(1995) 11 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Appeal No''s. 2 and 3 of 1980

Commissioner of Income Tax APPELLANT

Vs

Vinod Gupta RESPONDENT

Date of Decision : 22-11-1995

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

Citation : (1996) 221 ITR 213

Hon'ble Judges : N.K. Sodhi, J;Ashok Bhan, J

Bench : Division Bench

Advocate : R.P. Sawhney, Aaradhna Sawhney and Atul Thukral, for the Appellant; D.K. Gupta and Ajay Mittal, for the Respondent

Judgement

Ashok Bhan, J.—This order shall dispose of Income Tax Appeals Nos. 2 and 3, both of 1980. The facts are taken from Income Tax Appeal No. 2 of 1980.

2. Shortly stated, the facts are :

The Commissioner of Income Tax, Haryana, Rohtak, has filed this appeal u/s 269H of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), against the order dated December 19, 1979, of the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, whereby the order dated May 31, 1979, passed by the Inspecting Assistant Commissioner of Income Tax, Acquisition Range, Rohtak, as the competent authority u/s 269F(6) of Chapter XX-A of the Act, acquisitioning the property in dispute, has been struck down.

3. One Prahlad Singh, transferor (hereinafter referred to as "the transferor") transferred 311 square yards of land with two office rooms, measuring 10'' x 10'' and 10'' x 8'' by way of sale deed dated August 14, 1975, to one Vinod Gupta, transferee (hereinafter referred to as "the transferee") for an apparent consideration of Rs, 20,000. On a report by the Inspector of Income Tax that the fair market value of the property in dispute was Rs. 41,000 and after recording its satisfaction u/s 269C, the competent authority initiated the acquisition

proceedings by publication of the notice in the Official Gazette on April 24, 1976. The transferor and the transferee were served on April 8, 1976, and April 5, 1976, i.e., prior to the publication of the notice in the Official Gazette. The competent authority passed the order u/s 269F(6) acquiring the property on March 31, 1979, against which the transferee filed an appeal before the Tribunal. The Tribunal, vide its impugned order dated December 19, 1979, accepted the appeal and set aside the order of the competent authority on the merits.

4. We are not going into the merits of the controversy as we are disposing of the appeal on another ground, i.e., the question as to whether the notice served on the transferor or the transferee before the initiation of the proceeding would invalidate the acquisition proceedings including the order of acquisition was considered by us in Income Tax Appeal No. 3 of 1979 (Commissioner of Income Tax Vs. Des Raj and Another,), decided today. It was held that service of notice on the transferor or the transferee before the publication in the Official Gazette under Sub-section (1) vitiated the proceedings and which was not a mere irregularity. It was held in the aforesaid appeal as under (page 15) ;

" In the result, it must he held that the notice served on the transferor and the transferee on July 30, 1973, before it was published in the Official Gazette was illegal and all subsequent proceedings including the order acquiring the property u/s 269F(G) of the Act stood vitiated. We, therefore, uphold the impugned order of the Tribunal setting aside the order of the competent, authority. "

5. For the reasons stated in Income Tax Appeal No. 3 of 1979 (Commissioner of Income Tax Vs. Des Raj and Another,), this appeal is dismissed with no order as to costs.

