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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-01-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

TCA No. 288 of 2011

Commissioner Of Income Tax
Chennai

..Appellant(s)

Vs

Gwl Properties Ltd
Formerly Gorden Woodroffe Ltd

No.36 Rajaji Salai Ch-01 ..Respondent(s)

Petition filed under Section 260A of the Income Tax Act, 1961 against order dated 08.12.2010 passed in I.T.A.No.1155/Mds/2010 on the file of the Income Tax Appellate Tribunal Madras 'D' Bench for assessment year 2004-05.

For Appellant(s): M/s.T.Ravikumar

For Respondent(s): M/s.N.V.Balaji

J U D G M E N T

(Judgment of the Court was delivered by Dr.Anita Sumanth J.)

This is an appeal relating to assessment year (AY) 2004-05 filed at the instance of the revenue as against an order passed by the Income Tax Appellate Tribunal (in short 'Tribunal') on 08.12.2010. The issue that arises for

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consideration is as to whether profit earned by the assessee/respondent on sale of land should be assessed under the head 'capital gains' or under the head 'business profits'. The question of law admitted on 16.08.2011 is as follows:

> *Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the profit on sale of lands held by the assessee should be considered under the head 'Capital Gains' only and not as business profits of the assessee?*

2. We have heard the detailed submissions of Mr.T.Ravikumar, learned Senior Standing Counsel for the appellant/revenue and Mr.N.V.Balaji, learned counsel for the assessee/respondent.

3. Mr.Balaji would submit that there is no question of law, much less a substantial question of law that arises for determination in this matter. Mr.Ravikumar, would assail the impugned order of the Tribunal taking us through the trajectory that the matter has taken over the years.

4. A return of Income had been filed by the assessee in terms of the provisions of the Income Tax Act, 1961 (in short 'Act'), wherein a sum of Rs.9,87,12,654/- had been offered to tax as capital gain. An intimation had been issued under Section 143(1) of the Act, but the Assessing Authority was of the view that the amount ought to have been assessed as business income and hence reopened the assessment by issuance of notice under Section 148 of the Act.

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5. The assessee was engaged in the activity of manufacturing and trading, IATA approved cargo agent and customs house agent, and was not carrying on the business of purchase and sale of properties. Hence, it contested the re-assessment adopting the stand that any income earned from sale of property would be assessable only under the head 'capital gains' and would have no incidence of business activity.

6. Per contra, the Assessing Authority noted that property development figured as a line of activity in the financials. Hence, the consideration of Rs.10,02,60,000/- for sale of 22.28 acres of land in the relevant financial year was brought to sale as profits and gains of business.

7. As against the aforesaid conclusion, an appeal was filed by the assessee before the Commissioner of Income Tax (Appeals), who dismissed the appeal in the following terms:

> *6. I have carefully considered the facts of the case and the submissions of the Id.AR. It is seen that the appellant company is engaged in the business as IATA approved cargo agents, customs house agents and property development. Thus one of the main activities of the appellant company is property development. The transactions carried out by the appellant is to be examined in the background of the business the appellant is engaged in. The Assessing Officer treated the profit on sale of land as business income because the assessee company has been engaged in the business of development of property. During the year, it has sold land of 22.28 acres. The cost as per the books was only Rs.21,769/- whereas the sale consideration received was Rs.10,02,60,000/-. After considering the reasons given by the Assessing Officer and after perusing the details submitted by the Id.AR, I am of the view*

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that the Assessing Officer has rightly treated the gain on sale of land as business income. Merely because the impugned land is shown as a fixed asset in the balance sheet for A.Ys 2003-04 and 2004-05, that by itself would not help the appellant in any way. It is now well settled that the way in which the entries are made by the assessee in his books of accounts is not determinative of the question whether the assessee has earned any profit or suffered any loss. What is necessary to be considered is the true nature of the transaction and whether in effect, it has resulted in any profit or loss to the assessee. [Sutlej Cotton Mills v CIT 116 ITR 1(SC)]. Similarly, the Hon'ble Bombay High Court in the case of CIT vs Mogul Lines Ltd 46 ITR 590(Bom) has held that the matter of taxability would not be decided on the basis of entries which the assessee might make in its accounts but is to be decided in accordance with the provisions of law. The Hon'ble Supreme Court in the case of Karanpura Development Company Ltd. V CIT, 44 ITR 362(SC) held that the substance of the transaction should prevail over the form. Further, the Supreme Court in CIT v Vikram Cotton Mills, 169 ITR 597(SC) held that whether income is from business or from investments depends on various factors including conduct of the parties. It is seen from the details filed by the assessee for the A.Y 2003-04 and 2004-05 that it has substantial free hold land. It has been selling land regularly which is evident from the schedule of fixed assets submitted for the year ended on 31.3.03, 31.3.04 & 31.3.05. Thus, the activity of the appellant is real, substantial, regular and organized. Hence, it would constitute business income for the purpose of the Act. Reference may be given to the decision of the Hon'ble Supreme Court in the case of CIT vs Distributors (Baroda) Pvt. Ltd. 83 ITR 377 (SC) for the above proposition. In view of the above factual position and judicial authorities, I am of the considered opinion that the profit on sale of land is to be assessed under the head "Profits and gains of business". Accordingly, the addition made by the Assessing Officer is sustained and the appeal is dismissed.'

8. In further appeal before the Tribunal, the assessee reiterated its claim, which found favour with the assessee. The Tribunal noticed the position that the assessee had been amalgamated with one Shaw Wallace Properties Limited (Shaw Wallace/SWPL/Company) by orders passed by the company division of

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the Madras High Court on 07.03.2002 and 29.04.2002. Assets including land and apartment had been taken over by the assessee and were reflected in the balance sheet.

9. In the financial year relevant to the present year, the assessee had sold 22.2 acres of land at Pallavaram (subject property), and returned the capital gains thereupon to tax. The Tribunal was of the view that the sale did not give rise to business income, as the subject property was not part of the portfolio of business assets of the assessee.

10. Referring to the judgment of the Supreme Court in *Raja J. Rameshwaar Ro V. CIT*[1] and of the Karnataka High Court in *CIT V. B.Narasimha Reddy*[2], the Tribunal culled out the principles to determine whether the transaction was an adventure in the nature of trade. The parameters set out in those decisions to determine the nature of a transaction are its volume, frequency, continuity and regularity.

11. In the present case, the subject land had been acquired many years ago by the assessee as industrial land and had been reflected in the financials of the company as such, without any development. Taking advantage of the boom in property prices, the assessee decided, in the financial year relevant to the

[1] 42 ITR 179 (SC)
[2] 150 ITR 347

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subject assessment year, to sell the subject land in the same state in which it had been lying with it.

12. Hence, the question of the assessee having been involved in regular business activity of sale and purchase of land or development of land did not arise. Being of such a view, the Tribunal allowed the appeal as against which, the present Tax Case (Appeal) has been filed by the Department.

13. Mr.Ravikumar would reiterate the findings of the Assessing Officer and CIT(A), drawing attention to the fact that the activity of property development figured in the financials of the company as well as in the Memorandum and Articles of Association. He has relied on the following decisions rendered in the context of emphasizing the parameters to be applied in determining whether consideration from sale of property should be assessed under the head capital gains or business.

1.*Badridas Daga v. Commissioner of Income-tax*[3]
2.*Karanpura Development Co. Ltd. v. Commissioner of Income Tax*[4]
3.*Commissioner of Income Tax v. Mogul Line Ltd.*[5]
4.*Commissioner of Income-tax v. Distributors (Baroda) (P.) Ltd.*[6]
5.*Commissioner of Income Tax v. Vikram Cotton Mills Ltd.*[7]

[3][1958] 34 ITR 10 (SC)
[4][1962] 44 ITR 362 (SC)
[5][1962] 46 ITR 590 (Bom)
[6][1972] 83 ITR 377 (SC)
[7][1988] 169 ITR 597 (SC)

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14. In the present case, the amalgamated company, Shaw Wallace, was primarily engaged in the business of property development. We had called for the financials of the assessee for AY 2001-02 to 2005-06 and the same have been furnished. Drawing attention to the same, Mr.Balaji would submit that the assessee maintains two portfolios, one comprising properties under the head 'investments' and the second, under the head 'freehold assets'. The subject property falls in the latter.

15. He places reliance on Circular No.4 of 2007 issued by the Central Board of Direct Taxes (CBDT/Board) to carve out a distinction between shares held as investments and those held as stock-in-trade. He relies on the following judgments to support his arguments:

(i) *Commissioner of Income-tax v. Dalmia Jain & Co. Ltd.*[8]
(ii) *Principal Commissioner of Income Tax-19, Mumbai v. Jogani and Dialani Land Developers and Builders*[9]
(iii) *Commissioner of Income-tax v. Kasturi Estates (P.) Ltd.*[10], *Principal Commissioner of Income-tax*
(iv) *Vadodara-1 v. Gujarat Fluorochemicals Ltd.*[11]
(v) *Commissioner of Income Tax v. Kishan House Builders Association*[12]
(vi) *Commissioner of Income-tax v. Sutlej Cotton Mills Supply Agency Ltd.*[13]
(vii) *Commissioner of Income-tax v. National Finance Ltd.*[14]

[8][1972] 83 ITR 438 (SC)
[9][2020] 117 taxmann.com 140 (SC)
[10][1966] 62 ITR 578 (Madras)
[11][2020] 120 taxmann.com 433 (Gujarat)
[12][2020] 117 taxmann.com 687 (Karnataka)
[13][1975] 100 ITR 706 (SC)
[14][1962] 44 ITR 788 (SC)

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(viii) *Commissioner of Income-tax, Alwar v. Hazarilal Goyal*[15]

16. Hence, he would submit that there is no infirmity in the order of the Tribunal, which had taken note of all relevant facts in proper perspective, and no referable question of law thus arises for consideration in this appeal.

17. The facts in this case are more or less admitted, and we recapitulate the same to the extent to which they it is relevant. The assessee was incorporated on 23.12.1924 and the Memorandum contains inter alia, the following, as a main object:

> *The objects for which the Company is established are :-*
>
> . . . . . .
>
> *(j) To buy, sell and deal in land or buildings for any estate or interest whatsoever or options, rights or easements over the same.*
>
> *(k) To acquire and undertake the whole or any part of the business, goodwill property assets and liabilities of any person or persons, firm or company carrying on any business which this Company is authorized to carry on or engage in or possessed of property suitable for the purposes of this Company.*
>
> *(l) To purchase, take on lease or in exchange hire or otherwise acquire any real or personal property or any rights or privileges which the Company may think necessary or convenient for the purposes of any of its business and in particular any land buildings, easements, machinery, plant and stock-in-trade.*

18. The assessee had amalgamated, by an order passed by the Company Division of this Court, with Shaw Wallace. The effective date of amalgamation was 30.09.2001. The financials for FY 2000-01, i.e. year ending 31.03.2001

[15][2019] 108 taxmann.com 224 (Rajasthan)

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(pre-amalgamation) contain a statement of fixed assets as follows, that includes freehold assets:

Schedules to Consolidated Accounts

4. FIXED ASSETS

Description of Assets	GROSS BLOCK				DEPRECIATION					NET BLOCK	
	At Cost/ Revaluation as at 1st April 2001	Additions	Deletions	As at 31st March 2002	As at 1st April 2001	Additions	For the Year	Deletions	As at 31st March 2002	As at 31st March 2002	As at 31st March 2001
Goodwill	233			233	0				0	233	233
Patents & Designs	47			47	47				47	0	0
Freehold Land	**(a) 150,964**	**4,584**		**155,548**	**0**				**0**	**155,548**	**150,964**
Buildings	(b) 37,704	1,768	26,344	13,128	8,500		225	6,964	1,761	11,367	29,204
Plant & Machinery	(c) 52,146		51,623	523	33,400		156	33,114	442	81	18,746
Misc.Equipments	4,643	407	0	5,050	2,900	9	409	1,444	1,874	3,176	1,743
Furniture, Fittings & Equipments	3,500	2,402	2,273	3,629	1,776	0	290	1,410	656	2,973	1,724
Vehicles	50			50	37		3		40	10	13
Total	249,287	9,161	80,240	178,208	46,660	9	1,083	42,932	4,820	173,388	202,627

(a) Includes Rs19,02,30 thousands added on Revaluation in 1985 and 1993
(b) Includes Rs.2,43,52 thousand added on Revaluation in 1993
(c) Inclues Rs.2,42,06 thousands added on Revaluation in 1983 and 1993.

19. The financials for FY 2001-02, that is, year ending 31.03.2002, (post-amalgamation) contain a detailed note on the scheme of amalgamation and the financial position of the assessee after integration of the financials and assets of Shaw Wallace that reads as under:

	31-03-2002
B.NOTES ON CONSOLIDATED ACCOUNTS *xi) A Scheme of Amalgamation of M\s Shaw Wallace Properties Limited (SWPL) and M\s Gordon Woodroffe Limited (GWL) was filed before the Hon'ble High Courts of Madras and Calcutta on the 30th November 2001 and 4thDecember 2001 respectively. The appointed date for the*	

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	31-03-2002

scheme is 30th September 2001.

Pursuant to the order dated 6th December 2001 passed by the Hon'ble High Court of Madras, a meeting of the Equity Shareholders of GWL was held on the 10th January 2002, when the scheme was unanimously approved by the shareholders. Pursuant to the order dated 6th December 2001, passed by the Hon'ble High Court of Calcutta, a meeting of Equity Shareholders, Preference Shareholders and Debenture holders of SWPL was held on the 7th January 2002, when the scheme was unanimously approved by the stake holders. The High Courts of Madras and Calcutta were pleased to sanction the scheme by their order dated 7th March 2002 and 29th April 2002 respectively which were filed with the Registrar of Companies at Tamilnadu, Chennai and at West Bengal, Kolkata on the 26th March 2002 and 12th June 2002 respectively and thus 12th June 2002 is the Effective Date for the purpose of Amalgamation. The scheme although effective from the appointed date shall become operative from the Effective Date, being the last of the dates on which the certified copies of the orders of the Hon'ble High Courts of Madras and Calcutta confirming the petitions are filed with the respective Registrar of Companies at Tamilnadu, Chennai and West Bengal at Kolkata

Based on the sanctioned scheme of amalgamation the following assets and liabilities of SWPL as at the appointed date and as reduced by the provisions considered necessary, Income and expenditure for the period from the appointed date till the year end have been included in the accounts of GWL as at 31st March 2002

Particulars	Assets	Liabilities
Fixed Asset	50	
Investment	1	
Inventories	9,788	
Sundry Debtors	8,195	
Cash and bank balances	9,805	
Loans and advances	1,86,926	
Accumulated depreciation		9
Unsecured Loans		597

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				31-03-2002
Current liabilities & provisions		*1,05,430*		
. . . . . . *xvi) Quantitative particulars of trading items*				
Particulars	*Purchase/ Acquisition*	*Sales*	*Closing stock*	
Land for development	*7,500-1 No*	*-*	*7,500-1 No*	
Apartments	*2,288-9 Nos*	*297-1 No*	*1,991-8 Nos*	

20. The financials from year ending 31.03.2002 onwards would show that the assessee has maintained two portfolios, one in respect of freehold assets (current assets), and the other, as investments. There is no dispute on the position that the subject land is part of the Freehold land in the statement extracted below, that has been part of the current assets of the assessee, lying with it, we are told, for over 7 decades.

Schedules to Accounts

4. FIXED ASSETS

Description of Assets	GROSS BLOCK				DEPRECIATION					NET BLOCK	
	At Cost/ Revaluation as at 1st April 2002	Additions	Deletions	As at 31st March 2003	As at 1st April 2002	Additions	For the Year	Deletions	As at 31st March 2003	As at 31st March 2003	As at 31st March 2002
Goodwill	233		233	0	0				0	0	233
Patents & Designs	47		47	0	47			47	0	0	0
Freehold Land	**(a) 155,548**		**5,500**	**150,048**	**0**				**0**	**150,048**	**155,548**
Buildings	(b) 8,523		6,522	2,001	1,712		91	1,071	732	1,269	6,811
Plant & Machinery	(c) 523		523	0	442		25	467	0	0	81
Misc.Equipments	2,685		20	2,665	1,558		87	20	1,625	1,040	1,127
Furniture, Fittings &	1,415	552		1,967	601		180		781	1,186	814

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Equipments											
Vehicles	50			50	40		2		42	8	10
Total	169,024	552	12,845	156,731	4,400	0	385	1,605	3,180	153,551	164,624
Previous Year figures	2,46,325	4,772	82,073	169,024	46,658	9	665	42,932	4,400	164,624	199,667

(d) Includes Rs.1,503.47 Lacs added on Revaluation in 1985 and 1993
(e) Includes Rs.55.06 Lacs added on Revaluation in 1993

21. In addition, Schedule 6 in the financials for FY 31.03.2002 onwards under the head 'Inventories' reads as follows:

		As at 31st March 2003		*As at 31st March 2002*
6.INVENTORIES				
At cost or net realisable value:				
Land for development		*7,500*		*7,500*
Apartments		*408*		*1,991*
		---		---
……..		*7,908*		*9,491*

22. There is no category of assets under the head 'investments' in the financials for year ending 31.3.2001, prior to amalgamation. This category of assets is found only in the financials for year ending 31.03.2002 onwards and according to the assessee, only the assets that devolved upon it post amalgamation with Shaw Wallace are classified as 'investments'.

23. The land for development has thus been identified as a separate block of assets distinct and different from the freehold land, which is the original asset base of the assessee comprising fixed assets purchased over the years.

24. We see no necessity to integrate the two, as such integration would be contrary to the treatment that has been accorded by the assessee, both in the

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accounts as well as by conduct. The Department has not raised any suspicion in regard to the accounts of the assessee.

25. To reiterate, the accounts reveal that the assessee holds fixed assets, including freehold land, being land purchased over the years and held as is, without any development. Post amalgamation with Shaw Wallace, it acquired parcels of land which it held as a separate inventory, under the head 'investments'.

26. The subject land admitted, falls within the category of fixed assets held by the assessee for several decades. The Department does not dispute the factual position that the assessee had engaged in similar sales for the year prior to, and post the present assessment year, viz., for AY 2003-04 and 2005-06 as well.

27. For AY 2003-04, the return filed by the assessee offering the sale consideration under the head 'capital gains' has been accepted in the assessment made under scrutiny vide order dated 28.02.2006. The Assessing Authority has dealt with the sale of two sheds at Ambattur Industrial Estate bearing Nos.A9 and D18 and the sale consideration of those properties at Rs.50.00 lakhs and 45.00 lakhs respectively.

28. He had put forth a proposal for adopting the valuation of the Registering Authority at Konnur which was countered by the assessee seeking

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reference to the valuation cell. Ultimately, the assessment was completed adopting the fair market value as set out in the valuation report of the Valuation Officer. Hence, this is not an issue that has passed muster in a routine manner, but one where the Assessing Authority has specifically applied his mind, finding the classification by the assessee and the tax treatment thereof, acceptable.

29. For A.Y.2005-06 as well, the assessee had treated the sale consideration likewise, as capital gain. Though it had received an adverse order from the first appellate authority, it succeeded before the Tribunal, as against which T.C.(A)No.1033 of 2015 had been filed by the revenue, that came to be dismissed as withdrawn on 02.12.2024 on account of low tax effect.

30. Circular No.4/2007 dated 15.06.2007 issued by the CBDT makes a distinction between shares held as stock-in-trade and as investment, and the different tax treatment to be accorded to the two categories, and supports the present case. The relevant portion reads thus:

CIRCULAR NO. 4/2007

Section 28(1) of the Income –Tax Act, 1961 – Business – Income-Chargeable As –Distinction Between Shares Held as Stock-in-Trade and Shares held as Investments – Tests for such a Distinction

CIRCULAR NO. 4/2007, DATED 15-6-2007

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The Income Tax Act, 1961 makes a distinction between a "capital asset" and a "trading asset".

2. Capital asset is defined in Section 2(14) of the Act. Long-term capital assets and gains are dealt with under Section 2(29A) and Section 2(29B). Short-term capital assets and gains are dealt with under Section 2(42A) and Section 2(42B).

3. Trading asset is dealt with under Section 28 of the Act.

4. The Central Board of Direct Taxes (CBDT) through Instruction No.1827 dated August 31, 1989 had brought to the notice of the assessing officers that there is a distinction between shares held as investment (capital asset) and shares held as stock-in-trade (trading asset). In the light of a number of judicial decisions pronounced after the issue of the above instructions, it is proposed to update the above instructions for the information of assessees as well as for guidance of the assessing officers.

……

10. CBDT also wishes to emphasise that it is possible for a tax payer to have two portfolios, i.e., an investment portfolio comprising of securities which are to be treated as capital assets and a trading portfolio comprising of stock-in-trade which are to be treated as trading assets. Where an assessee has two portfolios, the assessee may have income under both heads i.e., capital gains as well as business income.

11. Assessing officers are advised that the above principles should guide them in determining whether, in a given case, the shares are held by the assessee as investment (and therefore giving rise to capital gains) or as stock-in-trade (and therefore giving rise to business profits). The assessing officers are further advised that no single principle would be decisive and the total effect of all the principles should be considered to determine whether, in a given case, the shares are held by the assessee as investment or stock-in-trade.

31. The same methodology as accepted in regard to shares, would equally be applicable to the present case as well, where a clear and categoric distinction has been made between assets held as investments and as freehold land.

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32. The error committed by the CIT(A) is in not noting that the assessee had sold off only a portion of those parcels of land that were held by it as fixed assets, and in respect of which there had been no development. The classification as a capital asset, was not merely on the ground of the accounting treatment, but also in the manner of holding of the asset, and the intention and conduct of the assessee over the years.

33. That apart, he erred in stating that the assessee had engaged in such sales in a routine and regular manner. There is no evidence to support such a conclusion. The aforesaid errors in fact have been corrected by the Tribunal, the highest fact finding body, and the relevant observations and conclusion of the Tribunal are as follows:

> *4.1We are unable to appreciate the Revenue's case in the instant appeal. As would be apparent, it has not been able to even make up its mind as to the nature of the assessee's impugned transaction. While the AO, as well as the Id. CIT(A) consider the impugned sale as a business transaction in view of the company being in the real estate/ property development business, engaging in regular, systematic and organized activity, constituting a business, the Id. DR would contend it to be a single transaction, though in the nature of trade, and which only implies absence of any pre-existing business. We find it as neither, but a case of plain sale by the assessee of its capital asset/s. However, before we dilate on our reasons leading to the said conclusion, we may clarify that there is no dispute or divergence of opinion as regards the law in the matter, which stands amply elucidated by the higher courts of law, to some of which reference has been made by the Revenue. The matter is purely factual, as held by the hon'ble Karnataka high court in the case of CIT vs. B.Narasimha Reddy (supra), as under:*

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"To, determine whether a transaction is an adventure in the nature of trade, the court in each case has to determine the nature of the transaction, its volume, frequency, continuity and regularity and there is hardly any abstract rule, principle or test for application. No individual or single fact can be taken as decisive in finding out the correct character of the transaction. The cumulative effect of all the facts and circumstance has to be taken into consideration for the said purpose."

4.2 If there is a systematic activity, the inference of 'business' and, consequently, of the income arising there-from as being business income, is unmistakable, even as, without doubt, a single venture could also be invested with the attribute of, and thus, be in the nature of a trading transaction. In the present case, firstly, the assessee has not undertaken any land development business till the end of the relevant year, though has acquired land toward the same on the take over of a company in that business. The land sold was acquired as an industrial land, and stands sold as such, i.e., without undertaking any development activity thereon. All that, as we see it, the assessee has done is to realize its capital assets), as in the past, and as acceded to by the Id. AR, even in future. How could that attribute it with a character of trade or business, passes our comprehension? True, the assessee struck a deal with two Developer(s), and was well aware that its land presented a suitable housing site, and may, rather would, have bargained for a good price: But then, is it not entitled to fetch a proper price for its asset? And would that alter the character of the amount realized? These are the questions that arise from the Revenue's stand. In our emphatic view, the answer is clearly 'yes' and no' for the two questions respectively. Realizing a proper or even a better price, as where one is cognizant or aware of the future prospects of his capital asset, without anything more, would not in any manner lend it with the character of a business or trade. It is for the purchaser, who is to buy the asset for his business, assuming business risk, to see what price he can offer; a deal/bargain always represents a balance or trade off between conflicting interests, representing supply and demand. In fact, this is not even the Revenue's case, and there is no finding that the assessee had struck the deal at a higher value, and our observations are aimed at meeting the ld. DR's contention with respect to the assessee being well cognizant and aware of the commercial potential of its asset, and which could well be true. That the assessee acted prudently, extracting a good price for its capital asset, qua which there is no ground as such, would be, nevertheless, of no moment, and would only impact the price and,

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thus, the gain that the assessee stands to realize on its transfer. This would also meet the ld. DR's claim of the land having been sold as an urban land (and not as an industrial land); the same being of no consequence as the income would in either case be assessable only as capital gains.

4.3Secondly, that the assessee is disposing its land on a continuous, regular basis, as appears to be the case, with the assessee's accounts itself exhibiting sale transactions for the preceding and subsequent periods, is again, of little relevance. Would the nature of the transactions stand to alter if the assessee were to dispose of its assets at one go? The land(s) are lying unproductive with it for years, if not decades, and it capitalizes on the opportunity, which its favourable location, as for a housing site, or on account of a boom in the real estate market, presented itself. The only 'activity', if it could be so called, that the assessee can be said to have undertaken for the purpose, was of being aware of its business environment and practicing the virtue of patience. The land user would have to be changed or perhaps may have already been so by the (prospective) buyers (so as to eliminate any risk on that score), but then that is only to enable the user of the asset forthe purpose for which it is being bought, or the purchase contemplated. The continuous selling of its lands by the assessee would not in any manner imbue it with the character a business, and to our mind, only represents a conscious decision by the assessee, being land-rich, to make an exit from its real estate holdings in view of the favourable market conditions.

4.4We could, rather, understand a controversy arising where the assessee, having entered the real estate market as a developer, had instead gone in for purchasing land or developing its existing holding. Here, again, the question that would arise is whether the gain attributable to the increase in the market price over decades could be considered as income of a business which it had entered into a couple of years ago, i.e., for the period for which the business was non-existent. The law, per section 45(2), takes care of such a situation, so that the fair market value of the capital asset on the date of its conversion into stock-in-trade (of the business), would, notwithstanding the fact that there has been no transfer' per se, be deemed as the consideration arising to the assessee on such conversion, liable to capital gains tax on the sale/transfer of the stock-in-trade, while the said consideration becomes the deemed cost at which the stock in trade of the business is acquired. In the instant case, on the other hand, the asset continues to be held as a capital

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asset, and neither do we find any challenge by the Revenue on this aspect; it invoking the charge of capital gains only on the actual sale, and at the sale/transfer price, which again is. not disputed. As afore-stated, the assessee has not yet commenced its' land development business, and sold its land under reference as such, i.e., without undertaking any development activity thereon.

4.5Under the given facts and circumstances, we find no merit in the Revenue's case and, therefore, vacating the findings by the authorities below, we uphold the assessee's impugned claim/s, so that the entire income arising to it would stand to be assed under the head capital gains' on the transfer of a long term capital asset, as per law. separate order is being passed qua the assessee's stay petition in view of our said decision, so that no demand obtains for being stayed. We decide accordingly.

5. In the result, the assessee's appeal is allowed, and its stay application is dismissed as infructuous.

34. The above findings of fact have attained finality as no question has been raised by the Revenue challenging the same. In light of the fact that the accounting methodology followed by the assessee as well as the surrounding facts and circumstances has been accepted by the Revenue, we see no infirmity in the order of the Tribunal.

35. In fact, one might even conclude that in the light of the above discussion, no substantial, referrable question of law arises for consideration. However, since the question of law has already been admitted, we answer the same in favour of the assessee, and adverse to the Revenue. In light of the discussion above, we see no necessity to discuss the cases cited by the parties.

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36. This Tax Case (Appeal) is dismissed. No costs.

(A.S.M.,J.) (M.S.K.,J.)

09-01-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

SL

To

Gwl Properties Ltd
Formerly Gorden Woodroffe Ltd No.36 Rajaji Salai
Ch-01

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DR.ANITA SUMANTH J.

AND

MUMMINENI SUDHEER KUMAR J.

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TCA No. 288 of 2011

09-01-2026

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