REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3265 OF 2016

DEPUTY COMMISSIONER OF GIFT TAX,
CENTRAL CIRCLE-II ..... APPELLANT

VERSUS

M/S BPL LIMITED ..... RESPONDENT

W I T H

CIVIL APPEAL NO. 3272 OF 2016

J U D G M E N T

SANJIV KHANNA, J.

The issue raised in these appeals relates to the valuation of 29,46,500 shares of M/s. BPL Sanyo Technologies Limited and 69,49,900 shares of M/s. BPL Sanyo Utilities and Appliances Limited, which were gifted by the respondent-assessee, M/s. BPL Limited, to M/s. Celestial Finance Limited on 2nd March 1993. The shares of M/s. BPL Sanyo Technologies Limited and M/s. BPL Sanyo Utilities and Appliances Limited, both public limited companies, were listed and quoted on the stock exchanges. However, these gifted shares, being promoter quota shares,

allotted to the assessee on 17th November 1990 and 10th July 1991, were under a lock-in period up to 16th November 1993 and 25th May 1994[1], respectively.

2. As per the provisions of the Gift Tax Act, 1958[2], as it was applicable on the date on which the gift was made, gift tax at the applicable rate is chargeable on the value of the taxable gift. Sub-section (1)(a) to Section 4[3] of the G.T. Act states that where a property is transferred otherwise than for adequate consideration, the amount by which the market value of the property, at the date of the transfer, exceeds the value of the consideration, shall be deemed to be a gift made by the transferor. Sub-section (1) to Section 6[4] of the G.T. Act states that the value of any property, other than cash, which is transferred by way of gift, shall be its value on the date on which

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[1] There appears to be some discrepancy in the date, which need not be authoritatively commented as it is not material for adjudication of the present appeals.

[2] For short, "G.T. Act".

[3] **4. Gifts to include certain transfers. –** (1) For the purpose of this Act, –

(a) where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property at the date of the transfer exceeds the value of the consideration shall be deemed to be a gift made by the transferor:

Provided that nothing contained in this clause shall apply in any case where the property is transferred to the Government or where the value of the consideration for the transfer id determined or approved by the Central Government or the Reserve Bank of India;

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[4] **6. Value of gifts, how determined.–** (1) Subject to the provisions of sub-section (2), the value of any property, other than cash, transferred by way of gift shall for the purpose of this Act, be its value as on the date on which the gift was made and shall be determined in the manner laid down in Schedule II.

(2) Where a person makes a gift which is not revocable for a specific period, the value of the property gifted shall be the capitalised value of the income from such property during the period for which the gift is not revocable.

the gift was made and shall be determined in the manner as laid down in Schedule II of the G.T. Act. Sub-section (1) to Section 6 is subject to the provisions of sub-section (2) to Section 6 of the G.T. Act, which sub-section need not be elucidated as it is not applicable in the context of the present case. It is an accepted position that the machinery provision relating to the method of valuation in Schedule II of the G.T. Act is mandatory and cannot be deviated.[5]

3. Schedule II to the G.T. Act, which incorporates the rules for determining the value of a gifted property, states that the value of any property, other than cash, transferred by way of gift, subject to the modifications as stated, shall be determined in accordance with the provisions of Schedule III of the Wealth Tax Act, 1957[6]. Therefore, we are required to refer to and apply the provisions of Part C of Schedule III of the W.T. Act, which lays down the method of valuation of shares and debentures of a company. For the purpose of the present decision, we are required to interpret Rules 9 and 11 of Part C of Schedule III of the W.T. Act, which relate to the valuation of quoted shares and debentures of companies and

[5] See decisions of this Court in relation to the method of valuation when stipulated under the rules or the Schedule in *S.N. Wadiyar (Dead) through Legal Representative* v. *Commissioner of Wealth Tax, Karnataka*, (2015) 15 SCC 38; and *Commissioner of Wealth Tax, Meerut* v. *Sharvan Kumar Swarup & Sons,* (1994) 6 SCC 623.
[6] For short, "W.T. Act".

valuation of unquoted equity shares in companies other than investment companies respectively and read thus:

> "**9. Quoted shares and debentures of companies. –** The value of an equity share or a preference share in any company or a debenture of any company which is a quoted share or a quoted debenture shall be taken as the value quoted in respect of such share or debenture on the valuation date or where there is no such quotation on the valuation date, the quotation on the date closest to the valuation date and immediately preceding such date.
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> **11. Unquoted equity shares in companies other than investment companies. –** (1) The value of an unquoted equity share in any company, other than an investment company, shall be determined in the manner set out in sub-rule (2).
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> (2) The value of all the liabilities as shown in the balance-sheet of such company shall be deducted from the value of all its assets shown in that balance-sheet; the net amount so arrived at shall be divided by the total amount of its paid-up equity share capital as shown in the balance sheet; the result multiplied by the paid-up value of each equity share shall be the break-up value of each unquoted equity share, and an amount equal to eighty per cent of the break-up value so determined shall be the value of the unquoted equity share for the purposes of this Act.
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> (3) For the purposes of sub-rule (2),–
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> (a) the following amounts shown as assets in the balance-sheet shall not be treated as assets, namely:–
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> (i) any amount paid as advance-tax under the Income-tax Act;
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> (ii) any amount shown in the balance-sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset;

(b) the following amounts shown as liabilities in the balance-sheet shall not be treated as liabilities, namely:–

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the valuation date at a general body meeting of the company;

(iii) reserves, by whatever name called, other than those set apart towards depreciation;

(iv) credit balance of the profit and loss account;

(v) any amount representing provision for taxation, other than the amount referred to in sub-clause (i) of clause (a), to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

Explanation.– For the purposes of this rule, "balance-sheet", in relation to any company, means the balance-sheet of such company (including the Notes annexed thereto and forming part of the accounts) as drawn up on the valuation date and, where there is no such balance-sheet, the balance-sheet drawn up on a date immediately preceding the valuation date, and, in the absence of both, the balance-sheet drawn up on a date immediately after the valuation date.

4. The expressions "quoted share" and "quoted debentures", and "unquoted shares" and "unquoted debentures" have been defined *vide* sub-rules (9) and (11), respectively, to Rule 2 of Part A of Schedule III of the W.T. Act, which read:

> "**2. Definitions.-**… (9) "quoted share" or "quoted debenture", in relation to an equity share or a preference share or, as the case may be, a debenture, means a share or debenture quoted on any recognised stock exchange with regularity from time to time, where the quotations of such shares or debentures are based on current transactions made in the ordinary course of business.
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> Explanation. – Where any question arises whether a share or debenture is a "quoted share" or a "quoted debenture" within the meaning of this clause, a certificate to that effect furnished by the concerned stock exchange in the prescribed form shall be accepted as conclusive;
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> (11) "unquoted share" or "unquoted debenture", in relation to an equity share or a preference share or, as the case may be, a debenture, means a share or debenture which is not a quoted share or a quoted debenture."

As per the definitions, the expression "quoted share" in case of an equity share means a share which is quoted on any recognised stock exchange with regularity from time to time and where the quotation of such shares is based on current transactions made in the ordinary course of business. Explanation to sub-rule (9) of Rule 2 of Part A of Schedule III of the W.T. Act states that when a question arises on whether a share is a quoted share within the meaning of the rule, a certificate to that effect furnished by the concerned stock exchange in the prescribed form shall be accepted as conclusive. The expression "unquoted share", in relation to an equity share, means a share which is not a quoted share.

5. We are in agreement with the view expressed in the impugned judgment, which observes that the equity shares under the lock-in period were not “quoted shares”, for the simple reason that the shares in the lock-in period were not quoted in any recognised stock exchange with regularity from time to time. There are no current transactions relating to these shares made in the ordinary course of business. These equity shares being under the lock-in period could not be traded and, therefore, remained unquoted in any recognised stock exchange. There, therefore, would be no current transactions in respect of these shares made in the ordinary course of business.

6. When the equity shares are in a lock-in period, then as per the guidelines issued by the Securities and Exchange Board of India (SEBI), there is a complete bar on transfer, which is enforced by inscribing the words “not transferable” in the relevant share certificates. This position is accepted by the Revenue, which, however, has relied upon a general circular issued by SEBI, wherein it is stated that the shares under the lock-in period can be transferred *inter se* the promoters. This restricted transfer, in our opinion, would not make the equity shares in the lock-in period into “quoted shares” as defined *vide* sub-rule (9) to Rule 2 of Part A of Schedule III of the W.T. Act, as the lock-in shares are not quoted in

any recognised stock exchange with regularity from time to time, and it is not possible to have quotations based upon current transactions made in the ordinary course of business. Possibility of transfer to promoters by private transfer/sale does not satisfy the conditions to be satisfied to regard the shares as quoted shares.

7. Rule 11 of Part C of Schedule III of the W.T. Act applies to "unquoted shares" which, as per the definition *vide* sub-rule (11) to Rule 2 of Part A of Schedule III of the W.T. Act, means a share which is not a "quoted share". Sub-rule (1) to Rule 11 of Part C of Schedule III of the W.T. Act, states that other than investment companies, the value of unquoted equity shares is to be determined in the manner specified in sub-rule (2) to Rule 11 of Part C of Schedule III of the W.T. Act. Sub-rule (2) to Rule 11 of Part C of Schedule III of the W.T. Act states the method of valuation in the case of "unquoted equity shares in any company, other than investment companies", which, in the context of the limited controversy raised before us, need not be elaborated. Suffice it is to observe that Rule 11 of Part C of Schedule III of the W.T. Act is a statutory rule which prescribes the method of valuation of "unquoted equity shares" in companies, other than investment companies, which prescription and method of valuation is mandatory in nature. The effect of Rule 11 of Part C of Schedule III

of the W.T. Act is that unquoted shares must be valued as per the formula prescribed. No other method of valuation is permitted and allowed.

8. Equity shares which are quoted and transferable in the stock exchange are to be valued on the basis of the current transactions and quotations in the open market. The market quotations would reflect the market value of the equity shares that are transferable in a stock exchange, but this market price would not reflect the true and correct market price of shares suffering restrictions and bar on their transferability. The shares in question would become transferable post the lock-in period. It is a fact that the market price fluctuates, and the share prices can move up and down. Share prices do not remain static. Equally, the restriction or bar on transferability has an effect on the value/price of the shares. Easy and unrestricted marketability are important considerations that would normally impact valuation/price of a share. Therefore, one may have to depreciate the value of the lock-in equity shares, viz. shares that are free from such restriction.

9. In terms of the Rules, we cannot apply a hybrid method of valuation while applying Rule 9 of Part C of Schedule III of the W.T. Act, which prescribes the method of valuation for quoted shares. *Ad hoc*

depreciation/reduction from the quoted price of equity shares transferable in the open market is not permitted and allowed *vide* Rule 9 of Part C of Schedule III of the W.T. Act. The shares in question being "unquoted shares", therefore, have to be valued in terms of Rule 11 as a standalone valuation method. This would be in accord with sub-section (1) to Section 6 of the G.T. Act, which states that the value of a property, other than cash, transferred by way of gift, shall be valued on the date on which the gift was made and shall be determined in the manner as laid down in Schedule II of the G.T. Act, which, as noticed above, makes the provisions of Schedule III of the W.T. Act applicable.

10. Faced with the aforesaid position, the Revenue has relied upon Rule 21 of Part H of Schedule III of the W.T. Act, which reads thus:

> "**21. Restrictive covenants to be ignored in determining market value**.–For, the removal of doubts, it is hereby declared that the price or other consideration for which any property may be acquired by or transferred to any person under the terms of a deed of trust or through or under any restrictive covenant in any instrument of transfer shall be ignored for the purposes of determining under any provision of this Schedule, the price such property would fetch if sold in the open market on the valuation date."

In order to understand the import of Rule 21 of Part H of Schedule III of the W.T. Act, it is necessary to refer to earlier judgments of this Court on the valuation of equity shares or property not freely transferrable or where transfer is restricted. Reference to

these decisions is also relevant as it supports our interpretation in highlighting the difference between "quoted" and "unquoted" shares.

11. In ***Ahmed G.H. Ariff and Others*** v. ***Commissioner of Wealth Tax, Calcutta***[7], a three Judge Bench of this Court, in a matter relating to the W.T. Act for a period when Schedule III of the W.T. Act was not applicable, had observed that the expression 'property' is a term of the widest import as it signifies every possible interest which a person can clearly hold or enjoy. 'Property', as a term, should be given a liberal and wide connotation, and extends to those well-recognised types of interests that have the insignia or characteristics of a proprietary right. Having held so, this Court rejected the argument of the assessee therein that his right to receive a specified share of the net income from an estate in respect of a *Wakf-Alal-Aulad* was not an asset assessable to wealth tax, on the ground that this asset had 'nil' or no value as it was of a non-transferable nature. It was held that wealth tax under Section 3 of the W.T. Act is imposed on the charge of net wealth, which necessarily includes in it every description of property of the assessee, movable or immovable, barring the exceptions as stated

[7] (1969) 2 SCC 471.

in the provisions of the W.T. Act. More significant for our purposes are the observations that the words "if sold in the open market" does not contemplate actual sale or the actual state in the market, but only enjoins that it should be assumed that there is an open market and the property, even with the restrictions, can be sold in such a market, and on that basis the value has to be found out. Therefore, the expression "if sold in the open market" refers to a hypothetical case, where, for the purpose of valuation, one must assume that there is an open market in which an asset with restrictions or bar on transfer can be sold. This decision was followed in ***Purshottam N. Amarsay and Another*** v. ***Commissioner of Wealth Tax, Bombay***[8], which was a case relating to the valuation of the right to property of the assessee in a trust. The argument of the assessee that the right to property in a trust, being a personal estate, is incapable of being sold in the open market and, therefore, it would have 'nil' or no value was rejected. This decision in this context quotes ***Ahmed G.H. Ariff*** (supra). At this stage, it would be relevant to refer to the decision of the House of Lords in ***Commissioners of Inland Revenue*** v. ***Crossman***[9], which decision was referred to with approval in both ***Ahmed G.H. Ariff***

[8] (1972) 4 SCC 376.
[9] (1937) A.C. 26.

(supra) and ***Purshottam N. Amarsay*** (supra). The majority decision of the House of Lords in ***Crossman's*** case (supra), a case relating to estate duty, holds that where the right to transfer shares of a limited company is restricted and while its value is not 'nil' or '0', it should be valued on the basis and accounting for the restriction. The contention that in view of the bar on transfer no property was actually passed on death, and a fresh set of rights in favour of the legatees came into existence was disapproved. At the same time, it was held that the shares cannot be valued ignoring the restrictions on transfer, as contained in the Articles of Association in that case, as that would be to value the property which the deceased as an owner did not own. Even if the shares were not transferable in the open market in terms of the Articles of Association, the shares had certain privileges and rights, which form the ingredients in its value. The expression "if sold in the open market" does not alter the nature of the property. What the expression postulates is to permit the assessee or the authorities to assume a sale in the open market, which is to limit the property to be valued at the price that a person would be prepared to pay in the open market with all rights and obligations. The value would not exceed the sum, which a willing purchaser would pay, given the fact that the right to purchase is restricted or barred. This does not imply

that the valuation of the shares can be made artificially and by ignoring the restrictions on the property. Valuation cannot ignore the limitations attached to the shares. This judgment in ***Crossman's*** case (supra) has been subsequently reiterated by the House of Lords in ***Lynall and Another*** v. ***Inland Revenue Commissioners***[10]. Referring to the decision in ***Crossman's*** case (supra) and a decision of the High Court of Australia in ***Abrahams*** v. ***The Federal Commissioner of Taxation***[11], a Division Bench of the Madras High Court in ***R. Rathinasabapathy Chettiar*** v. ***Commissioner of Wealth-Tax, Madras***[12], in our opinion, has rightly observed:

> "13. In *Abraham* v. *Federal Commissioner of Taxation* at the time of his death a deceased owned shares in five companies, four of which carried on investment business, and the fifth a pastoral business. The brother of the deceased who held equal interest in the whole of the issued capital of the companies was appointed the sole executor. The memorandum and articles of association of the four companies contained a restriction on transfer of shares whereby the board of directors may refuse to register any transfer of shares to a transferee who was in their opinion an undesirable person to be admitted as a member of the company. In the fifth company the articles of association provided that the governing directors should have a right at any time of purchasing the shares of all the-members of the company, the purchase price to be the amount paid up thereon or, at the option of the governing directors, the amount which bore the same proportion to the excess value of the assets over the liabilities of the company as the total amount paid up on the shares bore to the total paid up capital of the company. The question arose as to how the

[10] (1972) A.C. 680.
[11] (1944) HCA 32.
[12] (1974) 93 ITR 555.

> shares left by the deceased are to be valued for the purpose of estate duty. The court held that the assessment of value of the shares held by the deceased in the five companies must normally be made principally on the basis of the income yield including the strong probability of distribution of accumulated profits and that the effect of the restrictions on transfer of shares and the right of pre-emption given to the governing directors to purchase the shares must all be taken note of and depreciation on that account had to be allowed for in the primary valuation. The above case laid down the principle that the restrictions contained in the articles of association on the transfer and also on the price for which the shares could be transferred has to be ignored and the transferability in the open market must be assumed, for the purpose of valuation, but that the market value of the shares has to be depreciated to a certain extent having regard to the said restrictions contained in the articles of association, and that if the market value of such shares could not be ascertained otherwise, it is possible to value the shares on a break-up basis with reference to the balance-sheet of the company for the relevant year."

12. The aforesaid decision was subsequently followed by the Madras High Court in two other decisions, ***Commissioner of Wealth Tax, Chennai*** v. ***Shri Thirupathy Kumar Khemka***[13], and the decision dated 12th April 2019 in ***Commissioner of Income Tax, Chennai*** v. ***Sadhana Devi***[14]**,** which relates to the valuation of shares in lock-in period as per the provisions of Schedule III of the W.T. Act.

13. Read in this manner, Rule 21 of Part H of Schedule III of the W.T. Act is a rule which has been enacted to clarify and remove doubts. It has reiterated and affirmed the dictum in ***Ahmed G.H. Ariff*** (supra) and ***Purshottam N. Amarsay*** (supra) that notwithstanding

[13] (2012) SCC OnLine Mad 2562.
[14] Tax Case No. 788 of 2008.

the negative covenants prohibiting or restricting transfer, the property should be valued for the purpose of the W.T. Act and the G.T. Act, but the valuation is not by overlooking or ignoring the restrictive conditions. The shares in the lock-in period have market value, which would be the value that they would fetch if sold in the open market. Rule 21 of Part H of Schedule III of the W.T. Act permits valuation of the property even when the right to transfer the property is forbidden, restricted or contingent. Rights and limitations attached to the property form the ingredients in its value. The purpose is to assume that the property which is being valued is being sold, and not to ignore the limitations for the purpose of valuation. This is clear from the wording of Rule 21 of Part H of Schedule III of the W.T. Act, which when read carefully expresses the legislative intent by using the words “hereby declared”. The Rule declares that the price or other consideration for which any property may be acquired by, or transferred, to any person under the terms of a deed of trust or through any other restrictive covenant, in any instrument of transfer, is to be ignored as per the provisions of the Schedule III of the W.T. Act. However, the price of such property is the price of the property with the restrictions if sold in the open market on the valuation date. In other words, notwithstanding the restrictions, hypothetically the property would

be assumed to be saleable, but the valuation as per the Schedule III of the W.T. Act would be made accounting and taking the limitation and restrictions, and such valuation would be treated as the market value. The rules do not postulate a charge in the nature and character of the property. Therefore, the property has to be valued as per the restrictions and not by ignoring them.

14. Thus, Rule 21 of Part H of Schedule III of the W.T. Act permits valuation and ascertainment of the market value as per the provisions of Schedule III of the W.T. Act, but does not state that the valuation will be done by disregarding the restrictions, or by enhancing the rights which have been transferred, or by revaluation of the asset when provisions of Schedule III are invoked for the purpose of valuation of an asset under the W.T. Act.

15. However, one aspect is required to be clarified, viz. explanation to Rule 2(9) of Part A, Schedule III of the W.T. Act. The certificate from the concerned stock exchange is only to state whether an equity share, preference share or debenture, as the case may be, was quoted with the regularity from time to time and whether the quotations of such shares or debentures are based on current transactions made in the ordinary course of business. The explanation does not prohibit the authority, tribunal or the court from

examining whether a particular share, be it equity or preference share, is a “quoted share” or an “unquoted share” in terms of sub-rules (9) and (11) of Rule 2 of Part A of Schedule III of the W.T. Act. This right which is conferred on the authorities under the W.T. Act or the G.T. Act is not delegated to the stock exchange. A decision of the authority is amenable and can be examined when challenged in an appeal.

16. In view of the aforesaid discussion, and for the reasons stated above, the present appeal by the Revenue is to be dismissed. We must record that the assessee has not pressed the ground raised in its appeal challenging the impugned order, which is to be dismissed as not pressed. We order accordingly. There shall be no order as to costs.

.....J.
(SANJIV KHANNA)

.....J.
(J.K. MAHESHWARI)

NEW DELHI;
OCTOBER 13, 2022.