IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/TAX APPEAL NO. 1653 of 2007

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M/S DEEPAK NITRITE LTD.

Versus

DY.COMMISSIONER OF INCOME TAX,(ASSTT.) SPECIAL RANGE-2

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Appearance:
MR MANISH J SHAH(1320) for the Appellant(s) No. 1
MRS KALPANAK RAVAL(1046) for the Opponent(s) No. 1

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CORAM:**HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR**
and
HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI

Date : 12/01/2023

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI)

1. The present appeal is filed under Section 260A of the Income Tax Act, 1961, challenging the decision delivered by the Income Tax Appellate Tribunal in ITA No. 154/Ahd/2002 in respect of assessment year 1993-94.

1.1. The brief background of the facts leading to the rise of present appeal : appellant, Deepak Nitrite Limited was holding the shares of M/s Deepak Fertilisers and Petrochemicals Ltd. (hereafter referred to as "Deepak Fertilisers" in short). Initially the Deepak Fertilisers issued partly convertible debentures of Rs.100/- on right basis to its share holders. Each debenture of Rs.100/-

was consisting of 3 parts, part A, B and C with a detachable warrant in the following manner :-

> "(a) Part A of Rs.20/- which will be compulsorily and automatically converted on 1st January, 1990 into one equity share of Rs.10/- at a premium of Rs.
>
> (b) Part B of Rs.30/- which will be compulsorily and automatically converted on 1st January, 1991 into one equity share of Rs.10/- at a premium of Rs.20/-.
>
> (c) Part C of Rs.50/- and a detachable warrant with rights to apply for and be allotted one equity share as under :"

2. It is the case of the appellant that holder of the warrant shall have the right to apply for and be allotted one equity share of Rs.10 at a price not exceeding Rs.50/- as may be decided by the Controller of Capital Issue (CCI) and these rights shall be exercised during a period of 3 months or such longer period as may be determined by Board of Directors of DEPCL between the expiry of 4 years and the expiry of 6 years from the

date of allotment. According to appellant, it was clear from part C, which relates to non-convertible part of debenture carried a warrant along with it, which entitled the holder to apply for one share at a price to be fixed by CCI not exceeding Rs.50/- and as such, the holder of this part i.e. part 'C' can sell the debenture on face value of Rs.50/- and / or, the warrant separately or he could wait until the specified time and get allotment of one share.

3. The assessment year concerned here is the year 1993-94, the appellant i.e. Deepak Nitrite limited sold these warrants on 09.09.1992 at Rs.8.98/- and secured Rs.1,03,27,000/- as sale price. The Assessing Officer held that entire sale price is liable to be taxed as a long term capital gain without appellant being entitled to any deduction by way of cost or expense therefrom and the stand of the appellant came to be rejected relying upon the decision of Tribunal in ITA No.458/Ahd/1993, which is pending in reference before the High Court being I.T.R. No.66 of 1998 and as such, held that valuation of cost of this detachable warrant must be Rs.2.175/-.

4. Feeling aggrieved by and dissatisfied with the aforesaid view, the appellant approached the Tribunal against the decision of C.I.T. (Appeals) and the learned Tribunal vide its order dated 09.04.2007 was pleased to partly allow the appeal but the view of the C.I.T. (Appeals) was affirmed and it is against this order of the Tribunal, dated 09.04.2007, which was received by the appellant on 22.08.2007, the appellant has preferred present Tax Appeal under Section 260A of IT Act by raising brief contentions.

5. The appeal was entertained by the previous Co-ordinate Bench on 18.01.2008 and appeal was admitted on following question :-

> *"Whether on the facts and in the circumstances of the case the detachable warrants attached with Part 'C' of debentures of Deepak Fertilizers and Petrochemicals Ltd. had no conceivable cost of acquisition, and therefore, there was no taxable capital gain on sale of detachable warrants?"*

6. The present appeal then came up for consideration before this Court for final hearing in which, the learned

advocate Mr.Manish J. Shah has represented appellant whereas, Mr. Hirak Shah appeared for Mrs. Kalpanak Raval for the opponent.

7. Learned advocate Mr. Manish Shah has submitted that appellate Tribunal i.e. ITAT has erroneously held that detachable warrants has any cost or any conceivable cost. Tribunal has failed to appreciate the issue whether detachable warrant has any cost or not, is pending before the Hon'ble High court in ITA No.66 of 1998 and as such, it was desirable to send the matter back to the Assessing Officer to abide by the decision in the said reference.

7.1. Learned advocate Mr. Shah has submitted that this appeal relates to the assessment year 1993-94 and the learned Tribunal, instead of examining the issue at length, has not properly considered the stand of the appellant. In fact, according to Mr. Shah, the detachable warrants have no cost of acquisition but then despite the said fact by a brief order, Tribunal has affirmed the view of C.I.T. (Appeals). This being a clear error, said order deserves to be interfered with.

7.2. Learned advocate Mr. Manish Shah has submitted that in the background of this, the question of law, formulated be answered in favour of the appellant-assessee and appeal be allowed.

7.3. With a view to substantiate his contention, the learned advocate Mr. Manish Shah has referred to following decisions :

(i) [2008] 307 ITR 289 (Guj)

(ii) [2012] 346 ITR 1 (Bom)

(iii) The decision in ITA No. 518/Ahd/1993 decided by the Appellate Tribunal Bench, Ahmedabad on 07.08.2009.

8. Learned advocate Mr. Hirak Shah appearing on behalf of the Revenue has vehemently contended that Tribunal has not committed any error and as such, the appeal may not be entertained. According to Mr. Shah, Tribunal while passing an order has thoroughly gone through the decisions, which have been cited before it and has considered, even the sale of detachable warrant to be a capital receipt in the hands of assessee. While

passing the order, Tribunal has examined the said issue by taking note of the judgement in the case of **CIT vs. B.C.Srinivasa Shetty [128 ITR 294]** and appellant's own case of the recent past and after examining the same has held that part of the cost is attributable to the detachable warrant, which was ascertained at Rs.2.175/- and as such, the Assessing Officer was rightly directed to recalculate the capital gain after considering the said figure and said view of C.I.T. (Appeals) having been rightly examined by the learned Tribunal, there appears to be no error. In fact, the background of facts would indicate that question, which has been formulated by the Co-ordinate Bench at the time of admission, deserves to be answered in favour of revenue.

9. To support his submission, learned advocate Mr. Hirak Shah has relied upon the decision delivered by the Calcutta High Court reported in **[2014] 52 taxmann.com 110 (Calcutta)** and has submitted that stand of the appellant does not deserve to be entertained. Hence, he has requested the Court to dismiss the appeal.

10. Having heard the learned advocates appearing for the respective sides and having gone through the

material on record and having examined the order passed by the learned Tribunal, as also of C.I.T. (Appeals) the question before us is whether detachable warrants attached with part C of debentures of Deepak Fertilizers have any conceivable cost of acquisition or not and if not? whether to be treated as taxable capital gain on sale thereof or not?

11. Tribunal has examined the stand of C.I.T. (Appeals) and also of Assessing Officer, which in turn scrutinized the stand of the assessee's claim that warrant has no cost of acquisition, but then assessee had placed reliance upon one decision in **B.C.Srinivasa Shetty** case (supra), to contend that the same is not liable to be taxed. However, said decision was relating to a goodwill, which was undisputedly as self generating asset while presently, the issue is of detachable warrant, which is having a separate existence and as such a part of cost of debenture attributable to the warrant, which are inter-linked. The C.I.T. (Appeals) has referred to the earlier decision of learned Tribunal in case of this very assessee i.e. present appellant for the assessment year 1989-90 and after examining has held that part of the cost is

attributable to detachable warrant and as per the said decision, it was to be taken at Rs.2.175/- and as such, has directed the Assessing Officer to accept the valuation and calculate the capital gain accordingly, since the detachable warrant has an existence on its own along with the debenture purchased by the assessee for a sum of Rs.50/-. The realisation thereof would be a sale consideration arising out of transfer of capital asset and as such, liable to capital gain and further the assessee has already accepted the cost of Rs.2.175/-. Hence, in this peculiar background since C.I.T. (Appeals) has directed the Assessing Officer to recompute the deduction after taking the said figure into consideration, Tribunal did not interfere with said finding. Hence, a satisfaction and the conclusion, which has been arrived at, is based on aforesaid consideration of facts, which appears to be a reasonable and possible view taken by the Tribunal.

12. At this stage, the decision which has been cited by the learned advocate Mr. Shah for the appellant of Deepak Nitrite Limited itself reported in **[2008] 307 ITR 289 (Guj)** when perused would indicate the background of facts, if taken note of, said decision may not be of any

assistance to the appellant. Firstly, the transaction of the assessee, in that case, was genuine or not was center of controversy and secondly, contention was raised whether detachable warrant had any cost or not, but that appears to be not the controversy between the parties and as such, the High Court felt that it was not sufficient for the Tribunal to embark upon such an exercise in the absence of any controversy being raised. Hence, the said judgment when taken in its entirety, especially paragraphs 7 and 8 and the observations contained therein would indicate that decision would not be of any assistance to the appellant and principles enunciated therein cannot be applied as a straight-jacket formula by divorcing the facts.

13. In addition to this, yet another decision, which has been relied upon of Bombay High Court reported in **[2012] 346 ITR 1 (Bom),** on close perusal would indicate that issue was about sale of tradable warrants whether taxable or not and the asset transfer had no cost of acquisition. However, perusal of paragraph 4 would clearly indicate that said judgment is also of no assistance since the assessment year here involved in the

instant case is 1993-94 and as such, we are of the opinion that decision cited was relating to effect of amendment and it is of no assistance to the appellant in the instant case.

14. In the case on hand, it was observed clearly by C.I.T. (Appeals) and the view of it was affirmed by learned Tribunal is on the basis that the appellant itself has clearly stated that it was agreeable to accept the valuation of Assessing Officer at Rs.2.175/- only and it is under such circumstances the Assessing Officer was directed to accept the said valuation and calculate the capital gain accordingly. Paragraph 18 of the order of CIT (Appeals) is indicating the said fact, which we deem it proper to quote hereunder :

> *"18. The appellant now states that as per assessment order giving effect to I.T.A.T.'s order for A.Y. 1989-90, they are agreeable to accepting the valuation of the assessing officer which came to 2.175 only. For the present year also therefore the assessing officer is directed to accept this valuation and calculate capital gains accordingly."*

As such, when the assessee itself has accepted the cost as indicated above, we are of the view that both the authorities have rightly come to the conclusion since

the same is based upon the appellant's representation itself.

15. Under the circumstances whether matter was required to be remanded back or not was an issue and not required to be gone into since there appears to be a clear stand of the appellant itself, which has led the authority below to proceed and pass an order now under challenge. Now, at this stage, we may also take note of the fact that present appellant has tried to rely upon the decision delivered by the Hon'ble Apex Court in **B.C.Srinivasa** case (supra). In the said case, there was a reference with regard to a goodwill, which was a self-generating asset as distinct from the detachable warrant. Hence, the said issue also having been examined by the learned Tribunal before passing the order. We see no error committed by the Tribunal. Hence we are of the view that the conclusions arrived at by the Tribunal as also by the C.I.T. (Appeals) do not require any interference. Undisputedly, according to the appellant itself some value has to be ascribed to the detachable warrants and when such cost was accepted rather agreed to an extent of Rs. 2.175/- which led the C.I.T. (Appeals)

to pass the order has been rightly affirmed by the Tribunal. Hence, we answer the substantial question of law in favour of revenue & against assessee in the facts obtained in the instant case.

16. For reasons aforestated we proceed to pass following

ORDER :

(i) Appeal is dismissed by answering substantial question of law in favour of Revenue.

(ii) Order of Income Tax Appellate Tribunal passed in ITA No. 154/Ahd/2002 dated 09.04.2007 is affirmed.

(iii) No order as to costs.

(ARAVIND KUMAR,CJ)

(ASHUTOSH SHASTRI, J)

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