IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 86 OF 2016
IN
TAX APPEAL NO. 39 OF 2016

M/S. PRITHVI CONSULTANTS PVT. LTD., ... Applicant

Versus

DEPUTY COMMISSIONER OF INCOME TAX., ... Respondent

Mr. Shivan Desai, Advocate for the applicant.
Ms. Asha Desai, Advocate for the respondent.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 18th July, 2016

P.C.

Heard Mr. Shivan Desai, learned counsel appearing for the applicant and Ms. Asha Desai, learned counsel appaering for the respondent.

2. This is an application to stay the operation of the impugned demand dated 03.02.2016 to the extent of a sum of Rs.8,29,34,446/- together with interest thereon. It is not disputed that the subject demand is in respect of a large property surveyed under No.20/1 of Village Bainguinim which consists of two plots, plot no.1 admeasuring an area of 13,178 square metres and plot no.2 admeasurings an area of 37,500 square metres.

3. Mr. Desai, learned counsel appearing for the applicant has pointed out that in the meanwhile the applicant has already disposed of plot no.1 of the said property admeasuring an area of 13,178 square metres and for such transaction, the applicant has deposited a sum of Rs.97,90,284/- towards the payment of capital gains. The learned counsel further points out that in the appeal preferred by the applicant before the learned Income Tax Appellate Tribunal, the stay of operation of the subject demand was granted subject to deposit of Rs.25,00,000/-. The learned counsel as such points out that as the applicant has a good case on merits as according to him the applicant has not received any consideration based on the subject transaction, the operation of the impugned demand be accordingly stayed.

4. Ms. Asha Desai, learned counsel appearing for the respondent opposes the said relief and inter-alia points out that the applicant be directed to deposit 50% of the amount so demanded.

5. We have considered the submissions of the learned counsel and we have also gone through the records. The undisputed facts referred to herein above clearly suggest that the claim of Rs.8,29,34,446/- was also in connection with the said plot no.1. The respondent have not disputed that on account of the sale of the plot no.1 the applicant has deposited a sum of Rs.97,90,284/- towards capital gains. Apart from that, the applicant states that as far as the larger plot no.2

admeasuring an area of 37500 square metres is concerned, in case the applicant disposes such property, the applicant shall deposit the requisite capital gains in accordance with law. In such circumstances, we find that we would have to ensure that the respondents are protected with regard to the subject demand during the pendency of the above appeal. Hence, the operation of the impugned demand is stayed subject to the following conditions :

(i) The applicant shall deposit a further sum of Rs.50,00,000/- with the Principal CIT, Panaji, within four weeks from today.

(ii) The applicant shall not dispose of plot no.2 admeasuring an area of 37,500 square metres or create any third party right therein without seeking permission of this Court until further orders.

(iii) The application stands disposed of accordingly.

(iv) Liberty to apply.

NUTAN D. SARDESSAI, J. F. M. REIS, J.

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