[2019] 103 taxmann.com 12 (Bombay)

IT : Where assessee sold its entire sahreholding in its subsidiary UHEL to a third party and, AO took a view that it was a case of slump sale 2(42C), in view of fact that what was transferred were mere shares of assessee in UHEL and there had been no transfer of an undertaking of UHEL, such change in mere pattern of shareholding of UHEL would not make it a case of slump sale, and,thus, impugned order passed by AO was to be set aside

■■■

[2019] 103 taxmann.com 12 (Bombay)

HIGH COURT OF BOMBAY

Principal Commissioner of Income-tax-16

v.

UTV Software Communication Ltd.*

AKIL KURESHI AND M.S. SANKLECHA, JJ.
IT APPEAL NO. 1475 OF 2016†
JANUARY 29, 2019

Section 2(42C), read with section 50B of the Income-tax Act, 1961 - Slump Sale (Transfer of shares) - Assessment year 2007-08 - Assessee was in business of production of television programs, air time sales, movie production and distribution of films - During relevant year, assessee sold its entire sahreholding in its subsidiary UHEL to a third party - Assessing Officer took a view the sale of shares in UHEL to a third party resulted in slump sale of undertaking and, thus, capital gains had to be computed as per provisions of section 50B - Tribunal, however, held that transfer of shares by assessee in UHEL was just transfer of shares simplicitor and, said transfer of shares could not be considered to be a slump sale of undertaking within meaning of section 2(42C) - It was undisputed that what was transferred were mere shares of assessee in UHEL and there had been no transfer of an undertaking of UHEL - Whether in aforesaid circumstances, mere change in pattern of shareholdings of UHEL would not make it a case of slump sale - Held, yes - Whether, therefore, impugned order passed by Tribunal was to be upheld - Held, yes [Para 8] [In favour of assessee]

CASE REVIEW

UTV Software Communications Ltd. v. *Asstt. CIT* [2016] 65 taxmann.com 161 (Mum. - Trib) (para 8) *affirmed.*

CASES REFERRED TO

Bacha F. Guzdar v. *CIT* [1955] 27 ITR 1 (SC) (para 6) and *Vodafone International Holdings* v. *Union of India* [2012] 17 taxmann.com 202/204 Taxman 408/341 ITR 1 (SC) (para 6).

Suresh Kumar *for the Appellant.* **F.V. Irani** and **Atul Jasani** *for the Respondent.*

ORDER

1. This appeal under Section 260 A of the Income Tax Act, 1961 ("the Act" for short), challenges the order dated 9.12.2015 passed by the Income Tax Appellate Tribunal ("the Tribunal" for short). This appeal

relates to the Assessment Year 2007-08.

2. Revenue has urged following question of law for our consideration:—

> "Whether on the facts an in the circumstances of the case and in law, the Tribunal has erred in holding that the transaction between the assessee and M/s. The Walt Disney Company (Southeast Asia) Pte Ltd (WDPL) is that of share transfer and not the one of slump sale, without appreciating that the said transaction between the assessee and WDPL squarely meets the criteria of slump sale as laid down in Section 2(42C) of the Income Tax Act and thereby the Capital Gain accrued thereon should be governed by the provisions of Section 50B of the Income Tax Act, 1961?"

3. The respondent assessee is in the business of production of television programs, air time sales, movie production and distribution of films. For the subject assessment year, the respondent filed return of income declaring a loss of Rs. 21.01 crore under normal provisions of the Act and determining book profit at Rs. 19.44 crore under Section 115JB of the Act. In its return of income, the respondent had declared long term capital gains in respect of sale of its 49% shares in one M/s. United Home Entertainment Limited (UHEL) to a third party at Rs. 24.94 crore.

4. During the course of assessment proceedings, the Assessing Officer held that the respondent had sold its entire share holding i.e 100% in its subsidiary UHEL to a third party. The Assessing Officer thus concluded in its order dated 30.12.2010 that the sale of its shares in UHEL to a third party, resulted in slum sale of an undertaking. Thus, the capital gains have to be computed as per the provisions of Section 50B of the Act resulting in short term capital gain.

5. Being aggrieved, the respondent carried the issue in appeal to the Commissioner of Income Tax (Appeals) ["CIT(A" for short] but without success.

6. On further appeal to the Tribunal, the respondent pointed out that factually, the Assessing Officer was incorrect in holding that the respondent was holding 100% shares of UHEL In fact, the respondent held only 49% shares in UHEL while balance shares of 50% were held by Unilazer Export & Management Consultants Limited and 1% share were held by other shareholders. However, all of them had individually sold their share holdings in UHEL to the third party namely Walt Disney Company Ltd. However, the impugned order of the Tribunal proceeded to consider the issue in the context of the definitions of term "slump sale" under Section 2(42C) of the Act and of "undertaking" as given in Explanation 1 to Section 2 (19AA) of the Act and concluded that the transfer of shares in a company will not result in a transfer of an undertaking or part of the undertaking to make it a slump sale. The impugned order holds that the respondent had only sold its shares in UHEL and that the undertaking of UHEL was not the subject matter of the sale. The impugned order placed reliance on a decisions of the Supreme Court in the case of *Bacha F. Guzdar* v. *CIT* [1955] 27 ITR 1 and in the case of *Vodafone International Holdings B.V.* v. *Union of India* [2012] 17 taxmann.com 202/204 Taxman 408/341 ITR 1 to accept the respondent's contention that sale of shares of a company does not tantamount to sale of the assets of the company. It has been observed in *Bacha F. Guzdar* (*supra*) that "the interest of a shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders."

7. The Tribunal held that transfer of shares by the respondent in UHEL was just transfer of shares simplicitor and this transfer of shares cannot be considered to be a slump sale of an undertaking within the provisions of Section 2(42C) of the Act. Thus, making the provisions of Section 50B of the Act inapplicable to the present facts, while allowing the appeal of the respondent.

8. We find that the impugned order of the Tribunal has invoked the correct principle of law to draw a distinction between transfer of shares and transfer of undertaking. In the present facts, what has been transferred are mere shares of the respondent in UHEL There has been no transfer of an undertaking of UHEL. The undertaking continues to be vested in UHEL. Only there has been change in pattern of its share holdings which would not make it slump sale. This position is evident from the statutory definition of slump sale and the term 'undertaking' as defined in the Act read with the binding decision of the Apex Court.

9. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

10. In the result, the appeal is dismissed.

sunil

*In favour of assessee.
†Arising out in case of *UTV Software Communications Ltd.* v. *Asstt. CIT* [2016] 65 taxmann.com 161 (Mum. - Trib).