
(1996) 05 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Appeal No. 4 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Gobind Ram

RESPONDENT

Date of Decision : 06-05-1996

Acts Referred:

Income Tax Act, 1961 — Section 269C, 269D, 269RR

Citation : (1996) 136 CTR 101 : (1996) 221 ITR 892

Hon'ble Judges : S.S. Sudhalkar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.P. Sawhney and Sanjay Goyal, for the Appellant; B.S. Gupta, Senior Advocate and Sanjay Bansal, for the Respondent

Judgement

1. This common judgment shall dispose of Income Tax Appeals Nos. 4 and 5 of 1982.
2. These appeals arise out of the judgment of the Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") delivered on September 10, 1981. Shri Gobind Ram, son of Damodar Dass and Shri Hari Shanker, son of Shri Babu Lal, purchased a building situated at Narnaul from Shri Om Parkash, son of Shri Moti Lal Aggarwal, for a consideration of Rs. 35,000 as per sale deed registered at No. 77 dated April 24, 1973, with the Sub-Registrar, Narnaul. The building is having a land area of about 5,000 sq. yards and it consists of a number of rooms being used as godown and factories and, ten shops facing a road of about 10 ft. wide. It is a single-storeyed building.
3. A reference u/s 269L of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), was made to the Valuation Officer, Income Tax Department, Rohtak. The Assistant Valuation Officer, Income Tax Department, Rohtak, vide his report dated December 27, 1973, determined the fair market value of the property at Rs. 39,257 on the "rent capitalisation" method as the whole of the property was in the occupation of the tenants. There were 30 tenants in this property at the time of transfer. The Assistant Valuation Officer, in his report mentioned that Shri

Hari Ram and Shri Laxmi Narain Gupta were ready to purchase this property for Rs. 60,000. Some of the tenants were also ready to purchase the portions under their possession. It has further been reported that if the property could be divided into plots, there is a possibility of getting more value which is estimated to be nearly Rs. 1 lakh. As the difference between the apparent consideration and the fair market value was more than 15 per cent., proceedings for the acquisition of the said property, as per the provisions of Sections 269C and 269D were initiated. The fair market value of the property was determined at Rs. 75,000, The Inspecting Assistant Commissioner ,of Income Tax passed the order for the acquisition of the property.

4. The respondent filed the appeal before the Income Tax Appellate Tribunal, New Delhi, who came to the conclusion that the valuation of the property by capitalisation of the net annual value would be Rs. 39,257 and that on that basis, the difference between the fair market value and the apparent consideration of Rs. 35,000 did not exceed 15 per cent. It also held that the offers by other people long after the property was sold have no meaning. The order of the Income Tax Appellate Commissioner was held to be erroneous. The Income Tax Appellate Tribunal, therefore, allowed the appeals and cancelled the order of acquisition of the property. The Department being aggrieved by the said order filed these appeals before this court.

5. When the appeals came up for arguments, a short question was argued before us and the appeals could be disposed of on this short question only. The question argued before us was whether by the issuance of Circular No. 455 (see Emerald Paints and Colour Products (P.) Ltd. Vs. Commissioner of Income Tax,) of May 16, 1986, the appellant could maintain the acquisition of property. The circular issued is as below :

" Circular No. 455, dated May 16, 1986.

Subject: Acquisition of immovable properties under Chapter XX-A of the Income Tax Act, 1961-Guidelines-Regarding.

The Finance Bill, 1986, has proposed that no proceedings shall be initiated u/s 269C of the Income Tax Act, 1961, in respect of a property transferred after the 30th day of September, 1986. The Bill also proposes to insert Chapter XX-C providing for purchase by the Central Government of immovable properties in certain cases of transfer.

With a view to achieve early finalisation of proceedings under the existing Chapter XX-A of the Income Tax Act, 1961, the Board has decided that with effect from April 1, 1986, acquisition proceedings u/s 269C will not be initiated in respect of an immovable property for which the apparent consideration is Rs. 5 lakhs or less and that where acquisition proceedings have been initiated by issue of notice u/s 269D, the proceedings will be dropped if the apparent consideration of the immovable property is below Rs. 5 lakhs."

6. Chapter XX-A of the Act was made inapplicable in relation to transfer " of any immovable property after September 30, 1986, and a new Chapter XX-C was introduced in the Act by the Finance Act, 1986, with effect from October 1, 1986. Section 269RR provides that Chapter XX-A will not apply in relation to transfer of any immovable property after September 30, 1986.

7. The abovementioned circular states that after April 1, 1986, acquisition proceedings will not be initiated u/s 269C in respect of an immovable property if the apparent consideration is Rs. 5 lakhs or less and where acquisition proceedings have been initiated by issuance of notice u/s 269D, the proceedings will be dropped if the apparent consideration of the immovable property is below Rs. 5 lakhs. The interpretation of the above circular has to be made so as to hold whether it will be applicable to the impugned proceedings. Obviously before the circular came into existence, proceedings had come to an end and also the judgment of the Income Tax Appellate Tribunal was before the circular was issued. The question, therefore, is whether these appeals can be deemed to be pending proceedings or not. Learned counsel for the respondent has shown to us a judgment of the Division Bench of this court in Income Tax Appeal No. 1 of 1980 decided on February 20, 1996-- Commissioner of Income Tax Vs. Export India Corporation (P.) Ltd., . The Division Bench held that the circular does not use any expression limiting its applicability with reference to any date of transfer of property. It also held that no words of limitation prescribing its applicability to the proceedings at the initial stage are there and that it does not provide that it would not apply to the cases pending at the appeal stage. Under Chapter XX-A, proceedings could only be initiated by issue of notice u/s 269D and that simply by using the words "by issue of notice u/s 269D", the Board did not mean to limit the applicability of the circular to the proceedings pending at the initial stage only. It also held that notice u/s 269D has to precede the proceedings whether pending at the initial stage before the competent authority or before the Tribunal/ High Court.

8. The Division Bench also considered the use of the word "dropped" instead of the word "withdrawn". It held that the intention of the Board was in consonance with and in terms of, the speech made by the Finance Minister on the floor of the House while introducing the Finance Act of 1986 that the experiment under Chapter XX-A having failed, which had resulted in litigation and harassment, the Board decided either not to initiate or to drop the proceedings which were pending where the apparent consideration of the immovable property was below Rs. 5 lakhs. The Division Bench, therefore, held that the circular would be applicable to the proceedings at the initial stage as well as the proceedings which were pending before the Tribunal/High Court in appeal. It also held that the word "proceedings" occurring in the circular is not qualified by the word "initial". Therefore, the word "proceedings" shall include the proceedings at the appeal stage as well.

9. We agree with the opinion expressed by the learned judges of the Division

Bench. We would also like to state that in some matters which are kept pending for some reasons or the other, the initial proceedings would not have attained finality at any stage, in some matter which are expedited, the final proceedings would be over before the circular came into operation. In both such cases, the rights of the assesseees had to be decided as per the circular and, therefore, there could be no distinction between the rights of those assesseees in whose case initial proceedings were over before the circular came into existence and in others in whose case the proceedings are prolonged at the appellate stage thereafter. No premium can be given to those assesseees whose cases went on lingering over those whose cases were disposed of earlier. It is clear from the wording of the circular itself that the Board did not want to initiate further proceedings and wanted to drop all the pending proceedings. Of course, the proceedings which have already attained finality because of either not being pursued in appeal or the appeal being disposed of were not meant to be revived by the said circular because it could create further problem as the title in the property by acquisition would in such cases be finally decided and the circular cannot be held to be reopening the ownership rights which are finally decided.

10. In view of the above facts, we find that these appeals are without merit and, therefore, the same deserve to be dismissed. Hence, the appeals are dismissed.