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# CALCUTTA ELECTRIC SUPPLY CORPORATION

*v.*

# COMMISSIONER OF WEALTH TAX, WEST BENGAL

*August* 12, 1971

B [K. S. HEGDE AND A. N. GROVER, JJ.]

*Wealth Tax Act*, 1957 *s. 7—Computation of value of assets under—Assets as shown in balance-sheet can be accepted but Wealth-tax Officer not bound to accept valuation as shown therein—Electricity company seeking deduction of value of service connections installed at cost of consumers—Assessee failing to prove that service connections were not in* C *ownership of company—Shown in balance sheet as company's assets—Wealth Tax Officer justified in refusing deduction—Fact that service connections are not to be included in company's assets under s.7 A of Indian Electricity Act is irrelevant, for the purpose of s. 7 of Wealth Tax Act.*

The assessee carried on the business of supplying electrical energy in the City of Calcutta. During the year 1959-60 the corresponding valu- D ation date being March 31, 1959, the assessee showed in its balance sheet a deduction from the value of its total assets on the ground that the sum in question represented the contribution made by the consumers for putting up service connections. The Wealth Tax Officer proceeded to assess the net wealth of the assessee under s. 7 (2) of the Wealth Tax Act, 1957 and in doing so refused to grant the deduction claimed, though he accepted the valuation of the assets as shown in the balance-sheet. E The Appellate Assistant Commissioner and the Appellate Tribunal however held that the deduction must be allowed. The Tribunal was influenced in its decision by the fact that in computing the value of the undertaking under s. 7 (A) of the Indian Electricity Act the value of service lines and other capital works or any part thereof which had been constructed at the cost of the consumers had to be ignorned. The High Court in reference decided against assessee. In appeal to F this Court by the assessee,

HELD: (*i*) Section 7 (2) of the Wealth Tax Act authorises the Wealth-tax officer to accept the valuation of the assets of a business as shown in the balancesheet of a company. He is not bound to accept any deduction shown in the balance sheet if he comes to the conclusion that the said deduction was impermissible. Section 7(2) does not say that the Wealth Tax Officer should accept the balance sheet as a whole G or reject it as a whole. He is merely authorised to accept the value of the assets of the business as shown in the balance sheet. In the present case the wealth tax officer had accepted the value of the assets of the business as shown in the balance sheet but had not accepted the fact that the service lines were not owned by the assessee. [164 B-D]

(*ii*) There was no material before the authorities under the Act H to hold that the service connections were not the assets of the company. The fact that those assets were acquired by the company by utilising the contributions made by the consumers was a wholly irrelevant circumstance. The balance sheet showed the service connections as the assets

of the assessee. It was not said that they were the assets of the consumers on the relevant valuation date. The admission in the balance sheet (profit and loss accounts) was not rebutted by any other evidence. Hence the Wealth Tax Officer was justified in holding that they were assessee's assets. [164 E-H]

(*iii*) It is true that in view of s.7(A)(2) of the Electricity Act, in computing the market value of the undertaking sold under sub-s.(1) of s.5 of that Act, the value of service lines and other capital works or any part thereof which had been constructed at the expense of the consumers will not be taken into consideration. But s.7(A) only deals with sales under s.5(1) of the Act. If a sale is effected under s.8 the licensee shall have the option to dispose of all land building, works, materials and plants belonging to the undertaking in such manner as he may think fit. In such sales it is open to him to value the service connections put up at the expense of the consumers and add the same in computing the sale price. It is clear from ss.5 to 8 of the Electricity Act that the licensee is the owner of the service connections put up at the expense of the consumers. If that is not so, there is no purpose in mentioning in s.7A that while determining the market value of the undertaking the value of the service connections shall not be taken into consideration. Further s.8 would not have permitted the licensee to pocket the value of those service connections. The fact that the value of one or more of the assets of an undertaking will not be taken into consideration in computing the value of an undertaking when sold under compulsion of law because of some statutory provision does not by itself show that it is not a valuable asset within the meaning of s.7 of the Wealth Tax Act. [166 D-H]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos 1656 and 1657 of 1968.

Appeals from the judgment and order dated August 22, 1967 of the Calcutta High Court in Income-tax Reference Nos. 250 and 325 of 1963.

*M. C. Chagla* and *D. N. Mukherjee*, for the appellant (in both the appeals).

*B. Sen*, *A. N. Kirpal*, *R. N. Sachthey* and *B. D. Sharma*, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

**Hegde,. J.** These appeals arise from the decision of the High Court of Calcutta in a Reference under s. 27(1) of the Wealth Tax Act, 1957 (to be hereinafter referred to as the Act). In that decision, the High Court was requested to give its opinion on two questions of law referred to it by the Income-tax Appellate Tribunal, 'B' Bench, Calcutta. Following the decision of this Court

A in *Commissioner of Wealth-tax* v. *Ramaraju Surgical Cotton Mills Ltd.*,[1] the High Court answered the second question against the Revenue. That decision has become final. At present we are only concerned with the first question of law referred to the High Court for its opinion.

B That question reads:

> "Whether on the facts and in the circumstances of the case, the sum of £8,54,948 was deductible in determining the net value of the assets of the assessee's business under Section 7(2)(a) of the Wealth-tax Act?"

C The assessee is a Sterling Company incorporated in U.K. It carries on business of supplying electric energy in the city of Calcutta. During the year 1959-60, the corresponding valuation date being March 31, 1959, the assessee showed in its balance-sheet a deduction of £8,54,948 from the value of its total assets on the ground that the sum in question

D represents the contribution made by the consumers for putting up service connections. The relevant portion of the balance sheet reads thus:

**"THE CALCUTTA ELECTRIC SUPPLY CORPORATION LIMITED**

E **ACCOUNT OF CAPITAL EXPENDITURE AND OF DEPRECIATION**

For the year ended 31st March, 1958

| | Extended to March, 31, 1957 | Added during year | Cost of items scraped during year | Total at 31st March 1958 |
|---|---|---|---|---|
| F | 1 | 2 | 3 | 4 |
| Mains & Service Connections. | 8,725205 | 893,707 | 50242 | 9568670 |

| | Total at 31st March 1957 | Added frum the revenue of the year | Depreciation written off on Assets scrapped | total at 31st March 1958 | Net Expenditure at Cost less Depreciation at 31st March 1958 |
|---|---|---|---|---|---|
| G | 5 | 6 | 7 | 8 | 9 |
| | 2,954497 | 199239 | 11598 | 3142138 | 6426532 |
| | | × | > | > | > |

Less: Consumer's Contributions for Mains and Service Connections since 10th September, 1948.

717,059

H The Wealth-tax Officer proceeded to assess the net wealth of the assessee under s.7(2) of the Act. But he refused to grant the deduction claimed though he accepted

1. 53, I.T.R. 478;

the valuation of the assets as shown in the balance sheet. Thereafter the assessee went up in appeal to the Appellate Assistant Commissioner of Wealth-tax. The Appellate Assistant Commissioner allowed the appeal holding that as the Wealth Tax Officer has proceeded to assess the assessee under s. 7(2), he must accept the balance sheet as a whole. Hence it was impermissible for him not to allow the deduction shown in the balance sheet. He accordingly deleted the amount added back by the Wealth Tax Officer. As against that order, the Department went up in appeal to the Income-tax Appellate Tribunal. The Tribunal held that although the entire undertaking of the company including portions of Mains and Service Connections put up at the expense of consumers was the property of the company, it would not be correct to include the value of such portions in the net wealth of the company computed under s. 7(2). The Tribunal further held that the marketability of the Electric Undertaking had certain special features which had to be taken into consideration in assessing its Valuation. One such special feature the Tribunal noted was that the company could not sell the undertaking except in accordance with the provisions of s.5 of the Indian Electricity Act, 1910, and the market value of the undertaking in the event of sale had to be determined in accordance with the provisions in s.7(A) of the Act. While computing the value of the undertaking under s.7(A) of that Act, the value of service lines and other capital works or any part thereof which has been constructed at the expense of the consumers has to be ignored. In the result the Tribunal agreed with the conclusions reached by the Appellate Assistant Commissioner.

A B C D E F

As mentioned earlier at the instance of the Department, the Tribunal submitted two questions of law. We have already set out the question with which we are concerned in these appeals.

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The High Court answered the questions referred to it for its opinion against the assessee.

Section 7 of the Act deals with the mode of determination of the value of the assets. It reads thus:

H

"7. Value of assets how to be determined.—

(1) Subject to any rules made in this behalf, the value of any asset, other than cash, for the pur-

A poses of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date.

(2) Notwithstanding anything contained in B Sub section(1),

(a) where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax Officer may, instead of determining separately the value of C each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustments therein as may be prescribed;

D

(b) where the assessee carrying on the business, is a company not resident in India and a computation in accordance with clause (a) cannot be made by reason of the absence of any separate balance-sheet drawn up for the affairs E of such business in India, the Wealth-tax Officer may take the net value of the assets of the business in India to be that proportion of the net value of the assets of the business as a whole wherever carried or determined as aforesaid as the income arising from the business F in India during the year ending with the valuation date bears to the aggregate income from the business wherever arising during that year."

As seen earlier, the Wealth-tax Officer had determined G the value of the assets under s. 7(2). There is no dispute that the assessee is maintaining regular accounts for the business it is carrying on. Therefore it was open to the Wealth-tax Officer, instead of determining separatly the value of each asset held by the assessee as a part of its business, to determine the net value of the assets of the H business as a whole as on the valuation date having regard to the balance-sheet of such business. This section nowhere says that the Wealth-tax Officer while proceeding

under s. 7(2) is bound to accept every entry in the balance-sheet. What the section permits the Wealth-tax Officer is that instead of separately valuing each asset forming part of the business, he may determine the net value of the business as a whole having regard to the balance-sheet of such business as on the valuation date. In other words s. 7(2) authorises the Wealth-tax Officer to accept the valuation of the assets of a business as shown in the balance sheet of the company. He is not bound to accept any deduction shown in the balance-sheet if he comes to the conclusion that the said deduction was impermissible. Section 7(2) does not say that the Wealth-tax Officer should accept the balance-sheet as a whole or reject it as a whole. He is merely authorised to accept the value of the assets of the business as shown in the balance-sheet. In the present case, the Wealth-tax Officer has accepted the value of the assets of the business as shown in the balance-sheet. But he has not accepted the fact that the service lines are not owned by the assessee.

We shall proceed to consider whether the service lines which were constructed at the expense of consumers are the assets of the company. In the balance-sheet they are shown as the assets of the company. There was no material before the authorities under the Act to hold that they were not the assets of the company. The fact that those assets were acquired by the company by utilizing the contributions made by the consumers is a wholly irrelevant circumstance. The only thing relevant for the purpose of the Act is that the assessee should be the owner of the assets in question on the relevant valuation date. The Act does not concern itself with the mode in which those assets were acquired. It is immaterial for the purpose of the Act whether the assessee acquired those assets from his own money or with the assistance of others. The balance-sheet shown those service connections as the assets of the assessee. It was not said that they were the assets of the consumers on the relevant valuation date. The admission in the balance-sheet (profit and loss accounts) is not rebutted by any other evidence. Hence the Wealth-tax Officer was justified in holding that they were assessee's assets. The Tribunal was impressed by the fact that if and when the undertaking is sold the assessee will not get any price for the service connections in view of s.7 (A) (2) of the Indian Electricity

Act 1910. Section 7(A) provides for the determination of the purchase price on revocation of licence under s. 4. Whenever a licence of a licensee under the Indian Electricity Act is revoked under s. 4 it is open to the State Government to acquire the undertaking itself or to direct the licensee to sell the undertaking to one or the other of the authorities or person designated therein. When a sale in pursuance of such a direction is effected valuation of undertaking is made in accordance with s. 7(A). Section 7 (A) reads:

"7A. (1) Where an undertaking of a licensee not being a local authority is sold under sub-section (1) of section 5 the purchase price of the undertaking shall be the market value of the undertaking at the time of purchase or where the undertaking has been delivered before the purchase under sub-s. (3) of that section at the time of the delivery of the undertaking and if there is any difference or dispute regarding such purchase price the same shall be determined by arbitration.

(2) The market value of an undertaking for the purpose of sub-section(1) shall be deemed to be the value of all lands, buildings. works, materials and plant of the licensee suitable to, and used by him, for the purpose of the undertaking, other than (i) a generating station declared by the licensee not to form part of the undertaking for the purpose of purchase and (ii) service-lines or other capital works or any part thereof which have been constructed at the expense of consumers, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant and the state of repair thereof and to the circumstance that they are in such position as to be ready for immediate working and to the suitability of the same for the purpose of the undertaking, but without any addition in respect of compulsory purchase or of goodwill or of any profits which may be or might have been made from the undertaking or of any similar consideration.

(3) Where an undertaking of a licensee being a local authority is sold under sub-section (1) of section 5 the purchase price of the undertaking shall be such

as the State Government having regard to the market value of the undertaking at the date of delivery of the undertaking may determine.

(4) Where an undertaking of a licensee is purchased under section 6, the purchase price shall be the value thereof as determined in accordance with the provisions of sub-sections (1) and (2) :

Provided that there shall be added to such value such percentage if any, not exceeding twenty per centum of that value as may be specified in the licence on account of compulsory purchase.

It is true that in view of s. 7(A)(2) of the Electricity Act in computing the market value of the undertaking sold under sub-s.(1) of s. 5 of that Act the value of service lines which had been constructed at the expense of the consumers will not be taken into consideration. The reason for this provision is obvious. It will be the duty of the new licensee to not only maintain and repair those lines but also to replace them when they become unserviceable. But s. 7 (A) of the Electricity Act only deals with sales under s. 5(1) of the Act. But if a sale is effected under s. 8 the licensee shall have the option to dispose of all land building works material and plants belonging to the undertaking in such manner as he may think fit. In such sales it is open to him to value the service connections put up at the expense of the consumers and add the same in computing the sale price. It is clear from ss. 5 to 8 of the Electricity Act that the licensee is the owner of the service connections put up at the expense of the consumers. If that is not so there was no purpose in mentioning in section 7(A) that while determining the market value of the undertaking the value of the service connections shall not be taken into consideration. Further s. 8 would not. have permitted the licensee to pocket the value of those service connections. The fact that the value of one or more of the assets of an undertaking will not be taken into consideration in computing the value of an undertaking when sold under compulsion of law because of some statutory provision does not by itself show that it is not a valuable asset. Section 7 of the Act does not take note of hypothetical possibilities in the matter of valuation of the assets. It merely concerns itself as to

A what is the true market value of the assets in question on the valuation date. So far as the market value of the asset with which we are concerned in this case there is no difficulty. We have the assessee's own admission in its balance sheet.

B In the result these appeals fail and they are dismissed with costs–hearing fee one set.

G.C. *Appeals dismissed.*