(2008) 09 CAL CK 0021

Calcutta High Court

Case No: IT Appeal No. 119 of 2005

Commissioner of Income Tax		APPELLANT
	Vs	
Coats of India Ltd.		RESPONDENT

Date of Decision: Sept. 8, 2008

Acts Referred:

- Income Tax Act, 1961 - Section 2(14), 47

Citation: (2009) 221 CTR 775 : (2009) 315 ITR 215 : (2009) 176 TAXMAN 438

Hon'ble Judges: Sankar Prasad Mitra, J; Pinaki Chandra Ghose, J

Bench: Division Bench

Judgement

1. The only question which is tried to be pressed before us by Mr. Bhowmick in this matter is as per provision of Section 47(iv) of Income Tax Act whether the transfer of capital asset by a company to its wholly subsidiary company could be regarded as transfer and therefore capital gains tax could be levied on such transfer.

2. The facts of this case on that ground briefly are as follows:

The entire unit of packing coating units of the assessee has been transferred to M/s. Coates Coating India (P.) Ltd. ("CCIPL") with effect from 31-12-1997. While transferring the units the assessee received a sum of Rs. 29,89,87,000 by way of adjustment and issue of equity shares of Rs. 10 each in CCIPL credited as fully paid-up share capital. In the process of such transfer a surplus amount of Rs. 19,14,55,804 was credited to the accounts of the assessee over and above the book value of the assets actually transferred to the CCIPL as on 31-12-1997. The assessee claimed that this excess amount is not taxable on the ground that the assessee transferred the assets of the company to its wholly subsidiary company. It was further stated that the unit was transferred with all its assets and therefore, the value of each of the items could not be determined separately as the sale was made on slump basis and accordingly the actual profit from each asset could not be determined.

3. Where slump sale is made with everything including lock, stock and barrel, there is no scope for determination of the profit for individual items. Therefore, the assessee claimed that the profit could not be determined as the excess amount was not taxable. As per the provision of Section 47(iv) the transfer of capital asset by a company to its wholly subsidiary company (unit) could not be regarded as transfer and, therefore, capital gains tax could not be levied on such transfer.

4. Such contention was not accepted by the Assessing Officer. The Assessing Officer considered the sum of Rs. 19,14,55,804 credited to capital as capital gains on account of transfer of goodwill since CCIPL had in its accounts treated the same as goodwill. The Assessing Officer also did not accept the contention of the assessee that even if the transfer was treated of goodwill, tax is not leviable due to the fact that the transfer was to a wholly owned subsidiary company, and accordingly, the exemption is available to the assessee u/s 47(iv) of the said Act. It appears that the Assessing Officer finally held that Section 47(iv) was not applicable to the present case as the transfer of business undertaking included transfer of stock-in-trade and the proviso to Section 47(iv) excludes the operation of Section 47(iv) in case capital asset is transferred as stock-in-trade.

5. The CIT (Appeals) took into consideration all such facts and the further fact that CCIPL was not a wholly owned subsidiary of the assessee as on the date of coming into effect of the Scheme of Arrangement and that amalgamation (or demerger) of these companies was also accepted by the Hon''ble High Court in the Company jurisdiction.

6. Therefore, there cannot be a formula which had no connection with the value of the individual assets and the liabilities. The price was determined that of the business and therefore, there is no question of picking up any portion of such price and charging its capital gains. It appears to us that before transfer of the company, the said company had issued subscribed share capital and the original share certificates were produced before the CIT (Appeals). The company had transferred a business undertaking as a whole which was a capital asset in itself, that is the contention of Mr. Bhowmick before us. We have also considered the aspect which has been decided by the Learned Tribunal and the CIT (Appeals). The CIT has held that the price was approved by the High Court and did not have any relation with the value of the assets of the undertaking. It further appears that in respect of the grievance of the Assessing Officer that transfer of the undertaking including transfer of stock-in-trade also, the CIT (Appeals) has observed that no portion of the price could be attributed to stock-in-trade. The Assessing Officer had brought to capital gains tax the transfer of goodwill treating the goodwill as a capital asset rather than stock-in-trade. The CIT (Appeals), therefore, observed that the proviso to Section 47(iv) has no application to the present case. The CIT (Appeals) granted relief to the assessee by holding as under:

(i) It was the entire packaging coating undertaking which was transferred in consideration of a slump price of Rs. 29,89,87,000 and no price was fixed item-by-item in respect of the different assets belonging to the undertaking.

(ii) In view of the decision of the Supreme Court in CIT v. B.C. Srinivasa Setty (supra) as no cost of acquisition can be conceived for the Undertaking, the consideration received on transfer of the packaging coatings business by the assessee cannot be subjected to capital gains tax. Therefore, the Assessing Officer was wrong in assuming that the amount of Rs. 19,14,55,804 credited in capital reserve was received on account of goodwill.

(iii) Further, even assuming that the amount of Rs. 19,14,55,804 is on account of transfer of goodwill, the same cannot be brought to tax as the transaction enjoys exemption u/s 47(iv) of the Income Tax Act as explained earlier in this order. The addition of Rs. 19,14,55,804 is therefore deleted in full. The appellant accordingly gets relief of Rs. 19,14,55,804.

7. The learned Tribunal after taking into account all such facts as well as the order so passed by the CIT (Appeals) came into conclusion that the fundamental question in the present case which needs to be considered is whether there was a "transfer" of a "capital asset" during the year. After taking such into account, the Learned Tribunal held that from the facts as are brought on record, CCIPL was 100 per cent subsidiary of the respondent company and the said company was an Indian company. In the said factual circumstances, provisions of Section 47(iv) were applicable in respect of transfer of business undertaking. After considering all these facts, the Learned Tribunal held as follows:

...In the impugned assessment order, the Assessing Officer has mentioned that provisions of Section 47(iv) were not applicable in view of proviso to Section 47(v). On careful scrutiny of the said proviso however, we do not find any merit in the Assessing Officer''s said contention. Under the approved Scheme of Arrangement, the respondent had transferred the entire Packaging Coating business. Such business undertaking itself constituted distinct ''capital asset'' u/s 2(14) of the Act. For transfer of the said capital asset consideration was not determined with reference to individual asset but the consideration, was determined with reference to capitalised value of the said business. In our opinion, the proviso to Section 47(v) and (iv) is applicable, if any only if, in the hands of the ''transferee'' the capital asset on its transfer constitutes ''stock-in-trade''. Nothing was brought on record by the revenue authorities at any stage to substantiate that such packaging Coating business on its transfer was accounted in the books, of CCIPL as ''stock-in-trade''. Having regard to the facts on record therefore, we are fully satisfied that since the entire paid up capital of CCIPL as on 31-12-1997 was held by the respondent, the transfer of the undertaking was squarely covered by the provisions of Section 47(iv) and therefore, no income under the head ''Capital gains'' was assessable in assessment year 1998-1999. For the reasons as aforesaid, we therefore, uphold the

order of the Commissioner (Appeals) deleting the addition of Rs. 19,14,55,804.

8. In the result, we do not find that there is any illegality or irregularities in respect of the order so passed by the Learned Tribunal and we express the same view as has been expressed by the Learned Tribunal and uphold the order.

9. In the circumstances, we do not find that there is any substantial question of law involved to be decided by us since we have dealt with the matter extensively. Hence the appeal is not admitted.