

(1982) 10 AHC CK 0041

In the Allahabad High Court

Case No : Second Appeal from Order No's. 6 and 7 of 1975

Commissioner of Income Tax

APPELLANT

Vs

Asharfi Lal Gupta

RESPONDENT

Date of Decision : 21-10-1982

Acts Referred:

Income Tax Act, 1961 — Section 269C(2), 269E, 269E(3)

Citation : (1983) 36 CTR 88 : (1983) 142 ITR 765 : (1983) 13 TAXMAN 467

Hon'ble Judges : O.P. Saxena, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : A.C. Sinha and A.M. Mahajan, for the Respondent

Judgement

K.C. Agrawal, J.—These two appeals u/s 269H of the I.T. Act have been preferred by the Commissioner of Income Tax, Kanpur, against the judgment of the Income Tax Appellate Tribunal, dated 20th January, 1975, setting aside the acquisition of house No 112/331-332, Swarupnagar, Kanpur, and the plot measuring 347 sq. yards. This property, which belonged to one Om Prakash Gupta, was sold under two sale deeds dated 23rd July, 1973, to Asharfi Lal Gupta and his wife, Smt. Phoolmati, for Rs. 30,000 each. It consisted of a double storeyed building and a plot measuring 347 sq. yds.

2. The Sub-Registrar sent an information in Form No. 37G of the I.T. Rules in respect of this property to the departmental authorities Upon the receipt of this report by the competent authority, the ITO was asked to make an enquiry on the spot. After making enquiry, he estimated the market value of this property as on the date of transfer to be Rs. 48,000. The competent authority, thereafter, referred the matter u/s 269L of the Act to the Valuation Officer at Kanpur. The Valuation Officer estimated the value at Rs. 50,050 on the basis of the land and building method and at Rs. 49,000 on yield and rental method. For the other portion, which was sold to Smt. Phoolmati, the valuation estimated was at Rs. 49,800. Upon being satisfied and after recording reasons u/s 269G of the I.T. Act, the competent authority initiated proceedings for acquisition. The reasons

given by the competent authority were :

(i) that the fair market value of the property was between Rs. 49,000 and Rs. 49,800 ;

(ii) that the fair market value exceeded the apparent consideration by more than 15% ;

(iii) that the consideration for the property had not been truly stated in the transfer deed with the object of facilitating the reduction or evasion of tax including capital gains.

3. Consequently, a notice u/s 269D(1) of the I.T. Act was issued to the transferor and the transferees. The transferor, Om Prakash Gupta, did not file any objection. Asharfi Lal Gupta and Smt. Phoolmati filed two separate objections along with their affidavits stating that the consideration paid was equal to the fair market value and, as such, the proceedings taken u/s 269C(1) were liable to be set aside.

4. The competent authority held that the consideration for which each one of the two properties had been sold had not been truly stated and that both the portions of the said property were liable to be acquired. According to his finding, the fair market value exceeded the apparent consideration by 63.3% in one case and 66% in the other. Holding that all the conditions prescribed u/s 269F(6) of the I.T. Act were fulfilled, the competent authority made an order for acquisition under Chap. XX-A of the I.T. Act. The acquisition proposed was in respect of both the portions of the aforesaid house.

5. Aggrieved against the aforesaid two judgments, Asharfi Lal Gupta filed Appeal No. 1 of 1974 before the Income Tax Appellate Tribunal whereas Appeal No. 2 of 1974 was filed by his wife, Smt. Phoolmati. Both these appeals were decided by the common judgment dated 20th January, 1975, and the acquisition order by the competent authority was set aside.

6. The first question that arises for consideration in the instant case is about the valuation of the two portions of the house in question regarding which the notice u/s 269D(1) of the I.T. Act had been issued. We have found above that the two portions of the house in dispute were sold separately to Asharfi Lal Gupta and his wife, Smt. Phoolmati Gupta. The Income Tax Appellate Tribunal found that Asharfi Lal Gupta's portion had been let out at a monthly rent of Rs. 455 whereas the portion sold to Smt. Phoolmati could be let out at Rs. 415 per month. Applying the multiple of 11.635 and allowing the deductions, the Income Tax Appellate Tribunal held that the valuation of the house sold to Ashar6 Lal Gupta was Rs. 37,616 whereas the value of the portion sold to Smt. Phoolmati was Rs. 34,276. The valuation of the aforesaid two portions is given below :

Asharfi Lal's portion

Rs.

Gross annual income from rent

455 X 12

5,460

Less :

(a)

Municipal tax at 17.5% of Rs. 5,460

956

(b)

1/6th for maintenance

910

(c)

6% for management and collection charges

327

(d)

Insurance

34

2,227

Net annual income I

3,233

The value is Rs. 3,233

multiplied by 11.635 = Rs. 37,616.

Smt. Phoolmati Gupta's portion

Rs.

Gross annual income from rent

415 X 12

4,980

Less :

(a)

Municipal tax at 17.5% of Rs. 4,980

871

(b)

1/6th for maintenance

830

(c)

6% for management and collection charges

299

(d)

Insurance

34

2,034

Net annual income

2,946

The value is Rs. 2,946

multiplied 11.635 = Rs. 34,276.

7. On the basis of the above charge, it would be seen that so far as the portion purchased by Smt. Phoolmati Gupta is concerned, its fair market value does not exceed the apparent consideration by 15%. With regard to the portion purchased by Asharfi Lal Gupta, the difference is more than 25%.

8. So far as the portion purchased by Smt. Phoolmati is concerned, the learned counsel appearing for the Revenue submitted that the Tribunal committed an error in changing the method that was applied by the competent authority for the valuation and, as such, the Tribunal's judgment suffers from an error of law and is liable to be set aside. We do not agree with this submission. It has been found as a fact by the Tribunal that there were four tenants in the portion purchased by Asharfi Lal Gupta and they were paying Rs. 455. Admittedly, the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act No. 13 of 1972), imposes restriction on enhancement of rent. A landlord, therefore, is not free to raise rent whenever he likes. There are restrictions on the right of a landlord to evict a tenant as well. The right to realise rent and letting thus having been controlled in the State, the value of a property is not likely to be the same as in the case where these controls have not been imposed. We have, therefore, to keep into account the rental income derived from the portion purchased by Asharfi Lal Gupta and by Smt. Phoolmati Gupta while determining its fair market value. The expression "fair market value" has been defined in Section 269A(d). The fair market value in relation to any immovable property transferred by way of sale or exchange, means the price that the immovable property would ordinarily fetch. Therefore, the rental income of the house is an admissible

method for finding out its value. In the case of Smt. Phoolmati, the finding was that it was let out at Rs. 415. The Tribunal had applied the multiplier of 11.635 which had been adopted by the Government valuer himself. On applying this multiplier, the valuation of the house worked out to Rs. 4,366 whereas it was 3,600. That being so, the finding of the Tribunal, that Section 269C(1) did not apply to this portion of the house, cannot be said to be erroneous or wrong. As the method applied for finding out the valuation was legally permissible, no objection could be taken to the same. We, therefore, find that the Tribunal did not commit any error of law that this portion of the house had wrongly been ordered to be acquired by the competent authority.

9. Coming to the portion of the house in dispute purchased by Asharfi Lal Gupta, the difference between the fair market value and the apparent consideration exceeded by more than 25%, hence, this sale came within the clutches of Section 269C(2)(a) of the I.T. Act. This sub-section lays down a presumption in such a case of conclusive nature about the transfer deed having not stated the true price. However, Section 269E(3) affords an opportunity to the person concerned to lead evidence for showing that there was no untrue statement of the consideration in the sale deed. In the instant case, the argument raised on behalf of the learned counsel for the Revenue was that since Section 269C(2)(a) lays down that the difference of 25% could be conclusive proof of untrue statement in the sale deed, no evidence in rebuttal to the same was admissible. In other words, the submission of the Department was that the presumption incorporated in Section 269C(2)(a) is irrebuttable. We are not prepared to accept this submission.

10. Sub-section (3) of Section 269E is an exception to Section 269C(2)(a) of the I.T. Act. Sub-section (3) has removed the doubt about the rule of conclusive evidence and the prohibition imposed by it that no evidence would be admissible to contradict a presumption incorporated therein. Section 269E(3) permits the person affected to prove that the fair market value does not exceed the apparent consideration therefore, by more than twenty-five per cent. of such apparent consideration but the evidence brought by the objector must be in respect of the price showing that the property sold could not fetch more than the price at which it was sold or at least the difference between the real price and the apparent price was less than twenty-five per cent.

11. In the instant case, we find that the Tribunal took into consideration the irrelevant grounds and inadmissible evidence for holding that the presumption incorporated by Section 269C(2)(a) had been rebutted. Although the Tribunal applied the rental and yield method for calculating the net value of the house sold, but still, it heavily relied upon the condition of the building for reducing its value by applying the land and building method. The condition of the building could have been relevant if the latter method had been applied. But where, as here, the value had been found out on the basis of rent accrued from it, the condition of the building had become irrelevant. Similarly, the Tribunal although it

found that the reasons which led to the sale of the property were not factually established, but still, it considered them to be an adequate explanation for the property not being sold at the rate available in the market. What led to the sale of the property was not a relevant consideration in the facts and circumstances of the case, in this view of the matter, we are of the opinion that the evidence to rebut the presumption arising out of Section 269C(2)(a) was wholly insufficient. In fact, the Tribunal's finding is based on conjectures and surmises. A finding based on conjectures cannot in law be accepted. In law, a court can give its finding, on the basis of inferences drawn from evidence, but not on conjectures and surmises. If a finding is given on conjectures and surmises, that would not be a finding of fact and the error in relying on them by a court for giving a finding would be one of law. In this view of the matter, we find that the Tribunal committed an error in deciding Asharfi Lal Gupta's case in his favour.

12. In the result, appeal No. 6 of 1975 succeeds and is allowed. The judgment of the Income Tax Appellate Tribunal is set aside. No order as to costs.

13. Appeal No. 7 of 1975 fails and is dismissed. No order as to costs.