IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

INCOME TAX APPEAL NO. 49/2015

M/s Jamnalal Sons Private Limited,
Bacchraj Bhawan, Gandhi Chowk, Wardha. **APPELLANT**

.....VERSUS.....

Deputy Commissioner of Income Tax-
Range Nagpur (MS). **RESPONDENT**

Shri Rachit and Sanjay C. Thaker, counsel for the appellant.
Shri S.N. Bhattad with Shri A.J. Bhoot, counsel for the respondent.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.
DATE : 23RD NOVEMBER, 2021.
ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

This appeal was admitted on the following substantial question of law:

> "Whether on the facts and on the circumstances of the case could it be said that there was a 'transfer' of capital asset by the appellant resulting in capital gains of Rs.29,43,710/- which could be subjected to capital gains tax in the hands of the appellant for the assessment year 1982-83 ?"

2. While admitting the appeal it was noticed that a reference application under Section 256(1) of the Income Tax Act, 1961 was moved by the appellant for the Assessment Year 1980-81 and it was allowed on 05.09.1991. The said reference proceedings bearing Income Tax Reference No.225 of 1999 were pending at the Principal Seat and hence this appeal involving the same question for the subsequent assessment year 1982-83 was admitted.

3. On 26.02.2021, the learned counsel for the appellant placed on record the judgment in Income Tax Reference No.225 of 1999 that was decided on 27.09.2016. According to the learned counsel for the appellant with the adjudication of the said reference proceedings the substantial question of law as framed would have to be answered accordingly. Time was granted to the learned counsel for the Revenue to examine this position.

4. Today, the learned counsel for the parties agree that the substantial question of law framed in this appeal could be answered in accordance with the reference that was decided on 27.09.2016.

In the aforesaid reference, the following substantial question of law fell for adjudication:-

> "Whether on the facts and in the circumstances of the case, it could be said that there was a transfer of capital assets by the applicant company resulting in capital gains of Rs.1,19,26,177/- which could be subjected to capital gains tax in the hands of the applicant for the Assessment Year 1980-81 ?"

The Division Bench while answering the aforesaid question held in paragraph 17 as under:-

> "17. Accordingly, we answer the question partly in the affirmative to the extent the Tribunal held that there was a transfer of capital asset when the applicant assessee made its

capital contribution in the form of land, shares and securities to the partnership firm M/s Bajaj Trading Company. However, other parts of the question namely that the transfer of capital assets resulted in capital gains, which can be subjected to capital gain tax in the subject assessment year, is answered in the negative, i.e. in favour of the applicant assessee and against the Revenue."

5. It is submitted that in the aforesaid reference, the capital contribution was in the form of land, shares and securities while in the present case the capital contribution is in the form of shares alone for an amount of Rs.29,43,710/-. Having considered the adjudication in Income Tax Reference No.225 of 1999, the substantial question of law as framed in this appeal is answered by holding that though there was transfer of capital assets by the appellant which resulted in capital gain of Rs.29,43,710/-, the aforesaid amount cannot be subjected to capital gains tax in the hands of the appellant for the Assessment Year 1982-83.

6. In the light of aforesaid, Income Tax Appeal No.49 of 2015 is partly allowed in aforesaid terms. No costs.

(G.A. SANAP, J.) **(A.S. CHANDURKAR, J.)**

APTE