ahd/2018 – By Assessee M/s. Nikshal Properties Pvt. Ltd.

The grounds raised by the assessee in its appeal are as follows:-

“1. The Id. Commissioner of Income Tax (Appeals) has grossly erred in law and on facts of the case in confirming the action of Id. AO in making addition of Rs.33,52,72,458/-on account of alleged Short Term Capital Gain.

2 Both the Id. Authorities have grossly erred in law and on facts of the case in not appreciating the fact that on the basis of the inquiries carried out by the Id. AO in his assessment order, the Assessing Officer of the Purchaser Assessee has not allowed the cost of such properties in the hands of the Purchaser Assessee while determining Total Income of such Purchaser Assessee Company. Under the circumstances, the Id. AO ought not to have added such consideration of sale of properties in the hands of the Appellant and no addition of Rs.33,52,72,458/- should have been made in the hands of the Appellant.

3. *The ld. Commissioner of Income Tax (Appeals) has grossly erred in law and on facts of the case in not appreciating the facts that if the Appellant was allegedly involved in providing accommodation entry, gross receipts /receipts on account of such accommodation entry could not have been treated as income of the Appellant but only commission income could have been added as income of the Appellant Company.*

4 *Both the ld. Authorities have erred in law and on facts of the case in not appreciating that either books of accounts of the Appellant could have been accepted or rejected in toto, however, both the Id. Authorities have accepted only credit side of the books of accounts of the Appellant and not the debit side. Under the circumstances of the case, the books of accounts of the Appellant could have been rejected and some estimated income could have been added in the hands of the Appellant.*

5. *Both the ld. Authorities ought to have allowed set-off of commodity loss against alleged Short Term Capital Gain.*

6. *Both the ld. authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order.*

43. The solitary plea of the assessee raised in the above grounds is accepting its land sale transaction as bogus accommodation entry, taxing only commission income alleged to have been earned therefrom. Thus in effect setting aside the Ld. CIT(A)'s order subjecting capital gains earned from the transaction of sale of land to tax.

44. This issue is adjudicated by us at para 25 of our order above, accepting assessee's contention of the transaction being only an accommodation entry and directing the AO accordingly to tax only the admitted commission income earned therefrom @ 2%.

Ground no.1-6 stand allowed.

In effect appeal of the assessee is allowed.

45. In the combined result, the appeal bearing ITA No.2785/Ahd/2017 filed by the assessee M/s. Ardor Overseas Pvt. Ltd. is partly allowed and the appeal bearing ITA No. 206/Ahd/2018 filed by the assessee M/s. Nikshal Properties Pvt. Ltd. is allowed, whereas the appeal bearing ITA No. 2812/Ahd/2017 filed by the Revenue in the case of assessee M/s. Ardor Overseas Pvt. Ltd. is dismissed.

Order pronounced in the open Court on 18/10/2024 at Ahmedabad.

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER
(टी.आर. सेन्थिल कुमार, न्यायिक सदस्य)
Ahmedabad; Dated 18/10/2024

**btk*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
(अन्नपूर्णा गुप्ता, लेखा सदस्य)

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad