
(2003) 10 DEL CK 0058

In the Delhi High Court

Case No : Civil Writ Petition No. 2823 of 1986 16 October 2003

Annapoorna Agencies (P) Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Citation : (2004) 141 TAXMAN 542

Hon'ble Judges : B.C. Patel, C.J;A.K. Sikri, J

Bench : Full Bench

Advocate : S.P. Kalra and Sanjay Kalra, for the assessed R.D. Jolly, for the Revenu, for the Appellant;

Judgement

A.K. Sikri, J.

In this writ petition the petitioner has inter alia, challenged order dated 15-12-1986 passed by the Appropriate Authority under subsection (1) of section 269UD of Income Tax Act (hereinafter referred to as the Act). Although the petitioner has also challenged virus of some Income Tax Rules as well as provisions of Income Tax Act, that challenge was not pressed before us and the challenge was confined to the validity of the aforesaid order only.

2. One M/s. Ramesh Apartments (Delhi) Private Ltd. vide agreement 7-3-1986 agreed to sell the petitioner residential apartment bearing Private No. 4 on the first floor in Block of 9, Prithvi Road, New Delhi-110 001. Total consideration fixed was Rs. 11,36,000 which payment was made by the petitioner to the aforesaid seller on the date of execution of the agreement. Possession was also handed over on the same day and the petitioner became entitled to use and occupy the said apartment without any restriction as provided under clause 14 of the agreement. As per clause 19 of the agreement the petitioner also became liable to pay the proportionate amount of Municipal taxes, ground rent, water and electricity charges, maintenance services and other out goings and expenses in respect of the said apartment with effect from the date of the execution of the

agreement.

3. As stated above, although number of prayers are made in the writ petition the only argument advanced by learned counsel for the petitioner was that provisions of Chapter XXC of the Act apply only to agreement for transfer made on or after 1-10-1986 and these provisions would not apply to the case of the petitioner since agreement in question was dated 7-3-1986. In support of this contention, learned counsel for the petitioner relied upon judgment of this court in the case of Bhatia Apartments (Pvt.) Ltd. Vs. Union of India and Others,

4. The Division Bench in the aforesaid case in which one of us (A.K. Sikri, J) was a Member dealt with the law in detail. After taking stock of the various provisions as well as earlier pronouncements thereon Multi Rise Towers (P.) Ltd. Vs. Appropriate Authority and Others, ; Sanjeev Sethi Vs. Union of India and Others, Sunshine Travels and Tours P. Ltd. and another Vs. Union of India and others, ; Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, this court came to the conclusion that the provisions of Chapter XXC of the Act shall not apply to the agreement for transfer. That provisions of Chapter XXC and rule 48L of the Income Tax Rules would not have retrospective effect as in those cases transfer was complete prior to 1-10-1986, such provisions had no application. It was held:

(i) that since the transaction by the agreement dated 30-9-1986, was covered by the provisions of section 269AB of the Act which fell under Chapter XX-A, the provisions of Chapter XX-A alone were applicable;

(ii) that since the provisions of Chapter XX-C were not applicable, the petitioner was not required by law to file Form No. 37-1 and any bona fide mistake of law could not bind the petitioner,

(iii) that no interest was payable to the agreement holders on the balance of sale consideration either by the petitioner or by the Appropriate Authority. The delay in payment was not due to any fault of the petitioner. As far as the Income Tax authorities were concerned they were acting under the bona fide belief that the provisions of Chapter XX-C were applicable and thus the order was passed.

5. Learned counsel for the respondents could not dispute that present case is squarely covered by the aforesaid judgment. This writ petition is accordingly allowed. Rule is made absolute. Order dated 15-12-1986 passed by the Appropriate Authority under sub-section (1) of section 269UD of the Act is hereby set aside,

No costs.

Writ Petition allowed.