M/S GUZDAR KAJORA COAL-MINES LTD. CALCUTTA

v.

THE COMMISSIONER OF INCOME TAX, CALCUTTA

July 31, 1972

[K. S. HEGDE, A. N. GROVER AND D. G. PALEKAR, JJ.]

Income Tax Act (11 *of* 1922), *ss.* 10(2) *(vi) and* 10(5)—*'Original cost to assessee', meaning of—Power of Revenue Authorities to go behind the valuation and allocation in sale deed.*

The appellant purchased on July 1, 1945, the property of a colliery company and the consideration of Rs. 6 lacs was allocated in the sale deed in a certain manner among the various items purchased. From the assessment year 1946-47 to the assessment year 1952-53, the appellant claimed depreciation on the basis of the written down value of the assets as per the assessment record of the vendor-company, and the Income-tax officer allowed depreciation on that basis. For the assessment year 1952-53, however, the appellant contended that the depreciation should have been worked out on the basis of balance-sheet valuation of the assets as per the audited accounts submitted by the appellant and as claimed in their return. The Appellate Assistant Commissioner held against the appellant.

On appeal, the appellate Tribunal remanded the matter to the Income-tax Officer, and the Income-tax Officer, after inquiry, held that some of the directors of the vendor company and the appellant were the same, that the valuation of the depreciable assets had been written up while that of the non-depreciable assets was written down and that no provision was made for the goodwill of the vendor company even though it was making good profits. He made the allocation of Rs. 6 lacs in a different manner, and included the goodwill of the vendor also as having been sold to the appellant, and made provision for it from out of the Rs. 6 lacs. The Tribunal accepted the report of the Income-tax Officer and held that when the settled practice was sought to be reopened by the appellant the Income-tax Officer had a right to see whether there was any justification for the departure, that the break up of the valuation in the sale deed was in fact arbitrary and that it was unlikely that the goodwill was provided for in the break up of the valuation in the sale deed.

On reference, the High Court also held that the Income-tax Officer was competent to go beyond the conveyance and refix the valuation and that he had correctly worked out the valuation of the goodwill after examining all the relevant facts and reports of experts and that the method adopted was not challenged by the appellant.

Dismissing the appeal to this Court,

HELD : In the case of an asset, other than ocean-going ships, with regard to which depreciation allowance is claimed under s. 10(2)(vi) of the Income-tax Act, 1922, in view of s. 10(5), the original actual cost to an assessee of the asset has to be ascertained for the purpose of finding out its written down value. For the purpose of getting the benefit of cl. (c) of the proviso to s. 10(2)(vi) also the original cost to the assessee, that is the person who owns the asset and who is being assessed, has to be ascertained. [748F-H]

A The original cost of a particular asset is a question of fact which has to be determined on the evidence or on the material produced before or available to the Income-tax authorities. Any document or formal deed mentioning the consideration or the cost paid for the purchase of an asset by an assessee would be a piece of evidence and *prima facie* the statements or figures given therein show how much the cost of the asset to the assessee is. But if circumstances exist showing that a fictitious B price has been put on the asset or there is fraud or collusion between the vendor and the vendee and there has been inflation or deflation of value for ulterior purposes it is open to the Income-tax authorities to refuse to accept the price mentioned in the deed or alleged by the assessee and to ascertain what the actual original cost was. [749C-E]

Even if it is not expressly mentioned that goodwill has been sold it can be shown and ascertained by evidence whether it has been purchased C or not by the assessee. [749F-G]

Commissioner of Income Tax, Madras v. *The Buckingham & Carnatic Co. Ltd. Madras*, [1935] I.T.R. 384; *Jogta Coal Co. Ltd.* v. *Commissioner of Income Tax, West Bengal*, 36 I.T.R. 521; *Pindi Kashmir Transport Co. Ltd.* v. *Commissioner of Income Tax, Lahore* 26 I.T.R. 595; and *Kalooram Govindram* v. *Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara*, 57 I.T.R. 335, referred to.

D Therefore, in the circumstances of this case it was open to the Income-tax authorities to go behind the valuation as also the allocation given in the deed of conveyance and to determine afresh the valuation as well as the allocation between the depreciable and non-depreciable assets. [749G-H]

CIVIL APPELLATE JURISDICTION : C.A. Nos. 2132 and 2133 of 1970.

E Appeal by certificate from the judgment and order dated June 22, 1965 of the Calcutta High Court in I.T. Reference No. 36 of 1961.

Sukumar Mitra J. L. Hathi, T. A. Ramachandran, K. L. Hathi and *P. C. Kapur*, for the appellant.

F *V. S. Desai, R. N. Sachthey* and *B. D. Sharma*, for the respondent.

The Judgment of the Court was delivered by—

Grover, J. These appeals have been brought by certificate from a judgment of the Calcutta High Court in two Income tax G References.

It is most unfortunate that the statement of the case contains certain omissions and errors and does not appear to have been drafted with the usual care with which such statements are drawn.

H The assessee Guzdar Kajora Coal Mines Ltd. which was incorporated on July 4, 1945 purchased by a deed of conveyance dated April 3, 1966 executed by the liquidators of Guzdar

Kajora Colliery Co. Ltd. all the colliery lands, hereditaments and premises, mines, minerals, powers and privileges and all other hereditaments together with the machinery thereon belonging to the latter company. It was stipulated in the deed of conveyance that the sale was to be effective from July 1, 1945. The consideration for the transfer was Rs. 6 lacs and was allocated as follows :—

"(a) the value of the machinery plants stores including stock of goods grains coals at the pithead and other movable properties appertaining to the said colliery the property in which is capable of passing by delivery being .... Rs. 3,50,000/-.

(b) the value of the buildings and structures belonging to the said colliery being— Rs. 1,50,000/-.

(c) the value of the rest of the properties appertaining to the said colliery not capable of being passed by delivery being—Rs. 1,00,000/-"

Soon after the assessee company came into existence it took over the business from the vendor company and claimed depreciation for the assessment year 1946-47 on the basis of the figures the comparative statement of which is given in the statement of the case. This statement contains the written down value as per the assessment record of the vendor company the valuation of the assets as per the balance sheet of the vendor company and the valuation by the assessee company as per balance sheet as on December 30, 1945. The Income tax Officer allowed depreciation on the basis of those figures. This state of affairs continued till the assessment year 1952-53 when the Income tax Officer again allowed depreciation on the old basis. Before the Appellate Assistant Commissioner the assessee raised a ground that the Income tax Officer should have worked out the depreciation figures on the basis of balance sheet valuation of the assets as per the audited accounts submitted by the assessee and as claimed in the return. With regard to the assessment year 1953-54 the same position was taken up. The assessee appealed to the Income tax Appellate Tribunal, having failed in its contentions before the Appellate Assistant Commissioner.

It was contended before the Appellate Tribunal by the assessee that although it had paid a sum of Rs. 6 lacs as consideration for the transfer of the mines the value taken by the department for the purpose of determining depreciation was much lower. It was pointed out that the purchase had been made after obtaining the

A opinion of an expert and the assessee was being subjected to great hardship by depreciation being determined only on the old written down value of the assets and not on the basis of the original cost of acquisition. The Appellate Tribunal was of the view that substantial injustice would result to the assessee if the depreciation continued to be allowed on the old basis if the case of the assessee B had any substance. It was felt that a proper investigation as to the value paid by the assessee in taking over the old company was necessary. The matter was remanded to the Income-tax Officer to hold an inquiry after giving an opportunity to the assessee to place all the available material in support of its claim. With regard to the assessment year 1953-54 also the case was C remanded with similar directions.

The Income-tax Officer made a report on July 6, 1960. According to his findings some of the Directors and Shareholders of the two companies were the same and they were connected in many ways. Furthermore the valuation of the depreciable assets and the consumable stores had been written up whereas the valua- D tion of the non-depreciable assets like mines etc. had been written down. As regards the report of the expert A. N. Mitter dated September 1, 1945 he was unable to contact him in spite of making an effort to do so. The report made by the second expert S. N. Mullick dated October 19, 1955 and January 30, 1957 together E with the clarification made by him on November 20, 1959 were considered by him. He also examined S. N. Mullick under s. 37 of the Indian Income-tax Act, 1922, hereinafter called the 'Act'. He came to the conclusion that the vendor had been making good profits but no provision had been made for the goodwill of the company in the business and if such a provision had been made F it would have worked out at Rs. 2,56,960/- having regard to the profits made for the preceding four years. He made an allocation of Rs. 6 lacs as follows :—

"(1)	Good-will ..	Rs. 2,56,960/-
(2)	Mines and development as per balance-sheet of M/s. Guzdar Gajore Colliery Co. Ltd. as at 30-6-45. ..	Rs. 2,48,323/-
(3)	Stores and stock ..	Rs. 60,744/-
	and worked out the value of other depreciable assets at ..	Rs. 33,973/-"

H Before the Appellate Tribunal the remand report of the Income-tax Officer was assailed on behalf of the assessee on various grounds. The Tribunal observed that when the assessments for the years 1946-47 and 1947-48 were made the assessee

chose to give the valuation in its balance-sheet on a certain basis which was accepted and no appeal was taken to the higher authorities and although the rule of estoppel could not be applied but "acquiscence of the assessee shows which way the wind blew". When a settled thing was sought to be reopened the Income-tax Officer had a right to see whether there was any justification for the "radical departure from the settled practice". It was held that the Income-tax Officer was to go behind the valuation. As regards the good-will the contention raised on behalf of the assessee was that the same was included in the item of one lakh mentioned in the sale deed. According to the report of Mr. Mullick it was included in the item of Rs. 3,50,000. This is what the Tribunal proceeded to observe :

> "It seems to us, the simple truth of the matter is that the figure of Rs. 3,50,000/-, Rs. 1,50,000/- and Rs. 1,00,000/- were arbitrarily put and there was no clear cut or understandable break up of valuation (?) clause 3 of the break up in the deed of 3rd April 1946, which talks of the value of the rest of the properties appertaining to the said colliery not capable of being passed by delivery being valued at Rs. 1,00,000/- shows that these properties which had not been in clause 1 and 2 were comprised in this and it seems too much to say that good-will is included in this. It would be more true to say that good-will was thought of or conceived of but not provided for in the break up of valuation".

The appeals were consequently dismissed.

The assessee moved the Tribunal for referring certain questions of law to the Tribunal. The following question was framed by the Tribunal and referred to the High Court :

> "Whether on the facts and in the circumstances of the case the Income-tax Officer was competent to go beyond the conveyance and fix a valuation of the assets on his own ?"

The High Court was of the view that the Income-tax Officer was competent to make a fresh computation as to the value of the assets of the assessee if the facts and circumstances of a particular case justified following such a course. Even on the question of valuation of the good-will it was observed :

> "Further, it should be remembered that although the Income-tax Officer has made the valuation of the good-will by working out the normally accepted method of taking the profits of the four preceding years, this

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> method of calculation or this normal practice has not been challenged by the assessee. The revenue has examined all the relevant facts of the case including the reports of Mr. Mitter and Mr. Mullick and the Tribunal has agreed with those findings of facts and we do not think that we can interfere with those findings"

B

The answer to the question referred was given in the affirmative.

Learned counsel for the assessee has assailed the decision of the High Court on a number of grounds. It has been urged *inter alia* that the High Court had not kept in view the general and C well established principle that the statement with regard to valuation contained in a formal document should be *prima facie* accepted as correct. There can be no justifiction, it has been pointed out, for any court or Tribunal "to rip up a transaction not impeached as dishonest and not proved to be such, merely because the company may have paid an extravagant price for their D property". A great deal of emphasis has been laid on behalf of the assessee on the report submitted by the experts justifying the valuation given in the deed of conveyance. In the absence of fraud, collusion, inflation or false transaction made with an ulterior purpose the Income tax authorities, it is said, were precluded from going behind the agreement of purchase in determining the purchase price fixing their own valuation. The E other point canvassed on behalf of the assessee is that good-will was not included in the valuation given in the deed of conveyance nor was it ever intended that any good-will of the business should be sold by the vendor company. This contention, however, appears to run counter to what was argued before the High Court and the Tribunal nor can it be said to be covered F by the question which was referred. On the case as put before the Appellate Tribunal and the High Court and the question referred with regard to the two assessment years in question we are unable to see any such error or infirmity that would justify interference by us in these appeals.

It has been strenuously urged on behalf of the assessee that G since the decision of the Tribunal or the High Court could not operate as *res judicata* for other assessment years with regard to which assessments are still pending, the assessee would be entitled to raise all the points which are relevant with regard to the question of valuation for the purpose of determining depreciation. We have been pressed to indicate broadly the principles for future guidance as it will be open to the assessee to raise H all the points relevant for the purpose of determination of the amount of depreciation allowance in the assessments which are still pending and have not been finally disposed of.

Section 10(2)(vi) of the Act, to the extent it is material is as follows :—

"(2) Such profits or gains shall be computed after making the following allowances, namely :—

(vi) in respect of depreciation of such buildings machinery, plant or furniture being the property of the assessee, a sum equivalent, where the assets are ships other than ships ordinarily plying on inland waters, to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed and in any other case, to such percentage on the written down value thereof as may in any case or class of cases be prescribed;

.....

Provided that—

(a) .....

(b) .....

(c) The aggregate of all allowances in respect of depreciation made under this clause and clause (vi-a) or under any Act repealed hereby, o under the Indian Income-tax Act, 1886 (II of 1886), shall, in no case exceed the original cost to the assessee of the buildings, machinery, plant or furniture, as the case may be;"

Keeping in view sub-s. (5) of s. 10 of the Act the original actual cost to the assessee of the asset with regard to which depreciation allowance is claimed has to be ascertained for the purpose *inter-alia* of finding out the writen down value in case of assets other than ocean going ships. For the purpose of getting the benefit of clause (c) of the proviso to sub-section (2)(vi) also the original cost has also to be ascertained. The Privy Council laid down in *Commissioner of Income tax, Madras* v. *The Buckingham and Carnatic Co. Ltd. Madras*(1), that the word "assessee" in s. 10(2)(vi) of the Act refers to the person who owns the assets and who is being assessed and depreciation allowance has to be based on the original cost of such property to such person. This principle was laid down in a case where the assessee had acquired the business of another assessee and it was emphasised that the original cost to be conidered was the original cost to the person who was being actually assessed and not the original cost of those assets to the previous

(1) [1935] I.T.R. 181

A owner of the business. Reference was made to the above decision of the Privy Council in the judgment of this Court in *Jogta Coal Co. Ltd.* v. *Commissioner of Income tax West Bengal*(1) and it was observed :

> "We do not think that there is any doubt on the
> B wording of the section or on the interpretation that has been put upon those words that the cost to be calculated for the purpose of depreciation allowance is the cost to the assessee and not to the person who makes the sale....."

Now the original cost of a particular asset is a question of fact
C which has to be determined on the evidence or the material produced before or available to the Income tax authorities. Any document or formal deed mentioning the consideration or the cost paid for the purchase of an asset by an assessee would be a piece of evidence and *prima facie* the statements or figures given therein would show how much the cost of the asset to the assessee is. But if circumstances exist showing that a fictitious
D price has been put on the asset or there is fraud or collusion between the vendor and the vendee and there has been inflation or deflation of value for ulterior purposes it is open to the Income tax authorities to refuse to accept the price mentioned in the deed or alleged by the assessee and to ascertain what the actual cost was : See *Pindi Kashmir Transport Co. Ltd.* v.
E *Commissioner of Income-tax Lahore*(2) and *Kalooram Govindram* v. *Commissioner of Income tax Madhya Pradesh, Nagpur and Bhandara*(3). In this view of the matter it is open to the Income tax authorities to determine and to the assessee to show whether the good-will of the business is or is not included in the consideration or the price paid for the acquisition of the asset.
F In other words even if it is not expressly mentioned that goodwill has been sold it can be shown and ascertained by evidence whether the same has been purchased or not by the assessee. The expression "good-will" has been considered and explained by this Court in *S. C. Cambatta & Co. P. Ltd.* v. *Commissioner Excess Profits Tax, Bombay*(4) and nothing more need be said
G about it. The principles stated by us are by no means exhaustive and are mainly illustrative.

Keeping in view the facts of the present case we may make it clear that if circumstances exist for going behind the valuation as also the allocation given in the deed of conveyance it was and is open to the Income tax authorities to determine the valuation as well as the allocation between depreciable and
H non-depreciable assets.

(1) 36 I.T.R. 521 (2) 26 I.T.R. 595
(3) 57 I.T.R. 335 (4) 41 I.T.R. 500

The present appeals, however, must fail for the reasons stated earlier and are hereby dismissed. We make no order as to costs in this Court.

V.P.S. *Appeal dismissed*