
(1996) 11 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Appeal No. 12 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Haripal Singh

RESPONDENT

Date of Decision : 28-11-1996

Acts Referred:

Income Tax Act, 1961 — Section 269D, 269D(1)

Citation : (1997) 224 ITR 147

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

Bench : Division Bench

Advocate : S.S. Mahajan, for the Appellant; None, for the Respondent

Judgement

G.S. Singhvi, J.—Aggrieved by the order dated May 22, 1985, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, the appellant has invoked the jurisdiction of this court u/s 269H of the Income Tax Act, 1961, and has prayed for setting aside the impugned order.

2. It is not necessary to make a detailed reference to the facts which led to the passing of the order dated February 6, 1985, by the Inspecting Assistant Commissioner of Income Tax, Acquisition Range, Jalandhar. Suffice it to say that the respondent-Haripal Singh purchased the land measuring 66 kanals situated in village Kingra, Tehsil and District Jalandhar, from one Col. Hardial Singh, for an apparent consideration of Rs. 10,30,000 vide registered sale deed dated October 29, 1982. On receipt of information regarding the transaction, the competent authority initiated acquisition proceedings by the issue of notice dated June 9, 1983, under, Section 269D(1) of the Act of 1961. This notice was published in the Gazette of India, Weekly Part-III, Section I, on July 9, 1983. A copy of the notice was pasted on the property in dispute on June 18, 1983. Proclamation by beat of drum was carried out on the spot on the same date, i.e., June 18, 1983. A copy of the notice was pasted on the office notice board on July 6, 1983. Notice was separately served on the transferor on July 8, 1983, and the notice sent to the transferee, i.e., the respondent, was returned by the postal

authorities on July 13, 1983, with the report "refused and returned". The respondent appeared before the competent authority and objected to the maintainability of the proceedings on the ground of bar of limitation contained in the proviso to Section 269D(1) of the Act of 1961. The competent authority overruled the objection on the ground that, the proceedings stood initiated on July 9, 1983, i.e., the date on which the notice was published in the Gazette of India. Thereafter, the competent authority considered the merits of the case and ordered the acquisition of the property. The respondent filed an appeal against the order dated February 6, 1985, before the Income Tax Appellate Tribunal. The Tribunal held that the publication of the notice will be deemed to have taken place on August 17, 1983, because it was on that day that the Gazette was placed for public sale. On the basis of this conclusion, the Tribunal accepted the appeal and held that the proceedings initiated by the competent authority were barred by time.

3. The only argument advanced by Shri S. S. Mahajan, learned counsel for the appellant, is that the view taken by the Tribunal is contrary to the decision of the Full Bench of this court in Commissioner of Income Tax Vs. Amrit Sports Industries, and two decisions of the Division Bench in Commissioner of Income Tax Vs. Mela Singh, and Commissioner of Income Tax Vs. Ganesha Mal and Another, .

4. After having examined the undisputed facts which have come on record of this appeal and after perusing the decisions of this court referred to hereinabove, we are of the considered opinion that the order passed by the Tribunal is patently illegal. A bare look at the language of Section 269D of the Act of 1961 shows that the crucial point for determination of the period of nine months is the date of initiation of the proceedings. The initiation of proceedings for acquisition takes place on the publication of the notice in the Official Gazette. There is nothing in the language of Section 269D suggesting that the date of initiation of the proceedings would be the date on which the Official Gazette is made available for sale to the public. In the absence of any such requirement in the statute, we do not find any reason to accept the view of the Tribunal that the period of limitation has to be taken into consideration from the date on which the copies of the Official Gazette containing the publication of notice are made available for public sale.

5. A Full Bench of this court interpreted Section 269D of the Act of 1961 in Commissioner of Income Tax Vs. Amrit Sports Industries, and held (headnote) :

" Viewed in the correct perspective, Sub-section (1) of Section 269D is the primary and the main provision for the initiation of acquisition proceedings. Sub-section (2) is a provision subsidiary and supplementary to Sub-section (1).

It is elementary that where public notice by publication in the Official Gazette is provided and, added thereto, individual notices or other modes of publication are also provided, then the latter are secondary in nature. The notices prescribed

under Sub-section (2) are merely reflections and copies of the notice originally published in the Official Gazette under Sub-section (1). The law provides primarily and first, the publication of the notice in the Official Gazette and then a replica thereof is to be served on individuals or published as laid down in Sub-section (2)(b). An overall analysis of the section discloses that, apart from publication in the Gazette, the law also provides for publication in the locality where the property is situated as also affixing a copy thereof in the office of the competent authority. These are in the nature of public notices supplemental to the publication in the Official Gazette which plants presumptive knowledge of the same to everyone concerned. Apart from these, a further mode of service of notice is provided on the transferor, the transferee, the occupant and other persons interested in the property if known to the competent authority. These are subservient and supplemental provisions and the initiation of proceedings is complete with the publication in the Official Gazette. The assumption of jurisdiction by the competent authority arises from such publication. The proceedings u/s 269D(2) being procedural and supplementary, are in no way jurisdictional. Any defect or irregularity therein consequently cannot affect the assumption of jurisdiction by the competent authority and, therefore, in no way vitiates the initiation of proceedings, once validly done. Therefore, a default in service on the persons interested or even of publication under Sub-section (2)(b) does not affect the jurisdiction of the competent authority but at the very highest pertains to the exercise of the power thereunder. It is well-settled that an erroneous exercise of the power does not vitiate, the proceedings, but merely calls for correction, be it in the appellate, revisional or any other jurisdiction.

Therefore, an initiation of the proceedings for acquisition of immovable property in certain cases of transfers to counteract evasion of tax under Chapter XX-A and the consequent assumption of jurisdiction by the competent authority is complete by the publication of the notice in the Official Gazette u/s 269D(1). Any procedural defect in compliance with Sub-section (2) would not affect the jurisdiction of the competent authority and would not vitiate the whole of the proceedings under the section."

6. The aforesaid enunciation of law by the Full Bench is binding on us and, therefore, we respectfully follow the same and hold that the Income Tax Appellate Tribunal, Amritsar, committed an error of law in declaring the proceedings initiated by the competent authority as barred by limitation.

7. Consequently, the appeal is allowed. The order passed by the Tribunal is set aside and the case is remanded to the Tribunal for decision on the merits.