(2011) 04 AHC CK 0498

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17477 of 2009

Ashok Kumar APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 16-04-2011

Acts Referred:
Stamp Act, 1899 — Section 75

Citation : (2011) 5 ADJ 186

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Archana Tyagi and Pankaj Kumar Tyagi, for the Appellant;

Judgement

Pankaj Mithal, J.—Heard Smt. Archana Tyagi, learned counsel for the petitioner and Sri Nimai Das, learned Standing Counsel for the respondents. Pleadings have been exchanged between the parties and they agree for final disposal of the writ at the admission stage itself.

2. The petitioner by means of the above writ petition challenges the order dated 31.10.2008 passed by the Assistant Commissioner (Stamp) Muzaffarnagar and the appellate order thereto dated 24.2.2009 passed by Assistant Commissioner (Administration) Saharanpur Division, Saharanpur.

3. The first argument of learned counsel for the petitioner is that market value of the commercial building is to be determined strictly in accordance with Rule 5 of the Uttar Pradesh Stamp (Valuation of Property) Rules 1997. The said Rule prescribes that the market value of a commercial building is to be determined by taking the minimum rent of the building fixed by the Collector in accordance with Rule 4 of the Rules and multiplying it with the constructed area. Therefore, the value of the land on which the building exist is not to be taken and it stands excluded.

4. The document in question is a sale-deed of a shop having an area of 49.01 sq. meter. Stamp duty on the aforesaid sale-deed is payable on the market value of

the properly transferred.

5. In exercise of the Rule making power contained in Section 75 of the Indian Stamp Act, 1899, the State Government has framed the Uttar Pradesh Stamp (Valuation of Property) Rules 1997.

6. The said Rules vide Rule 4 empowers the Collector to fix minimum rate for valuing land, construction of non-commercial building and the rate of rent of commercial building. The said Rule thus provides for fixing separate rate for the valuation of the land constructed portion of the non-commercial buildings and the rate of rent for commercial buildings by the Collector for the purposes of determining the market value of any property which may be the subject-matter of conveyance.

7. At the same time Rule 5 of the Rules provides for the mode of calculation of the minimum market value of land and building. Separate mode of calculation has been made for determining the market value of a non-commercial building and of a commercial building.

8. In the present case, we are concerned with the determination of the market value of a non commercial building.

9. The said Rule provides that the minimum market value of a commercial building is to be determined on the basis of 300 times the minimum monthly rent of the building fixed by the Collector under Rule 4 and by multiplying it by the constructed area.

10. In other words, the minimum rent of a commercial building fixed by the Collector under Rule 4 multiplied by the area of the building and increasing it to 300 times would be the minimum market value of the commercial building.

11. The aforesaid provision which is contained in Rule 5-C(ii) of the Rules provides for determining the minimum market value of a building only. It does not lay down the method of determining the minimum market value of the land occupied by the building.

12. The method of determining the market value of any land is provided in Rule 5(a) of the Rules. It provides that the area of the land multiplied by the minimum rate for valuation of land fixed by the Collector in Rule 4 of the Rules will be the minimum market value.

13. A conjoint reading of Rules 4 and 5 of the Rules would make it clear that for the purposes of determining the market value of a commercial property the market value of the land as well as the minimum market value of the building as prescribed under Rule 5 of the Rules are to be taken together. Both the values taken together would ultimately determine the market value of the property.

14. It is well settled that constructions existing on a land forms part of it and as such the two have to be valued together unless proved otherwise as in cases where super structure is transferred separately and not alongwith the land.

15. In the present case, the petitioner had admittedly purchased a single storied shop alongwith the land having an area of 49.01 sq. meters as is evident from the sale-deed dated 21.1.2006 itself. It is not the case of the petitioner that he had purchased only the super structure and not the land.

16. In view of the aforesaid facts and circumstances, the authorities have rightly determined the minimum market value of the property covered by the sale-deed dated 21.1.2006 by adding the minimum market value of the land and the building together. The submission that in case of a commercial building only the minimum market value of the building as determined under Rule 5 of the Rules is to be considered and not the land cannot be accepted as the land also had formed part of the sale.

17. The other submission of Smt. Tyagi, is that the imposition of penalty under the facts and circumstances of the case cannot be justified.

18. A perusal of the impugned orders reveal that the authorities have not assigned any reason for imposing penalty. No finding has been recorded that the petitioner willfully and deliberately had disclosed lower market value with the intention to evade stamp duty.

19. In the case of Smt. Sonia Jindal v. State of U.P. and others, Writ Petition No. 20357 of 2011 decided on 7.4.2011, I have already held that the order of penalty cannot stand unless some reason is assigned and a finding of intentional evasion of stamp duty is recorded. In the absence of any reasoning and a finding to the above effect makes the order of penalty unsustainable in law.

20 Accordingly, writ petition is partly allowed and while upholding the validity of the orders determining the deficiency in stamp duty, the other part of the order which imposes penalty is quashed. In all other respects the impugned orders will remain intact and would stand modified to the extent indicated above. Writ Petition allowed in part with no order as to costs.