REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2565 OF 2022

Commissioner of Income Tax 8 Mumbai ...Appellant(s)

Versus

Glowshine Builders & Developers Pvt. Ltd. ...Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 04.09.2017 passed by the High Court of Judicature at Bombay in Income Tax Appeal No. 1756 of 2014, by which, the High Court has dismissed the said appeal preferred by

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the Revenue, thereby confirming the order passed by the Income Tax Appellate Tribunal, "G" Bench, Mumbai (hereinafter referred to as the ITAT) by which the addition made by the Assessing Officer (AO) of Rs. 15,94,06,500/- was deleted, the Revenue has preferred the present appeal.

2. The dispute pertains to the Assessment Year (AY) 2009-10 i.e., Financial Year (FY) 2008-09. The assessee entered into an agreement dated 06.05.2008 with one M/s Kirit City Homes Pvt. Ltd. The development rights in a property at Vasai were sold for a total consideration of Rs. 15,94,06,500/-. It appears that as per paragraph 6 of the development agreement and as per the receipt of the deed, consideration of Rs. 15,94,06,500/- was agreed and received by

the assessee. During assessment, it was noticed by the AO that the aforesaid was not disclosed while filing the return of income. The assessee did not enter the aforesaid income into his profit and loss account. The assessee was asked to explain the transaction as it was not appearing in its profit and loss account. The agreement dated 06.05.2008 was also furnished to the assessee along with the notice. In response, the assessee vide letter dated 04.10.2011 stated that the transaction was duly offered to tax in AY 2008-09 reflecting a consideration of Rs. 5,24,27,354/-. The assessee also stated that it had entered into a "rectification deed" with the said party on 30.05.2008. By the said ratification, it was claimed that the value of the development rights was reduced from Rs.

15,94,06,500/- to Rs. 5,24,27,354/-. As the transaction was pertaining to AY 2009-10, the assessee was served a further notice dated 10.10.2011 under Section 142(1). The assessee was requested to explain as under: -

(i) "You are aware that perusal of AIR information, copy of 'Development Agreement' dt. 06.05.2008 revealed that you had entered into "Development Agreement" with M/s. Kirit City Homes Mau, Pvt. Ltd in respect of various properties as detailed in the said agreement. It is also seen that you had received Rs. 13,94,06,500/- on account of granting/allowing development rights assigned.

(ii) As per the agreement, the transaction is dt. 06.05.2008, so this transaction falls under the A.Y. 2009-10 whereas you had offered this transaction in the A.Y. 2008-09. Please explain the logic and basis thereof

(iii) Perusal of the 'Development Agreement' dt. 06.05.2008, you had claimed to had received the entire sale proceeds of Rs. 15,94,06,500/ -. In this regard, you are requested to furnish the details of sale proceeds received mode there details of proceeds realized, etc in respect of sale proceeds of Rs. 15,94,06,500/-. Please also furnish the copy of 'Bank Book' / 'Cash Book' reflecting the receipts and

narrations thereof alongwith copy of the bank account statement reflecting credits thereof.

(iv) Vide 'Deed of rectification' dt. 30.05.2008, you had claimed to have revised the value from Rs. 15,94,06,500/- to Rs. 5,24,27,354/-. In this regard, please explain whether you had refunded the differential amount. If yes, please furnish the mode and details thereof with supporting documentary evidences.

(v) Vide 'Deed of rectification' dt. 30.05.2008, you had claimed to have revised the value from Rs. 15,94,06,500/- to Rs. 5,24,27,354/-. In this regard please furnish the basis thereof with supporting documentary evidences.

(vi) Considering the above, I am of the view that for the above transaction, provisions of section 50C of the I.T. Act 1961 are clearly applicable despite the reduction in your agreement value. In this regard, you are requested to explain as to why the provisions of section 50C of the I.T. Act should not be initiated as well as please explain as to why the sale proceeds should not be treated at Rs. 15,94,06,500/-.

(vii) Perusal of all the documents furnished by you in respect of above transactions, I am of the view that the transaction definitely belongs to this year and market value u/s. 50C should be considered as the sale consideration. In

> this regard, please explain as to why the treatment as mentioned above does not be made applicable in your case. In view of the above, it is proposed to treat the transaction for this year and to add the sale proceeds of Rs. 15,94,06,500/- in your hands. You are requested to furnish your explanation, if any, with supporting documentary evidences."

2.1 The assessee replied to the same and with regard to the applicability of provision of Section 50C, the assessee stated that the assessee had sold its stock in trade and not the assets. The AO made the addition of Rs. 15,94,06,500/- by treating the same as short term capital gains and consequently, added the same to the income for the year under consideration. The Commissioner, IT (Appeals), Mumbai dismissed the appeal and confirmed the addition made by the AO and upheld the view of the AO to treat the transaction as income for capital gains for the

AY 2009-10. The CIT (A) also discarded the submissions made by the assessee that transfer of development rights were made in FY 2008-09 pursuant to the MOU dated 27.12.2007. In the absence of proof to buttress such claim, the CIT (A) also discarded the claim of the assessee that value of the transfer of development rights was reduced from Rs. 15,94,06,500/- to Rs. 5,24,27,354/-

2.2 The assessee filed an appeal before the ITAT. The ITAT, after examining the chart submitted by the assessee pertaining to opening balance and closing balance for the assessment years 1996-97 to 2007-08 held that the assessee in all these years showed inventory and expenses. Consequently, ITAT

held that the assessee is engaged in the business of building and development. The ITAT further noted that the assessee showed the cost of land along with related expenditure as work in progress/inventory since 1999-2000 and the assessment orders were subsequently made under Section 143(3) of the IT Act, wherein the AO accepted the nature of business of the assessee. Therefore, ITAT concluded that what was sold by the assessee was part of its inventory and not a capital asset. The ITAT also held that the assessee has reduced the sale consideration from Rs. 15,94,06,500/- to Rs. 5,24,27,354/- during FY 2007-08 on the basis of MOU dated 27.12.2007 and the said amount of the income has already been declared in the AY 2008-09 i.e., FY 2007-08

and therefore, such income cannot be declared in AY 2009-10 i.e., FY 2008-09. The ITAT also confirmed and/or agreed with the assessee that the sale consideration was Rs. 5,24,27,354/- only. Based on these findings, the ITAT reversed the findings of the AO as well as the CIT (A) and allowed the appeal by deleting the addition made by the AO of Rs. 15,94,06,500/-.

2.3 The Revenue preferred an income tax appeal before the High Court by way of ITA No. 1756/2014. By the impugned judgment and order, the High Court has dismissed the said appeal filed by the Revenue by holding that none of the questions proposed by the Revenue are substantial questions of law.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dismissing the appeal, the Revenue has preferred the present appeal.

3. Shri Balbir Singh, learned ASG has appeared on behalf of the Revenue and Shri S.K. Bagaria, learned Senior Advocate has appeared on behalf of the assessee.

4. Shri Balbir Singh, learned ASG appearing on behalf of the Revenue has vehemently submitted that the High Court has failed to appreciate that the order of the ITAT was perverse and contrary to facts on record. It is submitted that the ITAT failed to appreciate that the assessee has taken contrary stands before the assessing authority and the Tribunal, on account of sale of development

rights. It is submitted that firstly, the assessee *vide* its letter dated 25.11.2011 submitted the Ledger Account in respect of development agreement. The perusal of the said Ledger Account revealed that the assessee claimed to have received income of Rs. 15,94,06,500/- from a development agreement on 31.03.2008 and the said entry was reversed on the same day by passing a rectification entry on 31.03.2008 itself. Therefore, it was reflected that the aforesaid payment was paid by the purchasing party on 31.03.2008 to an entity SICCL and all these entries were reflected on the same date. Based on the Ledger furnished by the assessee, pertinent questions were raised by the Assessing Officer which included reason

of rectification and confirmation of the fact that the differential amount of Rs 10,69,79,146/- was refunded to the purchaser. However, perusal of the order passed by the ITAT reflects that the fact of receipt of money on 31.03.2008 was not even discussed. On the contrary, a reference was made to the MOU dated 27.12.2007 for a total consideration of Rs. 5,24,27,354/-. It is submitted that the ITAT without examining the true nature of transaction and entry made in the books of accounts of the assessee simpliciter confirmed that the transactions pertained to earlier years i.e., Assessment Year 2008-09 and the reduction of amount arising out of the Development Agreement dated 06.05.2008 and Rectification dated 30.05.2008 was due to mistake.

4.1 It is further submitted by Shri Balbir Singh, learned ASG, that the ITAT failed to take into account the fact that the entry made and reflected in the Ledger Account of the assessee as on 31.03.2008 was on account of a third party i.e., SICCL and that too for a total of Rs. 15,94,06,500/-. Further, the ITAT did not even question the factum of refund of differential amount of Rs. 10,69,79,146/- to the purchaser on account of Rectification Deed dated 30.05.2008. That the ITAT has failed to appreciate that the moment the receipt of amount is received and recorded in the books of accounts of the assessee, unless shown to be refunded/returned, is to be treated as income in the hands of the recipient.

4.2 Secondly, balance sheets for the Assessment Years 2006-07 to 2009-10 were examined by the Assessing Officer and it was recorded that there was not even a single sale during all these years and there were negligible expenses and the transaction in question was the only transaction i.e., transfer of development rights in respect of land and consequently, it was held that the transaction was that of transfer of capital asset and not that of transfer of stock in trade. However, the ITAT in its order, after examining the opening and closing balance for the year 1996-97 upto 2007-08 held that in multiple years there was inventory shown in the Balance Sheet and since subsequent assessment orders were made under Section 143(3) of the Income Tax Act, without

disputing the claim of assessee, held that the transaction in question is sale of stock in trade. It is contended that the ITAT neither dealt with the findings given by the Assessing Officer nor verified/examined the total sales made by the assessee during the relevant year and during the previous years. Therefore, the ITAT as well as the High Court have materially erred in holding that, merely because the entry made in the books of accounts involved recording of inventory, the transaction in question becomes sale of stock in trade. That, it is well settled that in order to examine whether a particular transaction is sale of capital asset or business transaction, multiple factors like frequency of trade, volume of trade, nature of transaction over the years etc. are required to be

examined. However, in the present case, the ITAT without examining any of the relevant factors confirmed that the transaction was transfer of stock in trade.

4.3 It is further submitted that the ITAT without any basis and solely on the basis of claim made by the assessee, contrary to the accounts produced before the Assessing Officer, agreed that the transaction was reflected as sale in the tax return for the Assessment Year 2008-09. That, interestingly, the ITAT did not even question as to what happened to the differential amount of Rs. 10,69,79,146/- on account of reduction of sale value of development rights.

4.4 It is further submitted by Shri Balbir Singh, learned ASG, that the High Court has failed to examine the inherent contradiction in the

order of the ITAT and that the claim was allowed by the Tribunal, contrary to the records produced before the Assessing Officer. Therefore, the order of the High Court holding that there was no substantial question of law involves is illegal and perverse.

4.5 It is further submitted that the High Court has failed to appreciate that, even in the event of acceptance of claim made by the assessee, including the assertion that Rs. 5,24,27,354/- was shown in the tax return for the earlier Assessment Year i.e., 2008-09, the differential amount of Rs. 10,69,79,146/- on account of reduction in the sale consideration of development rights is to be assessed in the current year as either as capital gain or business income. This is

without prejudice to the submission that the Assessing Officer has correctly assessed the income in his Assessment Order dated 29.11.2011.

4.6 Making the above submissions, it is prayed that the present appeal be allowed and the order passed by the ITAT as well as the High Court be set aside and the order of the Assessing Officer be restored.

5. Shri S.K. Bagaria, learned Senior Advocate appearing on behalf of the assessee has taken us to the findings recorded by the High Court as well as the ITAT. It is submitted that the assessee is engaged in the business of building and development of properties since the year 1999-2000. That the assessee's balance sheets show that it had work-in-progress/inventories year after year, since

1999-2000. The same has been accepted by the department all these years; even after scrutiny assessments under Section 143(3) of the Income Tax Act, 1961.

5.1 It is submitted that the assessee had entered into an MOU dated 27.12.2007 with M/s Kirit City Homes Private Limited, whereby, Development Rights in a property at Vasai were sold for a total consideration of Rs. 5,24,27,354/-. That the said MOU was on record before the lower authorities and has been referred in the Assessment Order as well as in the order passed by the CIT (A). In connection with the said transaction, detailed findings were given by the Income Tax Appellate Tribunal (Tribunal/ITAT) and these were also duly considered by the High Court. The findings given by the Tribunal were pure

findings of facts and therefore, the High Court has rightly dismissed the appeal after considering the facts and the tribunal's order and by holding that no substantial question of law arises in the matter.

5.2 Shri S.K. Bagaria, learned Senior Advocate has taken us to the following facts recorded by the High Court in the impugned judgment and order: -

a) It is a common ground that the assessee is in the business of building and development of properties. There was no change in the activities of the assessee during the year under consideration.

b) For the year ending 31/03/2006 the assessee disclosed inventories at Rs 8.66 crores

c) For the year ending 31/03/2007 there was no change and the same figure of Rs 8.66 crores was disclosed.

d) For the year ending 31/03/2008 (assessment year 2008-09), the assessee showed sale of land development rights at Rs 5,24,27,354/- and the cost of land was shown at Rs 5,21,37,454/-.

5.3 It is submitted that in connection with the aforesaid transaction during financial year 2007-08, the High Court has further considered the following facts in the impugned judgment and order: -

i. In MOU dated 27/12/2007 with KCH transfer of development rights was for the said total consideration of Rs 5,24,27,354/-.

ii. The assessee was holding 50.16 acres of land, out of which 27.44 acres of land was the subject matter of the aforesaid MOU dated 27/12/2007. Total cost of the land was determined proportionately.

iii. On 02/01/2008 necessary entries were passed debiting the account of KCH but crediting the account of one M/s SICCL. The assessee owed SICCL a sum of Rs 8.10 crores and it therefore directed KCH to pay the consideration directly to SICCL.

iv. Corresponding entries relating to the aforesaid transaction were also made in the accounts of SICCL.

v. On 02/01/2008 possession of the land was also handed over.

vi. The aforesaid events took place during the financial year 2007- 08

relating to assessment year 2008-09. In that assessment year, the assessee offered to tax the income arising out of the aforesaid transaction under the head "business income".

vii. In the development agreement dated 06/05/2008 the sale consideration was incorrectly mentioned as Rs 15,94,06,500/- and on realising the mistake, a Deed of Rectification of executed on 30/05/2008. This deed of rectification was registered with the office of the Sub Registrar, Vasai.

5.4 Shri Bagaria, learned Senior Advocate has also taken us to the following further facts recorded and findings given by the ITAT: -

a) The aforesaid 50.16 acres of land was acquired by the assessee in the financial year 1996-97. The tribunal gave year wise details from 1996-97 which clearly showed that the acquisition of land was in financial years 1996-97 and 2004-05. During the financial year 2007- 08, cost of the inventory was Rs. 9,53,06,475/- and the tribunal gave a definite finding that "the above inventory represents the cost of 50.16 acres of land out of which 27.44 acres has been sold vide Memorandum of Understanding dated 27/12/2007".

b) The assessee was showing work in progress under the head current assets and loans and advances in

the balance sheets filed with the Department and in the Income Tax Returns. The tribunal considered the year-wise position and gave the following findings for different years.

c) For assessment year 2001-02 the assessee's Return was selected for scrutiny assessment and the assessment was completed under section 143 (3) vide order dated 11/09/2003, wherein, the assessing officer gave a categorical finding that the assessee was engaged in the business of builder and developer, erectors, construction of building, houses, apartments, ownership flats. Work in progress of Rs 7.66 crores was also mentioned in the

assessment order and it covered cost of land and various expenses including land development, stamp charges etc.

d) For financial year 2002-03, work in progress was shown at Rs. 8.51 crores.

e) For financial years 2003-04 and 2004-05 (year ending 31/03/2004 and 31/03/2005), inventories were shown at Rs 8.58 crores and Rs 8.66 crores respectively. For the assessment year 2005-06 (financial year 2004-05) the assessee was again subjected to scrutiny assessment and its assessment was completed under Section 143 (3) by order dated 30/11/2007 and the assessing officer again

acknowledged the business of the assessee as that of builder and developer, erectors, construction of building, houses, apartments, ownership flats. The assessing officer specifically found that there was no change in the activities of the assessee during the year under consideration.

f) For the financial years 2006-07 and 2007-08 the inventories were shown at Rs 8.66 crores and there was no change. For the financial year 2007-08 (year ending 31/03/2008) the assessee had shown sale of land development right at Rs. 5,24,27,354/- and cost of the said land was shown at Rs 5,21,37,454/-

The facts relating to MOU dated 27/12/2007, necessary entries being made in the books of accounts on 02/01/2008, debiting the account of KCH and crediting the account of SICCL, mistake in the development agreement dated 06/05/2008 and its being corrected by the said registered deed of rectification were also mentioned.

g) It was found that since 1999-2000 the assessee was showing cost of land along with other related expenditures as work in progress/inventory in the balance sheets and its Income Tax Returns for several intervening years as the above were assessed under Section

143 (3) wherein the nature of the assessee's business was accepted by the assessing officer. It was held that what was sold by the assessee was part of its inventory and not a capital asset and the tribunal decided the matter by taking into consideration these undisputed facts.

5.5 It is submitted that based on the aforesaid facts and findings, the ITAT has rightly held that the impugned transaction related to transfer of stock in trade and that the assessee had shown "stock in trade/inventories" year after year in its balance sheets and its contention was accepted by the Assessing Officer and twice the assessments were completed under

Section 143(3). It is submitted that ultimately the Tribunal concluded the issues as under: -

a) The impugned transaction related to transfer of stock in trade and that the assessee had been showing "stock in trade/inventories" year after year in its balance sheets and its contention was accepted by the assessing officer and twice the assessments were completed under Section 143(3).

b) The said transaction had taken place during the financial year 2007-08 pertaining to assessment year 2008-09. The assessee had shown the sale consideration as also the cost of land in its balance sheet and profit and loss account filed with the Return of Income for the

said assessment year 2008-09. Even in the abstract from AST, the assessing officer had referred the said sale as part of the return for assessment year 2008-09.

c) Considering the MOU and the Deed of Rectification, the consideration was Rs 5.24 crores. The assessing officer completed assessments simply by relying on AIR data received from the office of the Sub-Registrar, Vasai but failed to consider the Deed of Rectification registered by the same Sub-Registrar and did not even care to verify the figure from the said Sub-Registrar, Vasai.

d) Perusal of balance sheets of the assessee since 1999-2000 clearly

showed that the assessee had been showing work in progress/inventories year after year and apportioned the cost in proportion to the part of the land transferred and the cost of the land was as per the cost shown in the Return of Income for assessment year 2008-09.

e) Since the impugned transaction related to the business of the assessee and was to be assessed as such under the head "profit and gains of business or profession" the provisions of section 50C of the Income Tax Act, 1961 were not applicable to the facts of the case.

5.6 It is submitted that the above findings recorded by the ITAT which were upheld by the High Court are pure findings of facts and therefore, no substantial question of law arises in the matter. Therefore, it is prayed that no interference of this Court against the findings recorded on material and evidence is called for. Reliance is placed on the decision of this Court in the case of **Mantri Techzone Private Limited Vs. Forward Foundation and Ors.; (2019) 18 SCC 494**.

5.7 It is further submitted by Shri Bagaria, learned Senior Advocate appearing on behalf of the assessee that the assessment order simply referred to AIR data. As recorded in the assessment order itself the assessee had submitted that the transaction in question

was duly offered to tax in assessment year 2008-09 reflecting its consideration at Rs. 5,24,27,354/-. The MOU relating to the said transaction was already before the assessing officer and the consideration of Rs. 5,24,27,354/- was duly mentioned in the MOU. In the Development Agreement, there was a mistake in mentioning the consideration and on realizing the error, within a short period of 24 days, the aforesaid Deed of Rectification was entered into and was duly registered. The said consideration of Rs. 5,24,27,354/- was correctly mentioned in the MOU which was before the Assessing Officer as well as before the CIT (Appeals). The amount mentioned in the Deed of Rectification, rectifying the mistake in the Development Agreement also mentioned the

same consideration and the said Deed of Rectification was duly registered with the Sub-Registrar, Vasai with whom the Development Agreement was also registered. It is important to mention that if the Department intended to dispute the valuation, it could have easily referred the matter to the valuation officer but it did not do so. Not only this, as recorded by the tribunal, the development agreement as well as the deed of rectification were both registered with the same Sub-Registrar, Vasai but the income tax officer did not make any enquiry from the said Sub-Registrar.

5.8 It is further submitted that with regard to the nature of business of the assessee, the income tax officer proceeded as if there must be regular transactions of purchase and sale

every year. Firstly, the income tax Department itself had accepted that the assessee's business was of builder and developer, erectors, construction of buildings, houses etc and the assessments on that basis were completed year after year including the assessments under Section 143 (3) for different years as mentioned above. Secondly, the regularity and frequency itself depends on the nature of business and nothing prevents the assessee from buying plots of land, holding them as stock in trade, developing or continuing to hold as it is and then entering into the transactions of sale or disposal or transfer at an appropriate time. Reliance in this regard is placed on the judgement reported in **(1961) 42 ITR 179 (Raja J.**

Rameshwar Rao Vs. Commissioner of Income Tax, Hyderabad) wherein it was held inter alia that, "no doubt, this was only a single venture; but even a single venture may be regarded as in the nature of trade or business." As regards the applicability of Section 50C of Income Tax Act, it is submitted that when the land in question was held by and transferred by the assessee as stock in trade and not as capital asset, Section 50C could have no application at all. In the income tax return for assessment year 2008-09 (during which the relevant events as mentioned above took place) the transaction in question was duly offered to tax under the head "profit and gains of business and profession". All these facts were considered by

the tribunal and findings of fact as mentioned above were given.

5.9 Making the above submissions that the High Court is correct in holding that the Tribunal's findings were findings of fact supported by written documents and corroborating materials and that there was nothing perverse in the tribunal's findings and the case did not involve any substantial question of law, it is prayed to dismiss the present appeal.

6. Heard learned counsel appearing on behalf of the respective parties at length.

7. In the present case, the AO treated the transaction as capital assets. ITAT has reversed the said findings and held that the transaction was stock in trade. It appears that the AO specifically recorded the findings

on examining the balance sheets for the AY 2006-07 to 2009-10 that there was not even a single sale during all these years and that there were negligible expenses and the transaction in question was the only transaction i.e., transfer of development rights in respect of land and consequently, it was held that the transaction was one of transfer of capital assets and not one of transfer of stock in trade. However, the ITAT after examining the opening and closing balance for the AY 1996-97 to 2007-08 observed that in multiple years, inventory was shown in the balance sheet, without discussing the claim of the assessee and held that the transaction in question is sale of stock in trade. It appears that ITAT has neither dealt with the findings given by the

AO nor verified/examined the total sales made by the assessee during the relevant time and during the previous years. Merely on the basis of recording of the inventory in the books of accounts, the transaction in question would not become stock in trade. As per the settled position of law in order to examine whether a particular transaction is sale of capital assets or business expense, multiple factors like frequency of trade and volume of trade, nature of transaction over the years etc., are required to be examined. From the order passed by the ITAT, it appears that the ITAT has without examining any of the relevant factors confirmed that the transaction was transfer of stock in trade.

7.1 The High Court has also failed to appreciate that even in the event of acceptance of claim

made by the assessee, including the assertion that Rs. 15,94,06,500/- was shown in the tax return in the earlier AY i.e., 2008-09, the differential amount of Rs. 10,69,79,146/- on account of reduction in sale consideration of development rights was to be assessed in the current year as either capital gain or business income. At this stage, it is required to be noted that as per the claim of the assessee and the entry made and reflected in the ledger account of the assessee as on 31.03.2008, an amount of Rs. 15,94,06,500/- was paid to a third party i.e., SICCL. However, thereafter, according to the assessee there was a rectification deed dated 30.05.2008 and the amount was reduced from Rs. 15,94,06,500/- to Rs. 5,24,27,354/-. The ITAT has not even

questioned the factum of refund of differential amount of Rs. 10,69,79,146/- to the purchaser on account of rectification deed dated 30.05.2008. The ITAT ought to have appreciated that the moment the receipt of amount is received and recorded in the books of accounts of the assessee unless shown to be refunded/returned, it is to be treated as income in the hands of the recipient. However, the ITAT has also not considered the aforesaid aspect.

7.2 In view of the above and as observed hereinabove, the ITAT has not considered the relevant aspects/relevant factors while considering the transaction in question as stock in trade and has not considered the relevant aspects as above which as such were required to be considered by the ITAT, the

matter is required to be remanded to the ITAT to consider the appeal afresh in light of the observations made hereinabove and to take into consideration the relevant factors while considering the transaction as stock in trade or as sale of capital assets or business transaction.

8. In view of the above and for the reasons stated above, the present appeal succeeds in part. The impugned judgment and order passed by the High Court and that of the ITAT are hereby quashed and set aside and the matter is remitted back to the ITAT to consider the appeal afresh in accordance with law and on its own merits, while taking into consideration the observations made hereinabove and to take an appropriate decision on whether the transaction in

question is the sale of capital assets or sale of stock in trade and other aspects referred hereinabove. It is observed that we have not expressed anything on merits in favour of either of the parties. It is ultimately for the ITAT to take an appropriate decision in accordance with law and on its own merits as above.

.....J.
[M.R. SHAH]

.....J.
[B.V. NAGARATHNA]

NEW DELHI;
MAY 04, 2023