

(1985) 03 KAR CK 0026

In the Karnataka High Court

Case No : Income-tax Appeal No's. 1 to 4 of 1976 and 2 to 5 of 1978

B.M. Marappa, B.V. Nagaraj, B.M. Byrappa and B.C.
Hanumanthapp A.

APPELLANT

Vs

Inspecting Assistant Commissioner of Income Tax

Inspecting Assistant Commissioner of Income Tax Vs B.M.
Marappa, B.V. Nagaraj, B.M. Byrappa and B.C.
Hanumanthapp A.

RESPONDENT

Date of Decision : 18-03-1985

Acts Referred:

Income Tax Act, 1961 — Section 119, 269 (C), 269 (D), 269 F (6), 269 G

Citation : (1986) 160 ITR 642

Hon'ble Judges : N.R. Kudoor, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : G. Sarangan, for the Appellant; K. Srinivasan and H. Raghavendra Rao, for the Respondent

Judgement

K.S. Puttaswamy, J.—These appeals and cross appeals are directed against a common order made by the Income tax Appellate Tribunal, Bangalore Bench (Tribunal), on June 30, 1975, in Appeals Nos. I.T.A. (Acq.) Nos. 31, 32, 33 and 34/Bang/1975-76, reversing the order No. C.R. 62/ 1601/73-74 Acq. (B), dated February 12, 1975, of the Inspecting Assistant Commissioner of Income Tax, Acquisition Range, Bangalore, made under Chapter XX-A of the Income Tax Act, 1961 (Central Act No. 43 of 1961) ("the Act").

2. An immovable property bearing No. 1011/44, situated on Ist Main Road, IV Block, Rajajinagar, Bangalore-10, was owned by Smt. Girijamma (transferor). On August 3, 1973, the said transferor, under a registered instrument of transfer, transferred the said property to Sriyuths B. M. Byrappa, B. C. Hanumanthappa, B. M. Marappa and B. V. Nagaraj of Bangalore (transferees) for a consideration of Rs. 80,000.

3. On February 1, 1974, the Inspecting Assistant Commissioner recorded his

reasons u/s 269C of the Act to the effect that the fair market value of the property exceeded the apparent consideration by more than 15% and directed the issue of notices on the same day u/s 269D of the Act. While the notices issued u/s 269D(1) of the Act was published in the Official Gazette on May 18, 1974, the notices issued to the transferees and the transferor were served on March 25, 1974, and August 20, 1974, respectively. The other notices u/s 269D of the Act were duly effected in due course.

4. In response to the notices served on them, the transferees and the transferor filed their objections before the Inspecting Assistant Commissioner, inter alia, contending that the apparent consideration stipulated in the instrument of transfer was the real consideration paid and received and the same was the fair market value of the property as on August 3, 1973. On an examination of the objections filed, the evidence placed before him and affording an opportunity of hearing, the Inspecting Assistant Commissioner, with the previous approval of the Commissioner, found that the fair market value of the property exceeded the apparent consideration by more than 25% and made an order on February 12, 1975, u/s 269F(6) of the Act for the acquisition of the property under Chapter XX-A of the Act.

5. Against the order of the Inspecting Assistant Commissioner, the transfers filed appeals in Appeals Nos. 31, 32, 33 and 34 of 1975, u/s 269G of the Act before the Tribunal. Before the hearing of their appeals, the appellants sought leave of the Tribunal to urge an additional ground to the effect that the proceedings initiated by effecting service of notices on them even before the publication of the notice in the Official Gazette was an invalid assumption of jurisdiction by the Inspecting Assistant Commissioner and the completion of proceedings for acquisition were void at law and invalid. On allowing the said additional ground to be urged, the Tribunal by its order dated June 30, 1975, has accepted the same and has allowed the said appeals, however, holding against them on the fair market value of the property acquired by the Inspecting Assistant Commissioner.

6. Aggrieved by the finding recorded by the Tribunal on the fair market value of the property, the transferees have filed ITA Nos. 1 to 4 of 1976 before this court u/s 269H of the Act. Aggrieved by the same order of the Tribunal invalidating his order, the Inspecting Assistant Commissioner has filed ITA Nos. 2 to 5 of 1978 u/s 269H of the Act. In the appeals filed by the transferees, the Inspecting Assistant Commissioner is the common respondent. In the appeals filed by the Inspecting Assistant Commissioner, the transferees are the respondents. In the course of our order hereafter, we will refer to the transferees as the appellants and the Inspecting Assistant Commissioner as the respondent.

7. At the hearing of the appeals, Sri G Sarangan, learned counsel for the appellants annexing a copy of the Circular Instructions No. F. N. 283/1/75 - IT(INV) dated November 27, 1975, issued by the Central Board of Direct Taxes regulating the acquisition of properties under Chapter XX-A of the Act on the basis of the provisions made under the Voluntary Disclosure of Income and

Wealth Act, 1976 (Central Act No. 8 of 1976) ("the 1976 Act"), has stated that they had made applications under the said Act before the Commissioner of Income Tax, Karnataka, Bangalore ("the Commissioner"), who has not so far made his orders on them and they are still pending consideration before him.

8. Sri K. Srinivasan, senior standing counsel for the Income Tax Department, has appeared for the respondent.

9. On the contentions urged before us, three points arise for our determination and they are - (i) Whether the issue of notice u/s 269D(2) of the Act, before the publication of the notice u/s 269D(1) of the Act in the Official Gazette vitiates the jurisdiction of the Inspecting Assistant Commissioner and the order made by him thereto under Chapter XX-A of the Act ?

(ii) Whether the authorities functioning under the Act are required to regulate the acquisition of the property under Chapter XX-A of the Act in accordance with the terms and conditions of the circular instructions dated November 27, 1975, issued by the Board ?

(iii) Whether the determination of the fair market value of the property by the Tribunal and the Inspecting Assistant Commissioner are legal and valid ?

10. We will deal with them in their order.

11. Re : Point No. 1. - Sri Srinivasan contends that the Tribunal committed an error of law in allowing the belated additional ground urged by the appellants before it and the acceptance of the same was plainly illegal.

12. Sri Sarangan has sought to support the decision of the Tribunal on the very grounds found by it and other grounds also.

13. On very similar facts, we had occasion to examine the very point in I.T.A. Nos. 5 to 8 and 25 to 29 of 1976 decided on February 27, 1985 A. Premchand and Others Vs. Inspecting Assistant Commissioner of Income Tax and Others,

14. In Premchand's case, we have held that the Tribunal committed an error of law in allowing the additional ground urged at the hearing and that even otherwise the conclusion reached by it on that ground was erroneous in law. Sri Sarangan did not urge any new ground for not following the same in the present cases. For the very reasons stated in A. Premchand and Others Vs. Inspecting Assistant Commissioner of Income Tax and Others, , we hold that the Tribunal committed an error of law in invalidating the order of the Inspecting Assistant Commissioner on the additional ground urged before it by the appellants.

15. Re : Point No. 2. - Sri Sarangan contends that the authorities under the Act are bound to regulate the pending acquisitions with due regard to the Board circulars.

16. Sri Srinivasan contends for affirming the acquisition without reference to the circular of the Board issued during the pendency of these appeals before this

court.

17. When the Tribunal and the Inspecting Assistant Commissioner decided the cases, the 1976 Act had not been enacted and the Board issuing circular instructions thereunder did not arise. But the Board, with due regard to the later enactment, has issued circular instructions on November 17, 1975, which it was competent to do under the Central Boards of Revenue Act, 1963 (Act No. 63 of 1963), under which it has been constituted as also section 119 of the Act which are binding on all the authorities functioning under the Act.

18. The circular issued by the Board on November 27, 1975, reads thus :

"F. N. 283/1/75-IT (INV) GOVERNMENT OF INDIA CENTRAL BOARD OF DIRECT TAXES New Delhi, the 27th November, 1975.

A copy of the Press Note explaining the circumstances under which the acquisition proceedings initiated under Chapter XX-A of the Income Tax Act would be dropped in cases where declarations in relation thereto are made under the Ordinance is forwarded for information and guidance.

(Sd.) (D. N. S. Sinha) Under Secretary, Central Board of Direct Taxes.

To

1. All Commissioners of Income Tax. 2. All Additional Commissioners of Income Tax. 3. Director of Inspection (income tax and Audit)/(R. S. & F)/(Investigation)/(Special Cell)/Director of O & M./Director of Training, Nagpur. 4. All Officers of the Central Board of Direct Taxes.

Press Note

Chapter XX-A of the Income Tax Act, 1961, provides for acquisition of immovable properties in certain cases of transfer. The question whether the acquisition proceedings initiated under this Chapter could be dropped in cases where declarations in relation thereto are made under the Voluntary Disclosure of Income and Wealth Ordinance, 1975, has been examined. It is clarified that the acquisition proceedings would be dropped in cases where -

either

only the transferee makes a declaration under the Ordinance disclosing income equal to the difference between : -

(i) the apparent consideration plus 15% thereof, and (ii) the fair market value estimated by the competent authority and also files an affidavit to the effect that - (a) he had paid the extra money as admitted by way of purchase consideration to the transferor; (b) he undertakes and to co-operate fully in the matter of assessment of the transferor; and (c) he agrees that the affidavit may be utilised in the assessment of the transferor.

or

the transferor and the transferee admit payment of consideration approximating to the fair market value of the property estimated by the competent authority and each of them makes a declaration under the Ordinance disclosing an amount equal to the difference between : -

(i) the apparent consideration plus 15% thereof; and (ii) the fair market value estimated by the competent authority."

19. This general circular issued by the Board is undoubtedly binding on all the authorities under the Act. We are exercising our powers in these cases as an appellate authority under the Act and, therefore, we are bound to take note of the subsequent events and the circular instructions issued by the Board and regulate these appeals on that basis. What is true of this court is also true of the other authorities under the Act.

20. We find that the Board Circular directs the dropping of acquisition proceedings on the parties complying with the terms and conditions stipulated therein and not otherwise. Before us, the appellants state that they have made applications before the Commissioner under the 1976 Act and they are still pending before him. When that is so, any order to be made under Chapter XX-A of the Act must necessarily await the order to be made by the Commissioner on such application. In these circumstances, we consider it more appropriate to set aside the orders of the Tribunal and the Inspecting Assistant Commissioner and remit the case to the Inspecting Assistant Commissioner to regulate the same on the basis of the order to be made by the Commissioner.

21. Re : Point No. 3. - We need hardly say that a determination on this question would arise on the order to be made by the Commissioner and the applicability or otherwise of the 1976 Act to the case. We have, therefore, necessary to leave open this question. Even otherwise, we are of the view that the determination of the fair market value of the property, if that becomes necessary under Chapter XX-A of the Act, has necessary to be done in the light of the principles enunciated in A. Premchand and Others Vs. Inspecting Assistant Commissioner of Income Tax and Others, , on the valuation of properties for which purpose it becomes necessary to vacate the findings of the Tribunal and the Inspecting Assistant Commissioner on this aspect.

22. In the result, we make the following orders and directions - (i) We allow these appeals, set aside the orders of the Tribunal and the Inspecting Assistant Commissioner.

23. (ii) We remit the cases to the Inspecting Assistant Commissioner with a direction to him to restore the proceedings to its original file and redetermine the proceedings initiated by him with due regard to the orders to be made by the Commissioner on the applications made by the appellants under the 1976 Act, the law regulating the same and the observations made in this order after recording all such further evidence as may be placed before him and to be collected by him. But we, however, direct the Inspecting Assistant Commissioner

not to permit the appellants to urge any contention on the validity of Chapter XX-A of the Act or on the validity of the proceedings initiated by him on the ground urged before the Tribunal or before us and found against them in this order.

24. Income Tax Appeals are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.