
(2002) 11 P&H CK 0141
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 3 of 1988

Commissioner of Income Tax

APPELLANT

Vs

Khaitan Electricals Ltd.

RESPONDENT

Date of Decision : 26-11-2002

Acts Referred:

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

Citation : (2004) 186 CTR 153

Hon'ble Judges : V.K. Bali, J; Jasbir Singh, J

Bench : Division Bench

Advocate : R.P. Sawhney, M.S. Guglani and Rajesh Bindal, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Bali, J.—This is an appeal filed by the CIT, Haryana, Rohtak, u/s 269H of IT Act, 1961 (for short, "the Act of 1961") against order dt. 9th Nov., 1987, passed by Income Tax Appellate Tribunal, Delhi "D" Bench, Delhi (for short "the Tribunal") in IT Acq. No. 30(Del)/86.

2. The brief facts reveal that on the basis of scrutiny of Form No. 37-G provided by the Sub-Registrar, Baliabgarh, it was noticed that Industrial Plot No. 14 situated in Sector 6, Faridabad, was transferred by M/s Mimec India (P) Ltd. to M/s Khaitan Electricals Ltd., the respondent herein, for a consideration of Rs. 11,00,000 vide sale deed dt. 31st March, 1981, registered with the Sub-Registrar, Baliabgarh. The Government Valuation Officer determined the fair market value Of the plot at Rs. 20,40,000. Finally, vide his report dt. 17th March, 1986, he reduced the market value to Rs. 19,86,580 after having gone into the objections of the transferee.

3. Notice u/s 269D(1) of the Act of 1961 was then published in Part-III, Section-I of the Official Gazette on 7th Nov., 1981. The same was served upon the transferor and the transferee. Proclamation with the beat of drum was also made by the ITO, Faridabad.

4. After perusing the objections filed by the transferee from time to time, the competent authority passed order u/s 269F(6) of the Act of 1961 for the acquisition of the property, with prior approval of the CIT, Haryana. Aggrieved, M/s Khaitan Electricals Ltd. filed an appeal which has been allowed by the Tribunal vide order, Annexure-B, annexed with the present appeal. As mentioned above, it is against this order, the present appeal has been filed.

5. While determining the matter in favour of M/s Khaitan Electricals Ltd. and against the Department, number of points came to be considered by the Tribunal.

6. Learned Tribunal first dealt with the defect of the notice u/s 269D(1)(i) of the Act of 1961. Sub-para 2(a) of the notice reads thus:

"Facilitating the reduction or evasion of the liability of the transferor to pay tax under the said Act in respect of any income arising from the transfer; and/or."

From sub-para, reproduced above, followed by Clause (b), "facilitating the, concealment of any income or any moneys" etc. etc., it was observed by learned Tribunal that words "and" and "or" both remained in the said notice. On the defect in the notice, as indicated above, learned Tribunal relied upon a judgment of Bombay High Court in case All India Reported Ltd. and others Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax and others, . Bombay High Court in Ashok Madhav Chitalay's case (supra) had relied upon number of decisions of Hon'ble Supreme Court. Learned Tribunal on the strength of judicial precedents held notice to be defective. The Tribunal then dealt with three different valuation reports given by the Department itself. In the reasons for initiating acquisition proceedings the fair market value that was adopted by the Department was Rs. 20,40,000, which was reduced by the Valuation Officer to Rs. 19,86,580 by a subsequent report and it was further reduced by IAC (Acqn.) to Rs. 18,36,160. On the facts, as stated above, learned Tribunal relied upon the following observations of Madras High Court in case Commissioner of Income Tax Vs. Apsara Talkies, :

"It is jocularly said that a valuer is one who, if you have forgotten your telephone number, will estimate it for you. The truth behind this utterance is that a valuation is even in the most expert hands, an inexact instrument of measurement. It is only an estimate and no two valuers will agree on the same subject. In this very case, there were as many as three different valuation reports. One was by an executive engineer of the public works department. "Initiating acquisition proceedings on such a valuation report was invalid".

7. On the aforesaid two legal defects, learned Tribunal held the proceedings to be invalid but inasmuch as the parties had argued the issue on merits as well, same too was dealt with. While dealing with the controversy on merits, it was observed that sale, in question was so advertised through a newspaper "The Times of India" under the head "for immediate sale" followed by another advertisement. On the basis of these two newspaper advertisements, it was observed "Normally, in a case of publicly advertised sales, there, cannot be any thing hanky panky

but this again is a surmise. Simply because a sale is effected through advertisement, it cannot give a certificate of all cleanliness to the vendor and the vendee."

8. Since, sale through advertisement was not held enough to hold in favour of the assessee, learned Tribunal dealt with valuation part of the report and it was observed that "the fair market value of the land was taken at Rs. 9,13,725, i.e., @ Rs. 75 per sq. yd. The basis for this is that in August, 1981, the HUDA had offered industrial plots on G.T. Road, Faridabad, @ Rs. 122 per sq. yd. against foreign exchange. The sizes of such plots were 1,300 to 5,000 sq. yds. Keeping the big plot area of the said property in view and its location being slightly away from G.T. Road and the date of sale being March, 1981, the fair market value of the land in question was taken @ Rs. 75, against which when we look, to certificate of Estate Officer, Faridabad, we find that rate in Sector 6, Industrial Area is certified to be Rs. 30.95 per sq. yd. This was mentioned by the assessee to the Valuation Officer, who as per p. 137 of the valuation report, observed in one line "Rs. 30.95 per sq. yd. was the issue rate from HUDA and not a market rate." The casual way in which the objection of the assessee has been disposed of by the valuer fails to get our appreciation. Even if it is issue rate, what does it cannot? People could obtain plots in Industrial Area of Sector 6 @ Rs. 30.95 in 1981 from the Government itself. It was not the case of the Revenue that no lands were available which could be allotted by HUDA. Here we are supported by Delhi High Court decision in case of Commissioner of Income Tax Vs. Arun Mehra, . In that case Tribunal had found that there was no material on record on the file either of the Valuation Officer or of the competent authority as to how the price of Rs. 2,500 per sq. yd. was arrived at and how the market value of subject-matter had been arrived at Rs. 5,400 per sq. yd. "In view of there being no material on record, the Tribunal also held "that there were two reports of the Valuation Officer, that within meaning of Section 269C, the competent authority could not have reason to believe that subject-matter of acquisition had been transferred for an apparent consideration which was less than market value of the property or that the consideration for transfer had not been truly stated." It was further held that "in the instant case as well, as there are two reports, first valuing the property at Rs. 20,40,000 and another assigning the valuation at Rs. 19,86,580 and yet third is the valuation of Rs. 18,36,160 adopted by the IAC (Acqn.)."

9. Learned Tribunal then dealt with inordinate delay in passing the impugned order, subject-matter of appeal before it. The proceedings were initiated, on 31st March, 1981, and acquisition proceedings came to be finalised on 30th July, 1986. Learned Tribunal then, on the question of inordinate delay, on the basis of the observations made by Karnataka High Court in Cyril Albert D.I. Souza 15 ITR 685 , held as follows:

"In the Instant case, the records did not show any reason whatsoever for the delay in passing the impugned order. It was, therefore, clear that there was

excessive deferment of the action which the IAC was bound to take u/s 269F and that inordinate and inexcusable delay was sufficient to vitiate the order."

10. The basis of valuation done by the Department was then taken into consideration by learned Tribunal and it was observed as follows :

"When we peruse the valuation report of the approved valuer of the assessee fixing the value at Rs. 30 per sq. yd., we find it is based on mere comparable instances of sales, namely, transfer of plot Nos. 16 and 18 in Sector 6, Faridabad and relevant papers in this regard are available on assessee's compilation. Then in the Tribunal decision in case of Jainsons Engg. (P) Ltd. being ITA No. 4/81 land rates between Rs. 20 to Rs. 30 per sq. yd. for such smaller plots in Faridabad have been accepted as genuine and correct. The valuation if taken @ Rs. 30 per sq. yd. would come to a figure of Rs. 3,65,490 as against Rs. 9,13,725. Even in respect of the valuation of building, it is wrong to say that building was constructed in 1978. A letter dt. 11th Aug., 1981, which is an assessee's compilation, if perused, it clearly indicates that the building in question was constructed in 1972-73. This was also indicated in course of replies submitted that since building was not in use for about two years, about Rs. 75,000 had to be spent on repairs. This has been ignored by the Departmental Valuation Officer. He has proceeded on the basis that depreciation on construction has been allowed for three years, whereas if building is constructed in 1972-73 @ two and a half in case of factory buildings, it would work out to 22-1/2 per cent, as contended by the learned counsel of the assessee. The approximate depreciation allowed in a sum of Rs. 53,000, therefore, would further be increased by about a lac of rupees or so. This is also apparent from the order that Valuation Officer has adopted the rate of Rs. 659 for valuing the stores, whereas for office block he has adopted the same @ Rs. 650 per sq. yd. It is a fact of life that office blocks are always constructed at higher rate than the stores. One specific instance, which was pointed out by the assessee, was of Plot No. 37, Sector 6, which was sold on 27th March, 1981, for a consideration of 8 lacs of rupees. The comparative figures regarding the said plot and plot in question are given below :

Plot No. 37 Instant case

Total area 11,406 sq. yd. 12,183 sq. yd.

Covered area 20,282 sq. ft. 19,000 sq. ft.

Sale consideration Rs. 8,50,000 Rs. 11,00,000

Against the above comparable case, the Revenue has failed to point out any single instance of higher sale consideration."

11. Learned Tribunal then relied upon a judgment of this Court in Commissioner of Income Tax Vs. Leatherite Industries Limited, wherein it was held that in order to determine the price of a land, the instances of sale should be of similar plots of land in similar locality.

12. Despite the impressive array of facts, as culled out above from the impugned order passed by learned Tribunal as also reasons invalidating the order, subject-matter of challenge before learned Tribunal on defective notice, etc. as also inordinate delay in finalising the proceedings, Mr. Sawhney, learned senior counsel appearing on behalf of the petitioner-Department, contends that learned Tribunal failed to draw presumption which was available under Sub-section (2) of Section 269C dealing with conclusive proof that consideration of transfer in hand has not been truly stated in the instrument of transfer as in the present case fair market value of the property in dispute had exceeded the apparent consideration therefore by more than 25 per cent presumption available under Sub-clause (b) of Sub-section (2) of Section 269C was also not drawn against the assessee. With a view to appreciate the contention of learned counsel, as noted above, it will be useful to reproduce Sub-section (2) of Section 269C of the Act of 1961, which runs thus :

"(2) In any proceedings under this Chapter in respect of- any immovable property,--

(a) where the fair market value of such property exceeds the apparent consideration therefore by more than twenty-five per cent of such apparent consideration, it shall be conclusive proof that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer;

(b) where the property has been transferred for an apparent consideration which is less than its fair market value, it shall be presumed, unless the contrary is proved, that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in Clause (a) or Clause (b) of Sub-section (1)."

13. In the context of facts and circumstances of this case, we find no merit in the contention of Mr. Sawhney. No material has been shown to us nor any such finding was recorded at any stage that the fair market value of the property exceeds the apparent consideration therefore by more than 25 per cent of such apparent consideration nor any material that might have been brought on record has been shown that may prove that the property in dispute was transferred for apparent consideration which was less than its fair market value. Learned Tribunal; on the other hand, as mentioned above, dealt with the entire material that was brought on record of the case and returned a firm finding of fact that the value of the property as shown in the instrument was not less than the market value of the similar property in the, vicinity from where property was sold. In fact, by comparing the value of the property sold by the Department or the Government, in the very locality, a firm finding of fact has been recorded by learned Tribunal that it was not a case of undervaluation. Once, the contention of learned counsel, as noted above, needs to be repelled, there would be no necessity to go into the second contention of learned counsel, which is based upon a Division Bench judgment of this Court in M.K. Trading Company v. State

of Punjab (1974) STC 237 that in case Tribunal had ignored one aspect of the case which, according to him was vital in determining the controversy, the other reasons given by the Tribunal cannot sustain.

14. Finding no merit in this petition, we dismiss the same leaving, however, the parties to bear their own costs.