<u>आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।</u>

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER
AND SHRI VIVEK VARMA, JUDICIAL MEMBER
ITA No. : 478/Mum/2012
(Assessment year: 1984-85)

M/s Khira Mehta Shah & Associates, C/o Wankhede Stadium, D-Block, D Road, Churchgate, Mumbai -400 020 स्थयी लेखा सं.:PAN: **AACPM 8392 D**	Vs	ITO –19(2)-3, Room No. 311, Piramal Chambers, Lalbaug, Mumbai -400 012
अपीलार्थी(Appellant-Cross Objector)		प्रत्यर्थी(Respondent)
Appellant by	:	None
Respondent by	:	Shri Pitambar Das

सुनवाईकीतारीख /Date of Hearing : 12-08-2014

घोषणाकीतारीख/Date of Pronouncement : 07-11-2014

<u>आ दे श</u>

<u>O R D E R</u>

श्री विवेक वर्मा, न्या. स.

<u>PER VIVEK VARMA, J.M.</u>:

Instant appeal is filed by the assessee against the order of CIT(A) 35, Mumbai, dated 30.11.2011, wherein the following grounds have been taken:

> *"1. The learned Commissioner of Income Tax (Appeals) erred in not deleting the addition of Rs. 3,01,60,223/- to the appellant's income being difference between market value and the book value of the stock in trade of the appellant firm on the alleged dissolution of the appellant firm.*
>
> *2. The learned Commissioner of Income Tax (Appeals) further erred in confirming the finding of the Assessing Officer that stock in trade was distributed amongst the partners on dissolution of the appellant firm and not withdrawn by the partners during the course of the running business of the appellant firm.*
>
> *3. The learned Commissioner of Income Tax (Appeals) further erred in rejecting the legal position that the amended provision of Section 45(4) is applicable with effect from 01.04.1988 while the appellant firm was dissolved on 31.12.1981 by holding that the same is irrelevant.*
>
> *4. The learned Commissioner of Income Tax (Appeals) further erred in not considering and giving a finding that all the partners have paid their taxes when they received the revalued price from the 5 firms on retirement from these firms, as it is one of the grievances of the department that these partners have got revalued price from Viral*

Hotels & Theaters Pvt Ltd on retirement from these 5 firms and not paid any tax on the amount of Rs. 3 crores received by all the partners.

5. *The learned Commissioner of Income Tax (Appeals) further erred in relying on the finding given by the Hon. Madras High Court in the case of G R Ramachari & Co. – 41 ITR 142 while not giving any finding on the submissions of the appellant that the findings of this case are not applicable on the facts of the appellant's case.*
6. *The learned Commissioner of Income Tax (Appeals) further erred in relying on the decision of the Hon. Supreme Court in the case of McDowell and Co. Ltd. v Commercial Tax Officer -154 ITR 148 (SC) and holding that colouring of the transaction is not acceptable and ignoring the latest judgment of the Hon. Supreme Court in the case of Union of India V Azadi Bachao Andolan & Anr. – 263 ITR 706 (SC).*
7. *The learned Commissioner of Income Tax (Appeals) further erred in not considering the various judgments relied upon by the appellant firm and merely holding that the ratio of the judgments cited by the appellant are distinguishable from the facts of the appellant's case.*
8. *The appellant firm craves to add to, alter or amend the foregoing grounds, which are without prejudice to one another, at the time of hearing".*

"

2. This is the second round of appeal, wherein, in the first round, the coordinate Bench of the ITAT had restored the matter to the file of the CIT(A) on technical ground.

3. The facts are that the assessee is a firm with 16 partners, belonging to 5 groups, who used to undertake development projects. Sometimes in 1982, disputes arose between the partners and the ongoing projects came to halt on 17.11.1982. The unsold stock of flats and land were distributed on 31.12.1982. The unsold stock of flats and land were taken over by a consortium of five new firms. The outgoing partners received monetary consideration at the revalued price, which came to Rs. 3,01,60,223/-, being difference of revalued price at Rs. 3,57,00,000/- and original cost at Rs. 55,39,777/-. This receipt of Rs. 3,01,60,223/- was considered by the assessee as non-taxable, but the AO held that unsold stock of flats and land shall be taken as SIT on the date of dissolution of the firm.

4. This is the point which is impugned before us.

5. Before us, the DR relied on the orders of the revenue authorities but there was no attendance on behalf of the assessee.

6. We have heard the arguments of the DR and have pursued the issue in details from the orders of the AO and the CIT(A). The CIT(A) has observed,

> *"I have carefully considered the submissions of the assessee/appellant and in my opinion they cannot be accepted. No serious exception can be taken to the submission of the assessee/appellant that when stocks are withdrawn from a running business no profit might arise. The facts of the case as discussed above give a lie to this contention of the assessee. The Madras High Court in the case of ALA Firm vs Commissioner of Income-tax (102 ITR 622) has held that stock in trade of a firm does not cease to be stock in trade on the dissolution of the firm though the assessee/ appellant has the option to value the stock in trade either at market rate or at cost whicheve4r is lower, during the subsistence of the business. That option is not available to it at the point of termination of business when the stock in trade is to be valued at market value. Madras High Court in the earlier case of G R Ramachari & Co. vs Commissioner of Income-tax (41 ITR 142) has explained the legal provisions regarding the valuation of stock in trade on cessation of business.*
>
> *"The privilege of valuing the opening and closing stocks in a consistent manner is available only to continuing businesses and it cannot be adopted where the business comes to an end and the stock-in-trade has to be disposed of in order to determine the exact position of the business on the date of closure.*
>
> *The case of a firm which goes into liquidation forms a close parallel to the instant case. In such a case all the stock-in-trade and other assets of the business will have to be sold and their value realized. It cannot be controverted that it is only by doing so that the true state of the profits or losses of the business can be arrived at. The position is not very different when the partnerships ceases to exist in the course of the accounting year. The fact that 'R' one of the ex-partners, took over the entire stock and continued to run the business on his own, was not relevant at all, when the profits or losses of the partnership was considered which had come to an end. It should, therefore, follow that in order to arrive at the correct picture of the trading results of the partnership on the date when it ceases to function, the valuation of the stock in hand should be made on the basis of prevailing market price.*
>
> *In a case of this kind the market price alone should be taken in order to arrive at the trading results of the business. The judgment of the High Court and the report of the Commissioner in connection with the valuation of the stock would only serve as evidence of the market value of the goods on the date in question.*
>
> *It was true that because 'R' as an individual carrying on the business had taken over the goods of the partnership and had valued them at cost price, there would be greater margin. between that price and the eventual sale price leading to a larger profits in this hands being brought to tax. It was no doubt open to him to have valued the goods at the market price because on the dissolution of the partnership was bit a factor that could affect the conclusion as to the principle on which the closing stock had to be valued in the case of dissolved partnership in order to arrive at the true position of the profits of the partnership.*

Therefore, the valuation of the closing stock as adopted by the Tribunal was correct.
Note: The case was decided in favour of the revenue.
[Cases referred to –Chainrp Sampatram v CIT [1953] 24 ITR 481 (SC), Chouthmal Golapchand, in re AIR 1939 Cal. 559, CIT v Ahmedabad New Cotton Millls Co. Ltd. ILR 54 Bom. 213 and Sir Kikabhai Premchand vs CIT (1953) 24 ITR 506 (SC).
The relevant observation is at page 146 and is reproduced as under:
"It is obvious that when a business ceases, all its stock-in-trade has to be disposed of and brought to account in order to balance the books. The goods on hand do not lose the character of stock-in-trade, and this proposition put forward by the assessee has no authority to sustain it".
25.7. Thus, it would appear that, once the dissolution takes place, distribution of stock in trade before the actual dissolution deed was drafted and signed will have to be valued at market price with a view to balancing the accounts. In this case, the stock in trade was actually withdrawn in the latter half of November, 1982 when the actual dissolution deed was effected soon thereafter 31.12.1982. Therefore, this would not go to detract the merits of the department's case. The business stated to be had come to a standstill as there was a dispute among the partners. Withdrawal of the stock in trade or distribution of the same in the profit share ratio can only be considered as a necessary or concomitant formality for dissolution or, in other words, this distribution of stock, in trade has been done in the course of dissolution and, therefore, it is imperative that valuation of such stock in trade has to be at the market price. The argument of the assessee that the amendment bought about by the Finance Act, 1987 in thi9s regard would go to show that the law has been changed with effect from 1.4.1988 has to be rejected as irrelevant. The decision referred to above clearly go to show that when stock in trade is distributed or withdrawn at the termination of when stock in trade is distributed or withdrawn at the termination of business, they have to be value at the market price.
As regards the submission of Ld AR and his reliance on various case laws, the ratio of judgments are not applicable to the present facts if tge appellant, therefore, with due regards to all the judicial pronouncements relied upon by the Ld. AR, are found to be distinguishable on facts.
Keeping in view of the factual position as well as the legal procurements made by the Hon'ble Court, I as unable to accept the plea of the appellant against the Assessing Order passed u/s 143(3) r.w.. 263 of the I.T. Act, 1961".

7. From the facts available, we are of the opinion that the order of CIT(A) does not suffer from any infirmity. We also find that the case of ALA firm as decided by the Hon'ble Madras High Court got its approval from the Hon'ble Supreme Court, as reported in 189 ITR 285. We, therefore, sustain the order of the CIT(A), consequentially, reject the appeal as filed by the assessee.

8. Since all the grounds taken in GOA are on the same issue, all the grounds are rejected.

9. In the result, the appeal, as filed by the assessee is dismissed.

Order pronounced in the open Court on 7th November, 2014.

Sd/-	**Sd/-**
(B R BASKARAN)	**(VIVEK VARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Date: **7th November, 2014**

प्रति/Copy to:-

1) अपीलार्थी/The Applicant.
2) प्रत्यर्थी/The Respondent.
3) The CIT (A)-35, Mumbai.
4) आयकरआयुक्त –19, Mumbai/The CIT-19, Mumbai.
5) विभागीयप्रतिनिधि "A" आयकरअपीलीयअधिकरण,मुंबई
   The D.R. "A" Bench, Mumbai.
6) गार्डफाईल
   Copy to Guard File.

आदेशानुसार/By Order

/ / True Copy / /

उप/सहायकपंजीकार

आयकरअपीलीयअधिकरण,मुंबई

Dy./Asstt. Registrar

I.T.A.T., Mumbai

∗चव्हानव.नि.स

∗Chavan, Sr. PS