
(2010) 11 MAD CK 0351

In the Madras High Court

Case No : W.A. No"s. 332 and 333 of 2007 and connected miscellaneous petitions

Waterfall Estate (East) Pvt. Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Companies Act, 1956 — Section 397, 398, 94

Citation : (2011) 2 MLJ 137

Hon'ble Judges : Elipe Dharma Rao, J;D. Hariparanthaman, J

Bench : Division Bench

Advocate : Sathish Parasaran, for the Appellant; K. Balasubramaniam, S.G.P., for the Respondent

Judgement

D. Hariparanthaman, J.—These writ appeals are directed against the common order dated 9.2.2007 passed by a learned single Judge of this Court in W.P. Nos. 12920 and 12921 of 2006.

2. The facts leading to the filing of these appeals are as follows:

(a) Kothari Industrial Corporation Limited has owned the Appellants - subsidiary companies viz., (i) Waterfall Estate (East) Private Limited and (ii) Waterfall Estate (West) Private Limited.

(b) Kothari Industrial Corporation Limited executed two transfer deeds in document Nos. 2558 and 2582 of 2001 in favour of Waterfall Estate (East) Private Limited and Waterfall Estate (West) Private Limited, on 28.9.2001 and 30.11.2001, for a consideration of Rs. 11,00,00,000/- (Rupees Eleven Crores only) and Rs. 8,50,00,000/- (Rupees Eight Crores Fifty Lakhs only) respectively.

(c) The transfer deeds along with other requisite documents were duly presented for registration before the Sub Registrar, Anaimalai. The parent/transferor company also furnished the certified copies of the annual returns and balance sheet filed before the Registrar of Companies and claimed remission in stamp

duty as per the conditions imposed under Serial No. 38 of the Notification issued in G.O. Ms. No. 1224, Revenue Department, dated 25.4.1964. and G.O. Ms. No. 37, Commercial Taxes and Revenue Department, dated 25.1.1995. The Sub Registrar, Anaimalai granted remission in stamp duty and registered the documents.

(d) Later, local audit was conducted from 2.12.2001 to 5.12.2001 by the Local Audit party and they submitted a report on the receipt of accounts of registration fees and stamp duty of the Office of the Sub Registrar, Anaimalai for the year 2001-2002 to the Accountant General, Tamil Nadu. In the report, it is stated that the remission of stamp duty granted to the Appellants herein, for the transfer of properties, in transfer deed Nos. 2558 and 2582 of 2001, was not in order, as the condition for remission of stamp duty was not satisfied.

(e) According to the audit report, the Appellants are entitled to remission in stamp duty, only if the parent/transferor company holds 90% of the issued share capital of the transferee company in the beneficial ownership of the parent/transferor company.

(f) It has been categorically stated in the audit report that in the case of Waterfall Estate (East) Private Limited, the authorised share capital was Rs. 10,00,000/- and the issued share capital was Rs. 9,03,500/-. But, the parent/transferor company held only Rs. 1,44,930/-. In order to get remission in stamp duty, the parent/transferor company should have held 90% of the issued share capital. According to the audit report, since the said condition was not satisfied, the remission in stamp duty was not in order.

(g) Likewise, it has been categorically stated in the audit report that in the case of Waterfall Estate (West) Private Limited, the authorised share capital was Rs. 4,00,00,000/- and the issued share capital was Rs. 3,53,000/-. But the parent/transferor company held only Rs. 85,850/-. In order to get stamp remission, the parent/transferor company should have held 90% of the issued share capital.

(h) The audit report also pointed out that instead of applying the exemption clause to the quantum of issued share capital, the Appellants claimed remission in stamp duty, based on the quantum of subscribed share capital. It was further pointed out that the exemption clause speaks only about the quantum of issued share capital and not the subscribed share capital. As the parent/transferor company does not hold 90% of the issued share capital and holds 90% of the subscribed share capital, the Appellants are not entitled for remission in stamp duty.

(i) The aforesaid local audit report was forwarded by the Office of the Accountant General to the Deputy Inspector General of Registration, Coimbatore, for taking appropriate action against the Appellants.

(j) In the said circumstances, action was taken by the District Registrar (Stamps) Tiruppur, Coimbatore District, the third Respondent herein, vide order dated

17.11.2003 stating that Waterfall Estate (East) Pvt. Limited was liable to pay the stamp duty of Rs. 1,32,00,000/- and Waterfall Estate (West) Pvt. Limited was liable to pay the stamp duty of Rs. 1,02,00,000/- and also directed them to remit the stamp duty before the Sub Registrar, Anaimalai. It was further stated that if they failed to remit the aforesaid stamp duty, proceedings would be initiated for recovery, as the transferor company does not hold 90% of the issued share capital of the transferee company.

(k) Against the said order of the third Respondent, the Appellants preferred a revision petition under the Indian Stamp Act before the fourth Respondent. But, the fourth Respondent rejected the revision petition filed by the Appellants by an order dated 14.3.2006 and thereby confirmed the order dated 17.11.2003 of the third Respondent.

(l) The Appellants herein filed writ petitions in W.P. Nos. 12920 and 12921 of 2006 to quash the order dated 14.3.2006 of the fourth Respondent. According to the Appellants, the impugned order of the fourth Respondent is arbitrary and opposed to the Notification in G.O. Ms. No. 1224, Revenue Department, dated 25.4.1964.

(m) Both before the fourth Respondent and before the learned single Judge of this Court, the only contention raised by the Appellants was that since the parent/transferor company holds 90% of the subscribed share capital, the Appellants are entitled to remission in stamp duty, as per the Notification in G.O. Ms. No. 1224. According to them, the subscribed share capital and issued share capital are one and the same.

(n) However, the learned single Judge held that the Indian Stamp Act is a fiscal measure enacted to secure revenue for the State and that therefore, the concerned Notification granting exemption from stamp duty should be strictly construed. The learned single Judge also held that the Notification granting exemption should be construed literally and on literal interpretation, the Appellants are not entitled for exemption. The learned single Judge also held that the parent/transferor company does not hold 90% of the issued share capital of the Appellants company and that therefore, they are not entitled to remission of stamp duty. Accordingly, the learned single Judge dismissed those writ petitions on 9.2.2007. Hence, the Appellants have filed these writ appeals against the common order dated 9.2.2007 passed by the learned single Judge of this Court in W.P. Nos. 12920 and 12921 of 2006.

3. We have heard the submissions made on either side and perused the materials available on record.

4. The learned Counsel for the Appellants vehemently argued that both the issued share capital and the subscribed share capital are one and the same and that therefore, the learned single Judge erred in dismissing the writ petitions. The only contention reiterated with much vehemence was that since the parent/transferor company holds 90% of the subscribed share capital, the learned Judge

ought to have held that the condition for remission in stamp duty was not complied with and the Appellants are not entitled to remission in stamp duty.

5. The learned Counsel for the Appellants heavily relied on the Division Bench judgment of the Punjab High Court in *Associated Clothiers Ltd. Vs. Union of India (UOI) and Others*, .

According to him, in an identical situation, a Division Bench of the Punjab High Court held in the aforesaid decision that if the parent/transferor company holds 90% of the subscribed share capital, the transferee company is entitled to remission in stamp duty, as per the Notification dated 16.1.1937 of the Finance Department, Central Board of Revenue. According to him, the Notification of the Tamil Nadu Government is on the identical terms of the Notification dated 16.1.1937 as considered by the Punjab High Court.

6. The learned Counsel for the Appellants also relied on a judgment of the Calcutta High Court in *In Re: Albert David Ltd*, 68 CWN 163 in support of his submissions. The learned Counsel has further relied on the definition on "issued share capital" as defined in *P. RAMANATHA AIYARS ADVANCED LAW LEXICON*.

7. The learned Counsel for the Appellants further relied on the judgment of the Honourable Apex Court in *Distt. Registrar and Collector, Hyderabad and Another Vs. Canara Bank Etc.*, and submitted that law has to be interpreted liberally in favour of the Assessee so as to advance the purpose of the Indian Stamp Act and the purpose for which the Notification was issued for remission in stamp duty.

8. On the other hand, the learned Special Government Pleader submitted that the Appellants are not entitled to remission in stamp duty as per the Notification in G.O. Ms. No. 1224, as the parent/transferor company does not hold 90% of the issued share capital. According to him, there is no ambiguity in the Notification and the literal interpretation of the Notification makes it clear that remission in stamp duty could be granted only when the parent/transferor company holds 90% of the issued share capital and not 90% of the subscribed share capital. According to him, the judgments relied on by the learned Counsel for the Appellants are not applicable to the facts of these appeals.

9. We have considered the submissions made on either side.

10. The issue that arises for consideration is as to whether the Appellants are entitled to remission in stamp duty under the Notification in G.O. Ms. No. 1224, though the parent/transferor company does not hold 90% of the issued share capital and on the other hand, holds more than 90% of the subscribed share capital.

11. The relevant clause of the Notification in G.O. Ms. No. 1224, Revenue Department, dated 25.4.1964, relied on by the learned Counsel on either side, is extracted hereunder:

"(C) Reductions and Remissions (Tamil Nadu)

(38) Instrument evidencing transfer of property between companies limited by shares as defined in the Companies Act, 1956, in a case where (i) at least 90 per cent of the Issued Share Capital of the transferee company is in the beneficial ownership of the transferor company, or (ii) where the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90 per cent of the issued share capital of the other or (iii) where the transfer takes place between two subsidiary companies of each of which not less than 90 per cent of the share capital is in the beneficial ownership of a common parent company;

Provided that a certified copy of the relevant records of the Companies kept in the office of the Registrar of Companies, Madras is produced by the parties in the instrument to prove that the conditions above prescribed are fulfilled."

12. The words used in the Notification for grant of remission in stamp duty is only "issued share capital" and not "subscribed share capital". According to the learned Counsel for the Appellants, both the issued share capital and the subscribed share capital are one and the same. But, the Local Audit party and the Accountant General held that the Appellants are not entitled to remission in stamp duty, as the parent/transferor company does not hold 90% of the issued share capital. The relevant passage from the Local Audit report that was forwarded by the office of the Accountant General to the Deputy Inspector General of Registration for taking suitable action, is extracted hereunder:

"Accordingly xerox copies of schedule v. part II Annual Return of Kothari Information System Ltd., and Kothari Hotel and Breweries Ltd., certified by the Asst. Registrar of Companies Chennai dated 4.5.2001, have been produced by the companies to claim stamp duty exemption and the above mentioned two documents were registered without collection of any stamp duty.

However as seen from these returns and also from the 30th Annual Report 1998-99 (1.7.1998 to 31.12.1999) of KICL the share capital structure of the transferee companies are as follows:

Kothari Information System Limited, Now, Known As Water Fall Estate (East) Ltd.

Share Capital Authorised 1,00,000 Equity shares of Rs. 10 each Rs. 10,00,000/-

Issued 90,350 Equity shares of Rs. 10 each - Rs. 9,03,500/-

Subscribed and Paid Up 14,500 Equity shares of Rs. 10 each fully paid up - Rs. 1,45,000/-

Shares held by KICL, The Holding Company 14493 Equity shares of Rs. 10 each - Rs. 1,44,930/-

Kothari Hotels and Breweries Limited, Now known as Water Fall Estate (West) Limited

Share Capital Authorised 30,00,000 Equity shares of Rs. 10 each - Rs.

3,00,00,000/-

Unclassified shares - Rs. 1,00,00,000/-

Issued 35,350 Equity shares of Rs. 10 each - Rs. 3,53,500/-

Subscribed and Paid Up 8,850 Equity shares of Rs. 10 each - Rs. 88,500/-

Shares held by KICL, The Holding Company 8,585 Equity shares of Rs. 10 each - Rs. 85,850/-

In this connection, the following remarks are offered.

(i) As seen from the exemption clauses to claim stamp duty exemption, the exemption will be operative only if atleast 90% of the issued share capital of the transferee company is in the beneficial ownership of the transferee company. Hence, in order to claim stamp duty exemption for document No. 2558 of 2001, atleast 81,315 equity shares of Rs. 10 each of Water Fall Estate (East) Ltd., (90% of 90350 - the issued share capital of the transferee) should be in the beneficial ownership of KICL, the transferor company. However, the shares held by KICL are only 14493 equity shares of Rs. 10 each and the percentage works out to 16.04%. Hence the S.D exemption granted to Doct. No. 2558 of 2001 was not in order.

(ii) Similarly in respect of Document No. 2582/01 atleast 31815 equity shares of Rs. 10 each of, Waterfall Estate (West) Ltd.,

(90% of 35350 the issued share capital of the transferee) should be in the beneficial ownership of KICL. However the shares held by KICL are only 8585 equity shares of Rs. 10 each and the percentage works out to 24.29%. Hence the S.D exemption granted to Document No. 2582 of 2001 was also not in order.

Thus the total stamp duty exemption of Rs. 2.34 crores (12% of 19.50 crores) granted to Document No. 2558 of 2001 and 2582 of 2001 should have been collected at the time of registration of these documents itself.

It is further seen that the S.D exemption was granted by applying the exemption clauses to the quantum of "subscribed share capital". This is not acceptable as the exemption clauses speaks only about the quantum of "issued share capital".

13. The learned single Judge further held that the words used in the Notification was only "issued share capital" and as per the literal interpretation of the Notification, the Appellants are not entitled to remission in stamp duty. But the learned Counsel for the Appellants strenuously argued that the parent/transferor company holds 90% of the subscribed share capital and nobody else had a beneficial interest in the transferee companies and that therefore, the Appellants are entitled to remission in stamp duty.

14. As stated above, the learned Counsel for the Appellants relied on the definition of "issued share capital" as found in P. RAMANATHA AIYAR'S ADVANCED LAW LEXICON and the same is extracted hereunder:

Issued share capital. That part of a company's share capital which has been issued (Capital Market)

That portion of the authorised share capital which has actually been offered for subscription. This includes any bonus shares allotted by the corporate enterprise. (Finance).

The amount of a company's authorised share capital that has actually been taken up (i.e. sold to investors). (Investment).

15. We have perused the definition. We are not able to agree with the submissions made by the learned Counsel for the Appellants. It is not stated so in the definition that the issued share capital is nothing but the subscribed share capital. On the other hand, the 14th Edition, 1998, Part 1 of RAMAIYA'S GUIDE TO THE COMPANIES ACT has the comment on Share Capital -Authorised, Issued and Subscribed and the same is extracted hereunder:

"In the case of a company limited by shares or a company limited by guarantee and having a share capital the amount of share capital with which the Company is to be registered is usually called the authorised or nominal capital, and it must be stated in the" memorandum. Such capital may be increased according we to the circumstances and requirements of the company in the course of its career after incorporation (Section 94).

The authorised or nominal capital sets the limit of capital available for issue and the issued capital can never exceed that limit.

Out of the issued capital, the total amount actually subscribed or agreed to be subscribed is known as subscribed capital, and this subscribed capital again may be wholly paid or partly paid in which latter case the balance would be payable on future calls when made.

The amount actually paid by the shareholders is called the paid-up capital."

16. The definition to share capital as found in Ramaiya's Guide to the Companies Act makes it clear that the "issued share capital" is different" from "subscribed share capital". The audit party has categorically pointed out in the case of Waterfall Estate (East) Private Limited that the authorised share capital was Rs. 10,00,000/- and the issued share-capital was Rs. 9,03,500/- and the transferor company has the subscribed share capital of Rs. 1,44,930/-Like-wise, the audit party categorically pointed out in the case of Waterfall Estate (West) Private Limited, that the authorised share capital was Rs. 4,00,00,000/- and the issued share capital was Rs. 3,53,000/- and subscribed share capital was Rs. 88,500/- from the transferor company. Just because the parent/transferor company has more than 90% of the subscribed share capital, it could not be held that they satisfied the conditions for grant of remission in stamp duty, since the transferor company, does not, admittedly hold 90% of the issued share capital.

17. Far from supporting the Appellants, the Division Bench judgment of the

Punjab High Court in *Associated Clothiers Ltd., v. Union of India* (supra) goes in favour of the Respondents. It is true that the said judgment deals with an identical Notification dated 16.1.1937 issued by the Finance Department, Central Board of Revenue. That case related to one Phelps and Co. Limited, a company incorporated in the year 1937. The Directors of the said company decided to wind up the company due to large sums of money being embezzled by the carelessness of the auditors and its affairs settled, that the name of the company should be altered from Phelps and Co. Limited, into Associated Clothiers Limited. It was further decided that since the goodwill of Phelps and Co. Limited, would be of considerable value, a new company bearing the same name viz., Phelps and Co. Limited, should be incorporated and that all the assets of Associated Clothiers Limited should be taken over by Phelps and Co. Limited, in view of shares, "which were to be offered by Phelps and Co. Limited. Pursuant to the aforesaid decision, they changed the name of the company from Phelps and Co. Limited, to Associated Clothiers Limited and also that a new company was incorporated under the name of Phelps and Co., Limited. Under the scheme of reconstruction, the company in the name of Associated Clothiers Limited reconveyed the assets in favour of Phelps and Co. Limited, in view of shares that were offered by Phelps and Co. Limited. While conveying the properties, remission in stamp duty was sought under the Notification and the same was declined. The matter was taken to the High Court. The learned single Judge confirmed the order of the authorities refusing to grant remission in stamp duty on the ground that the state of affairs that gives rise to and justifies the exemption must be in existence before the transaction for transfer of property from one company to other is entered and it could not be an artificial state of affairs for the purpose of taking advantage of exemption under the Notification. The matter was further taken before the Division Bench of the High Court. The Division Bench allowed the appeal. The Division Bench found that the Appellant - Associated Clothiers Limited were allotted shares of the face value of Rs. 12,30,000 (out of the total issued share capital of Rs. 12,30,000/-) partly on 31.5.1952 and 14.10.1952 by the Phelps and Co. Limited. Thus, the Appellant therein obtained entire issued share capital of the transferee company. That weighed with the Division Bench of the Punjab High Court. The learned single Judge did not reject the claim for exemption for stamp duty on the ground that the Appellant therein did not have 90% of the issued share capital and on the other hand, the learned single Judge declined relief on the ground that the scheme of reconstruction was an artificial one to take advantage of exemption under the Notification. But on facts, it was found that more than 90% of the issued share capital and in fact 100% of the issued share capital of the transferee company was in possession of the Appellant therein. Hence, we are unable to understand as to how the said judgment could render any assistance to the Appellants herein, since admittedly in the present appeals, the parent/transferor company does not have 90% of the issued share capital of the Appellant company herein.

18. The judgment of the Calcutta High Court relied on by the learned Counsel for the Appellants in *In Re: Albert David Ltd.* (supra) has nothing to do with the facts of the case. That was a case relating to control and management of the company, that were to be decided under Sections 397 and 398 of the Indian Companies Act. The said judgment does not deal with the Notification granting exemption in stamp duty.

19. The learned Counsel for the Appellants also relied on the judgment of the Honourable Apex Court in *District Registrar and Collector, Hyderabad and Anr. v. Canara Bank and Ors.* (supra) and more particularly para 10. In our view, the same is of no use to the Appellants. The said judgment is relating to the amendment made to Indian Stamp Act by the State of Andhra Pradesh empowering the authorities to seize and impound the documents. The Honourable Apex Court held that seizure and impounding of documents amounts to violation of Right to Privacy. Para 10 of the said judgment is extracted hereunder:

10. The Stamp Act is a piece of fiscal legislation. Remedial statutes and statutes which have come to be enacted on demand of the permanent public policy generally receive a liberal interpretation. However, fiscal statutes cannot be classed as such, operating as they do to impose burdens upon the public and are, therefore, construed strictly. A few principles are well settled while interpreting a fiscal law. There is no scope for equity or judiciousness if the letter of law is clear and unambiguous. The benefit of any ambiguity or conflict in different provisions of statute shall go to the subject. In *Dowlattram Harji v. Vitho Radhoji* the Full Bench indicated the need for balancing the harshness which would be inflicted on the subjects by implementation of the stamp law as against the advantage which would result in the form of revenue to the State; the latter may not be able to compensate the discontent which would be occasioned amongst the subjects."

In fact, the aforesaid para also makes it clear that while interpreting fiscal legislation, there is no scope for equity or judiciousness, if the letter of law is clear and unambiguous. In this case, as stated above, there is no ambiguity in the Notification and it is very clear that the Appellants are entitled to exemption in stamp duty, only if the transferor company holds 90% of the issued share capital of the transferee company. Admittedly, the transferor company does not hold 90% of the issued share capital of the transferee company. Hence this judgment is not applicable to this case.

20. As rightly contended by the learned Special Government Pleader, taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax as held by the Honourable Apex Court in *The Federation of Andhra Pradesh Chambers of Commerce and Industry and Others Vs. State of Andhra Pradesh and Others Etc. Etc.,* . In this regard, para 7 of the

said judgment is extracted hereunder:

"7. It is trite law that a taxing statute has to be strictly construed and nothing can be read into it. In the classic passage from CAPE BRANDY SYNDICATE which was noticed in the judgment under appeal, it was said:

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used."

This view has been reiterated by this Court time and again. Thus, in *State of Bombay v. Automobile and Agricultural Industries Corpn.* this Court said:

"But the Courts in interpreting a taxing statute will not be justified in adding words thereto so as to make out some presumed object of the legislature;... If the legislature has failed to clarify its meaning by the use of appropriate language, the benefit thereof must go to the taxpayer. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted."

21. Pursuant to the order dated 17.11.2003 of the third Respondent, the Tahsildar, Valparai, Coimbatore District, issued the proceedings dated 9.6.2004 to recover the stamp duty amount. The Appellants herein filed writ petitions in W.P. Nos. 17554 and 17555 of 2004 to quash the aforesaid order dated 9.6.2004 of the Tahsildar, Valparai and to forbear the Respondents therein from initiating recovery proceedings, pending disposal of the appeals against the order dated 17.11.2003 of the third Respondent herein. They also obtained an interim order. Those writ petitions were disposed on 9.12.2005 directing the Respondents to dispose of the appeals within a stipulated period and ordered to maintain status-quo till the disposal of the appeals. The appeals were disposed by the fourth Respondent herein on 14.3.2006. Thereafter, the Appellants herein have filed writ petitions in W.P. Nos. 12920 and 12921 of 2006 and obtained interim order. When the writ petitions were dismissed on 9.2.2007, they filed the present appeals and obtained interim order. Thus, the stamp duty amount of Rs. 1,32,00,000/- and Rs. 1,02,00,000/- respectively, have not been paid for the past ten years and the State is made to suffer.

22. For the aforesaid reasons, the writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.