

(1958) 03 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Ref. No. 260 of 1958

Sri Raj Sachdeva

APPELLANT

Vs

Board of Revenue

RESPONDENT

Date of Decision : 17-03-1958

Acts Referred:

Companies Act, 1913 — Section 104, 104(2)

Companies Act, 1956 — Section 75(2)

Stamp Act, 1899 — Article 23, 5, 2(10)

Citation : AIR 1959 All 595 : (1959) 29 AWR 391 : (1960) RD 6

Hon'ble Judges : O.H. Mootham, C.J;Raghubar Dayal, J;A.P. Srivastava, J

Bench : Full Bench

Advocate : R.S. Pathak, for the Appellant; N.D. Pant, for the Respondent

Judgement

Mootham, C.J.—This is a reference made to this Court by the Chief Controlling Revenue Authority u/s 57 of the Indian Stamp Act.

2. The circumstances in which the reference is made are these. Sri Raj Sachdeva was the proprietor of a business carried on under the name of Messrs Globe Travels. A company was incorporated under the Indian Companies Act under the name of Messrs. Globe Travels (Private) Limited of which Sri Rai Sachdeva was the Managing Director. In 1955 an oral agreement appears to have been entered into between Sri Raj Sachdeva as proprietor of Messrs. Globe Travels and the Company whereunder the former agreed to transfer his business to the Company in consideration of the allotment of fully paid shares. An allotment of 720 shares was made to Sri Raj Sachdeva on the 5th April, 1955. Thereafter the Company on 11-1-1956, filed with the Registrar, pursuant to Section 75(2) of the Indian Companies Act, 1956, particulars of the contract in the prescribed form. That form was signed by Sri Raj Sachdeva as a Director of the Company and bore a stamp of Rs. 2/-, as an agreement under Article 5(c) of Schedule I-B to the Indian Stamp Act, as in force in this State.

3. The question referred to this Court is "Whether the document dated January

11, 1956, executed by Sri Raj Sachdeva is a mere agreement chargeable with a duty of Rs. 2/- under Article 5(c) of the Stamp Act as amended in its application to Uttar Pradesh, or it is in the nature of a conveyance within the meaning of Section 2(10) of the Act, chargeable under Article 23 Schedule I-B of the Act with a duty of Rs. 15,912/-."

4. The question is not very accurately framed for the question is not whether the document of 11-1-1956, is an agreement but whether the prior oral contract the particulars of which are specified in that document would have been chargeable with duty as an agreement or as a conveyance had it been reduced to writing. The Board of Revenue, which is the Chief Controlling Revenue Authority, was inclined to the view that the document was duly stamped, but as it entertained some doubt with regard to the matter it thought it proper to make this reference.

5. Now Section 104 of the Companies Act, 1913, so far as is material, reads thus:

"(1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter,

(a)

(b) in the case of shares allotted as fully or partly paid up Otherwise than in cash, produce for the inspection and examination of the Registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the Registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted; and

(2) Where a contract such as above mentioned is not reduced to writing, the company shall, within one month after the allotment, file with the Registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899, and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated u/s 31 of that Act."

The section requires evidence of the title of the allottee to the allotment being placed upon the register, and where that evidence is to be found in a contract in writing, that contract together with any contract of sale, or for services, or other consideration in respect of which the allotment is made, must be produced for the inspection of the Registrar and duly verified copies filed. Where however, the contract constituting the title of the allottee is not in writing, then, under Sub-section (2) the prescribed particulars of that contract must be filed, and these particulars must bear the same stamp duty which would have been payable if the contract had been reduced to writing.

6. Now in the present case it is not in doubt that the transfer of the assets and liabilities of the business to the company was effected by delivery and the only question is whether such delivery was given in pursuance of the oral contract for sale or was part and parcel of some subsequent oral contract of sale. There is however no suggestion in the order of reference that there had been in fact any such contract of sale. The vendor did not own any immovable property and the law does not require that a transfer of moveable property should be made by an instrument in writing. If the parties choose to transfer such property by delivery pursuant to a contract for sale they are free to do so. In the present case no deed of conveyance was executed, and the particulars furnished were in my opinion the particulars of the agreement for sale which preceded the completion or the purchaser's title by delivery. Had that agreement been reduced to writing it would have been chargeable with duty under Article 5(c) of Schedule I-B to the Stamp Act and I am therefore of opinion that the particulars filed by the Company tender Section 104 (2) of the Companies Act were duly stamped. I would therefore, answer the reference accordingly.

Dayal, J.

7. I have read the opinion expressed by my Lord the Chief Justice on the question referred for decision and agree with the answer proposed and the reasons stated for the answer.

Srivastava, J.

8. This is a reference u/s 57 of the Indian Stamp Act. The question referred to us by the Board of Revenue is this:

"Whether the document dated 11-1-1956, executed by Sri Raj Sachdeva is a mere agreement chargeable with a duty of Rs. 2/- under Article 5(c) of the Stamp Act as amended in its application to Uttar Pradesh, or it is in the nature of a Conveyance within the meaning of Section 2(10) of the Act, chargeable under Article 23 Schedule I-B of the Act with a duty of Rs. 15,912/-."

9. It appears that Sri Raj Sachdeva was the proprietor of a business carried on in the name of Messrs. Globe Travels. Later a company was incorporated under the Indian Companies Act. It was called Globe Travels (Private) Limited, and Sri Raj Sachdeva became its Managing Director. In 1955 an agreement was entered into between Sri Raj Sachdeva as proprietor of the private firm Messrs. Globe Travels and the incorporated company according to which the former agreed to transfer his business to the company in consideration of the allotment of 720 fully paid up shares of the company. On 5-4-1955 the company allotted 720 fully paid up shares to Sri Raj Sachdeva. Thereafter on 13-4-1955 the company passed the following resolution:

"Resolved unanimously that the firm M/s Globe Travels, New Delhi be purchased as a going concern with all its assets and liabilities as on 31-3-55 including its cash in hand and bank balance with effect from 1-4-55 from its proprietor Mr. Raj

Sachdeva who is also the Managing Director of the Company on such terms and conditions, as may be decided by the Directors."

10. On 11-1-1956 a form known as particulars of oral contracts was filed by Sri Raj Sachdeva with the Registrar of Companies as required by S, 104 of the Companies Act, 1913. According to this document the concern known as Messrs. Globe Travels was taken over by the company for a consideration of Rs. 6,63,000/- which was paid in the following manner:

(i) Allotment of 720 shares

at Rs. 100/- each Rs. 72,000/-

(ii) Cash Payment Rs. 27,550/-

(iii) Liabilities of the firm taken

over by the companyRs. 5,63,450/-.

The form was signed by Sri Raj Sachdeva as Director of the company and a stamp duty of Rs. 2/- was paid in respect of it as it was treated as an agreement under Article 5(c) of Schedule I-B to the Indian Stamp Act, as applicable to the Uttar Pradesh. A question arose whether the document had been correctly stamped or whether it was liable to be stamped as a conveyance (as defined in Section 2(10) of the Stamp Act) with duty payable under Article 23 of the Schedule. The Board was inclined to the view that the document had been correctly stamped but in view of the conflicting arguments advanced before it, it has referred the question to this Court.

11. The relevant portion of Section 104 of the Companies Act of 1913 reads as follows:

"104(1) Whenever a companymakes any allotment of shares, the company shall within one month thereafter, file

(a)

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash produce for the inspection and examination of the Registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale such contract being duly stamped.....

(2) Where such a contract as above mentioned is not reduced to writing the Company shall within one month of the allotment, file with the Registrar prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act."

12. The obvious intention of the section appears to be that in any case where shares are allotted for consideration other than cash the Registrar must have

before him the evidence of the title of the allottee to the allotment. If the contract constituting the title is in writing that writing itself must be produced. If it is oral the full particulars of the oral contract must be filed. If the contract in writing constituting the title to the allotment is preceded by any other contract of sale or of service which is the consideration for the contract constituting the title that earlier contract or its particulars must also be filed. It is therefore clear that as contemplated by Section 104(1)(b) the title of the allottee to the allotment can be constituted only by a contract and cannot be constituted in any other way. The contract may be in writing or may be oral. In case it is in writing the writing itself must be produced. If the contract is oral its particulars must be filed. It is not necessary that in every case there should be an earlier contract of sale or service, but if there is one that contract too if it is in writing and its particulars if it is oral must be produced.

13. It is noticeable that it is not the earlier contract referred to in Section 104(1)(b) which is the contract constituting the title of the allottee to the allotment. That earlier contract is only a contract of sale or service which by itself does not create any title. The primary thing required by the section to be filed is therefore the contract constituting the title of the allottee to the allotment and not the earlier contract because it is not necessary that in every case there must have been such a preceding contract.

14. Sub-section (2) of Section 104 creates a legal fiction. If the contract constituting the title of the allottee to the allotment is in writing it must be stamped. If, however, it is not in writing and is only an oral its particulars have to be filed in a prescribed form. That form is in law to be deemed for the purposes of stamp duty to be the contract in writing by which the title to the allotment is constituted and duty has to be paid on that form as if it was a contract made in writing.

15. The contention urged on behalf of Sri Raj Sachdeva in the present case is that in his case the entire transaction consisted of only one contract and that way oral. That was the contract by which he agreed as proprietor of the private firm Messrs. Globe Travels to transfer his concern with all its assets and liabilities to the company and the company in return agreed to pay him Rs. 27,000/- cash and to allot 720/- fully paid shares to him. That according to the learned counsel was not a contract by which either party was making any transfer in praesenti. It was only an agreement to transfer in future. Subsequently in pursuance of it Sri Raj Sachdeva transferred to the company the assets and liabilities of his firm by delivery. As no immovable property was involved the transfer could be made by delivery alone without any contract oral or written. The company had also in pursuance of the same agreement allotted 720 fully paid shares to Sri Raj Sachdeva without there being any oral or written contract for that purpose. He has urged that the only contract entered into between the parties being an agreement to transfer the particulars filed in the prescribed form were of that contract. Had that contract been, in writing it would have been stamped only as

an agreement. The form of particulars filed could not, therefore! be required to be stamped in any other manner.

16. The logical consequences which appear to follow from the stand taken by the learned counsel may raise some difficulties, for instance; (1) as Section 104(1) (b) of the Companies Act contemplates that title of the allottee to the allotment of share can be constituted only by a contract whether oral or in writing no title to such allotment may have accrued to Raj Sachdeva on account of the absence of a contract. Admittedly the earlier agreement which was arrived at did not pass such a title.

(2) The assets of the firm may include good will, benefits to contract or actionable claims. It is seriously questionable if the company can claim title to them on the basis of delivery without any contract in writing.

(3) The particulars which had to be filed u/s 104 of the Companies Act are the particulars of the contract constituting title to the allotment of shares and on the consideration of. that contract. If no such particulars were filed on the pretext that no such contract was made and only the particulars of the earlier contract of sale were tiled it may be possible to say that the requirements of the section had not been complied with at all and that every officer of the company was on that account liable to be prosecuted for the omission.

17. We are, however, not concerned in this case with any of these consequences, The only thing which we have to determine is whether the form of particulars actually filed by the company is sufficiently stamped. It is not necessary therefore to consider what a stamp would have been payable on the form which ought to have been filed but was not actually filed. As has been pointed out by my Lord the Chief Justice, in the referring order there is no suggestion that any contract other than a contract for sale was entered into between the parties. Nor is there any material before us on the basis of which it can be held that any other contract of sale was in fact entered into. The contract which was admittedly made was only an agreement to transfer in future and was chargeable with duty under Article 5(c) of Schedule I-B to the Stamp Act and must be held to have been properly stamped. I, therefore, agree that the reference should be answered as proposed by my Lord the Chief Justice.

By The Court

18. We hold that the parti-culars filed by the Company u/s 104(2) of the Indian Companies Act 1913 were duly stamped and answer the reference accordingly.