

(2000) 11 DEL CK 0064

In the Delhi High Court

Case No : Civil Writ Petition No. 338 of 1987

Chandra Estates Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Income Tax (Amendment) Act, 1974 — Section 1(2), 6
Income Tax (Seventh Amendment) Rules, 1986 — Rule 48L, 48L(2)
Income Tax Act, 1961 — Section 269A, 269AB, 269AB(1), 269AB(2), 269D(1)
Transfer of Property Act, 1882 — Section 53A

Citation : (2001) 1 AD 613 : (2001) 89 DLT 717 : (2001) 249 ITR 54 : (2001) 114 TAXMAN 426

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

Bench : Single Bench

Advocate : Amit Chadha, Rajnish Ranjan and Deepak Jacob, for the Appellant;
R.D. Jolly and Ajay Jha, for the Respondent

Judgement

Vijender Jain, J.—This petition initially filed to challenge the virus and legislative competence in enacting Chapter XX-C of the Income Tax Act, 1961, but in view of C.B. Gautam Vs. Union of India and Others, , the petitioner confines his arguments to the applicability of Chapter XX-C of the Income Tax Act on the ground that the said Chapter which has come into force on October 1, 1986, could not retrospectively apply in respect of the agreements for transfer of property which had already been executed before that date and the transfer has taken place within the definition of Chapter XX-A of the Act, which was the law prior to Chapter XX-C of the Income Tax Act.

2. The facts giving rise to the present petition are that on January 1, 1983, the petitioner entered into an agreement of sale dated January 1, 1983, with respondent No. 4. Pursuant to that agreement it was agreed that the property situated at 23, Jorbagh, New Delhi, was to be purchased by the petitioner for a total sale consideration of Rs. 41.50 lakhs. In terms of the said agreement for sale, the petitioner had paid a total amount of Rs. 11.50 lakhs to respondent No.

4 and it was agreed that the balance amount would be paid thereafter. The operation of the said agreement for sale was extended from time to time. The effect of such extension and supplemental agreements was to extend the date for execution and registration of the sale deed consequent upon non-receipt of requisite approval from various authorities. It is contended before me that after the date of the execution of the agreement for sale, the petitioner paid further amounts aggregating Rs. 10 lakhs to respondent No. 4 of which Rs. 5 lakhs was paid on February 1, 1983, and Rs. 2.50 lakhs was paid on February 10, 1983, and the balance amount of Rs. 2.50 lakhs was paid in the year 1985. One important factor which has to be taken note of is that possession of the property was delivered by respondent No. 4 to the petitioner-company on January 1, 1983, itself, which finds mention in terms of Clause (3) of the agreement for sale dated January 1, 1983. A separate letter dated January 1, 1983, was also executed to evidence handing over of possession to the petitioner-company on January 1, 1983.

3. At the relevant time u/s 269AB of the Income Tax Act, 1961, respondent No. 4 and the petitioner filed Form No. 37EE in respect of the aforesaid transaction on March 31, 1983. In the said Form No. 37EE it was also clearly mentioned that the possession of the property has been handed over by respondent No. 4 to the petitioner on January 1, 1983.

4. The agreement of sale dated January 1, 1983, was duly registered by the Inspecting Assistant Commissioner, Acquisition Range-III, vide his order dated February 10, 1983. The Inspecting Assistant Commissioner, Acquisition Range-III, initiated proceedings for acquisition of the aforesaid property vide its order dated October 10, 1983, issued u/s 269D(1) of the Act and also published the same in the Official Gazette. The valuation proceedings were taken up by the Revenue Officer prior to the acquisition of the aforesaid property. A notice of hearing u/s 269F of the Act was later issued in respect of the aforesaid acquisition proceedings on October 9, 1986. During the pendency of the writ petition, however, it has been stated by counsel for the petitioner that the property has been de-acquired pursuant to the proceedings u/s 269AB of the Act.

5. In terms of the amendment in the Finance Act, 1986, the provision of Chapter XX-C was inserted in the place of Chapter XX-A of the Income Tax Act. Pursuant to the notification published by the Central Government in the Official Gazette dated October 7, 1986, the Central Government notified the said Chapter XX-C would come into force on October 1, 1986, so far as the Union Territory of Delhi and certain other specific areas were concerned and pursuant to the notification dated September 4, 1986, respondent No. 3-Central Board of Direct Taxes notified the Income Tax (Seventh Amendment) Rules, 1986 (see [1986] 162 ITR 47 and the same came into force on October 1, 1986. The said rules were notified to prescribe certain procedural matters relating to the operation of the provisions of Chapter XX-C of the Act.

6. In accordance with the provision of Rule 481(2)(a) notified by respondent No,

3, the petitioner again presented the required Form No. 37-I before respondent No. 2, i.e., appropriate authority, constituted u/s 269UB of the Income Tax Act, 1961. In the meanwhile, it seems that the proceedings went on under new Chapter XX-C of the Act but the order was passed by respondent No. 2 on January 23, 1987, under Sub-section (1) of Section 269UD of the Income Tax Act and it was decided to purchase the property by the Central Government for an amount equal to the apparent consideration for the transfer of the said property. On February 4, 1987, another letter was received from respondent No. 2, inter alia, demanding possession of the aforesaid property to be surrendered and delivered to respondent No. 2. An order u/s 269UD(1) of the Income Tax Act was passed in respect of the aforesaid property. On February 6, 1987, this writ petition was filed and on the first date of hearing, i.e., on February 8, 1987, stay of the operation of the order dated January 23, 1987, u/s 269UD of the Act was passed and the petitioner was also directed to maintain status quo in respect of the property.

7. The main contention of Mr. Amit Chadha, learned counsel for the petitioner, canvassed before me is that the provision of Chapter XX-C which came into force on October 1, 1986, could not be made retrospectively applicable in case of the agreement for transfer of property which has already been executed before that date and actual transfer has taken place within the definition of Chapter XX-A of the word "transfer". It was contended that the possession having been transferred in favor of the petitioner by respondent No. 4 at the time of execution of the agreement on January 1, 1983, itself, Form No. 37EE having been submitted pursuant to Chapter XX-A, inquiry having been initiated under the relevant provision of Chapter XX-A of the Income Tax Act, there was inherent fact of jurisdiction to invoke Chapter XX-A of the Income Tax Act. It was further contended that the acquisition proceedings in terms of Chapter XX-A were initiated on October 10, 1983, valuation report was filed on October 24, 1983, which is at pages 174 to 176 of the paper-book. The objections were invited u/s 269E on October 9, 1986, which is at page 85 of the paper-book and an order u/s 269F(7) dated June 22, 1989, was passed dropping the proceedings in the following terms :

ORDER

In the case of abovementioned property proceedings were initiated by issuing notice u/s 269D(1). The proceedings are hereby dropped."

8. The said order is at page 114 of the paper-book. It was contended that after the aforesaid order has been passed on June 22, 1989, the Revenue could not have sustained proceedings under Chapter XX-C in the instant case.

9. It has been contended before me by Mr. Chadha that after coming into force of Chapter XX-C, the petitioner has filed Form No. 37-I under a mistaken notion and to avoid any technical objection and merely filing of Form No. 37-I pursuant to coming into operation of Chapter XX-C of the Income Tax Act would not confer

jurisdiction on respondent No. 2 under the relevant provision of Chapter XX-C, if the transfer was complete, possession has been handed over and substantial sale consideration was given.

10. What has been contended before me is that merely filing of Form No. 37-I would not confer jurisdiction as it will not operate as an estoppel against statute. In support of his contention, Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others,

11. Counsel for the petitioner has further contended that the object of incorporating Chapter XX-A and Chapter XX-C is the same and when recourse has been taken by the Revenue under Chapter XX-A, the provision of Chapter XX-C will not be applicable. The object for incorporating Chapters XX-A and XX-C are the same and in this connection learned counsel for the petitioner has placed reliance on Rambai Manjanath Nayak and others Vs. Union of India and others, . The relevant portion from the above authority is as under (page 427) :

"The Government of India appointed the Direct Taxes Inquiry Committee under the chairmanship of Justice K. N. Wanchoo, former Chief Justice of India, in 1970 to recommend concrete and effective measures, inter alia, to unearth black money and prevent its proliferation through further evasion ; to check avoidance of tax through various legal devices, including the formation of trusts and to reduce tax arrears. Pursuant to some recommendations of the Committee, the Taxation Laws (Amendment) Act, 1972, was enacted incorporating those suggestions whereby Chapter XX-A was inserted in the Act with effect from November 15, 1972. The Statement of Objects and Reasons for its enactment mentioned that it was to counter evasion of tax through understatement of the value of immovable property in sale deeds and also to check the circulation of black money by empowering the Central Government to acquire immovable properties, including agricultural lands, at prices which correspond to those recorded in the sale deeds ; to improve the present arrangement for valuation for the purposes of Income Tax, etc., and other ancillary matters. The provisions contained in the newly inserted Chapter XX-A of the Act have to be understood in this background. Obviously, the legislation was enacted and the provision for acquisition of property was made therein for a public purpose. We may here mention that, subsequently, Chapter XX-C was inserted by the Finance Act, 1986, with effect from October 1, 1986, providing for purchase by the Central Government of immovable properties in certain cases of transfer and, Therefore, Chapter XX-A relating to acquisition of immovable properties in certain cases ceased to operate in respect of transfer of immovable property made after September 30, 1986. The validity of certain provisions of Chapter XX-C of the Act is the subject-matter of challenge in some other matters decided separately and, Therefore, no further mention of Chapter XX-C is required to be made in the present context.

A brief reference to the scheme of Chapter XX-A and the provisions therein may now be made. Chapter XX-A was inserted to provide for acquisition of immovable

properties in certain cases of transfer to counteract evasion of tax. In the said Chapter, as originally enacted by the Income Tax (Amendment) Act, 1981, Section 269AB was inserted with effect from July 1, 1982, and Section 269RR was inserted by the Finance Act, 1986, with effect from October 1, 1986."

12. It was contended by Mr. Chadha that Rule 48L was directory and not mandatory and has cited DLF Universal Ltd. Vs. Appropriate Authority and Another,

"Now the appropriate authority is obliged to give an opportunity to the parties to rectify the defects, if any, in Form No. 37-I within a period of 15 days or such extended period as the appropriate authority may allow. If we consider Section 269UC(4) vis-a-vis Rule 48L, the scenario or setting is rather incongruous. If statement in Form No. 37-I has no defect, Rule 48L mandates that it should be filed within 15 days, but if it is defective, then an opportunity can be granted by the appropriate authority under Subsection (4) of Section 269UC to correct mistakes even beyond the period of 15 days after filing; of the statement in Form No. 37-I. It would appear that no thought was given to amend Clause (c) of Sub-rule (2) of Rule 48L while inserting Sub-section (4) of Section 269UC of the Act. It would further appear as rightly held by the High Court that Rule 48L is only directory and not mandatory."

13. On the basis of the aforesaid observation of the Supreme Court, Mr. Chadha has contended that Rule 48L is a subordinate piece of legislation and cannot operate retrospectively when the main enactment does not operate retrospectively. In support of his contention, he has cited Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others,

"This court in Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others, has culled out the principles with regard to the ambit and scope of an amending Act and its retrospective operation as follows :

"(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication." We are unable to accept the contention of the respondent State that Section 6 of the amending Act of 1974 is retrospective. In Sub-section (2) of Section 1 the Legislature clearly stated that the Act would come into force at once, i.e., from the date of publication in the Gazette. Neither in Section 6 nor in any other Section of the amending Act was it mentioned that the Act would have retrospective effect. If we hold that the Act would have retrospective effect it would go against the intention of the legislation." It was also contended that pursuant to the order passed by the Revenue on June 22, 1989, u/s 269F(7) of the Income Tax Act, proceedings under Chapter XX-A were dropped and it was found that there was no evasion of tax, the applicability of Chapter XX-C will automatically come to an end. It was further contended that Rule 48L of the Income Tax Rules made pursuant to Section 269UC(3) by the Income Tax (Seventh Amendment) Rules, 1986, the word "transfer" has been defined u/s 269UA under Clause (f) and the word "immovable property" has been defined in Clause (d) whereas under Chapter XX-A *pari materia* words "immovable property" and "transfer" have been defined u/s 269A in clauses (e) and (h), respectively. It was contended that if the transfer is complete within the definition of Section 269A(h) under Chapter XX-A then Rule 48L of the Rules will not cover such transfer. It was contended that Rule 48L of the Rules will not hold the field retrospectively to the transfer which is complete under Chapter XX-A. In support of his contention, he has cited *Sanjeev Sethi Vs. Union of India and Others*,

14. On the other hand, Mr. R. D. Jolly, learned counsel for the respondents, has contended that the petitioner has filed Form No. 37-I on November 29, 1986. He has further contended that the petitioner was obliged to file Form No. 37-I under the relevant rules particularly Rule 48L of the Income Tax Rules as it stood after the 1st day of October, 1986. He has contended that as per the declaration made by the petitioner in Form No. 37-I, property was still in the possession of respondent No. 4 and, Therefore, there was no transfer within the meaning of the definition of the word "transfer" under the Act. Mr. Jolly has contended that in terms of Section 269UC, the transfer under the Act is contemplated "notwithstanding anything contained in the Transfer of Property Act", except in terms of Section 269UC of the Act. Sub-section (3) of Section 269UC of the Act, *inter alia*, lays down as follows :

"(3) Every statement referred to in Sub-section (2) shall,-

- (i) be in the prescribed form ;
- (ii) set forth such particulars as may be prescribed ; and
- (iii) be verified in the prescribed manner,

and shall be furnished to the appropriate authority in such manner and within such time as may be prescribed, by each of the parties to such transaction or by

any of the parties to such transaction acting on behalf of himself and on behalf of the other parties."

15. On the basis of the aforesaid Sub-section, Mr. Jolly has contended that all particulars have been prescribed and the same were to be verified in the prescribed manner. Relying upon *Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others*, decided by the Division Bench of this court, counsel for the respondent has contended that there is no jurisdiction vested on the appropriate authority to adjudicate upon the legality of the transaction which was proposed to be entered into by the applicant as Section 269UD was not concerned with the validity of the sale. The appropriate authority could not go and decide that there is any impediment or defect in the title of the transferor or there is any other law which would be violated by the proposed sale is of no consequence to the appropriate authority except that it can take all such factors into consideration while making up its mind whether to exercise the pre-emptive right to purchase or not. According to Mr. Jolly, the appropriate authority has to pass appropriate order either to purchase the property or grant a no objection certificate. It did not have any other option or discretion.

16. Mr. Jolly has contended that the agreement for sale is inter parties and that can always be changed and an agreement for transfer, in fact, means statement in Form No. 37-I and once the petitioner himself has made a statement in Form No. 37-I, no other meaning could be assigned except what has been the statement of the petitioner in Form No. 37-I. In support of his connection, he has also relied upon *DLF Universal Ltd. Vs. Appropriate Authority and Another*, . On the basis of *DLF Universal Ltd. Vs. Appropriate Authority and Another*, , Mr. Jolly has contended that the foundation of exercise of jurisdiction by the appropriate authority u/s 269UD is the statement in Form No. 37-I and not agreement for transfer and, Therefore, no fault could be found with the impugned order.

17. I have given my careful consideration to the arguments advanced by learned counsel for both the parties. Having regard to the agreement entered into between the parties on January 1, 1983, the fact that the petitioner applied under Chapter XX-A and filed Form No. 37EE, the petitioner specifically mentioned that the possession of the property has been transferred in favor of the petitioner by respondent No. 4, acquisition proceedings having been initiated on October 10, 1983, under Chapter XX-A of the Act, valuation report having been filed on October 24, 1983, are certain facts which are not disputed. Reliance has been placed by the Revenue on filing of Form No. 37-I by the petitioner pursuant to coming into force of Chapter XX-C of the Act and the statement made therein that the property has not yet been transferred in favor of the petitioner. In Form No. 37EE u/s 269AB(2) of the Income Tax Act under column (8), the name of the petitioner was mentioned as "occupier of the property". The covering letter by which Form No. 37-I was filed, agreement for sale dated January 1, 1983, was enclosed and this is how the petitioner wrote by a registered acknowledgment due letter on November 19, 1986, to the

appropriate authority while submitting Form No. 37-I as follows :

"We are resubmitting herewith the statement in Form No. 37-I in duplicate, duly signed by the transferor as desired by the appropriate authority on October 15, 1986. The papers could not be submitted earlier as both the transferor and the power of attorney holder were away from India.

Chapter XX-C applies to transfer of immovable property taking effect from October 1, 1986 (vide Notification No. S.O. 480(E), dated August 7, 1986 (see Commissioner of Income Tax Vs. Amar Transport Services, . In the case under reference, the agreement for sale was concluded on January 1, 1983, and hence the provisions of Chapter XX-C are not applicable. Without prejudice to the contention, we are filing statement as required under the Income Tax Rules.

In regard to this property, statement in Form No. 37EE was already filed before the competent authority and the notice received u/s 269D(1) of the Income Tax Act, 1961, from the Inspecting Assistant Commissioner, Acquisition Range-III, Asaf Ali Road, New Delhi, with his letter No. IAC/ACQ/III/37EE/2.83/108/9, dated October 10, 1983, is under correspondence."

18. On January 21, 1987, again a letter was written by the petitioner to respondent No. 2 that notice u/s 269D(1) of the Act has been issued by the Inspecting Assistant Commissioner, Acquisition Range-III, New Delhi, on October 10, 1983, and the proceedings were initiated and were still pending for disposal. In the next paragraph it was, inter alia, stated in the aforesaid letter that the provision of Chapter XX-C of the Act would not at all be attracted to the said transfer of property. Form No. 37-I had, in fact, only been filed to avoid harassment by launching of prosecution proceedings, etc., it was requested to drop the proceedings for valuation of the said property as the Valuation Officer (A. A.) had taken up proceedings for valuation of the said property. Another letter dated February 5, 1987, was written to respondent No. 2 for rectification of a mistake apparent from the record. The petitioner in paragraph 2 of the said letter mentioned that in the said Form No. 37-I, it was wrongly mentioned that the property in question was in occupation of respondent No. 4. As a matter of fact, the said property right from the date of execution of the agreement for sale, i.e., from January 1, 1983, has been in possession of the petitioner.

19. It is in this background that the short question for determination is whether the transfer for the purpose of Chapter XX-A of the Act and Chapter XX-C of the Act took place prior to October 1, 1986 or thereafter. From what have been stated above, there cannot be any doubt that the possession of the property has been handed over to the petitioner and he has been in enjoyment of the same. The agreement created a right in favor of the petitioner to enjoy the property. Even assuming that there was only part performance of the contract, the said part performance was clearly one falling within Section 53A of the Transfer of Property Act. In the circumstances, the petitioner came squarely within the provision of Section 269AB of Chapter XXA of the Act.

20. In *Sunshine Travels and Tours Pvt. Ltd. v. Union of India* (1995] 213 1TR 749 , it was observed (page 755) :

"In both the writ petitions on the facts, we are of the view that the agreements in question have enabled the vendees to enjoy the respective properties or at any rate they have enabled the vendees to enjoy certain rights with respect to the properties in question and those rights are deemed to be immovable properties both under Chapters XX-A and XX-C."

21. Section 269A(e) defines the term "immovable property". Its Sub-clause (i) refers to tangible immovable properties, such as land or building, etc. Sub-clause (ii) refers to certain rights of the nature referred to in Clause (b) of Sub-section (1) of Section 269AB. In order to understand the said rights referred to in Sub-clause (ii) one has to refer to Section 269AB(1)(b). The same is as follows :

"269AB. (1)(b) every transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement of whatever nature) whereby a person acquires any rights in or with respect to any building or part of a building (whether or not including any machinery, plant, furniture, fittings or other things therein) which has been constructed or which is to be constructed [not being a transaction by way of sale, exchange or lease of such building or part of a building which is required to be registered under the Registration Act, 1908 (16 of 1908)]."

22. A conjoint reading of the aforesaid Section would mean that certain rights are to be considered as immovable properties by reading Section 269A(e)(ii) and Section 269AB(1)(b) together and these rights are covered by Section 269A(h) (ii).

23. While Clause (a) of Section 269AB(1) covers a transaction involving possession as referred in Section 53A of the Transfer of Property Act, Clause (b) operates with wider ramification to cover other kind of transactions and if a right is acquired out of such transaction that right is also an immovable property and the same is referred in the definition of the said term in Section 269A(e)(ii). In *Sunshine Travels and Tours P. Ltd. and another Vs. Union of India and others*, , a Division Bench of this court has observed as follows (page 755) :

"As per Section 269AB(1)(b), inter alia, every transaction whereby a person acquires any rights in or with respect to any building which is to be constructed not being a transaction by way of sale, exchange or lease of such building or part of a holding which is required to be registered under the Registration Act, 1908, should be reduced to writing, etc., and be registered with the competent authority. While Clause (a) of Section 269AB(1) covers a transaction involving possession, as referred to in Section 53A of the Transfer of Property Act, Clause (b) spreads its net wider, to cover other kinds of transactions out of which, one transaction is a transaction whereby a person acquires any right with respect to a building to be constructed. This right with respect to a building to be constructed,

is also "immovable property", as this right is referred to in the definition of the said term in Section 269A(e)(ii). For the sake of convenience, we have limited the reference to the words in Section 269AB(1)(b) to the extent of their relevance to the facts before us. Therefore, if under a transaction (other than the transactions referred in the words bracketed) a person acquires any right with respect to a building to be constructed, that right is to be considered on par with the right created by an agreement covered by Section 53A of the Transfer of Property Act, because Section 269AB(1)(a) ropes in transactions to which Section 53A of the Transfer of Property Act applies . . .

The difficulty of understanding the concept of "transfer" as defined in Section 269A(h), is the difficulty due to the abstract rights covered by the statutory definitions. If the scope of Chapter XX-A becomes clear and a transaction falls within its net, no argument is needed to conclude that Chapter XX-C would not govern such a transaction, provided the transaction is prior to the date of the coming into force of Chapter XX-C.

The width of the relevant terms referred in these two Chapters, is almost the same. The term "immovable properties" is defined in Section 269UA(d) ; Sub-clause (ii) is on par with Section 269A(e) ; similarly, the concept of "transfer" defined as per Section 269UA(f) in Chapter XX-C is broadly similar to the language employed by Section 269A(h) in Chapter XX-A. The law became more stringent under Chapter XX-C, as compared to the provisions of Chapter XX-A.

Any law which operates as a restriction on the rights of persons has to be confined to operate strictly within the area sought to be covered by the language of the said law. If, by the time Chapter XX-C came into force, there has been already a transaction resulting in the "transfer" as defined, the court cannot read Chapter XX-C so as to make it retrospective to operate on the said transaction or "transfer". The term "transfer" has to be considered in the light of the provisions operating at the time of the "transfer".

If a "transfer" falling under Chapter XX-A has not been subjected to any acquisition proceedings under the said Chapter, the immunity accrued to such a transfer under the statute cannot be easily defeated by enlarging the scope of subsequently enacted Chapter XX-C, when the wording of Chapter XX-C clearly and unambiguously does not purport to operate on the earlier transactions. Rights and liabilities created or incurred under a prior law is always considered as continuing to exist, unless the subsequent law has manifestly expressed a contrary intention. ... As already found by us, the term "transfer" and referred to here, is not a transfer as ordinarily understood and this term is not confined to the "transfers" referred to in the Transfer of Property Act. The term has a wider connotation both u/s 269UA(f) and Section 269A(h), read with the relevant definitions."

24. In Sanjeev Sethi Vs. Union of India and Others, , a Division Bench of this court held that when the provisions of Chapter XX-A were applicable, the

provisions of Chapter XX-C would not become applicable and once Chapter XX-C is not applicable, Rule 48L of the Rules will also not be applicable (page 350) :

"With regard to the applicability of Rule 48L, the conclusion is very simple, The said Rule will apply only if Chapter XX-C applies. For the view that we have taken, on the facts of the present case, Chapter XX-C does not apply. Therefore, the question of the said Rule becoming applicable does not arise . . .

Lastly, the said Rule 48L has no retrospective operation and would not apply to an agreement entered into prior to October 1, 1986, specially to such cases where the provisions of Chapter XX-A were applicable like in the present case."

25. The SLP filed against the decision of Sanjeev Sethi Vs. Union of India and Others, was also dismissed by the Supreme Court on August 23, 1993. No doubt dismissal of SLP will not always operate as a binding principle affirming the ratio of the decision of the High Court, but it is important to note that by that time the Supreme Court had decided C.B. Gautam Vs. Union of India and Others, on November 17 and 27, 1992. On the very day judgment i C.B. Gautam Vs. Union of India and Others, was rendered, the Supreme Court pronounced a decision in Rambai Manjanath Nayak and others Vs. Union of India and others, While considering the scope of Chapter XX-A, the court made the following observations (page 431) :

"The scheme of Chapter XX-A clearly shows that the acquisition is not merely of the proprietary rights in an acquired property but also of the possessory rights therein which would undoubtedly include the tenancy rights. This also finds support from Section 269AB which was inserted subsequently. It requires registration of certain transactions which permit possession of any immovable property to be taken or retained and whereby a person acquires any rights in or with respect to any building or part of it, which has been constructed or which is to be constructed, not being a transaction by way of sale, exchange or lease thereof which is required to be registered under the Registration Act. This provision clearly indicates that any transaction conferring^ right to take or retain possession of the- immovable property or whereby a person acquires any rights therein is also governed by Chapter XX-A."

26. Now let me deal with the argument of Mr. Jolly that in view of the recent judgment of the Supreme Court in DLF Universal Ltd. Vs. Appropriate Authority and Another, only the statement in Form No. 37-I has to be looked into. I am afraid that the authority is of no help to the case of the Revenue to the point in controversy. The Supreme Court in the above case has laid down that the provision of Section 276AB does not make Rule 48L in any way mandatory. The court was dealing with the question with regard to the effect of changes made by the parties to an agreement when Form No. 37-I has already been filed. The Supreme Court held (page 744) :

"that it is appropriate to give meaning to the term "agreement for transfer" appearing in Clause (c) of Sub-rule (2) of Rule 48L and cannot just adopt literal

meaning. Foundation for exercise of jurisdiction by the appropriate authority u/s 269UD is the statement in Form No. 37-I and not agreement for transfer."

27. Here in this case we are concerned with a case where the very foundation for exercise of jurisdiction under Chapter XX-C has been challenged. As discussed above, in View of the statutory definitions of the relevant terms in Chapters XX-A and XX-C and exercise of the jurisdiction by the Revenue under Chapter XX-A prior to the coming into force of Chapter XX-C and in view of the material placed on record, I hold that the agreement of sale entered into on January 1, 1983, conferred a right and pursuant to the right, the possession of the immovable property was retained by the petitioner and thereby the petitioner acquired the right within the meaning of Chapter XX-A of the Act. Creation of any right enabling the petitioner to take the possession for enjoyment of the property would attract the application of Chapter XX-A just like any other transfer. The court also takes note of dropping of the proceedings vide letter dated June 22, 1989, u/s 269D of Chapter XX-A of the Act.

28. Even as per the guidelines issued by respondent No. 3 the case of the petitioner would not fall within the mischief of Chapter XX-C.

29. Respondent No. 3-Central Board of Direct Taxes vide its Circular No. F-316/134/86-OT, dated December 19, 1986, laid down the guidelines to the following effect :

"For the purpose of the application of the new Chapter XX-C, what is material is not the date of the agreement. Even if an agreement has been entered into prior to October 1; 1986, the provisions of the new Chapter would apply if the transfer of immovable property sought to be made by such an agreement is to be effected with effect from October 1, 1986. The expression of the term transfer in Section 269UA(f) is of wide connotation. If the transfer of immovable property takes place in any of the ways contemplated in the definition after October 1, 1986, the provisions of the new Chapter will apply after October 1, 1986. Conversely, if the transfer within the meaning of definition has already taken place prior to October 1, 1986, the provisions of the new Chapter would not be applicable. It has, Therefore, been decided that in all cases where substantially the consideration has been paid and physical possession of the property has been given before October 1, 1986, the provisions of Chapter XX-C should not be applied."

30. Judging from any angle, I have no hesitation in holding that having taken recourse to Chapter XX-A of the Act first by acquiring the property and then after dropping the same, merely on filing of Form No. 37-I, will not vest jurisdiction on the respondent to invoke Chapter XX-C as agreement dated January 1, 1983, enabled the petitioner to enjoy the property which constituted transfer, prior to the enforcement of Chapter XX-C as the same was covered under the terra "transfer" by the provisions of Chapter XX-A.

31. The writ petition is allowed. Order made under Chapter XX-C for the

purchase of the property in question and consequential impugned order passed by the Central Government is quashed. Rule is made absolute.

32. Petition is allowed.