
(2003) 08 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No's. 1, 2, 3 and 4 of 1990

Commissioner of Income Tax

APPELLANT

Vs

Ruhi Construction Co. (P.) Ltd.

RESPONDENT

Date of Decision : 11-08-2003

Acts Referred:

Income Tax Act, 1961 — Section 269C, 269D(1), 269F(6)

Citation : (2004) 267 ITR 455 : (2004) 139 TAXMAN 298

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

Bench : Division Bench

Advocate : A.S. Tewatia, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Bali, J.—By this common order, we propose to dispose of six connected Income Tax appeals bearing Nos. 1 to 6 of 1990, as common questions of law and fact are involved in all these appeals. The bare minimum facts that need a necessary mention here, however, have been extracted from Appeal No. 1 of 1990 titled Commissioner of Income Tax, Haryana, Rohtak v. Unitech Builder (P.) Ltd., 6-Community Centre, Saket, New Delhi.

2. This appeal has been filed u/s 269H of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), against the order of the Income Tax Appellate Tribunal, Delhi Branch "A", New Delhi, whereby the property under acquisition has been released by the said Tribunal vide order dated May 21, 1990. The Deputy Commissioner of Income Tax, Acquisition, Rohtak Range, on the basis of screening of Form No. 37-G forwarded by the Sub-Registrar, Gurgaon, noticed that land measuring 159 kanal, 7 marlas situate at village Jharsa, Tehsil Gurgaon was transferred by Smt. Kaushlya, widow of Kailash Chand, to M/s. Unitech Investment (P) Ltd., 6, Community Centre, Saket, New Delhi, for an apparent consideration of Rs. 46,80,906 vide sale deed registered at serial No. 1263 dated June 5, 1986. The property was referred to the Government Valuation Officer (hereinafter referred to as the GVO), who through his report No. DVO/

CHD/86-87/2A/247/234 and 264/2347 dated September 8, 1986, determined the fair market value at Rs. 83,83,200 as against the apparent consideration of Rs. 46,80,906. Thereupon, notice u/s 269D(1) of the Act of 1961 was published in the Official Gazette on November 1, 1986, and served upon the transferee and the transferor in due course of time. On receipt of notice aforesaid, the transferee replied to the notice on a variety of grounds, which have since been noticed by the Deputy Commissioner of Income Tax, Acquisition, and need not be reiterated in this respect. On consideration of the matter and while relying upon the report from the GVO, the Deputy Commissioner of Income Tax vide order dated March 21/23, 1989, recorded his findings as follows :

- (a) the immovable property to which the proceedings relate is of a fair market value exceeding one hundred thousand rupees ;
- (b) the fair market value of such property exceeds the apparent consideration therefore by more than fifteen per cent. of such apparent consideration ; and
- (c) 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) of Section 269C.

3. Being aggrieved by the order aforesaid, the assessee filed an appeal before the learned Income Tax Appellate Tribunal, which has since been allowed vide impugned order dated May 21, 1990.

4. It is not disputed that the Deputy Commissioner of Income Tax passed the order, the subject matter of appeal before the Tribunal, on the basis of the report of the GVO. The Tribunal, in fact, has quoted the relevant part of the order passed by the Deputy Commissioner of Income Tax, which would clearly show that the primary reliance placed by the concerned officer was upon the report of the GVO. It would be appropriate to reproduce part of the order that has been mentioned by the Tribunal in the impugned order. The same reads thus :

"In I. T. Acq. No. 2/DeIhi of 1989 while determining the fair market value the competent authority determined the same on following basis :

In this case, the D.V.O., Chandigarh, has applied the land rate of Rs. 122 per sq.mt. and the Valuation Officer, Rohtak, had applied a rate of Rs. 109 per sq.mt. in other cases of the transferee (in F. No. GRG 418/ 85-86 and GRG 419/85-86), the land rate adopted by the Valuation Officer, Rohtak, is considered as reasonable. The D. V. O. has erred in increasing the land rate by 10 per cent. for better location. As discussed in the order, the land of the transferee is situated in less developed area as compared to the land of the sale instances. The fair market value of the property is recomputed as under :

(a) F. M. V. of land measuring 82K, 8M, i.e., 41,681 sq. mt. valuing at Rs. 109 per sq. mt. 45,43,229 Less : 30% for adverse factors as discussed in the order : 13,62,968 ----- Balance : 31,80,261 Less : Apparent consideration 18,60,000 ----- Difference between the FMV and the apparent

consideration. This gives a difference of 70.9% between the F. M. V. and the 13,20,261 apparent consideration."

5. It has further been noticed in the appellate order that the Deputy Commissioner of Income Tax determined the rates on the basis of valuation determined in GRG 418/85-86 and GRG 419/85-86. In these two matters, the proceedings were dropped by the competent authority itself. Once, the matters, on the basis of which orders were passed in the present case by the Deputy Commissioner, were dropped, the very basis of the impugned order challenged before the Tribunal, ceased to exist. That apart, it could not be disputed, during the course of arguments, that the case could not be based exclusively upon the report of the GVO. The Tribunal has also returned a finding that examination of records would reveal that the competent authority recorded its satisfaction in view of the provisions contained in Sections 269C and 269F(6) of the Act of 1961, yet, there was no specific order for the acquisition of the property under consideration. The findings of the Tribunal, as mentioned above, could not be challenged during the course of arguments. Otherwise also, we are satisfied, after hearing learned counsel for the appellant, that there is no illegality or infirmity in the impugned order passed by the Tribunal.

6. Finding no merit in the appeal, the same is dismissed, leaving, however, the parties to bear their own costs.