
(2001) 04 MAD CK 0017

In the Madras High Court

Case No : T. C. No. 517 of 1990 (Appeal No. 65 of 1990) 4 April 2001

Commissioner of Income Tax

APPELLANT

Vs

R. Rajarathnam

RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

Citation : (2002) 173 CTR 461 : (2002) 253 ITR 359 : (2002) 124 TAXMAN 208

Hon'ble Judges : R. Jayasimha Babu, J;K. Gnanaprakasam, J

Bench : Full Bench

Advocate : T. Ravikumar, for the Revenue M. P. Senthilkumar, for the Assessee, for the Appellant;

Judgement

R. Jayasimha Babu, J.

The Tribunal has taken the view that no case has been made out to invoke section 269C of the Income Tax Act, 1961, (hereinafter referred to as

the Act"), in relation to the property sold to the assessee under a sale deed dated 11-12-1985. The apparent sale consideration in the sale deed

was Rs. 9,50,000. The property is situated in Poonamallee High Road, Kilpauk, Madras.

The Inspecting Assistant Commissioner had made an order u/s 269F(6) for the acquisition of the property. In that order he held that the fair

market value of the transferred property exceeded the apparent consideration by more than 15 per cent and that the consideration for such transfer

had not been truly stated in the instrument of transfer with the object mentioned in clauses (a) and (b) of section 269C of the Income Tax Act,

1961.

The Tribunal has found that the acquisition proceedings were initiated based on

the opinion of the Inspector of the department who had valued that property at a figure of about Rs. 16 lakhs and that there was no material at all before the authorities, to hold that the property had been sold with a view to evade the liability of the transferor to pay tax in respect of the income arising from the transfer or for facilitating concealment of any income or any monies or other assets which have not been and which ought to be disclosed by the transferor for the purpose of the Act. We have not been shown anything from the record to differ from the finding of the Tribunal. The finding recorded by the Inspecting Assistant Commissioner directing the acquisition, is an order which seeks to derive support from section 269C(2). However, the presumptions provided for in that sub-section are not available in respect of the matter required to be dealt with in section 269C(1), viz., a requirement to be met before the proceedings can be initiated.

Section 269C(1) requires the authority to have reason to believe that the transfer is for an apparent consideration which is less than the fair market value, that such consideration is not the true consideration for the transfer and it is different from the one set out in the instrument of transfer, and that such erroneous statement of value in the deed of transfer has been stated with the object of facilitating reduction or evasion of the liability of the transferor to pay tax under the Act in respect of any income arising from the transfer or for facilitating concealment of any income or any monies or other assets which have not been or which ought to be disclosed by the transferor for the purposes of the Act.

Unless all these requirements are satisfied the initiation of the proceedings itself would be vitiated. Any presumption that the department may seek to draw on the basis of sub-section (2) would not be of any assistance to the revenue. There must be a positive finding based on material that the consideration stated in the instrument is not the consideration for the transfer and that such false statement in the document is with an intent to facilitate evasion or reduction of tax or concealment of monies or other assets.

Here the revenue has proceeded on the erroneous assumption that a difference in the value by reason of a different value being put on the property by the department's valuer by itself will establish all the other requirements of section 269C(1). The department had no material before it except

that valuation report and no circumstance which would provide for a formation of an opinion that the consideration had not been correctly stated in

the instrument with the object of facilitating evasion or concealment, was available to the revenue. The Tribunal was, therefore, right in setting aside

the acquisition proceedings. The appeal is dismissed.