Mangalore Electric Supply Co. Ltd vs The Commissioner Of Income Tax, West ... on 4 May, 1978

Equivalent citations: 1978 AIR 1272, 1978 SCR (3) 913, AIR 1978 SUPREME COURT 1272, 1978 3 SCC 248, 1978 TAX. L. R. 792, 1978 2 ITJ 413, 1978 SCC (TAX) 167, 1978 (113) ITR 655, 1978 U J (SC) 503

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, D.A. Desai, R.S. Pathak

PETITIONER:
MANGALORE ELECTRIC SUPPLY CO. LTD.

Vs.

RESPONDENT:
THE COMMISSIONER OF INCOME TAX, WEST BENGAL

DATE OF JUDGMENT04/05/1978

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
DESAI, D.A.
PATHAK, R.S.

CITATION:
1978 AIR 1272 1978 SCR (3) 913
1978 SCC (3) 248
CITATOR INFO :
R 1982 SC 149 (231,249)

ACT:
Income Tax Act, 1922, S. 12 B(1)-Whether the word 'transfer' occurring, in S. 12B(1) of the Act refers to voluntary transfers only-Whether the word transfer should be construed ejusdem generis with the words 'sale', 'exchange' and requisitions'.

HEADNOTE:
In exercise of its power under Section 4 of the Madras Electricity Supply Undertakings (Acquisition) Act, 1954, the Government of Madras acquired the appellants' undertaking and its properties were taken over on the date of vesting

viz. October 15, 1956. As per the option exercised by the _appellant under S. 6 , the, appellant was paid a compensation of Rs. 18,42,312/ applying Basis 'A' method. In the course of the appellant's assessment for the assessment year 1957-58, corresponding to the accounting year commencing on April 1, 1955 and ending on October 14, 1956, the Income Tax Officer considered the question whether the compensation received by the appellant for the acquisition of its undertaking was in the nature of a capital gain within the meaning of S. 12 B of the Income Tax Act, 1922. Deducting a sum of Rs. 6.45,710/- representing the value of fixed assets from the compensation paid by the State Government to the appellant, the Income Tax Officer treated the sum of Rs. 11,95,602/- as capital gains which was liable to be brought to tax. The appellant's contention before the appellate Assistant Commissioner that the compulsory acquisition of its undertaking was riot a 'transfer' within the meaning of S. 12 B (1) of the Act and therefore, it was not liable to capital gain tax failed. The Tribunal in further appeal and the High Court on a reference confirmed the said view. The High Court on an application under Section 256(2) of the Income Tax Act, 1961, decided against the appellant on the question whether part of the compensation was paid towards good-will and therefore exempt from tax.

Dismissing the appeals by certificate the Court,

HELD : 1. The word 'transfer' is comprehensive and is regarded generally as comprehending within its scope transfers both of the voluntary and involuntary kinds. Without more, therefore there is no reason for limiting the operations of the word 'transfer' to voluntary acts of transfer so as to exclude compulsory acquisitions of property. [917 G-H]

2. (a) The word 'transfer cannot be construed ajusdem generis with the words sale'.'exchange' or relinquishment'. [918 A]

(b) There is no room for the application of ejusdem generis doctrine unless one finds a category and where the words are clearly wide in their meaning, they ought not to be qualified on the ground of their association with other words. [918 C-D]

In the instant case, in the absence of a distinct genus or category, no presumption can arise that the word 'transfer' must be construed' in the sense of a voluntary act of transfer since 'sale', exchange' or 'relinquishment' are in the normal acceptation of those terms voluntary acts. The words (a) sale, (b) exchange, (c) relinquishment and (d) transfer must accordingly be given their plain and natural meaning and there is no justification for restricting the wide comprehension of the last of the four words to voluntary transfers by the application of the ejusdem generis rule. [918 E]

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Provest, etc. of Glasgow v. Glasgow Tramway Co., [1898] A.C. 631, 634 and N.A.L.G.O. v. Bolton Corpn., [1943] A.C. 166 quoted with approval.

(c)The proviso to S. 12B of the Income Tax Act, 1922. as it stood prior to its amendment by the Finance Act (No. 3) 1956 shows that the word 'transfer' which occurred in sub-section (1) was intended to include transfer of capital assets by reason of the compulsory acquisition thereof under an law for the time being in force relating to the compulsory acquisition of property for public purposes. The object of the proviso, clearly, was to take away transfers by way of compulsory acquisition from the scope of sub-section (1). It is impossible on any other hyprothesis to give intelligible meaning to the exception carved out by the proviso. After the amendment of S. 12B by the Act of 1956, the exception carved out by the proviso in favour of 'transfer of capital assets by reason of the compulsory acquisition thereof was deleted. The deletion of the particular clause of the proviso contains an indelible reflection of the true legislative intent which is, that the transfer of capital assets by reason of compulsory acquisition are comprehended within the meaning of the word 'transfer'. If an existing title is extinguished and a new one is created, there is within the, meaning of section 12B (1) of the Act of 1922, transfer of a capital asset. The fact that the divestiture of title takes place under a law relating to compulsory acquisition of property would make no difference to that position. The word 'transfer' which occurs in section 12B (1) of the Income Tax Act, 1922, is an expression of wide comprehension and includes within its sweep both voluntary and involuntary transfers.[918 F, 919 B-H]

Commissioner of Income Tax, Madhya Pradesh v. Shriikrishan Chandmal and Anr., 47 I.T.R. 833, Wilfred Perera Ltd. v. Commissioner of Income Tax, Madras, 53 I.T.R. 747, Commissioner of Income-Tax, Madras v. United India Life Assurance Company Ltd., 62 I.T.R. 610 and Vadilal Soda Ice Factory v. Commissioner of Income-tax, Gujarat II 80 I.T.R. 711 approved.

3.(a) The High Court has correctly negatived the appellants' contention that goodwill should be valued separately and a part of the compensation attributable to it should be deducted from the compensation. [920 G]

(b)Since the question as to whether a part of the compensation is attributable to the goodwill of the appellant's business is a mixed question of law and fact and since not only was the question not raised by the appellant before the Income-tax Officer or the Appellate Assistant Commissioner but, having raised it before the Tribunal, the appellant placed no material before it on the basis of which good-will could be evaluated and a part of the compensation properly apportioned to the goodwill of the business, the appellant cannot be allowed to raise. the contention

involved in two questions raised before the High Court under S. 256(2) of the Income Tax Act, 1961. [921 D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2160 and 2006 of 1972.

From the Judgment and Order dated 25th August, 1971 and 19th November 1977 of the Calcutta High Court in Income Tax Reference No. 106 of 1969 and 138/69.

Y.S. Desai, S. R. Agrawal, A. T. Patra and Praveen Kumar for the Appellant in both the, appeals.

G.C. Mathur and Miss A. Subhashini for the Respondent in both the appeals.

The Judgment of the Court was delivered by CHANDRACHUD, C.J.-The appellant, the Mangalore Electric Sup- ply Company Limited, was carrying on. the business of distribution of electricity in Mangalore, South Kanara District, under a licence granted by the Government of Madras in favour of Messrs Octavious Steel & Company Limited. The licensee had assigned its right to the appellant with the previous consent of the State Government. Under section 4 of the Madras Electricity Supply Undertakings (Acquisition) Act, 1954, the State Government had the power to take over any electricity undertaking, declaring that it shall vest in the Government on the date specified therein. In exercise-of that power, the Government of Madras passed an order declaring that the appellant's undertaking would vest in the Government on December 31, 1956, which date was later advanced to October 15, 1956. The appellant's undertaking was accordingly acquired by the Government and its properties were taken over on the date of vesting. Mangalore was then a part of the State of Madras.

Section 5 of the.Acquisition Act, 1954, provided for payment of compensation to a licensee whose undertaking was taken over by the Government. Three modes of fixation of compensation were provided for by that section, called Basis A, Basis B and Basis C. Section 6 gave to the undertaking concerned the option to choose any one of these three modes. According to Basis A, the licensee was entitled by way of compensation to the payment of an amount equal to 20 times the average net annual profits of the undertaking during the period of five consecutive accounting years immediately preceding the date of vesting. The, appellant opted for compensation on Basis A, one of the consequences of which, 'as provided by the, Act, was that the entire property belonging to the undertaking, includingthe fixed assets, vested in the State Government under section C.Applying Basis A, the appellant was paid compensation in the sum of Rs. 18,42,312/-.

In the course of the appellant's assessment for the assessment year 1957-58, corresponding to the accounting year commencing on April 1, 1955 and ending on October 14,'1956, the Income-tax Officer considered the question whether the compensation received by the appellant for the acquisition of its undertaking was in the nature of a capital gain within the, meaning of section 12B of the Indian Income-tax Act, 1922. Deducting a sum of Rs. 6,46,710/-, representing the value of fixed assets, from the compensation paid by the State Government to the appellant, the Income-tax

Officer treated the sum of Rs. 11,95,602/as capital gains which was liable to be brought to tax. The appellant appealed to the Assistant Commissioner contending that the compulsory acquisition of its undertaking was not a 'transfer' within the meaning of section 12B(1) and therefore it was not liable to capital gains tax. That argument was rejected by the Assistant Commissioner whose judgment was confirmed in a further appeal, by the Income- tax Appellate Tribunal. On the application of the appellant, the Tribunal referred the following question for the opinion of the High Court "Whether, on the facts and in the circumstances of the case, the acquisition under the Madras Electricity Supply Undertakings (Acquisition) Act, 1954 came within the scope of section 12B of the Indian Income-tax Act, 1922 so as to render liable any surplus arising from such acquisition to tax under section 12B of the Act?"

> By its judgment dated August 25, 1971, the High Court upheld the view taken by the Tribunal but granted to the appellant a certificate of fitness, to file an appeal to this Court. That has given rise to Civil Appeal No. 2160 of 1972. The appellant had asked the Tribunal to refer for the opinion of the High Court four other questions. The Tribunal having declined to do so, the appellant applied to the High Court under section 256 (2) of the Income-tax Act, 1961, requesting it to call for a reference from the Tribunal. The High Court agreed and called for a reference on the four points, the 3rd and 4th out of which were not pressed by the appellant when the reference was heard by the High Court. Before the High Court the appellant limited its argument to the following two questions
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> (i) Whether on the facts and in the circumstances of the case and on a proper interpretation of the Madras Electricity Supply Undertakings (Acquisition) Act, 1954 the Tribunal was justified in law in holding that no part of the compensation was attributable to the goodwill of the company;
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> (ii)Whether the Tribunal was justified in law in not determining the amount of compensation attributable to the goodwill and in further not determining the Capital Gains, if any, arising out of such acquisition", By its judgment dated November 19, 1971, the High Court answered both the questions against the appellant but granted to it a certificate of fitness to appeal to this Court, which has given rise to Civil Appeal No. 2006 of 1972.

We will take up Civil Appeal No. 2160 of 1972 first for her consideration the involves for consideration the decision of the question whether compulsory acquisition of property falls within the scope of section 12B of the Indian Income- tax Act, 1922, so as to render any surplus arising from such acquisition liable to tax under that section. Capital gains were charged for the first time by the Income- tax and Excess Profits Tax (Amendment) Act, 1947, which inserted section 12B in the Indian Income-tax Act, 1922. It taxed capital gains arising after March 31, 1946. The levy on capital gains was, however, abolished by the Indian Finance Act, 1949, which confined the operation of section 12B to capital gains arising before April 1, 1948. The levy of tax on capital gains was revived by the Finance (.No. 3) Act, 1956, with effect from April 1, 1957, which substituted the following section with which we are concerned. It read thus :

> "12B(1) The tax shall be payable by an assessee under the head 'capital gains' in respect of any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset effected after the 31st day of March 1956, and such profits and gains shall be deemed to be the income of the previous year in which the sale, exchange, relinquishment or transfer took place :
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> Provided that any distribution of capital assets on the total or partial partition of Hindu undivided family or under a deed of gift, request or will shall not for the purposes of this section be treated as a sale, exchange, relinquishment or transfer of the capital assets....."

Learned counsel appearing for the appellant contends that if a subject is deprived of his property by the State in exercise of its power of eminent domain, there is no 'transfer' of property within the meaning of section 12B(1), the reason being that a transfer cannot be effected, according to the ordinary connotation of that word, without the concurrence of the transferor and the transferee. It is urged that a compulsory divestiture of title against the volition of the owner cannot amount to transfer, howsoever lawful the act may be as a statutory acquisition of property. The justification for this submission is stated to be that the word 'transfer' occurs in the collocation of three other words 'sale', 'exchange' and 'relinquishment' which are essentially volitional or voluntary acts, leading to the conclusion that the word 'transfer' must take its colour from the three other words in association with which it is used. 'Transfer', therefore, according to the learned counsel, means a voluntary transfer and cannot include the compulsory acquisition of property.

We find it impossible to accept this submission. In the first place if it was intended that voluntary transfers alone should fall within the meaning of the section, it was unnecessary for the legislature to use the expression 'transfer', an expression acknowledged in law as having a vide connotation and amplitude. Earl Jowitt, in 'The Dictionary of English Law' says "In the law of property, a transfer is where a right passes from one person to another, either (1) by virtue of an act done by the transferor with that intention, as in the case of a conveyance or assignment by way of sale or gift, etc.; or (2) by operation of law, as in the case of forfeiture, bankruptcy, descent, or intestacy".

Roland Burrows on Words and Phrases', volume V, contains a statement under the caption 'Transfer on Sale' at page 331 that even a transfer of land under compulsory powers is a transfer 'on sale'. It is unnecessary for us to consider the question whether a compulsory acquisition of property is a 'sale within the meaning of section 12B(1) and indeed, it is needless for the present purpose to go that far. We are concerned with the narrower question whether a compulsory acquisition of property can amount to a 'transfer' within the meaning of section 12B(1) and upon that question it is important to bear in mind that the word transfer is comprehensive and is regarded generally as cormprehensing within its scope transfers both of the voluntary and involuntary kinds. Without more, therefore, there is no reason for limiting the operation of the word 'transfer' to voluntary acts of transfer so as to exclude compulsory acquisitions of property.

The argument that the word 'transfer' must be construed ejusdem generis with the words sale, exchange or relinquishment has to, be rejected because as stated in Craies on Statute Law (7th

edition, page 181);

> "the ejusdem generis rule is one to be applied with caution and not pushed too far, as in the case of many decisions, which treat it as automatically applicable, and not as being, what it is, a mere presumption, in the absence of other indications of the intention of the legislature. The modern tendency. of the law, it was said, is 'to attenuate the application of the rule of ejusdem generis'. To invoke the application of the ejusdem generis rule there must be a distinct geneus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply".

Thus, unless you find a category there is no room for the application of ejusdem generis doctrine and where the words are clearly wide in, their meaning they ought not to be qualified on the ground of their association with other words. (See Provost, etc. of Glasgow v. Glassgow Tramway) Co.(1). In N.A.L.G.O. v. Bolton Corpn.(2), it was held that "the ejusdem generis rule is often useful or convenient, but it is merely a rule of construction, not a rule of law". In the instant case, in the absence of a distinct genus or category, no presumption can arise that the word 'transfer' must be construed in the sense of a voluntary act of transfer since 'sale', 'exchange' or 'relinquishment' are in the normal acceptation of those terms voluntary acts. The words (a) sale, (b) exchange, (c) relinquishment and (d) transfer must accordingly be given their plain and natural meaning and there is no justification for restricting the vide comprehension of the last of the four words to voluntary transfers by the application of the ejusdem generis rule.

The legislative history of section 126(1) furnishes an important clue to the question raised by the appellant's counsel. Prior to its amendment by the Finance (No. 3) Act, 1956, which came into force on April 1, 1957, section 12B(1) of the Act of 1923 read thus :

> "12B. Capital gains.-(1) The tax shall be payable by an assessee under the head 'Capital gains' in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset effected after the 31st day of March, 1946, and before the 1st day of April, 1948; and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange or transfer took place...
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> Provided further that any transfer of capital assets by reason of the compulsory acquisition thereof- under any law for the time being in force relating to the compulsory (1) [1898] A.C. 631, 634.
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> (2) [1943] A.C. 166.

acquisition of property for public purposes of any distribution of capital assets on the total or partial partition of a Hindu undivided family, or on the dissolution of a firm or other association of persons, or on the liquidation of a company, or under a deal of gift, bequest, will or transfer on irrevocable trust shall not, for the, purposes of this section, be treated as sale, exchange or transfer of the capital

assets:.....":

> The proviso which we have extracted above shows that the word 'transfer' which occurred in sub-section (1) was intended to include transfer of capital assets by reason of the compulsory acquisition thereof under any law for the time being in force relating to the compulsory acquisition of property for public purposes. The object of the proviso, clearly, was to take away transfers by way of compulsory acquisition from the scope of sub-section (1). It is im- possible on any other hypothesis to give intelligible meaning to the exception carved out by the proviso. This is in so far as the legislative history of section 12B prior to its amendment by Finance (No. 3) Act, 1956, is concerned. After the amendment of section 12B by the Act of 1956, the exception carved out by the proviso in favour of 'transfer of capital assets by reason of the compulsory acquisition thereof was deleted. The rest of the proviso was retained substantially with certain modifications and additions which are not relevant for our purpose. The deletion of the particular clause of the proviso contains an indelible reflection of the true legislative intent which is, that the transfer of capital assets by reason of compulsory acquisition are comprehended within the meaning of the word 'transfer'. We are, therefore, clear that if an existing title is extinguished and a new one is created, there is within the meaning of section 12B(1) of the Act of 1922, transfer of a capital asset. The fact that the divestiture of title takes place under a law relatingto compulsory acquisition of property would make no difference to that position.
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> The High Court of Madhya Pradesh in the Commissioner of Income-tax, Madhya Pradesh v. Shrikrishan Chandmal and another(1), the High Court of Madras in Wilfred Pereira Ltd. v. Commissioner of Income-tax, Madras (2) and Commissioner of Income-tax, Madras v. United India Life Assurance Company Ltd. (3) and the High Court of Gujarat in Vadilal Soda Ice Factory v. Commissioner of Income-tax, Gujarat(4) have taken the same view, namely, that the word 'transfer which occurs in section 12B(1) of the Income-tax Act, 1922 is an expression of wide comprehension and includes within its sweep both voluntary and involuntary transfers. (1) 47 ITR 833.
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> (2) 53 ITR 747.
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> (3) 62 ITR 610.
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> (4) 80 ITR 711.

The, judgment of the, High Court dated August 25, 1971, leading to Civil Appeal No. 2160 of 1972 must therefore be affirmed and the appeal dismissed.

In regard to Civil Appeal No. 2006 of 1972, the case of the appellant before the Income-tax Officer was only this that the compulsory acquisition of its undertaking did not amount to a 'transfer' within

the meaning of section 12B(1) of the Act of 1922. No case was made out that, alternatively, goodwill is not a capital asset. The appellant did not contend before the Appellate Assistant Commissioner also that goodwill is not a capital asset and therefore at least to the extent to which compensation was attributable to the goodwill, the Capital Gains tax was not attracted. The appellant did contend before the Tribunal that apart from its tangible assets, the State Government had taken over, the goodwill attaching to the business and the appellant's right to the management of that business and the amount referable to these items had to be deducted in computing the capital gains. The Tribunal answered this contention by holding that-

(a) goodwill as understood in law had no real significance in the present case and could not have been acquired by the Government;

(b) it was not one of the assets shown in the balance-sheet;

(c) there was no proof to show that the Government actually took over any goodwill;

(d) if the case of the appellant was that even if it was not shown in the balance-sheet, payment therefore had to be evaluated or apportioned, the appellant should have produced proof regarding the evolution of the goodwill;

(e) the appellant had not placed any materials before the Tribunal to show whether any interference was called for in the matter of computation having regard to the value of goodwill as on January 1, 1954; and

(f) the right of management was not independent of the business acquired and there. were no materials to show that this right could have any value placed upon it in the fixation of compensation.

The High Court was, in our opinion right in taking the view that in the light of these circumstances the appellant's contention, that goodwill should be valued separately and a part of the compensation attributable to it should be deducted from the compensation, could not be accepted. Even assuming for the purposes of argument that the two relevant questions on which the, High Court called for a reference from the Tribunal involved the consideration of any legal principle, the questions are mixed questions of law and fact because, unless it is found that the goodwill, infact, had some value, it cannot be decided whether any part of the compensation is attributable to the goodwill of the business.

Learned counsel for the appellant drew our attention to the grievance made by the appellant in his application dated February 8, 1972, for leave to appeal to this Court to the effect that the Tribunal had expressed the view at the time of hearing of the appeal before it that it would only decide the point whether a part of the compensation was attributable to the goodwill of the business and that thequestion as regards the value of the goodwill as of January 1, 1954,would be, left to the Income-tax Officer for his determination. The grievance of the appellant is that it was misled by the observations made by the Tribunal during the course of the hearing of the appeal and that is why it did not produce any evidence regarding the value of the goodwill. That there is no substance in this

contention is clear from the order of the Tribunal dated October 9, 1968, by which it refused to refer for the opinion of High Court the question regarding the evaluation of the goodwill. The Tribunal observes in its order that during the hearing of the appeal it had not expressed any view of the kind attributed to it by the appellant and that no assurance was held forth to the appellant that the question as regards goodwill would be left for determination to the Income-tax Officer.

Since the question as to whether a part of the compensation is attributable to the goodwill of the appellant's business is a mixed questionof law and fact and since not only was the question not raised bythe appellant before the Income-tax Officer or the Appellate Assistant Commissioner but, having raised it before the Tribunal the appellantplaced no material before it on the basis of which goodwill could beevaluated and a part of the compensation properly apportioned to the goodwill of the business, we cannot allow the appellant to raise the contention involved in the two questions. On those questions, therefore, the judgment of the High Court, for the reasons mentioned by us, has to be affirmed. Civil Appeal No. 2006 of 1972 is also, therefore, dismissed.

In the ultimate result, both the appeals are dismissed and the judgment of the High Court in both the cases is confirmed. The appellant shall pay the Commissioner's costs in the appeals.

S.R. Appeals dismissed.
8-329SCI/78