IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL No. 1530 of 2007

FOR APPROVAL AND SIGNATURE :
HONOURABLE Mr. JUSTICE AKIL KURESHI
and
HONOURABLE Mr. JUSTICE B.N. KARIA
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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**No**
2	To be referred to the Reporter or not ?	**No**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**No**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**No**

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THE COMMISSIONER OF INCOME TAX- I
Versus
BISLERI INTERNATIONAL PVT LTD
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Appearance :
Mr. M.R BHATT, Sr Advocate with Mrs MAUNA M BHATT, Advocate for the PETITIONER
Mr B.S SOPARKAR, Sr Advocate with Mr B S SOPARKAR, Advocate for the RESPONDENT
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CORAM: HONOURABLE Mr. JUSTICE AKIL KURESHI
and
HONOURABLE Mr. JUSTICE B.N. KARIA
7th May 2018

ORAL JUDGMENT (PER : HONOURABLE Mr. JUSTICE AKIL KURESHI)

This appeal filed by the Revenue pertains to assessment of the respondent-assessee for the year 1994-1995. The respondent-Acqua Minerals Private Limited, later on re-named as Bisleri International Private Limited, is a company registered under the Companies Act, 1956 and was in the business of production of mineral water in the trade name "BISLERI". During the period relevant to AY 1994-95, the assessee transferred its trade mark, goodwill, technical knowhow and franchise rights under different agreements in favour of the Coco-cola Company. The trade-mark was transferred for a consideration of Rs. 313.50 lakhs and goodwill for a sum of Rs. 15.67 lakhs. During the course of assessment proceedings, the Assessing Officer in the context of capital gain tax arising out of such transfers, questioned the assessee on the lower valuation of the goodwill, particularly in comparison to the trademark. The assessee mainly raised two contentions. The first contentions of the assessee was that the goodwill had no value of acquisition, and in view of judgment of the Supreme Court in the case of **CIT v. B.C Srinivasa Setty**, reported in 128 ITR 294 [SC], capital gain cannot be computed and collected. The second contention of the assessee was that the goodwill was transferred for a consideration of Rs. 15.67 lakhs, as per the agreement between the assessee-company and

Coca Cola Company. The price indicated in such transfer cannot be substituted by the Assessing Officer on any consideration. The assessee also explained why value in question was adopted. The Assessing Officer rejected the assessee's first contention of non tax-ability of such gain arising out of transfer of goodwill. He also did not accept assessee's valuation of Rs. 15.67 lakhs assigned to the goodwill. He noted that the trademark was valued at nearly twenty times the value of goodwill. In his opinion, since the receipt due to transfer of trademark was not taxable but the goodwill was, the assessee had under valued the goodwill component. He, therefore, substituted the said value of Rs. 15.67 lakhs by a sum of Rs. 164.59 lakhs arrived by him by taking the mean of the total consideration received by the assessee for transfer of trademark and goodwill.

CIT [A] reversed such decision of the Assessing Officer mainly on the ground that there was no basis to substitute the declared consideration of transfer of the goodwill. Though trademark was a valuable right representing the integral part of the business, transfer of trademark with itself transfers not merely an emblem or figure, but also the reputation. Merely because in the present case, the assessee in addition to transferring the trademark, also executed a separate deed transferring the goodwill, would make no difference. The name, figure and emblem and reputation associated with trademark became property of Coca Cola by virtue of trademark agreement and the same would have been the result even if no agreement of transfer of goodwill would have been entered into between the parties.

Revenue carried the matter in appeal. The Tribunal confirmed the view of CIT [A], though in somewhat different manner.

In this background, while admitting the appeal of the Revenue, the Court had framed the following substantial question of law :

> **"Whether the Appellate Tribunal is right in law and on facts in sustaining the addition of capital gain to the extent of only Rs. 15,67,000/= as against Rs. 164.59 lakhs worked out by the Assessing Officer** ?"

Learned counsel Shri M.R Bhatt for the Department contended that the assessee had deliberately under-valued the goodwill since the gain arising out of transfer of such asset was *exigible* to capital gain tax as compared to trademark where no tax was leviable. The assessee had not supported its valuation of goodwill at Rs. 15.67 lakhs with any material. The Assessing Officer in absence of any other clarification accepted the average of the proceeds out of transfer of trademark and goodwill. The CIT [A] and Tribunal committed an error in disturbing the order of Assessing Officer.

On the other hand, learned advocate Shri Bandish Soparkar appearing for the assessee opposed the appeal contending that the CIT [A] and Tribunal have given cogent reasons that upon transfer of trademark and technical knowhow, in any case, the transferor company would not be in a position to carry on the business in the same products. Its goodwill would be reduced to nil. The CIT [A] correctly noted that having agreed to transfer the trademark, it was not even necessary for the assessee to execute a separate agreement transferring the goodwill. The Assessing Officer cannot substitute the declared consideration recorded in an agreement between the parties without holding that any sum in excess of amount so declared was paid by the transferee and received by the transferor. In this context, counsel relied on judgment of Division Bench of this Court in case of **Commissioner of Income Tax-III vs. Parle International Limited** dated 8th August 2016 rendered in Tax Appeal No. 1905 of 2008 and connected appeals. He pointed out that the Tribunal in the present case has relied on the earlier decision of the Tribunal in case of *Parle International Limited* which was the subject matter of appeal by the Revenue in the said Tax Appeal No. 1905 of 2008. The Court should therefore follow the decision in case of **Parle International Limited** [Supra].

In the present case, we are not concerned with the question of taxability of capital gain arising out of transfer of goodwill nor are we concerned with the question of its cost of acquisition. The Assessing Officer having rejected the assessee's contention based on judgment of the Supreme Court in case of **CIT v. BC Srinivasa Setty** [Supra], the issue does not seem to have been carried further by the assessee before the higher authorities. In any case, the question of cost of acquisition in such a case is provided under sub-section [2] of Section 55 of the Income-tax Act, 1061 ["**the Act**" for short].

In the present case, however, we are concerned with the valuation of such goodwill. It is undoubtedly true that pursuant to an agreement between the assessee as a transferor and Coco Cola Company as a transferee company, the assessee's assets – in the present case intangible assets, such as trademark, technical knowhow, goodwill, etc., came to be transferred. The trademark was transferred for a consideration of Rs. 313.50 lakhs, whereas, the goodwill was transferred under an agreement executed at the same time for a sum of Rs. 15.67 lakhs. The Assessing Officer noted that the gain arising out of trademark was not taxable. Whereas, capital gain resulting from transfer of goodwill would be taxed. He also noted that the valuation of trademark was nearly twenty time the value of goodwill. When called upon to justify such relatively lower value of goodwill, the assessee did not present any method of valuation. Ordinarily therefore, we could not have accepted assessee's blanket proposition that under no circumstances, the Assessing Officer can question declared consideration in an agreement between the transferor and the transferee, particularly when such valuation was not backed by any scientific basis. However, in the present case, we are not inclined to disturb the view of CIT [A] and the Tribunal for the following reasons :

Firstly, CIT [A] has given detailed reasons to over-rule the view of Assessing Officer. He noted that the transfer of trademark, emblem, figure and even the reputation of the products of the company stands transferred, leaving very little by way of goodwill. In his opinion, after transfer of the trademark, it was perhaps not even necessary for assessee to separately enter into an agreement for transfer of trademark.

The reflected sale consideration in an agreement between the transferor and transferee in such a situation cannot be lightly tampered with. The Assessing Officer in addition to having discarded such valuation, adopted a rather simplistic method of substitution of book mean of the transferred value of trademark and the goodwill and projected the resulting figure as a consideration for transfer of goodwill. If the assessee's adoption of the sum of Rs. 15.67 lakhs as valuation for goodwill was not backed by any material or data on the record, the substitution adopted by the Assessing Officer suffered from greater vice. There was no basis for him to believe that the trademark and goodwill must value at the same level.

This Court in case of **Parle International Limited** [Supra] has frowned upon the Assessing Officer discarding the disclosed consideration in an agreement by doubting its genuineness without there being any supporting material on record.

In the result, question is answered against the Revenue and in favour of the assessee.

Tax Appeal is dismissed.

[Akil Kureshi, J.]

[B.N Karia, J.]

Prakash