
(1990) 04 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No. 353 of 1986

Apeejay Premises Co-operative Society Ltd. and another APPELLANT
Vs
Nishar Ahmed and another RESPONDENT

Date of Decision : 05-04-1990

Acts Referred:

Income Tax Act, 1961 — Section 269, 269C, 269C(1), 269C(2), 269D

Citation : (1990) 3 BomCR 468 : (1990) 85 CTR 46 : (1990) 185 ITR 487

Hon'ble Judges : T.D. Sugla, J

Bench : Single Bench

Advocate : N.A. Dalvi, for the Appellant; G.S. Jetley, for the Respondent

Judgement

T.D. Sugla, J.—By this petition under article 226 of the Constitution of India, the petitioner, a co-operative society, has challenged the validity and legality of the notice dated April 11, 1977, issued by the Competent Authority u/s 269D(1) of the Income Tax Act, 1961.

2. A private limited company by name Fleury's Swiss Confectionery Pvt. Ltd., (hereinafter referred to as "vendors") were the owners of a piece of land together with two buildings standing thereon at Forbes Street, Fort, Bombay. They demolished one of the old structures and constructed a new building in that place now known as Apeejay House consisting of office blocks, godowns and car-parking spaces. The building was sold to various persons on what is known as ownership basis by blocks and godowns. Certain portions were retained by the vendors for their own use or for letting out to tenants. All this happened during the period from 1967 to 1972.

3. The blocks and godowns so sold could not, in law, be registered in the names of the persons who purchased them on ownership basis, the law being that the land and the structure thereon can be transferred to a co-operative society to be formed of such members who purchased blocks, godowns, flats, etc Ltd., in the building. With this end in view, the individual purchasers formed a society in the

year 1972. The building along with the land appurtenant thereto was transferred to the said society by a sale deed executed on October 25, 1972. The sale consideration shown in the sale deed was Rs. 41,71,020. This amount represented the sum total of the amounts for which the individual purchasers including the vendors had purchased and/or retained blocks and godowns, etc., in the said building.

4. In order to find out whether the suit property was or was not transferred at its fair market value, the Competent Authority made a reference to the District Valuation Officer-I, Income Tax Department, Bombay, for valuing the suit property. The Valuation Officer estimated the fair market value of the property at Rs. 60,70,000 as on October 25, 1972. On receipt of the valuer's report, the Competent Authority and the Inspecting Assistant Commissioner, by letter dated March 7, 1977, required the petitioner to show-cause why acquisition proceedings u/s 269C/269D should not be started. The reply to the show-cause memo was filed on March 25, 1977. According to the petitioner, nothing was heard thereafter till October 15, 1983, when another notice dated September 24, 1983, issued by the Competent Authority u/s 269F(1) was received.

5. The sale deed had been lodged for registration on February 16, 1973, but was registered on August 20, 1976, only. Notice u/s 269D(1) was stated to have been issued on April 11, 1977, the notification to that effect being published in the Official Gazette on April 30, 1977.

6. Shri Dalvi, learned counsel for the petitioner, advanced arguments at length challenging each and every aspect of the matter. Since this court finds that the petition can be decided on the short ground that formation of belief as regards the third condition required in section 269C(1) is not satisfied, it is not considered necessary to examine other arguments.

7. It is pertinent to mention that the condition precedent for assumption of jurisdiction u/s 269C is whether the Competent Authority has reason to believe that any immovable property of a fair market value exceeding Rs. 25,000 (then) has been transferred by a person to another person for an apparent consideration which is at least less than 15% of the fair market value of the property and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of -

(a) facilitating the reduction or evasion of the liability of the transferor to pay tax under this Act in respect of any income arising from the transfer; or

(b) facilitating the concealment of any income or moneys or other assets which have not been or which ought to be disclosed by the transferee for the purposes of the Indian Income Tax, 1922(11 of 1922) or this Act or the Wealth-tax Act, 1957 (27 of 1957).

8. The sale consideration is admittedly more than Rs. 25,000. On the basis of the valuation report, it may, for the present, be assumed that the appaent

consideration in the sale deed is less than 15% of the fair market value of the property. In the circumstances, What requires to be considered is whether the consideration for such transfer as agreed to between the parties had not been truly stated in the sale deed and it was so done with the object of clause (a) or (b) or both. It may be mentioned that, in the notice u/s 269D(1), The Competent Authority has not struck the words "and/or" meaning thereby, according to him, the object of understatement of consideration could be either.

9. This court had occasion to consider in the case of Unique Associates Co-operative Housing Society Ltd. Vs. Union of India and others, , Whether the presumptions raised in section 269C(2) are available to the Competent Authority for the purpose of assuming jurisdiction u/s 269C/269D. Following the Calcutta and Gujarat High Court decisions, it was held that the presumptions could be raised after valid assumption of jurisdiction without the support of the presumptions and not for the purpose of assuming jurisdiction. No doubt Shri Jetly pointed out that Allahabad High Court in Pushpalata Vs. Inspecting Asst. Commr. of Income Tax and Another, and the Punjab and Haryana High Court in Sulej Chit Fund and Financiers (Pvt.) Ltd. Vs. Commissioner of Income Tax, , had taken a contrary view. Be that as it may, following this court's judgment, it has to be held that the presumptions raised in section 269C(2) are not available to Competent Authority for the purpose of acquiring jurisdiction u/s 269C/269D.

10. Considering the facts of the case independent of the presumption clauses of section 269C(2), in the present case, it cannot be held that the sale consideration was not truly stated in the sale deed. It has to be borne in mind that, in this case, the blocks/godowns, etc., were purchased by various persons during the period from 1967 to 1972. The co-operative society to whom the property was transferred was formed with a view to comply with the requirement of law. The consideration shown therein was the sum total of the purchase price paid by the individual purchasers and/or vendors who had retained portions of the property. It cannot thus be held that the Competent Authority could at all form a belief that the consideration as agreed to between the parties was something more than what was stated in the document. That apart, there is a further condition, viz., even if it is assumed that there was understatement, the formation of belief has also to be that such an understatement was with a view to either evasion of tax liability of the purchasers or that of the vendors. Here again, as stated earlier, the Competent Authority having kept the words "and/or" both between the two clauses in the notice, as held by this court in the cases of All India Reported Ltd. and others Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax and others, , it would have to be held that there was complete non-application of mind on the part of the Competent Authority. He was uncertain as to whether the understatement was with the object of one or the other. It was necessary for him to say whether it was with a view to one object or to the other or both. In this view of the matter, it has to be held that condition No, 3 which is necessary for the assumption of valid jurisdiction u/s 269C is not satisfied in this case.

11. Before concluding, reference may also be made to the Board's circular, paragraph 38.1 at Shriram Dagdual Vs. Commissioner of Income Tax, , where, in the context of introducing Chapter XXC in the Income Tax Act, the Board opined that, under Chapter XXA which covered sections 269C and 269D, the requirement of law was that the Competent Authority had, by some material, to establish that there was an understatement of sale consideration in the sale deed with a view to evasion of tax liability of the vendors and the purchaser and since that was an impossible task, it was considered appropriate to introduce the provisions in the form of Chapter XXC. This also supports the view taken by the court in this case.

12. In the result, the petition succeeds. Rule is made absolute in terms of prayer (a). No order as to costs.