

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JANUARY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

I.T.A. NO.69 OF 2015

BETWEEN:

SMT. DEEPA S. PAI
AGED ABOUT 38 YEARS
W/O SRI. CHETHAN BHATT
R/AT. No.5, 'CHITRAKALA'
ANANTHANAGAR, MANIPAL-576104
GPA HOLDER JAYA S. PAI.

... APPELLANT

(By Sri. S. PARTHASARATHI, ADV., FOR
Smt. JINITA CHATTERJEE, ADV.,)

AND:

THE DEPUTY COMMISSIONER OF INCOME-TAX
CIRCLE-1, UDUPI.

... RESPONDENT

(By Sri. E.I. SANMATHI, ADV.)

THIS I.T.A. IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER 26-9-2014 PASSED IN ITA NO.1063/BANG/2013, FOR THE ASSESSMENT YEAR 2004-05, PARYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE INCOME TAX APPELLATE

TRIBUNAL BEARING ITA NO.1063/BANG/2013
DATED:26/9/2019 (ANNEXURE-A) & ETC.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY,
ALOK ARADHE J., DELIVERED THE FOLLOWING:

JUDGMENT

Mr.S.Parthasarathi, learned counsel for the
appellant.

Mr.E.I.Sanmathi, learned counsel for the
respondent.

2. This appeal under Section 260-A of the Income
Tax Act, 1961 (hereinafter referred to as 'the Act', for
short) has been filed by the assessee which was
admitted by a Bench of this Court by order dated
23.06.2015 on the following substantial questions of
law:

*1. Whether, the order of the
Assessing Authority was sustainable when
the direction of the Appellate Tribunal in
the earlier appellate order was not followed
while concluding the assessment?*

2. *Whether the shares held by the appellant having been converted into stock-in-trade, the value of the closing stock at the end of the year was required to be valued at the cost to the business at the time of conversion (i.e. the market value at the time of conversion) or cost of acquisition or net realizable value whichever is less?*

3. *Whether for valuation of closing stock, when the principle of "original cost or market value whichever is less" is required to be adopted, in the case of shares converted into stock-in-trade, the value as on the date of conversion can be substituted for its original cost?"*

3. Facts giving rise to the filing of the appeal briefly stated are that the assessee filed return of income for assessment year 2004-05 on 31.10.2004 declaring NIL income. The assessee was holding certain shares as investments while she was a minor. On attaining majority, the assessee converted the shares

into stock-in-trade and valued them on fair market value as on 01.04.2003 as per Section 45(2) of the Income Tax Act, 1961. The case was taken up for scrutiny and the assessment was completed vide order dated 28.12.2006 by which the Assessing Officer disallowed the assessee's claim for treating the shares as stock-in-trade and determined the income of the assessee at ₹2,75,48,980/-. Being aggrieved by the order of assessment, the assessee filed an appeal before Commissioner of Income Tax (Appeals) which was dismissed by an order dated 17.03.2010. The assessee filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal' for short). The Tribunal, by an order dated 17.09.2010 remitted the matter to the Assessing Officer to re-compute the profits by valuing the closing stock at net realizable value of the shares as on 31.03.2004 or at the value of the opening stock determined and adopted by the assessee i.e., the conversion cost, which ever is lower.

4. The Assessing Officer by an order dated 26.12.2011 valued the closing stock at lower of the cost (conversion cost) or net realizable value of the shares and also levied interest under Sections 234B and 220(2) of the Act. Being aggrieved by the order of the aforesaid Assessing Officer, the appellant filed an appeal, which was dismissed by CIT (Appeals) by an order dated 19.03.2013. The assessee again approached the Tribunal. The Tribunal by an order dated 14.11.2008 dismissed the appeal preferred by the assessee. In the aforesaid factual background, this appeal has been filed.

5. Learned counsel for the appellant submitted that the assessee had converted the shares held by her as a stock-in-trade and claimed the closing stock at the cost at which the shares were acquired or the market value as on that date whichever was lower. However, the aforesaid aspect of the matter has not been appreciated

by the authorities under the Act. In support of the aforesaid submission, learned counsel for the appellant has placed reliance on the decisions of the Supreme Court in the case of '**COMMISSIONER OF INCOME-TAX, PATIALA Vs. GROZ-BECKERT SABOO LTD.**' 1979 (116) ITR 125 (SC). On the other hand, learned counsel for the revenue has supported the order passed by the Tribunal and has taken through the order passed by the Assessing Authority, Commissioner of Income Tax (Appeals) as well as the Tribunal.

6. We have considered the submissions made by the learned counsel for the parties and have perused the record. The entire issue pertains to valuation adopted for conversion of investments to stock-in-trade, opening stock and closing stock. The Tribunal by an order dated 17.09.2010 had remanded the matter to the Assessing Officer. The relevant extract reads as under:

"We therefore remit the case back on the file of the Ld. AO to re-compute the profits by

valuing the closing stock at net realizable value of the shares as on 31.3.2004 or at the value of the opening stock determined and adopted by the assessee, i.e. the conversion cost whichever is lower, needless to say that the method adopted to value the opening stock shall be followed for valuing the net realizable value of shares held as on 31.3.2004."

7. The Supreme Court in **COMMISSIONER OF INCOME-TAX, PATIALA**, supra has held that where an assessee converts his capital assets into stock-in-trade and starts dealing with them, the taxable profit on the sale must be determined by deducting on sale proceeds and the market value at the time of their conversion into stock-in-trade. The aforesaid principle has neither been taken into account by the Assessing Officer as well as by the CIT (Appeals) and the Tribunal. It is not in dispute before us that the CIT (Appeals) and the Tribunal has not examined the aforesaid aspect of the matter.

8. In view of preceding analysis, the substantial question of law No.1 framed by this Court is answered in favour of the assessee and against the revenue. In the result, the order passed by the Assessing Officer as well as CIT (Appeals) and the Tribunal are hereby set aside and the matter is remitted to the Assessing Officer to decide the matter afresh in the light of the directions contained in the order dated 17.09.2010 passed by the Tribunal as well as the decision of the Supreme Court in **COMMISSIONER OF INCOME-TAX, PATIALA**, supra. Therefore, it is not necessary to answer 2nd and 3rd substantial question of law.

Accordingly, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**