

AO wasn't justified in substituting value of goodwill with trademark if there was no basis to substitute it

Summary – The High Court of Gujarat in a recent case of Bisleri International (P.) Ltd., (the Assessee) held that where assessee transferred its trade mark, goodwill, technical knowhow and franchise rights under different agreements in favour of Coca-cola company, merely because trademark was valued at nearly twenty times value of goodwill, Assessing Officer could not substitute declared consideration of trademark and goodwill and compute capital gain as transfer of trademark transfers not merely an emblem but also reputation

Facts

- The assessee was engaged in the business of production of mineral water in the trade name 'BISLERI'. It transferred its trade mark, goodwill, technical knowhow and franchise rights under different agreements in favour of company (Coca-cola) for a consideration of Rs. 313.50 lakhs and goodwill for a sum of Rs. 15.67 lakhs.
- The Assessing Officer in the context of capital gain tax arising out of such transfers, questioned the assessee on the lower valuation of the goodwill, particularly in comparison to the trademark.
- Assessee contended that the goodwill had no value of acquisition. Capital gain could not be computed and collected and that the price indicated in such transfer agreements cannot be substituted by the Assessing Officer on any consideration.
- The Assessing Officer rejected assessee's contentions and noted that trademark was valued at nearly twenty times the value of goodwill. In his opinion, since the receipt due to transfer of trademark was not taxable but the goodwill was taxable, the assessee had undervalued the goodwill component. He, therefore, substituted the said value of goodwill by a sum arrived by him by taking the mean of the total consideration received by the assessee for transfer of trademark and goodwill.
- The Commissioner (Appeals) reversed such decision of the Assessing Officer mainly on the ground that there was no basis to substitute the declared consideration of transfer of the goodwill. Though trademark was a valuable right representing the integral part of the business, transfer of trademark with itself transferred not merely an emblem or figure, but also the reputation.
- The Tribunal confirmed said order.
- On appeal:

Held

- Ordinarily the assessee's blanket proposition that under no circumstances, the Assessing Officer can question declared consideration in an agreement between the transferor and the transferee, particularly when such valuation was not backed by any scientific basis, cannot be accepted. However, in the present case, the view of Commissioner (Appeals) and the Tribunal could not be disturbed for the reasons: Firstly, Commissioner (Appeals) has given detailed reasons to over-rule the view of Assessing Officer. He noted that the trademark, emblem, figure and even the reputation

of the products of the company stood transferred, leaving very little by way of goodwill. In his opinion, after transfer of the trademark, it was not even necessary for assessee to separately enter into an agreement for transfer of trademark.

- The reflected sale consideration in an agreement between the transferor and transferee in such a situation cannot be lightly tampered with. The Assessing Officer in addition to having discarded such valuation, adopted a rather simplistic method of substitution of book mean of the transferred value of trademark and the goodwill and projected the resulting figure as a consideration for transfer of goodwill. If the assessee's adoption of the sum of Rs. 15.67 lakhs as valuation for goodwill was not backed by any material or data on the record, the substitution adopted by the Assessing Officer suffered from greater vice. There was no basis for Assessing Officer to believe that the trademark and goodwill must value at the same level.
- In the result, question is answered against the revenue and in favour of the assessee.