VALUATION OF SHARES

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By
JAYANTILAL H. SHAH
B.Com., Grad. C.W.A., F.C.A.

UNDER THE SUPERVISION OF

PROF. A.G. PATEL
PROFESSOR OF ACCOUNTS
M.S. UNIVERSITY OF BARODA

BARODA

SHARE VALUATION (APPRAISAL) FOR FISCAL PURPOSES

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CHAPTER V
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01 INTRODUCTION

01.01 When one is engaged in the process of Share valuation for fiscal purposes, considerations other than which applies for the valuation for other purposes apply. Lord Russal of Killoeoun: IRC Crossman IRC V Maun (1936) (1937) AC 26, (1936) 1 Aller 762 52 TLR 415, 80 Sal Jo 485; Sub nom Re Crossman Re Paulin 105 LKJB 450; 154 LTT 970 said "It is not a question of actual value or their true value, or their intrinsic value or their value in some particular person's ownership. THE VALUE TO BE ASCERTAINED IS THEIR STATUTORY VALUE."

01.02 The approach to the valuation assignment is listed in para 05.02 of Chapter III. But prior to listing of the basic elements the appraiser has to ascertain the interests to be valued in arriving at

2. Re Crossman Re Paulin 105 LKJB 450.
the statutory value. These are to be based on the provisions contained in the relevant statutes and the case laws.

01.03 As stated in the conceptual discussion on the theory of valuation the approach a practical appraiser should take, is that he is going in for the valuation of interest in the property and not the property itself. In the fiscal valuation the objects of the tax gatherer and that of tax payer are conflicting, each one pulling in the different directions. However, by lying down conceptual theory, modifying it with statute and judge based law appraiser can well ascertain the interest to be appraised. Knowledge on nature of share coupled with the need of law as interpreted by judges would enable him to complete his task.

01.04 It is also accepted that we are not dealing with an exact science. The factors involved in it are many and varied and subject to constant change. The valuer of shares for fiscal purposes has to consider these factors in context of ever changing statutory provisions and interpretations that the courts may give them.
01.05 Practical experience should always add to the theories advanced. There is no substitute for correct day to day real life situations. Lord Johnston: IR Harry's Trustees (1906) 44 Sc LR 647; 14 SLT 585 said while relaying on practical experience of a trained appraiser "I would definitely rather trust his trained and practical institution, though it would appear on paper to produce some what of a rule of Thumb result than many a more apparently scientific value classification."

01.06 To summarise some of the basic aspects of fiscal valuation.

a) Character of Problem:

Nothing in taxation field pays so large a dividend as a thorough knowledge of what to do, with valuation problem and how to do it. Difficult, nebulous but continually challenging, valuation has been termed as inexact science. Despite a large number of valuation cases, a comprehensive statement of applicable principles remains to be made. In part, this is

1. IR Harry's Trustees (1906) 44 Sc LR 647, 14 SLT 585.
due to fluid nature of valuation problems and impossibility of devising dogmatic formulae for valuing each species of property.

b) Sale as Criterion:

The fundamental and best criterion of value is the sale of the identical property, under theoretically ideal conditions, of ideal transaction between willing purchaser with means, and a willing seller. The comparable selling price is usually no more than dream, as it is difficult to find both, the identical property or comparable property in a competitive market, for a faint hint of bargain price, in such a sale and its evidentiary value evaporates.

c) Forecast as criterion:

Where comparative price method fails or is not available, the next leap in the dark world of unborn sales, is what would be its forecast value. For this,
one must (a) look at the past history of property ascertain what and how it has profited its owner, (b) look at the speculative prospect for the future, which are inherent in the situation, (c) adjust the past history for all abnormal, non-recurring factors, and (d) discount the future speculative possibilities for probability or improbability of its realisation. The feel of the past adjusted average is to be tempered in emulsion of future possibility of probable growth or decay.

In all these efforts, rule of reason is the key word. Any unreasonable result, then scrap the whole working and plunge head long again for search and research of relevant and essential facts. The attempt to solve the problem requires continuous need for intelligent and imaginative handling of facts, rather than any cut and dried formula.
d) Fair market value:

This fixed definition lies at the heart of any discussion of valuation. Fair market value is the price, at which a willing seller and willing buyer would agree to trade, though are both were quite aware of the facts. This necessitates reading of minds of an entirely fictitious willing buyer and equally non existent willing seller. The valuation requires stamp of tax authorities. Usually, the Government representative is an optimistic seller supporting higher valuation, and the taxpayer's representative is usually the pessimistic buyer.

It is now firmly established adjective fair in market value visualises a value which is unfair, unfair as between taxpayer and the revenue - See Joseph Valloram v. CIT (1977) 108 ITR 5441 and CIT v. Smt. Vimalaben

01.06 With this identification of critical aspects of appraising value of share in a company for fiscal purpose we now go to identify the occasion for valuation of shares for fiscal purposes.