(1992) 10 KL CK 0029

In the High Court Of Kerala

Case No : M.F.A. No. 45 of 1982

Commissioner of Income Tax — APPELLANT

Vs

Mathew M. Thomas and Others — RESPONDENT

Date of Decision : 08-10-1992

Acts Referred:
Income Tax Act, 1961 — Section 269C, 269D, 269RR

Citation : (1993) 201 ITR 494

Hon'ble Judges : M. Jagannadha Rao, C.J;K.S. Paripoornan, J;K.A. Nayar, J

Bench : Full Bench

Advocate : P.K.R. Menon, for the Appellant; Mathews P. Mathew, for the Respondent

Judgement

K.S. Paripoornan, J.—A Division Bench of this court, by order dated May 5, 1988 has referred a question whether administrative circulars issued by the Central Board of Direct Taxes under the Income Tax Act to supplement the statute or can supplant the same by deviating or detracting or going beyond or contrary to the statutory provisions, for consideration by a Full Bench. The appeal is filed by the Revenue. The short facts that are necessary for considering the question are as follows : The appellant is the Revenue. The respondents are assessees to Income Tax. Proceedings under Chapter XX-A of the Income Tax Act were initiated against the respondents-assessees. The said provision of law deals with acquisition of immovable properties in cases of transfer made evading payment of tax due. u/s 269D(1), a preliminary notice was served on the assessees on June 26, 1978. The valuation report was submitted by the Officer on February 14, 1979. The competent authority passed an order after hearing objections u/s 269F of the Act on March 31, 1981. Aggrieved by the same, the respondents-assessees filed an appeal before the Appellate Tribunal. The Income Tax Appellate Tribunal, by order dated October 31, 1981, allowed the appeal. Aggrieved by the said order of the Tribunal, the Revenue has filed the above M.F.A. No. 45 of 1982 on January 21, 1982, in this court. The said appeal is still pending. Pending the appeal, Chapter XX-C was introduced in the Income Tax Act by Finance Act of 1986 with effect from October 1,1986. u/s 269RR, Chapter XX-A will not apply in relation to transfer of any immovable property after September 30, 1986.

2. When the appeal was heard by the Division Bench, reliance seems to have been placed on Circular No. 455 dated May 16, 1986 (see Emerald Paints and Colour Products (P.) Ltd. Vs. Commissioner of Income Tax,) issued by the Central Board of Direct Taxes. It is seen that a plea was taken that, in view of the abovesaid circular, the proceedings initiated under Chapter XX-A by the Revenue should be discontinued. Proceeding further, the question as to whether the circular aforesaid has the force of law and whether it will supplant or supplement the provisions of the Act seems to have been mooted. It is, in the above circumstances, that the Division Bench felt a doubt with regard to the legal effect of the circular in the light of various decisions of the Supreme Court and of this court and has referred the matter for consideration by a Full Bench.

3. Circular No. 455 dated May 16, 1986, is to the following effect (see Emerald Paints and Colour Products (P.) Ltd. Vs. Commissioner of Income Tax, :

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

Subject : Acquisition of immovable properties under Chapter XX-A of 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."

4. The provisions of Chapter XX-C of the Income Tax Act introduced by the Finance Act of 1986, with effect from October 1, 1986, has been explained in another Circular dated July 9, 1986. The Explanatory Note is seen reported in [1986] 161 ITR 17. For the purpose of this case, we are concerned with Circular No. 455, dated May 16, 1986 (see [1986] 159 ITR 05). The short question that arises for consideration is whether the said circular applies to the instant case.

5. We heard counsel. A look at the circular would show that the Board has decided that, with effect from April 1, 1986, acquisition proceedings will not be initiated u/s 269C in respect of immovable property if the apparent consideration is Rs. 5 lakhs or less. The Board also decided that where the acquisition

proceedings have been initiated by issue of notice u/s 269D, the proceedings will be dropped if the apparent consideration for the immovable property is below Rs. 5 lakhs. In this case, the acquisition proceedings were over long ago. The competent authority passed the order on March 31, 1981. The circular aforesaid contemplates that proceedings initiated in pursuance of notice u/s 269D should be pending. No such proceeding is pending in this case. The proceedings were over long ago resulting in the order passed by the competent authority on March 31, 1981. What is more, even the first appeal was disposed of by the Appellate Tribunal on October 31, 1981, and the appeal filed by the Revenue as early as on January 21, 1982, is pending in this court. Pendency of the proceedings before the competent authority is necessary for the applicability of the circular. No such proceedings are pending before the competent authority. We are of the view that Circular No. 455, dated May 16, 1986 (see Emerald Paints and Colour Products (P.) Ltd. Vs. Commissioner of Income Tax,), has no application to the present case. Since the circular itself has no application, the binding nature of the circular does not arise for consideration and so we decline to adjudicate the said question.

6. We decline to answer the question referred to the Full Bench. The matter will be posted before the Division Bench for hearing.

