

## SPECIAL BENCH.

*Before Addison, Jai Lal and Bhide JJ.*

BHOLA RAM & SONS, LTD.—Petitioner

*versus*

THE CROWN—Respondent.

1934

March 29.

Civil Reference No. 31 of 1934

*Indian Companies Act, VII of 1913, Section 104 (2)—Form VII, column 3—Particulars showing allotment of shares 'otherwise than in cash'—Stamp duty—whether chargeable as on an 'Agreement' or on a 'Conveyance.'*

The Company (Petitioner), having by oral contract agreed to take over the entire business of a Firm in consideration of the allotment of certain fully paid up shares in the Company, gave particulars of the transaction in its return to the Registrar under Section 104 of the Indian Companies Act (Form VII, column 3), which particulars were, under sub-section (2) of that section, chargeable with the same stamp duty as the contract would have been if it had been reduced to writing. The Company claimed that the particulars were chargeable as an 'agreement,' with a one rupee stamp, and not as a 'conveyance.'

*Held*, that the particulars filed were chargeable with stamp duty as on an 'agreement' and not as on a 'conveyance' inasmuch as the agreement as shewn in column 3 of Form VII was in the nature of a transfer of the business of the Firm in the future and not *in presenti*.

*Case referred under section 57 of the Indian Stamp Act, 1899, by the Hon'ble Mr. J. N. G. Johnson, Chief Commissioner, Delhi, with his letter No. 741, dated 25th January, 1934, for orders of the High Court.*

MEHR CHAND MAHAJAN and AMAR NATH CHONA,  
for Petitioner.

DEWAN RAM LAL, Government Advocate, for  
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BHIDE J.—This is a reference by the Chief Commissioner, Delhi, under section 57 of the Indian Stamp Act.

The material facts giving rise to the reference may be briefly stated as follows:—A firm styled Messrs. *Rai Sahib* Bhola Ram & Sons was carrying on business as wine and general merchants in Delhi and other places. In 1931 a Company named *Rai Sahib* Bhola Ram & Sons, was formed, one of the objects of which, according to clause 3 (a) of the memorandum of association, was to take over the running business of the firm Messrs. *Rai Sahib* Bhola Ram & Sons with its good will and all property assets and liabilities as on 31st March, 1931, in consideration of the allotment of fully paid up shares in the capital of the new company as follows:—

*Rai Sahib* Bhola Ram .. 32 shares.

Mr. Sardari Lal and Mr. Jaswant Rai  
(sons of *Rai Sahib* Bhola Ram) .. 32 shares each.

It is alleged that the shares were allotted as above in consideration of an oral agreement on behalf of Messrs. Bhola Ram & Sons to transfer their assets, liabilities and good will to the Company and that no deed of conveyance with respect to the property or the good will of the partnership has so far been executed in favour of the Company.

After the allotment of the shares, the Company had to file with the Registrar, in accordance with the provisions of section 104 of the Indian Companies Act, a return as to the allotment of the shares together with another return showing the prescribed particulars in respect of the 96 shares which were allotted as fully paid up 'otherwise than in cash' as stated above in pursuance of an oral contract. The particulars given in respect of these shares as required

in column 3 of Form VII prescribed for the purpose were as follows :—

<p>(3) If the consideration for the allotment of any shares is a sale of property or the agreement for the sale of property, state fully the consideration for, and other terms of such sale or agreement for sale.</p>	<p>The consideration for the agreement to sell is the allotment of 96 fully paid up shares of the nominal value of Rs. 1,44,000—<i>vide</i> clause 3 (a) of the memorandum of the association of the Company. There are no other terms of the said agreement of the sale.</p>
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According to sub-section (2) of section 104 of the Indian Companies Act, the particulars so supplied are chargeable with the same stamp duty as the contract of which the particulars are given, if it had been reduced to writing. When the particulars were filed in the office of the Registrar an objection was raised that the above particulars were chargeable with duty as a 'conveyance' under article 23, Schedule I, of the Indian Stamp Act. The Company claimed that the particulars were chargeable as an 'agreement' only with a one rupee stamp. The Registrar, who is also the Collector for the Delhi Province, decided that the objection was valid and ordered the Company to pay a stamp duty of Rs. 2,150 together with a penalty of an equal amount. The Company appealed to the Chief Commissioner, who is the Chief Controlling Revenue Authority for the Delhi Province, under section 56 of the Indian Stamp Act, for the setting aside of the Collector's order and he has made the present reference under section 57 of that Act as he was of opinion that the question of law involved was not free from doubt.

The sole point for decision before us is whether the aforesaid particulars filed with the Registrar are

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in the circumstances of the case chargeable with stamp duty as a 'conveyance' or as an 'agreement.' The decision of the question depends on the interpretation of the provisions of sub-sections (1) and (2) of section 104 of the Indian Companies Act which are as follows:—

“ 104. (1) Whenever a Company having a share capital makes any allotment of its shares, the Company shall, within one month thereafter—

(a) file with the Registrar a return of the allotment, stating the number and nominal amount of the shares, comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(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.

(2) Where such a contract 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 these 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 under section 31 of that Act."

It would appear from the above that clause (b) of sub-section (1) requires that in the case of shares allotted as fully or partly paid up 'otherwise than in cash,' the '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 should be produced for the inspection of the Registrar—such contracts being duly stamped. Sub-section (2) goes on to say that where 'such a contract as above-mentioned is not reduced to writing,' the Company must file the prescribed particulars thereof and the prescribed particulars so supplied have to be stamped with the same stamp duty as would have been payable if the contract had been reduced to writing. Now, the only 'contract in writing' which is specifically referred to in sub-sections (1) (b) is the contract 'constituting the title of the allottee' to the allotment of the shares in question and when this contract is *not in writing*, the particulars of this contract have to be filed under sub-section (2). We have, therefore, to see which was the 'contract constituting the title of the allottees' in the present case. According to the Company, this contract consisted of the oral agreement on behalf of the firm Bhola Ram & Sons to transfer their assets, good will, etc., to the Company

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in lieu of the 96 shares allotted to *Rai Sahib* Bhola Ram and his two sons who were the partners of that firm and there was no other 'contract of sale or for services, etc.' The particulars supplied were therefore of this oral agreement between the firm and the Company and according to the provisions of subsection (2) of section 104, the stamp duty payable on the particulars would be the same as that on the oral agreement referred to above, if it had been reduced to writing. It was contended on behalf of the Company that the agreement being to transfer the assets, etc. *in the future* it could not be treated as a 'conveyance' and as an agreement it was liable only to a duty of one rupee in this province. The Company had actually paid a stamp duty of Rs. 10 which was in excess of the duty legally payable.

In reply to the above contentions of the learned counsel for the Company, the learned Government Advocate advanced a two-fold argument. He urged firstly that the agreement was in reality to transfer the assets, etc. at once and not in the future and secondly, that the particulars supplied under subsection (2) of section 104 must at any rate be treated for purposes of stamp duty as a 'conveyance' of the property and not merely as an agreement to transfer the property. Neither of these positions, however, appears to me to be tenable. So far as the nature of the agreement is concerned, the facts were not disputed before the Collector or the Chief Controlling Revenue Authority and have been apparently accepted by them and we must therefore take it for the purposes of this reference that the agreement was in fact as stated in Form VII. It was urged that in Form VI supplied by the Company in respect of the allotment of the shares, the consideration for the allotment is

described as the 'purchase of the firm *Rai Sahib* Bholā Ram & Sons as a going concern with all assets and liabilities.' But Form VI makes only a brief reference to the matter and its wording, though not happy, is not wholly inconsistent with the allegation that the purchase was to take place subsequently. The particulars of the agreement are given in Form VII and this is the document with which we are concerned for the purposes of the present reference.

The second argument put forward by the learned Government Advocate that the particulars must be treated as a conveyance is not supported either by the wording of section 104 or of the form for particulars (Form VII) prescribed thereunder. The section requires the particulars of the contract 'constituting the title of the allottee' to be filed with the Registrar. If this contract consisted merely of an agreement to transfer properties in the future, it is difficult to see how the particulars thereof could be treated as a transfer of the property *in presenti*. Sub-section (2) of section 104 clearly lays down that the particulars would be liable to the same stamp duty as would have been payable if the contract of which the particulars are supplied had been reduced to writing. Further, column 3 of Form VII prescribed under the Act itself recognises a distinction between sales of property and agreements to sell property which might form the consideration for the allotment. It seems therefore clear that in the circumstances of this case the particulars cannot be treated as a 'conveyance,' as the contract of which the particulars are supplied was only an agreement to transfer property in the future. 'Conveyance' is defined in the Indian Stamp Act as follows:—'Conveyance includes a conveyance on sale and every instrument by which pro-

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erty whether moveable or immoveable is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I.' It would appear from this definition that an actual transfer of property is an essential feature of a "conveyance." Consequently an agreement to transfer property in the future cannot be treated as a "conveyance."

The present case appears to be of the same type as those reported in *Commissioner of Inland Revenue v. Angus, The same v. Lewis* (1) and *In re Swadeshi Cotton Mills Co.*, (2), on which the learned counsel for the Company relied and which the learned Government Advocate did not even attempt to distinguish. In both these cases there were agreements to transfer assets or good will of a business in the future in similar circumstances. But it was held that these agreements were not liable to stamp duty as "conveyances." The only point of distinction is that in the present case the agreement was an oral one; but for purposes of stamp duty, as pointed out already, the particulars supplied under section 104 (2) of the Indian Companies Act stand on the same footing as the agreement if it had been reduced to writing. The Collector has merely relied on *In re The Kondoli Tea Co., Ltd.* (3), in support of his order but that case is clearly distinguishable as there was a deed conveying the property in that case. All that was held therein was that the mere fact that the transferors and the transferees were practically identical did not make any difference for the purposes of stamp duty. It was urged by the learned Government Advocate that the firm Bhola Ram & Sons and the new Company were practically identical and the alleged oral agree-

(1) (1889) 23 Q. B. D. 579.

(2) 1932 A. I. R. (All.) 291.

(3) (1886) I. L. R. 13 Cal. 43.



ment was merely a device adopted with a view to evade stamp duty. That may be so; but as pointed out in the rulings referred to above, we are not concerned with that aspect of the question. It is a well-established principle that fiscal enactments must be construed strictly. We have to interpret the law as it stands and to see whether, in view of the provisions of section 104 of Indian Companies Act read with those of the Indian Stamp Act, the "particulars" of the oral 'contract constituting the title of the allottee' which were supplied in the present case fall within the definition of a "conveyance." For reasons given above, it seems to me that these particulars cannot be treated as a "conveyance" for the purposes of stamp duty and can only be treated as an agreement. I would, therefore, answer this reference accordingly. If this situation is unsatisfactory and the law is defective, it is for the Legislature to consider what steps should be taken to amend it.

ADDISON J.—I agree.

JAI LAL J.—I agree.

A. N. C.

*The following case is similar to the above and was decided by the same Bench on the same date:—*

LAKHSHMI IRON & STEEL MANUFACTURING COMPANY, LTD.—Petitioner

*versus*

THE CROWN—Respondent.

Civil Reference No. 32 of 1934.

*Case referred under section 57 of the Indian Stamp Act, 1899, by the Hon'ble Mr. J. N. G. Johnson, Chief Commissioner, Delhi, with his No. 747.*

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