

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 24TH DAY OF SEPTEMBER 2012

PRESENT

THE HON'BLE MR.JUSTICE K.SREEDHAR RAO

AND

THE HON'BLE MR. JUSTICE B.MANGHAR

ITA.NO.1092/2006 C/W ITA.57/2006 & ITA.396/2007

ITA.NO.1092/2006

BETWEEN:

M/S.TATA COFFEE LIMITED,
FORMERLY KNOWN AS
CONSOLIDATED COFFEE LTD.,
POLLIBETA,
COORG – 571 215.

...APPELLANT

(BY SRI.SARANGAN, SR COUNSEL FOR
SRI.K.S.RAMABHADRAN, ADV)

AND:

THE JOINT COMMISSIONER OF INCOME TAX,
SPECIAL RANGE 2,
BANGALORE.

...RESPONDENT

(BY SRI.M.THIRUMALESH, ADV)

ITA FILED U/S. 260-A OF I.T.ACT, 1961 ARISING OUT
OF ORDER DATED 02-03-2006 PASSED IN ITA.NO.1500-
1501/BANG/2004 FOR THE ASSESSMENT YEARS 1998-1999 &
1999-2000, PRAYING TO FORMULATE THE SUBSTANTIAL

QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, IN ITA.NOS.1500 & 1501/BANG/2004 DATED 02-03-2006, IN THE INTEREST OF JUSTICE AND EQUITY.

ITA.NO.57/2006

BETWEEN:

M/S.TATA COFFEE LIMITED,
POLLIBETTA,
COORG.

.... APPELLANT

(BY SRI.SARANGAN, SR COUNSEL)

AND:

THE JOINT COMMISSIONER OF INCOME TAX,
SPECIAL RANGE – 2,
BANGALORE.

...RESPONDENT

(BY SRI.G.KAMALADHAR, ADV)

ITA FILED U/S. 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 02-09-2005 PASSED IN ITA.NO.301/BANG/2001 FOR THE ASSESSMENT YEAR 1997-1998 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, IN ITA.NO.301/BANG/2001 DATED:02-09-2005 AND ETC.,

ITA.NO.396/2007

BETWEEN:

M/S.TATA COFFEE LIMITED,
FORMERLY KNOWN AS
CONSOLIDATED COFFEE LIMITED,
POLLIBETTA,

COORG – 571 215.

... APPELLANT

(BY SRI.SARANGAN, SR.COUNSEL)

AND:

THE ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE 12(3),
BANGALORE.

...RESPONDENT

(BY SRI.K.V.ARAVIND, ADV)

ITA FILED U/S. 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 15-12-2006 PASSED IN ITA.NOS.3466 & 3528/BAN/2004 FOR THE ASSESSMENT YEARS 2001-02 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, IN ITA.NO.3466 & 3528/BAN/2004 DATED: 15-12-2006 RELATING TO ASSESSMENT YEAR 2001-2002, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE ITA'S HAVING BEEN HEARD AND RESERVED AND COMING ON FOR PRONOUNCEMENT OF JUDGEMENT THIS DAY, **B.MANOHAR J.**, MADE THE FOLLOWING:

J U D G M E N T

The assessee has filed these appeals under Section 260-A of the Income Tax Act, ('the Act' for short), being aggrieved by the order dated 02-09-2005 made in ITA No.301/BNG/2001, order dated 02-03-2006 made in ITA Nos.1500-1501/BNG/2004 and the order dated 15-12-2006 made in ITA Nos.3466 & 3528/BNG/2004 passed by the Income Tax Appellate Tribunal, Bangalore Bench-A, setting aside the order passed by the Commissioner of Income Tax

(Appeals) (hereinafter referred to as 'CIT (Appeals)') and restoring the order passed by the Assessing Authority for the assessment years 1997-1998, 1998-1999, 1999-2000 and 2001-2002.

2. Since the common question of law and facts are involved in these appeals for the different assessment years with regard to the computation of the capital gain for sale of rose wood and silver oak trees, all these appeals are clubbed together and disposed off by this common order.

3. The appellant is a Public Limited Company owning lands under Coffee and Tea plantation in Pollibetta, Kodagu District, which was purchased in the year 1943. For the purpose of providing shade to the coffee plantation, shade trees were planted which includes silver oak, rose wood, eucalyptus and other trees. The shade giving trees have over-grown to the need of providing shades to the coffee plantation. Unless, the shade giving trees are removed, coffee trees will not grow. Accordingly, over-grown trees were cut and removed, fresh saplings were planted to replace the shade trees. The trees, which are removed, were subsequently sold and the sale proceeds are considered for the purpose of capital gain. The trees have been held to be capital assets and part of the fixed structure of a

coffee or tea plantation. For the assessment years 1997-1998 to 2001-2002, the appellant has sold rose wood, silver oak and other trees. The statement of quantum of the capital gain on the sale of rose wood, silver oak and other trees was furnished along with the return of income, filed under the Income Tax Act. While computing the capital gains, the appellant has exercised an option to value the assets as on 01-04-1981. The value was adopted as the cost of acquisition and indexation has been done in accordance with the factor applicable under the relevant years in terms of clause (v) of the Explanation to Section 48 of the Act. The indexed cost of acquisition so arrived at was deducted from the sale proceeds. In the year 1981, rose wood was sold in the Government auction at the rate of Rs.12,400/- per cubic meter. Insofar as silver oak trees are concerned, the fair market value as on 1-4-1981 was adopted as the cost of acquisition and indexation was done in accordance with the provisions of clause (v) to Section 48 of the Act. With regard to the eucalyptus and other miscellaneous trees are concerned, the cost of acquisition was adopted to the extent of 70% and 30% has been taken as capital gain.

4. The Assessing Officer did not accept the assessment made by the appellant. Relying upon the judgment of Kerala High Court reported in 189 ITR 580 in the case of CIT v/s PULLANGODE RUBBERS AND PRODUCTS CO. LTD., worked out the capital gain at 30% of the sale proceeds and did not allow any cost of indexation. The Assessing Officer held that the option exercised by the assessee as provided under Section 55(2)(b) to determine the cost of acquisition was not proper. Further the Assessing Officer held that the trees sold during the assessment years is not the same which was existing before 1-4-1981 and accordingly assessed the capital gain. The appellant being aggrieved by the assessment order passed by the Assessing Authority, preferred an appeal before the Commissioner of Income Tax (Appeals), Bangalore (hereinafter referred to as CIT (Appeals)). The CIT (Appeals) after considering the matter held that the order passed by the Assessing Authority is contrary to law. The assessee has rightly exercised an option to substitute the market value as on 1-4-1981 as provided under Section 55(2)(b) of the Act. Further, when the appellant purchased the estate in the year 1943, rose wood, silver oak and other trees were existing. The said trees were cut and removed in the financial year onwards. The appellant is entitled to exercise his option. The

valuation as on 1-4-1981 has been taken in accordance with the notification issued by the State Government. Accordingly, CIT (Appeals) allowed the appeals and directed the Assessing Officer to work out the market value of the assets as on 1-4-1981 with regard to sale of silver oak and rose wood trees. Further the Assessing Officer was also directed to obtain the specific Notification from the office of the Conservator of Forests with regard to the market value of rose wood and silver oak trees as on 1-4-1981 and to work out the capital gain by working out the indexed market value. With regard to the eucalyptus and other miscellaneous trees are concerned, the CIT (Appeals) upheld the order passed by the Assessing Authority taking into consideration 70% of the sale proceeds as the cost of acquisition. The Revenue being aggrieved by the order passed by the CIT (Appeals) filed an appeal before the Income Tax Appellate Tribunal, contending that the order passed by the CIT (Appeals) is contrary to law. The Assessing Officer was right in estimating the capital gain at 30% of the sale proceeds following the decision of the PULLANGODE RUBBERS COMPANY case and the assessee is not entitled to exercise the option provided under Section 55(2)(b) of the Act. The Income Tax Appellate Tribunal by its orders in these appeals allowed the appeals and set aside the order passed by the

CIT (Appeals) and upheld the order passed by the Assessing Authority. The assessee being aggrieved by the orders passed by the Income Tax Appellate Tribunal filed these appeals.

5. These appeals were admitted to consider the following substantial question of law:

(i) Whether the order of the Tribunal that the shade trees were mere saplings as on 01-04-1981 was not perverse, untenable, contrary to facts and expert opinion?

(ii) Whether the Tribunal was correct in applying the judgment of Kerala High Court in 189 ITR 580 without noticing that the High Court was not dealing with eucalyptus, silver oak and rose wood trees unlike in the case of the appellant?

(iii) Whether the determination by the Tribunal of the capital gains on the sale of shade trees was not contrary to scientific data and materials on record?

(iv) Whether the Tribunal was in error in not allowing indexation and thus contrary to the second proviso to section 48 of the Income Tax Act, 1961?

(v) Whether the Tribunal was right in law in setting aside the order of CIT(A) and restoring the

order of assessing officer?

6. Sri.Sarangan, learned Senior Advocate appearing for the appellant contended that the orders passed by the Appellate Tribunal is contrary to law and materials on record. The appellant has purchased the estate in the year 1943. The shade giving trees were over-grown and need to be removed. Accordingly, after obtaining necessary permission from the Competent Authority, the assessee has removed the excess shade giving trees. The said trees were sold in the Government auction. The appellant is not a timber merchant. The rose wood, silver oak and other trees were existing as on the date of purchase of the Estate. Some of the trees are of more than 100 years old as per the report submitted by the Deputy Conservator of Forests. The said trees were cut and removed during the assessment year 1996-1997 onwards and new saplings were planted. Under Section 48 of the Act, the income chargeable under the head 'capital gain' shall be computed by deducting the expenditure incurred and the cost of acquisition of the assets and cost of improvement thereto. Further, sub-Section 2(b) of Section 55 of the Act contemplates that where the capital asset becomes the property of the assessee before 1-4-1981, means the cost of acquisition of the

assets to the assessee or the fair market value of the asset as on the first day of April 1981 at the option of the assessee. In the instant case, the assessee has exercised the option under Section 55(2)(b) of the Act taking the market value as on 1-4-1981. The finding of the Tribunal that the shade trees would not reach maturity before 30 to 40 years, as the trees have been planted as on 1-4-1981 is erroneous in law. The judgment made in PULLANGODE RUBBERS COMPANY case is not applicable to the facts of these appeals and is applicable only when the fair market value is not able to be ascertained. In the instant case, as per the Government Notification, the fair market value has been fixed as Rs.12,400/- per cubic meter in respect of rose wood and Rs.360/- in respect of silver oak trees. The appellant has assessed the market value of rose wood and silver oak trees on the basis of the notification issued by the State Government. Hence, he is entitled for indexation under Section 55(2)(b) of the Act. The CIT (Appeals) after considering the matter in detail has passed the order, and the same is ought not to have interfered with by the Appellate Tribunal and sought for setting aside the orders passed by the Appellate Tribunal.

7. On the other hand, Sri.K.V.Aravind, learned counsel appearing for the Revenue argued in support of the orders passed by the Appellate Tribunal and contended that the assessee had adopted the market value of Rs.12,400/- per cubic meter in respect of rose wood trees as per the letter dated 31-3-1981 by the Deputy Conservator of Forests. Insofar as silver oak trees are concerned, the market value as on 01-04-1981 was taken as per the Government Notification. In respect of other trees, the assessee has adopted 70% of the value as cost of acquisition. Hence, the provisions of Section 55(2)(b) is not applicable to the present cases. The sub-Section would normally be applicable when the assessee acquires the concerned asset by payment of costs. In the instant case, the price of the capital assets was continuously raising. In such cases, the assessee would opt to choose the original cost of acquisition. However, sub-clause would not apply where the capital assets become the property of the assessee after the date specified in Section 55(2) of the Act. In the present cases, the property which was sold in the financial year, relevant to the present assessment year was rose wood timber which was cut from the stem during the year. This goes to prove that before 01-04-1981, timber was nothing but a tree, may not be matured, only to be used as timber. Hence, the

property sold was not the same, which was there before 1981. In view of that the appellant cannot exercise the option of Section 55(2) (b) of the Act. The CIT(Appeals) has not properly appreciated the case. Accordingly, the said order has been set aside by the Appellate Tribunal and the orders does not call for interfere by this court and sought for dismissal of the appeals.

8. We have carefully considered the arguments addressed by the learned counsel for the parties.

9. The records clearly disclose that for the purpose of removal of excess shade, the had appellant cut and removed rose wood, silver oak, eucalyptus and other trees. The appellant has adopted the cost of rose wood and silver oak trees by exercising the option to adopt the fair market value as on 01-04-1981 and availed the benefit of indexation under Section 48 and also Section 55(2)(b) of the Act.

Sections 48 and 55(2)(b) reads as under:

Mode of Computation

48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset

the following amounts, namely: -

- i) expenditure incurred wholly and exclusively in connection with such transfer;*
- ii) the cost of acquisition of the asset and the cost of any improvement thereto:*

Sec.55 (2)(b) in relation to any other capital asset.

- i) Where the capital asset became the property of the assessee before the [1st day of April, 1981]], means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the [1st day of April, [1981]], at the option of the assessee.*
- ii) Where the capital asset became the property of the assessee by any of the modes specified in [sub-section (1) of] section 49, and the capital asset became the property of the previous owner before the [1st day of April, [1981]], means the cost of the capital asset to the previous owner or the fair market value of the asset on the [1st day of April, [1981]], at the option of the assessee.*
- iii) Where the capital asset became the property of the assessee on the*

distribution of the capital assets of a company on its liquidation and the assessee has been assessed to income tax under the head "Capital gains" in respect of that asset under section 46, means the fair market value of the asset on the date of distribution;

10. Insofar as eucalyptus and other trees are concerned, the cost of acquisition on the basis of the judgment of the Kerala High Court made in PULLANGODE RUBBER COPMPANY case, the capital gain was worked out at 30% of the sale proceeds. The Assessing Officer rejected the appellant's method of arriving at the cost of rose wood and silver oak trees relying upon the judgment of the Kerala High Court, uniformly in respect of rose wood, silver oak, eucalyptus and other trees. The appellant contended that the judgment of PULLANGODE RUBBER case is not applicable and the said judgment is applicable when the market value of the capital asset was not readily available. In the instant case, there was no dispute with regard to the fair market value determined by the State Government as on 01-04-1981 at the rate of Rs.12,400/- per cubic meter. The appellant's entire case is relied upon the letter dated 31-3-1981 written by the Deputy Conservator of Forests. Whether the said letter is genuine or not, is not examined by the authorities

below. It is not in dispute that the trees are held to be the capital asset and part of the fixed structure of a coffee or tea plantation. When the trees have been cut and removed, the capital gain has to be assessed on the basis of Section 48 of the Act. In the instant case, the cost of acquisition of the assets has not been properly examined by the authorities below. Solely on the basis of some letter written by the Officer of the Government Department, the cost of acquisition of the assets cannot be assessed. Accordingly, the CIT (Appeals) while setting aside the order passed by the Assessing Authority directed the Assessing Authority to work out the market value of the assets as on 01-04-1981 after obtaining the specific notification from the office of the Conservator of Forests with regard to market value in respect of rose wood and silver oak trees as on 01-04-1981 and to work out the capital gain by working out the indexed market value. Except the letter dated 31-3-1981, no other materials has been produced before the authorities. We find that the order passed by the Income Tax Appellate Tribunal in setting aside the order passed by the CIT (Appeals) wherein the Commissioner has directed the Assessing Authority to reconsider the matter is contrary to law. The Appellate Tribunal has also not examined the market value of the assets as on 01-04-1981. Hence, the matter has to be reexamined by

the Assessing Authority by working out the indexed market value in respect of rose wood and silver oak trees. Hence, the order passed by the Appellate Tribunal cannot be sustained.

11. Accordingly, these appeals are allowed without expressing any opinion on the substantial questions of law framed in these appeals. The order passed by the Appellate Tribunal is set aside and the appeals are remanded back to the Assessing Authority to reconsider the same and pass appropriate orders in accordance with the directions issued by the CIT (Appeals) after obtaining specific notification from the office of the Conservator of Forests with regard to market value of Rose wood and silver oak trees as on 01-04-1981 and to work out capital gain by working out the indexed market value.

Sd/-
JUDGE

Sd/-
JUDGE

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