
(1995) 03 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No. 869 of 1995

Anagram Finance Ltd.

APPELLANT

Vs

Appropriate Authority and Another

RESPONDENT

Date of Decision : 30-03-1995

Acts Referred:

Income Tax Act, 1961 — Section 269UD, 269UD(1), 269UD(1A), 269UD(1B)

Citation : (1995) 127 CTR 193 : (1996) 217 ITR 22

Hon'ble Judges : Rajesh Balia, J;C.K.Thakker, J

Bench : Division Bench

Advocate : S.N. Soparkar, for the Appellant; M.J. Thakor, for R.P. Bhatt and Co., for the Respondent

Judgement

Rajesh Balia, J.—Through this petition, the correctness and legality of the order at annexure "A" dated January 31, 1995, passed by the appropriate authority for purchase of the property in question u/s 269UD(1) of the Income Tax Act, 1961, has been questioned.

2. The facts giving rise to this petition may be noticed in brief. The property in question is part of the first floor of the building known as "Sakar-I" complex, situated opp : Gandhigram Railway Station, Ashram Road, Ahmedabad, which is a commercial complex. Respondent No. 2, Dalal Consultants and Engineers Pvt. Ltd. (hereinafter called the "vendors"), are the current occupiers of the said property in question. The vendor executed an agreement to sell that property to the petitioner at a price of Rs. 1,05,08,000 (rupees one crore five lakhs and eight thousand only) (hereinafter called the "apparent consideration"). The vendors submitted the requisite information as per section 269UD of the Act in Form No. 37-I, dated October 18, 1994. Respondent No. 1, who is the appropriate authority, constituted u/s 269UD of the Act for the purposes of Chapter XX-C of the Act, issued notice dated January 13, 1995, for the purpose of affording an opportunity of hearing in terms of newly inserted sub-section (1A) of section 269UD of the Act to the vendor who is also in occupation of the property and

transferee-petitioner stating that as per the agreement to sell in question, the apparent consideration for the property under consideration comes to Rs. 1,802 per sq. ft. and as per the discounted consideration, its price comes to Rs. 1,763 per sq. ft. whereas, as per the consideration of property comprising built-up premises, the basement, ground floor and first floor which has been sold on August 20, 1993, it shows the corresponding apparent value to be Rs. 2,744 per sq. ft. and as per the discounted consideration, its market price to be Rs. 2,681 per sq. ft. According to the said notice, the difference between comparable sale transactions in respect of the properties situated in the same building, showed that the apparent consideration in the apartment in question has been understated by more than 15 per cent. particularly when time lapse between two transactions is taken into consideration. Therefore, the authority intends to resort to pre-emptive purchase under Chapter XX-C of the Act. In the show-cause notice, the appropriate authority also stated the net discounted consideration of the property suggested to be paid to the vendor and required the vendors and the transferee to show cause against the intended action. On January 31, 1995, the impugned order was passed by rejecting the submissions raised by the transferor and the transferee who have filed written submissions on January 25, 1995, and January 27, 1995, respectively.

3. Three-fold contentions have been raised before us by the petitioner. Firstly, it is contended that the petitioner was not afforded adequate opportunity of hearing by not taking proceedings promptly within the time-frame prescribed under the Act and, therefore, the order is vitiated having been made in breach of the principles of natural justice in hot haste at the close of the item barrier. Secondly, it has been contended that the appropriate authority was under obligation to determine the fair market value of the property in question before it could order pre-emptive purchase. Determination of the fair market value of the property sought to be dealt with under Chapter XX-C is a condition precedent before the property can be so purchased and for arriving at a satisfaction as to under-statement of apparent consideration. For this purpose, reliance has been placed on the recent decision in the case of Sarwarben Temas Khambata and Others Vs. Appropriate Authority, , being Special Civil Application No. 11697 of 1994 decided on March 8/9, 1995. It was lastly contended that the bare reading of the order precluded the satisfaction that the apparent consideration of the property in question appears to be understated by more than 15 per cent. and is, therefore, a fit case for making pre-emptive purchase under the provisions of Chapter XX-C of the Act and has been arrived at without application of mind inasmuch as, from the order, it is apparent that the facts which are necessary for arriving at such satisfaction are non-existent.

4. Learned counsel for the Revenue did not dispute the fact that the guidelines for the purpose of making a pre-emptive purchase under Chapter XX-C is that in the opinion of the appropriate authority, the apparent consideration of transaction in an agreement to sell must appear to have been under-stated by 15 per cent. of its market value. He argued that the notice to show cause against

the proposed action was given on January 30, 1995, well before the time prescribed and that the petitioners were afforded an adequate opportunity of hearing and after taking into consideration, the written submissions made by them, the order was passed and, therefore, the order cannot be said to be suffering from the vice of the breach of principles of natural justice. Regarding the second contention, learned counsel for the Revenue stated in all fairness that though the contention is covered by the decision relied on by the petitioner in his favour, he strenuously urged that the decision to the extent it holds the determination of the fair market price a condition precedent, requires reconsideration. The requirement of law in view of the decision in the case of C.B. Gautam Vs. Union of India and Others, does not travel beyond satisfaction of the appropriate authority about understatement of the apparent consideration being more than 15 per cent. of the real market value, but actual determination of the market value is not a *sine qua non*. He further submitted that the order is otherwise founded on due application of mind by the appropriate authority by taking into consideration all relevant material that was before it and suffers from no illegality.

5. We have given our anxious consideration to the contentions raised before us and perused the material placed before us. As will be discussed presently, in our opinion, the last contention of learned counsel for the petitioner is well-founded and the petition should succeed on that count alone. Hence, we do not propose to go into other contentions.

6. As has been noticed above, the entire property in question is situated in and is part of the first floor of the commercial complex known as "Sakar-I" and its apparent consideration has been worked out by the appropriate authority at Rs. 1,802 per sq. ft. and discounted consideration for the purpose of Chapter XX-C has been calculated at Rs. 1,763 per sq. ft. The only material which has been relied upon and has gone into consideration for arriving at the satisfaction of the appropriate authority about the fact of apparent consideration having been understated by more than 15 per cent. of the market price is the sale instance of August 20, 1993, relating to the property situated in those very Sakar-I premises and which consisted of built-up premises in basement, ground floor and the first floor and according to the apparent consideration in the said sale instance, the built-up area being 14,540 sq. ft. which came to be sold at Rs. 3,98,94,220, the rate per sq. ft. comes to Rs. 2,744 while its discounted sale consideration comes to Rs. 2,681 per sq. ft. which, on the face of it, was more than 15 per cent. of the apparent consideration of the property in question. The appropriate authority in its order has clearly indicated the principle on which it was acting while rejecting the submissions made by the objector. The objector had pointed out that while the property in question comprised built-up area in one single floor, situated in the first floor of the building, sale instance of the property comprised of basement, ground floor with lower height, the first floor and car parking and he had given a separate rate of consideration per sq. ft. of built-up area situated at different floors in the same building. While the petitioner's claim is that the

bifurcation of the price per sq. mtr. was done as per the purchaser of the property which is none other than the Unit Trust of India, a Government agency. Though the appropriate authority did not accept the bifurcated values of the apparent consideration of the sale instance of the property as per basement, ground floor, first floor, car parking, but none the less, it accepted the principle when it said : "it is common knowledge that the rates of basement are always lower in comparison with the rates of the ground floor and the first floor". The objector had also relied on the sale transaction of June, 1994, of the property situated in the very same premises of Sakar-I, albeit on the 6th floor of the building about which there was no dispute and the rate of built-up area came to be Rs. 1,500 per sq. ft. While rejecting that instance, the appropriate authority said that "it is to be noted that the rate of the first floor of the premises is always higher in Ahmedabad in comparison to the rates of higher floors".

7. From the aforesaid, it is apparent that on principle, there was no dispute between the objectors and the appropriate authority that the rates for the built-up area in each floor would be different and the rate for the lower floor cannot be compared with that for the higher floor and as such, they do not afford comparable criteria for the purpose of arriving at the estimated market value of a part of the floor.

8. If that be so, and in our opinion it is so, then on reading the entire order, we do not find a whisper about the satisfaction of the appropriate authority as to what was the prevailing market rate per sq. ft. of the built-up area of the first floor of commercial property situated on Ashram Road in the near vicinity of the property under consideration. The sale instance on which reliance has been placed by the appropriate authority and which was stated to be the only material before it, was undisputedly a composite property, as per the notice, including basement, ground floor and the first floor. According to the reasoning of the appropriate authority itself, the rates for the basement would be much lower and the rate for built-up area above ground level would be in descending order, that is to say, the higher the floor, the lower the rate. Therefore, on its own showing in the order, the composite average rate for built-up area comprising basement, ground floor and first floor by its did not furnish any material which had relevant nexus to the formation of the satisfaction that the apparent consideration disclosed in the agreement to sell in question was lower than the existing rate for built-up area in the first floor.

9. It is further to be noticed that even where the taking of action depends upon the subjective satisfaction of the authority, the basic requirement is that such subjective satisfaction must be founded on existing material and when a challenge to such subjective satisfaction is raised, the existence of material, which has resulted in such subjective satisfaction, is to be shown. A reference in this connection may be made to the decision of the apex court in the case of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, . Here, it is not a case of subjective satisfaction. Section 269UD(1A) and (1B) of

the Income Tax Act, 1961, reads as under :

"(1A) Before making an order under sub-section (1), the appropriate authority shall give a reasonable opportunity of being heard to the transferor, the person in occupation of the immovable property if the transferor is not in occupation of the property, the transferee and to every other person whom the appropriate authority knows to be interested in the property.

(1B) Every order made by the appropriate authority under sub-section (1) shall specify the grounds on which it is made."

10. It is the requirement of the statute that before making any order for pre-emptive purchase, the appropriate authority has to give reasonable opportunity of being heard to the transferor, the person who is in occupation of the property and the transferee and also to every person whom the appropriate authority knows to be interested in the property and thereafter he has not only to reach his satisfaction but record specific grounds for taking action under that provision.

11. A combined reading of section 269UD(1A) and (1B) of the Act leaves no room for doubt that it is a question of objective decision-making process by taking into consideration all the relevant materials which have come before the hearing authority and considering the rival aspects of the matter. Moreover, the requirement of law is to specify the grounds on which the order of pre-emptive purchase is made. That obligation does not stop by merely rejecting the submissions made before it. The rejection of submissions made by the vendors or the transferee or the persons interested in the property, does not lead to a consequence that grounds for making pre-emptive purchase exist. The sine qua non is that reasons must exist, on the material placed before it, for supporting the action taken for pre-emptive purchase u/s 269UD of the Act. The order clearly falls short of this requirement.

12. The order nowhere specifies the grounds on which the appropriate authority has decided to take action under Chapter XX-C, while the appropriate authority rejects the submissions made by the objectors against the proposed action, as discussed earlier, the action is not supported by any material on which it can be said that the appropriate authority could reach a conclusion that the estimated market rate or the real consideration of the first floor of a commercial building, similarly situated as the property in question, is more than the apparent consideration disclosed in the agreement in question by 15 per cent. Therefore, the order must fail on its own reading.

13. As a result, this petition succeeds. The impugned order annexure "A" dated January 31, 1995, is hereby quashed and set aside and respondent No. 1 is further directed to complete the necessary formalities as a consequence thereof within a period of six weeks from the date of receipt of the order of this court including issuance of clearance certificate. Rule made absolute. No order as to costs.