
(1995) 06 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Application No. 3856 of 1995, 26th June, 1995

H. K. MELINKERI

APPELLANT

Vs

APPROPRIATE AUTHORITY and Another

RESPONDENT

Date of Decision : 26-06-1995

Acts Referred:

Income Tax Act, 1961 — Section 269UD(1), 269UD(1), 269UE, 269UL

Citation : (1996) 131 CTR 46 : (1996) 218 ITR 348

Hon'ble Judges : C.K. Thakker, J;C. K. Thakker, J

Bench : Division Bench

Judgement

C. K. THAKKER, J. :

Rule. Mr. B. J. Shelat instructed by M/s R. P. Bhatt, appears and waives service of rule on behalf of respondent No. 1 Appropriate Authority. Mr. V. K. Potadar, appears for respondent No. 2 transferor and waives service of rule on his behalf. In the facts and circumstances of the case, the matter is taken up today for final hearing.

2. This petition is filed by the petitioner for an appropriate writ, direction or order quashing and setting aside order Annexure "A" dt. 28th April, 1995, passed under s. 269UD(1) of the IT Act, 1961 (hereinafter referred to as "the Act") and consequential order of even date, Annexure "K" under s. 269UE of the Act. A prayer is also made to direct respondent No. 1 to issue certificate under s. 269UL of the Act.

3. It is the case of the petitioner that he entered into an agreement with respondent No. 2 on 17th Dec., 1994, by which he agreed to purchase a flat situated at 591, Sadashiv Path, Pune, admeasuring 243.03 sq. mts. for apparent consideration of Rs. 12,00,000. Since the amount of consideration exceeded Rs. 10 lacs, in accordance with the provisions of Chapter XX-C of the Act, the transferor and transferee filled in Form No. 37-I on 2nd Jan., 1995. Certain details were called for by the first respondent which were supplied. The

Appropriate Authority thereafter issued a notice on 10th April, 1995, inter alia, alleging that against the apparent consideration of Rs. 10,066 per sq. mt. of the property under consideration (PUC), the rate of the sale instance property (SIP) situated in the same locality was Rs. 10,433. Both the properties were tenanted properties. Taking into account the apparent as well as discounted consideration of PUC and SIP, PUC appeared to be understated by more than 15%. The parties were, therefore, called upon to show cause as to why an order under s. 269UD(1) of the Act should not be made in case of PUC.

4. The petitioner and respondent No. 2 submitted replies on 20th April, 1995, stating therein that valuation was not correctly worked out by the Appropriate Authority; the working of saleable FSI was not correct, SIP was not comparable to PUC, costs of construction of flat worked out at Rs. 5,90,426 and market value of flat ought to have been considered in accordance with the provisions of s. 269UA(b) (i) (ii) of the Act. It was also contended that comparison with only one sale instance was misleading, and that the difference was not more than 15% as alleged. On the above grounds, the parties contended that consideration was not understated as alleged and prayed for dropping of proceedings.

5. The Appropriate Authority after considering the submissions made by transferor and transferee passed the impugned order under s. 269UD(1) of the Act holding that apparent and discounted consideration had been understated by more than 15% and, hence, an action under s. 269UD(1) of the Act was called for for pre-emptive purchase of the property. Relevant part of the order reads as under :

"4. We have carefully gone through the submissions made by the transferor/transferee and same are discussed below :

(1) The discounted value of the apparent consideration has been correctly worked out in the show-cause notice. No base has been given for number of days in the working given by the transferor/transferee and therefore same is not acceptable. Moreover, as per schedule given in the agreement, the exact date of payment has not been mentioned for most of the payments and, therefore, reasonable assumption has been made. The details of working has already been given in the show-cause notice.

(2) The contention that apparent consideration has not been correctly mentioned in the show-cause notice is also not correct. The apparent consideration has been worked out as under :

Rs.

1. Apparent consideration as per agreement

12,00,000

Add : Cost of construction of flat to be provided to the vendor

5,90,426

Less : Depreciated cost of open well

25,000

17,65,426

(3) The contention regarding incorrect working of RSI is also not accepted. the correct working of FSI is as under :

Plot area

243.3 sq. mts.

FSI available i.e. 1.2

486.6 sq. mts.

Less : FSI of flat to be provided to the vendor

139.35 sq. mts.

FSI for tenants

171.87 sq. mts.

311.22 sq. mts.

Net saleable FSI

175.38 sq. mt.

(4) The cost of construction of flat to be provided to the vendor has not been given in the agreement. Also no specification to be provided has been given in the agreement. Therefore, cost of construction of flat is assessed as per Delhi plinth area rate with normal specification, at the rate of Rs. 4,237 per sq. mtr.

(5) The contention that PUC should be compared with 3 or 4 sale instances is not acceptable. The same instance relied upon by the Appropriate Authority is of the area where PUC is situated and, therefore, it is comparable. Moreover, transferor/ transferee have not cited any sale instance of the property located in that area.

5. Moreover, it is not out of place to mention here that one offer has been received by us for the purchase of the property under consideration for the price of Rs. 14 lacs and to allot flat to the vendor. The offeror, has given a cheque of Rs. 5 lakhs in advance. And affidavit is also filed by the offeror in which it is inter alia stated as under :

"I am pleased to offer for purchase of the property at 591, Sadashiv Peth, Pune 30, for a price of 14 lacs and to allot flat to the landlord as per the agreement executed between purchaser and seller.

I am pleased to enclose a cheque of Rs. 5 lacs of Bank of Baroda Branch Laxmi Road, Cheque No. 075943.

I undertake that if we fail to buy this property as said above, the Govt. shall be free to forfeit the said amount. However, if I fail to purchase the property in auction then the amount should be returned within 7 days from the date of auction."

6. The name of the offeror has not been disclosed in this order. However, the same is available on record. This offer is evidentiary value which is for the purchase of the property and this becomes an important indication of the fair market value of the property.

7. Considering the fact that the apparent and discounted consideration has been understated by more than 15% by comparing the rate of PUC with SIP and price rise due to time lag between two transactions also considering the fact that offer to purchase the property has been received at much higher price than disclosed by the transferor, we are satisfied that it is a fit case for pre-emptive purchase of the property under Chapter XX-C of the IT Act. Therefore, in exercise of powers vested in us under s. 269UD(1) of the IT Act, we do hereby order to purchase the said immovable property."

6. It is this order which is challenged by the petitioner by filing the present petition.

7. Mr. N. R. Divetia, learned counsel for the petitioner, raised various contentions. He submitted that there is an error apparent on the face of the record committed by Appropriate Authority in invoking the provisions of Chapter XX-C of the Act and in passing the impugned order. He contended that the allegations levelled in the show-cause notice are vague and of general nature and the petitioner was deprived of reasonable opportunity of explaining his case which had caused prejudice to him and it resulted in miscarriage of justice. He further contended that it was not even the allegation of the Appropriate Authority that understatement of consideration was with a view to achieve the object of tax evasion and, hence, an action was required to be taken under Chapter XX-C of the Act. According to Mr. Divetia, in absence of such allegation the proceedings were without jurisdiction and no order under s. 269UD(1) could be passed. According to learned counsel, no positive finding on the basis of materials on record had been recorded by the Appropriate Authority as to why he was satisfied that there was understatement of consideration (apparent as well as discounted) of more than 15% and the orders suffered from non-application of mind. Finally, Mr. Divetia, contended that difference between apparent and discounted consideration was not more than 15% and no order could have been passed invoking provisions of Chapter XX-C of the Act. 8. In our opinion, it is not necessary for us to deal with all the contentions since the matter can be disposed of on the last ground. 9. Mr. Divetia drew our attention to the show-cause notice Annexure "G" issued by the first respondent under s. 269UD(1A) of the Act. It was submitted that the Appropriate Authority took into consideration price of PUC as well as SIP and noted the same in Col. No. 6. The said column reads as under :

PUC

SIP

(Rs.)

(Rs.)

"6., Rate per sq. mtr.

FSI,

(a), as per apparent consideration

10,066

10,433

(b), as per discounted consideration

9,032

10,150

According to Mr. Divetia, if apparent consideration of SIP is considered as Rs. 10,433, 15% must be deducted from the said figure. It would then come to Rs. 8,869 whereas the apparent consideration of PUC is more than that, i.e. Rs. 10,066. Similarly, discounted consideration of SIP as mentioned in Col. 6 is Rs. 10,150. Deducting 15% it would come to Rs. 8,628 while discounted consideration of PUC is 9,032. Thus, even if apparent as well as discounted consideration of SIP is accepted as correct and proper, there is no understatement of 15% or more of PUC as alleged by the respondent Authority. Likewise, apparent as well as discounted consideration of PUC is taken at its face value and 15% would be added to it, the total amount would exceed than the apparent as well as discounted consideration of SIP. Thus, taking into account any method, it cannot be said that there was difference of 15% or more, in apparent as well as discounted consideration of PUC and it cannot be concluded that consideration of PUC was understated by more than 15%.

10. In support of the above contention, Mr. Divetia placed strong reliance on a decision of this Court in *Shantaben Ratilal and Others Vs. Appropriate Authority and Another*, . In *Shantabens case (supra)*, the Division Bench of this Court held that since the difference of consideration was less than 15% of the fair market value, the order of pre-emptive purchase under s. 269UD(1) of the Act was illegal and liable to be quashed.

11. In our opinion the point is concluded by the decision of the Division Bench in *Shantabens case (supra)* and without entering into other questions and expressing any opinion thereon, the petition is required to be allowed on this ground alone.

12. Mr. Shelat contended the this Court has no territorial jurisdiction to entertain

the petition filed by the petitioner. He submitted that immovable property which is the subject-matter of present petition is situated in Pune within the local limits of the High Court of Bombay. Both the transferor and transferee are residing in Pune outside the territorial limits of this Court and, hence, the petitioner may be directed to approach an appropriate forum to ventilate his grievances. Mr. Shelat further stated that as a matter of fact, respondent No. 2 who is transferor has approached the High Court of Bombay by filing a petition against the impugned order passed by the Appropriate Authority and is pending in that Court.

13. In our opinion, Mr. Divetia is right in submitting that even if the High Court of Bombay has jurisdiction to entertain a petition, this Court is equally competent to entertain, try and decide the matter, inasmuch as the cause of action can be said to have arisen within the local limits of the jurisdiction of this Court. Mr. Divetia stated that the office of the first respondent is situated in Ahmedabad within the jurisdiction of this Court. In purported exercise of the powers under Chapter XX-C of the Act, he has issued notice to the petitioner from Ahmedabad. The petitioner submitted his reply at Ahmedabad on 20th April, 1995. The Appropriate Authority after considering the reply submitted by the petitioner, passed the impugned order on 28th April, 1995 at Ahmedabad which is impugned in the present petition. Hence, in our opinion, the contention of Mr. Shelat that this Court has no jurisdiction is not well founded and, therefore, cannot be upheld.

14. Regarding petition filed by the respondent No. 2 in the High Court of Bombay, Mr. Potadar, learned counsel for the said respondent stated that respondent No. 2 who is petitioner before the High Court of Bombay will withdraw that petition within a period of 10 days from today. In view of the said statement, we do not want to express any opinion as to what would happen if two competent Courts would pass orders, if they are contradictory in nature. In view of the statement made by Mr. Potadar, the question becomes more or less academic and it is not necessary to deal with the said contention in the facts and circumstances of the present case. Respondent No. 2, who is petitioner will withdraw the petition filed by him and pending in the High Court of Bombay as per statement made by Mr. Potadar within 10 days from today.

15. For the foregoing reasons, the petition requires to be allowed and is accordingly allowed. The impugned orders dt. 28th April, 1995, passed by respondent No. 1 at Annexures A and K are quashed and set aside. The Appropriate Authority is directed to complete necessary formalities within a period of six weeks from the date of receipt of the order of the Court including issuance of clearance certificate. Rule is made absolute. No order as to costs.