(2004) 10 GUJ CK 0067

In the Gujarat High Court

Case No : Misc. Civil Application No''s. 1508 to 1510 of 2004 in Special Civil Application No''s. 8606 of 1996 and 2171 and 3399 of 1997 & Misc. Civil Application No''s. 1508 to 1510 of 2004 in Special Civil Application No''s. 8606 of 1996 and 2171 and 3399 of 1997 27 October 2004

Appropriate Authority APPELLANT

Vs

Rasiklal M. Dhariwal and Others RESPONDENT

Date of Decision : 27-10-2004

Acts Referred:
Income Tax Act, 1961 — Section 269UD, 296UG, 296UG(4)

Citation : (2005) 193 CTR 377 : (2005) 277 ITR 370

Hon'ble Judges : M.S. Shah, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Tanvish U. Bhatt, for the Appellant; Swati Soparkar and K.H. Kaji, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Shah, J.—These review applications are filed by the Appropriate Authority u/s 269UG of the IT Act, 1961, in respect of purchase by Central Government of immovable properties under certain cases of transfer under Chapter XX-C of the Act. The applications are filed for recalling part of the directions given by this Court in judgment dt. 12th April, 2004 while disposing of Special Civil Appln. No. 8606 of 2004 and two cognate petitions.

2. On 25th Jan., 1996, opponent Nos. 3 and 4 herein {hereinafter referred to as "the vendors") executed an agreement to sell the property in question at Pune in favour of opponent Nos. 1 and 2 herein (hereinafter referred to as "the purchasers" or "vendees") for a consideration of Rs. 240 lakhs, which amount was to be paid in three instalments upon execution of the agreement on 25th Jan., 1996 (Rs. 75 lakhs), the second instalment to be paid by 10th March, 1996 (Rs. 50 lakhs) and the third and final instalment to be paid at the time of

execution of the conveyance on or before 30th April, 1996 (Rs. 115 lakhs). In accordance with the aforesaid agreement, the purchasers paid Rs. 75 lakhs on 25th Jan., 1996 and another instalment of Rs. 50 lakhs on 30th March, 1996, i.e., total amount of Rs. 125 lakhs was paid by the purchasers to the vendors on the aforesaid dates. When the parties submitted Form Wo. 37-1) u/s 269UC of the Act on 2nd Feb., 1996, the order of purchase dt. 24th May, 1996 came to be passed by the Appropriate Authority u/s 269UD. When that order came to be challenged, this Court set aside the order and remanded the matter to the Appropriate Authority. On 30th Sept., 1996, the order of purchase came to be passed by the Appropriate Authority, which came to be challenged in Special Civil Appln. Nos. 8606 of 1996, 2171 and 3399 of 1997 by the vendors, the purchasers and another party claiming to be interested in the property.

The petitions came to be opposed by the respondents by filing an affidavit-in-reply of the Appropriate Authority in Special Civil Appln. No. 2171 of 1997 wherein the Appropriate Authority made the following submissions:

"It is submitted that the consideration amount has been deposited in the fixed deposit with a nationalised bank by the Appropriate Authority, The interest at bank rate secured on this amount will be given along with the consideration to both the parties according to settlement between both the parties. Purchase order dt. 13th Sept., 1996 has been challenged before this Hon''ble Court by the respondent No. 5 in Special Civil Appln. No. 8606 of 1996. The proceedings in this case are pending."

(emphasis, italicised in print, supplied)

When the petitions reached hearing in the first week of April this year, the learned standing counsel for the Revenue was given time to place on record the particulars of the amount of interest accrued on the amount of Rs. 2.40 crores deposited by the Appropriate Authority in fixed deposit with a nationalised bank. On 12th April, 2004, the learned standing counsel for the Revenue was permitted to place on record a copy of the letter dt. 8th April, 2004 from the Appropriate Authority stating that-

"an amount of Rs. 2,40,00,000 was initially got released and kept in fixed deposit with a scheduled bank on 30th Oct., 1996. The same was renewed periodically and lastly the amount of Rs. 5,34,81,261 has been renewed on 7th Feb., 2004 for a period of one year".

The learned counsel further stated that possession of the property was not taken, but the Appropriate Authority was still interested in purchase of the property.

In view of the aforesaid amount of interest accrued on the amount of consideration, the learned counsel for the vendors as well as the learned counsel for the purchasers stated that their clients were not interested in challenging the order of purchase dt. 13th Sept., 1996 and the subsequent consequential orders, if the vendors and the purchasers are paid the entire amount of consideration of Rs. 240 lakhs along with the interest thereon from 30th Oct., 1996 as aforesaid in the ratio of Rs. 115 lakhs: Rs. 125 lakhs with interest on the respective amounts from 30th Oct., 1996.

Mr. Shevade, learned counsel for Mr. Ravindra Vishvas Deshmukh, who had filed the third petition, also agreed that the vendors, one of whom was Karta of the joint family property, has title to the property and full authority to transfer and sell the property in question and that they shall indemnify the IT Department in case of any dispute by any party, and the said party, therefore, expressed the desire to withdraw Special Civil Appln. No. 3399 of 1997 in view of the aforesaid arrangement.

Mr. Kaji, learned counsel for the vendors, also stated that the vendors had never refused to hand over possession of the property to the IT Department and in any view of the matter, they will now hand over the possession of the property to the Department within ten days.

Thereafter, Mr. Bhatt, learned standing counsel for the Revenue, submitted that since a substantial amount of interest which has accrued on the amount of Rs. 115 lakhs and Rs. 125 lakhs is to be paid over to the vendors and purchasers, the Department will have to deduct the Income Tax at source before paying over the amount of interest to the respective parties.

It was in view of the aforesaid submissions that the Court found that the challenges raised in the petition were not required to be examined and, therefore, the petitions were disposed of by holding that the order of purchase dt. 13th Sept., 1996 of the Appropriate Authority stands and the IT Department may act upon the same without any objection from any of the parties and that the Appropriate Authority shall encash the fixed deposit of Rs. 5,34,81,261 along with interest thereon from 7th Feb., 2004 and to pay over such amount in the proportion of Rs. 115 lakhs with interest accrued thereon from 30th Oct., 1996 till the date of encashment of the aforesaid fixed deposit to the vendors and Rs. 125 lakhs with interest accrued thereon from 30th Oct., 1996 till the date of encashment of the aforesaid fixed deposit to the purchasers [Sub-clause (b) of cl. (ii) of para 8 of the order-reference to the names of purchasers was intended, but inadvertently the word "vendors" was used instead of "vendors" or "purchasers"].

3. In the present review applications, the Appropriate Authority has stated that while the principal amounts of Rs. 115 lakhs and Rs. 125 lakhs have been paid over to the vendors and purchasers respectively, the Appropriate Authority is not liable to pay any interest thereon to the parties. In support of the said contentions, reference is made to the provisions of Section 269UG.

4. At the hearing of the applications, Mr. Tanvish U. Bhatt, learned standing counsel for the Appropriate Authority, has submitted that Sub-section (4) of Section 269UG confers discretion on the Appropriate Authority as to whether the

amount received from the Central Government under Sub-section (3) is required to be invested and even if the amount is invested, again discretion is conferred on the Appropriate Authority to decide whether to direct the payment of interest to the intending vendor/s or purchaser/s. It is submitted that it is for the Appropriate Authority to pay such amount of interest for giving the parties having interest in the property the same benefits therefrom as they might have had from the immovable property in question which would depend upon the market value of the property at the time of sale of the property by the Central Government.

5. In reply, Mr. K.H. Kaji, learned counsel for the vendors and Mr. Soparkar, learned counsel for the purchasers, have opposed the review applications on the following grounds:

(i) The review applications are barred by limitation. There is delay of 56 days in filing the review applications.

(ii) The review applications are not maintainable as the order was passed on consensus of the parties. In the affidavit of the Appropriate Authority in Special Civil Appln. No. 2171 of 1997, it was stated that the consideration amount has been deposited in fixed deposit with a nationalised bank by the Appropriate Authority and the interest at bank rate accrued on this amount will be given along with the consideration to both the parties (i.e., to the vendors and the purchasers). It is submitted that Mr. Manish Bhatt, learned standing counsel for the Revenue, who had appeared in the main petitions had, therefore, stated that, since the substantial amounts of interest which has accrued on the amount of Rs. 115 lakhs and Rs. 125 lakhs are to be paid over to the vendors and the purchasers, respectively, the Department will have to deduct the Income Tax at source before paying over the amounts of interest to the respective parties.

(iii) On merits, it is submitted that the interpretation sought to be placed by the Appropriate Authority on the provisions of Sub-section (4) of Section 269UG is erroneous and that even if two views are possible, the review applications are not the appropriate proceedings for having rehearing of the matter which is permissible only in appeal. Reliance has been placed on several decisions of the apex Court in support of the said submission.

6. As far as the delay in filing the review applications is concerned, the learned standing counsel for the Appropriate Authority has submitted that the Authority had to follow the due procedure for releasing the principal amount to the opponents, i.e., the vendors and purchasers as per the orders of this Court and that, when the Appropriate Authority analysed the provisions of law, the Authority was of the view that the opponents are entitled to interest on the amount of consideration only to the extent provided under Sub-section (4) of Section 269UG of the Act and, therefore, some time was taken to file these review applications.

7. Although the Appropriate Authority has not given any detailed explanation for

the delay in filing these review applications, taking a liberal view of the matter, we have entertained the review applications as, even otherwise, we are not inclined to entertain the review applications on merits,

8. As regards the contention of the opponents that the order being a consent order, the review applications are not maintainable, although para 8 of the order refers to consensus between the vendors and the purchasers and the third party who had earlier staked his claim in the property, we find considerable substance in the submissions of the learned counsel for the opponents (original petitioners) that the Appropriate Authority itself had taken the stand that the parties will be paid the amount of consideration deposited in the fixed deposit along with interest thereon. The said paragraph of the affidavit-in-reply in Special Civil Application is again reproduced which reads as under:

"It is submitted that the consideration amount has been deposited in the fixed deposit with a nationalised bank by the Appropriate Authority. The interest at bank rate secured on this amount will be given along with the consideration to both the parties according to settlement between both the parties. Purchase order dt. 13th Sept., 1996 has been challenged before this Hon''ble Court by the respondent No. 5 in Special Civil Appln. No. 8606 of 1996. The proceedings in this case are pending."

It is, therefore, obvious that when the learned standing counsel for the Revenue produced the letter dt. 8th April, 2004 from the Appropriate Authority stating that the amount of Rs. 2.50 crores kept in fixed deposit with a scheduled bank on 30th Oct., 1996 has grown to Rs, 5.34 crores (Rs. 5,34,81,261, to be precise) as on 7th Feb., 2004 and that the said amount has again been invested in fixed deposit, the learned counsel for the vendors as well as the purchasers had given up their challenge to the purchase order if they were paid the entire amount of consideration with interest accrued thereon from 30th Oct., 1996, i.e., the date on which the amounts were invested in fixed deposit by the Appropriate Authority.

In our opinion, therefore, the Appropriate Authority having specifically taken up the stand in the affidavit as aforesaid, and having not raised any such contention which is now sought to be raised in the review applications, these review applications are not required to be entertained on merits.

9. As regards the contention of the learned standing counsel for the Revenue that a concession of a counsel which is not in consonance with the statutory provisions, cannot bind the party, the argument is misconceived. The provisions of Sub-section (4) of Section 269UG, read as under:

"269UG-Payment or deposit of consideration.

(4) Where any amount of consideration has been deposited with the Appropriate Authority under this section, the Appropriate Authority may, either on its own motion or on an application made by or on behalf of any person interested or claiming to be interested in such amount, order the same to be invested in such

Government or other securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefits therefrom as they might have had from the immovable property in respect whereof such amount has been deposited or as near thereto as may be."

Nowhere do the above provisions prohibit the Appropriate Authority from paying over the amount of interest on the amount of consideration to the proposed vendors and proposed purchasers of the property in question.

10. In view of the above, there was no illegality either on the part of the Appropriate Authority while making the above submission in the affidavit-in-reply or on the part of the learned standing counsel who represented the Revenue at the hearing of Special Civil Appln. No. 8606 of 1996 and the two companion petitions in making the submissions on similar lines.

11. In Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulose Athanasius and Ors. AIR 1954 SC 526 the Hon''ble Supreme Court has referred with approval the decisions taking the view that a misconception by the Court of a concession made by the advocate or of the attitude taken up by the party appears to be a ground analogous to the grounds set forth in the first part of the review section and affords a good and cogent ground for review. The apex Court has also observed therein that when the error complained of is that the Court assumed that a concession had been made when none had, in fact, been made or that the Court misconceived the terms of the concession or the scope and extent of it, it will not generally appear on the record but will have to be brought before the Court by way of an affidavit.

12. As already indicated above, the statements made by the learned standing counsel for the Revenue at the hearing of the petitions are not shown to be contrary to any instructions of the Appropriate Authority. On the contrary, the stand taken by the learned standing counsel for the Revenue was very much in consonance with the stand of the Appropriate Authority as reflected in the affidavit-in-reply quoted hereinabove. Even otherwise, we are of the view that the stand of the Appropriate Authority as reflected in the affidavit and of the learned standing counsel as taken at the hearing is in consonance with the provisions of Sub-section (4) of Section 269UG.

13. Sub-section (1) of Section 269UG provides that the amount of consideration payable in accordance with the provisions of Section 269UF shall be tendered to the person/s entitled thereto, within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under Sub-section (1) or, as the case may be, Sub-section (6) of Section 269UE.

Sub-section (1) of Section 269UH provides for consequences of failure on the part of the Central Government to tender or deposit such payment within the aforesaid specified period.

Sub-section (2) of Section 269UG provides that notwithstanding anything contained in sub- s. (1), if any dispute arises as to the apportionment of the amount of consideration amongst the persons claiming to be entitled thereto, the Central Government shall deposit with the Appropriate Authority the amount of consideration required to be tendered under Sub-section (1) within the aforesaid period and that, if the person entitled to the amount of consideration does not consent to receive it or even if there is any dispute as to the title to receive the amount of consideration, the Central Government shall deposit with the Appropriate Authority the amount of consideration within the aforesaid period.

14. It is in the backdrop of the aforesaid statutory provisions that the provisions of Sub-section (4) are required to be construed. Once the Central Government has deposited the amount with the Appropriate Authority, the Appropriate Authority either on its own motion or on an application made by or on behalf of any persons interested or claiming to be interested in such amount, is expected to invest the amount of consideration in Government security or other appropriate security and ultimately when the amount of consideration is required to be paid over to the interested parties, the interest on the amount is also required to be paid.

15. The learned counsel for the Revenue has contended that it is for the Appropriate Authority to decide as to how much amount will, in the opinion of the Appropriate Authority, give the parties interested therein the same benefits therefrom as they might have had from the immovable property and, therefore, the Appropriate Authority can also wait till the property is put to sale and its price realised.

16. The argument overlooks the aspect that, if the original transaction was permitted to go through, the vendors would have received interest on the amount of consideration and similarly since the transaction is not allowed to go through, the purchasers'' money paid over to the vendors has remained blocked and idle and the purchasers have not been allowed to use the property. Hence, the purchasers would also be entitled to claim interest on the amount which they had paid over to the vendors and which the IT Department has now reimbursed to the purchasers.

In any view of the matter, as per the settled legal position, the power of review can be exercised for correction of a mistake and not to substitute a view. Review cannot be treated like an appeal in disguise and mere possibility of two views on subject cannot be a ground for review.

17. As regards the contention that the Department did not have possession of the property in question during pendency of the petitions, Mr. Kaji, learned counsel for the vendors, have invited our attention to several letters which were written by the vendors to the Department calling upon the Department to take over possession of the properties.

The learned counsel for the Revenue does not dispute that such letters were received by the Department but it is stated that it was on account of pendency of the petitions challenging the order of purchase that the possession of the property was not taken over. In this view of the matter, the Department is not justified in refusing to pay interest on the amount of consideration.

In Hotel Mardias Pvt. Ltd. Vs. Union of India and Others, another Division Bench of this Court has already taken the view that, even if possession of the property is not handed over, the vendors cannot be deprived of the right to get the possession. In this view of the matter also, we do not find any compelling ground for review of our judgment dt. 12th April, 2004 disposing of Special Civil Appln. No. 8606 of 2004 and two cognate petitions.

18. The Department shall pay the amounts of interest which are withheld so far, along with the interest accrued thereon by 15th Dec, 2004.

Subject to the above direction, the applications are dismissed.

19. The learned counsel for the opponents (original petitioners) pray for exemplary costs.

20. In the facts and circumstances of the case, we are not inclined to grant this request because even the amounts of interest which have been withheld so far have been invested in fixed deposits with a scheduled bank and we have directed the applicant-Appropriate Authority to pay the amount of interest withheld so far along with the interest accrued thereon.