
(1998) 03 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 10485 of 1990

C. Venkata Rao

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 13-03-1998

Acts Referred:

Income Tax Act, 1961 — Section 269 UA, 269 UA (b), 269 UA (b) (1) (i)

Citation : (1999) 236 ITR 895

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : N. Kumar, for the Appellant; M.V. Seshachala, for the Respondent

Judgement

V.K. Singhal, J.—The petitioner has challenged the constitutional validity of Section 269UA of the Income Tax Act, 1961, with regard to a definition of "apparent consideration" as given u/s 269UA(b)(1)(i). Sub-clause (1) contemplates that where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such agreement for transfer, the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf. Rule 48-I has prescribed the interest at eight per cent, per annum.

2. The petitioner entered into an agreement on July 20, 1989, which was for the consideration of Rs. 42 lakhs. The time stipulated for the completion of sale transaction was 10 months from the date of the agreement to sell. The statement in Form No. 37-1 dated July 31, 1989, was filed by the petitioner along with a copy of the agreement to sell dated July 20, 1989. By order dated September 15, 1989, it was directed that the property is fit to be purchased by the Central Government. The possession of the property has also been taken by the respondents and has been sold by auction. In the order passed u/s 269UD(1), it was directed that the Central Government may purchase the

property for Rs. 39,95,020. The petitioner has also received the said payment vide receipt dated October 31, 1989. In the calculation of apparent consideration (discounted value) the amount of Rs. 5 lakhs which was paid on the date of agreement was taken as it is. But in respect of the remaining Rs. 37 lakhs interest for nine months (since balance consideration was payable in nine months from the date of agreement) at the rate of eight per cent, amounting to Rs. 2,04,980 was reduced. The discounted value was taken at Rs. 34,95,020 instead of Rs. 37 lakhs. The submission in the writ petition is that the period stipulated in the agreement of sale is only for the purpose of making provision for obtaining the permission from the Income Tax Department and, thus, the consideration could not be reduced/discounted.

3. The section provides apparent consideration as the consideration specified in the agreement of transfer and, therefore, the later part runs counter to the main section.

4. The standing counsel for the Income Tax Department has relied on the case of Vidyavathi Kapoor Trust Vs. Chief Commissioner of Income Tax and others, , wherein it was observed that it would be clear that the appellant was aware of the discounted value and for any mistake in calculation the same could be considered by the respondents. The validity of the provision was not examined in this case. The decision of Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, , is also relied upon wherein it was observed (page 59) :

"The principle of discounting is well-known and regularly applied in accounting. In plain words, discount means present value of payment due in future. The word "discount" in the Oxford English Dictionary means an abatement or deduction from the amount or from the gross reckoning or value of anything and is used in commerce to mean a deduction made for payment before it is due. Discount is primarily a rebate and such allowance in reduction of the total sum payable. It is subtracted from the amount in consideration of pre-payment before the due date. Stroud's Judicial Dictionary, 4th edition, sets out that the discount has no technical or universal meaning, and perhaps its most common meaning is that it is equivalent to the payment of interest in advance. The principle of discounting is prescribed under Chapter XX-C of the Act. Even though the agreement between the parties provides for deferred payment of consideration for transfer, the Central Government is required to pay the entire consideration within the stipulated period from the date of purchase. Broadly, the order for purchase is to be made within a period of three months from the date of receipt of Form No. 37-1 by the appropriate authority and in case the purchase order is passed, then the Central Government has to tender the purchase price within a period of one month therefrom. In other words, though the agreement provides for deferred payment, the transferors receive payment within the stipulated period and that is not necessarily in consonance with the terms of the agreement. As the transferors get an advantage of payment which was due in

future, the transferors cannot complain if the payment is made with discount. Indeed, Shri Dada on behalf of the transferors did not complain that the principle of discount is to be applied."

5. I have considered over the matter. The principle of discounting has taken into consideration the benefit which the seller would get by getting the payment immediately. It is also stated that possession of the property is to be given within 15 days of the order but the payment is made subsequent to taking of possession and, therefore, at least discounting should be only from the date of actual payment by the respondent. It is only the reduced interest element which is deducted from the total consideration as the deduction is made at the rate of eight per cent, per annum. If the amount is deposited in any bank in F. D., the interest received would be much more as the rate of interest on F. D. R is more than eight per cent., depending on the period for which the F. D. receipt is purchased. The seller does not lose because by the time the payment under the agreement could have been received from the purchaser, the amount received from the Central Government would be much more than what was the total consideration under the agreement. The principle of accountancy and the business principles are to be applied in commercial transactions, The principles of discounting are based on logic and reasons also. The deeming fiction for determining value of consideration at discounted value have property been created. No provision of the Constitution is violated. The provision is neither arbitrary nor unreasonable or unjust. There could be no delay in payment of consideration as sufficient care has been taken in the provisions by fixing the time limit for various actions to be taken by the respondents. It could not be said that there is deprivation of property without payment of consideration. The time limit under the statute in making the payment is most reasonable and the actual delay from the date of agreement cannot be deducted in calculating the discounting amount as the provisions are based on public policy. As such, I do not feel that any case is made out for declaring the provisions of Section 269UA(b) unconstitutional. The writ petition having no force is accordingly dismissed.