
(2000) 03 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No's. 17590 and 19591 of 1997

H. Prakashchand Chordia

APPELLANT

Vs

Appropriate Authority and Others

RESPONDENT

Date of Decision : 27-03-2000

Acts Referred:

Income Tax Act, 1961 — Section 269UA

Citation : (2000) 162 CTR 532 : (2000) 244 ITR 474

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : V. Ramachandran, for K. Mani, for the Appellant; S.V. Subramaniam, for C.V. Rajan, for the Respondent

Judgement

N.V. Balasubramanian, J.—Writ Petition No, 17590 of 1997, is filed for the issue of a writ of mandamus directing the respondent to pay to the petitioner the balance of consideration of Rs. 9,01,500 together with interest on the aforesaid sum of Rs. 9,01,500.

2. Writ Petition No. 17591 of 1997 is filed for issue of a writ of declaration to declare the provisions of Sub-clause (2) of Clause (b) of Section 269UA of the Income Tax Act, 1961, providing for the discount from the total consideration payable to the transferee of the property under Chapter XX-C of the Income Tax Act ultra vires.

3. Both the writ petitions have been filed by the same petitioner and he is the owner of the property admeasuring 1,757.94 sq. ft. of an undivided interest in the portion of the land in the compound of "Shadowbush" in R. S. No. 106/3 of Layout No. 118 of 1963, Corporation of Madras, as Plot No. 7, No. 110, Mahatma Gandhi Road, Chennai-34, and super built up area of 6,700 sq. ft. in the third floor of the building known as "Prakash Presidium". The petitioner has entered into an agreement with Banque Nationale de Paris, a body corporate incorporated under the laws of France and having its office at "French Bank Building", Mumbai, on June 4, 1997, for the sale of the property to the said Banque Nationale de

Paris, for a total consideration of Rs. 3,23,27,500. The relevant terms of the agreement are as under :

"The sale consideration of Rs. 3,23,27,500 will be paid by the purchaser to the vendor in the following manner :

(a) A sum of Rs. 5,00,000 by means of cheque number 071267 dated April 7, 1997, drawn on B. N. P. Bombay, before the execution of the agreement the receipt of which the vendor herein admits and acknowledges ;

(b) The balance sum of Rs. 3,18,27,500 to be paid at the time of lodgement of the sale deed for registration with the Registrar of Assurances.

Subject to the vendor performing the other terms of the agreement, the purchase shall be completed by the purchaser in all respects within 15 days from the date of receipt of the required certificate granting permission u/s 269UC of the Income Tax Act, 1961 (Form No. 37-1) from the appropriate Income Tax authority and the vendor shall execute and deliver to the purchaser the sale deed as per the draft prepared by the purchaser's advocate and shall admit the execution of the sale deed before the appropriate registering authority.

Upon payment of the amount specified supra, the vendor shall deliver all documents of title relating to the land and the flat proposed to be sold to the purchaser or its advocate within 15 days from the date of such payment for the scrutiny and approval of the title by the purchaser's advocate."

4. The petitioner filed a statement in Form No. 37-1 prescribed under Rule 48L of the Income Tax Rules, 1962, u/s 269UC of the Income Tax Act before the first respondent on June 4, 1997. The said agreement was executed by the transferor and the Banque Nationale de Paris as transferee. The first respondent passed an order on October 13, 1997, ordering the purchase of the said property by the Central Government.

5. The first respondent has stated in the said order that in exercise of the powers vested in them u/s 269UD of the Income Tax Act. they ordered purchase of the immovable property by the Central Government for a sum of Rs. 3,14,26,000. The aforesaid order was made on October 13, 1997, and the consideration was paid to the petitioner on November 6, 1997. The petitioner did not object to the purchase by the Government of the said property. The petitioner is aggrieved by the discount made amounting to Rs. 9,01,500 in the order dated October 13, 1997. The petitioner has challenged the order as well as the provisions providing for discount in the sale consideration in the above two writ petitions.

6. The case of the petitioner is that under the agreement, a sum of Rs. 5,00,000 was paid and acknowledged at the time of agreement and the balance amount of Rs. 3,18,27,500 shall be paid at the time of the lodgement of the sale deed for registration with the Registrar. It is also stated that as per Clause 3, the sale should be completed in all respects within fifteen days from the date of receipt of the required certificate granting permission by the appropriate authority u/s

269UC of the Income Tax Act. It is stated that the appropriate authority made the order on October 13, 1997, and if the "no objection certificate" had been granted, it would have been granted on the same date and hence in terms of Clause 3 of the agreement, the balance of sale consideration of Rs. 3,18,27,500 was payable on or before October 28, 1997. It is stated that the appropriate authority has paid the sale consideration only in November, 1997, and in spite of the above said payment, the appropriate authority has discounted the sale consideration which is not correct in law. It is stated that the object of discounting was to arrive at the actual amount that would be payable by the transferee, if the transfer takes place in accordance with the agreement entered into between the parties and it is not open to the Government of India to secure better terms than the terms of the agreement and seek to reduce the amount of consideration or acquire the property at a lower price. It is, therefore, stated that the provisions which permit the discounting of the sale value where the dates of payment fall beyond the date of agreement for transfer are ultra vires, and they are violative of his right to hold the property. It is also stated that the definition of "apparent consideration" in Clause (b) of Section 269UA of the Income Tax Act does not justify the discounting of the consideration disclosed in the agreement with reference to the dates fixed for payment from the date of agreement. It is, therefore, stated that the discounting made by the appropriate authority is not justified and the appropriate authority has no jurisdiction to discount the sale consideration. The provision providing for discounting is also challenged as arbitrary and violative of the provisions of the Constitution of India.

7. Mr. V. Ramachandran, learned senior counsel appearing for K. Mani, learned counsel for the petitioner, submitted that it is not open to the appropriate authority to discount the sale consideration payable from the date of the agreement. His submission was that the appropriate authority has to determine the discounted value only from the date on which payment was tendered to the petitioner and ending with the date on which the balance of consideration was payable under the agreement of sale. He referred to the agreement entered into between the petitioner with the transferee and submitted that the balance of sale consideration was to be paid at the time of lodgement of the sale deed for registration with the Registrar of Assurances, and within fifteen days from the date of receipt of consideration, and he referred to the order of the purchase made u/s 269UD(1) of the Income Tax Act, 1961, and submitted that the appropriate authority was not justified in discounting the sale consideration from the date of the agreement and according to him discounting is permissible only from the date of tender of payment to the transferor and not earlier. Learned senior counsel also relied upon the decision of the Bombay High Court in Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, , and the decision of the Karnataka High Court in C. Venkata Rao Vs. Union of India (UOI) and Another, , and both the courts have held that the discounting should be done only from the date of tender of payment by the appropriate authority. Learned senior counsel also submitted that the decision of

the Gujarat High Court in Pradip Ramanlal Sheth Vs. Union of India and Others, , and submitted that in preference to the view expressed by the Gujarat High Court, the view expressed by the Bombay High Court should be followed.

8. Mr. S. V. Subramaniam, learned senior counsel for the Department, submitted that a plain reading of Clause (b) of Section 269UA of the Income Tax Act, discloses that where a part of the consideration is payable as on any date falling after the date of agreement for transfer, the value for such consideration as on the date of such agreement for transfer should be determined by adopting the rate of interest prescribed in Rule 48-1 of the Income Tax Rules and the discounting from the date of agreement is justified in law. Learned senior counsel for the Department relied upon the decision of the Gujarat High Court in Pradip Ramanlal Sheth Vs. Union of India and Others, , and also the decision of the Bombay High Court in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, .

9. I have carefully considered the submission of learned senior counsel on both sides. Section 269UA of the Income Tax Act, defines the expression "apparent consideration" and the section, in so far as it is relevant for the purpose of the case, reads as follows :

" "apparent consideration"--

(1) in relation to any immovable property in respect of which an agreement for transfer is made, being immovable property of the nature referred to in Sub-clause (i) of Clause (d), means-

(i) if the immovable property is to be transferred by way of sale, the consideration for such transfer as specified in the agreement for transfer ; ...

and where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such agreement for transfer, the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration, as on date of such agreement for transfer, determined by adopting such rate of interest, as may be prescribed in this behalf ;"

10. Rule 48-I of the Income Tax Rules prescribes the rate of interest for determination of the discounted value and the rule reads as under :

"48-I. The rate of interest for determination of the discounted value of consideration under Sub-clause (1) or Sub-clause (2) of Clause (b) of Section 269UA shall be eight per cent. per annum."

11. In so far as the validity of the provision is concerned, I find that the principle of discounting is based on logic and the object of discounting was considered by the Karnataka High Court in C. Venkata Rao Vs. Union of India (UOI) and Another, , wherein the said court held as under (page 898) : "The principles of discounting are based on logic and reasons also. The deeming fiction for determining the value of consideration at discounted value have properly been

created. No provision of the Constitution is violated. The provision is neither arbitrary nor unreasonable or unjust. There could be no delay in payment of consideration as sufficient care has been taken in the provisions by fixing the time limit for various actions to be taken by the respondents. It could not be said that there is deprivation of property without payment of consideration. The time limit under the statute in making the payment is most reasonable and the actual delay from the date of agreement cannot be deducted in calculating the discounting amount as the provisions are based on public policy."

12. I respectfully follow the decision of the Karnataka High Court and hold that the object of discounting is founded on the principle that the amount due in future is paid on the date of payment. As observed by the Bombay High Court in Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, "discount" means the present value of the amount due in future and by discounting a percentage is deducted from the total consideration payable by the Central Government as the money which is due to be paid on the future date is paid earlier.

13. The concept of discount is not a peculiar concept. It is a common expression in commercial circles. In the context of Chapter XX-C, the expression "discount" is employed to denote that what is due on a future date is paid earlier, and consequently a certain deduction is warranted at the time of tender of payment of the sale consideration and by the process of discount the transferor does not get undue advantage by the pre-payment of apparent consideration and a rough and ready measure is adopted to prevent the unfair advantage that may accrue to the seller and by discounting the transferor is placed in the same position, as far as possible, what he would have received by way of sale consideration, if the agreement of sale had gone through. I hold that discounting permitted under the provisions of Section 269UA(b) or Section 269UA of the Act is not violative of the provisions of the Constitution.

14. I find that there is a conflict of view on the question regarding the starting point for discounting the sale consideration. Does it begin from the date of agreement or does it begin from the date of the tender of apparent consideration ? In Pradip Ramanlal Sheth Vs. Union of India and Others, , the Gujarat High Court, while considering the aforesaid question, has held that under the scheme of Chapter XX-C of the Act, where the whole or any part of the consideration as found in the agreement of transfer is deferred to a future date, then the value of such consideration payable after such date shall be deemed to be the discounted value of such consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf by the statutory rules. The court held that the period for the purpose of computing would be determined from the date of the agreement itself and the court held as under (page 877) :

"... the words found are "as on the date of such agreement". Therefore, discounting of the value is to be done from the amount of consideration which is

deferred so far as payment is concerned right from the date of the agreement. Thus, the period for the purpose of computing the discount would begin, for the deferred part of the consideration, from the date of the agreement itself. That is the mandate of the Legislature. If Mr. Shah's contention is accepted, the said provision will have to be rewritten by deleting the words "on the date of and by substituting the words "mentioned in". That exercise is not open to the court. Hence, on the interpretation of the relevant provisions of the definition of "apparent consideration" contained in Section 269UA(b), it must be held that when payment of part of the consideration is deferred to the date of the agreement of transfer, then the discounted value of the deferred part of the consideration has to be determined from the date of the agreement in the light of the rate of interest fixed by Rule 48-I of the Rules and that is precisely what has been done by the appropriate authority. Consequently, the deduction of Rs. 35,330 from the total consideration mentioned in the agreement of sale cannot be found fault with. Such deduction is contemplated by the statutory scheme as discussed earlier and is not contrary to or de hors it."

15. The Bombay High Court in *Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others*, , has also taken a similar view and held that the discounting has to be done from the date of the agreement.

16. However, the Bombay High Court in a subsequent decision, in *Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others*, , has held that the discounting has to be done only for the period commencing from the date on which the payment was tendered to the transferor and ending with the date on which the balance amount is payable subsequent to that date. The reasoning of the Bombay High Court is as follows (page 59) :

"The principle of discounting is well-known and regularly applied in accounting. In plain words, discount means the present value of payment due in future. The word "discount" in the Oxford English Dictionary means an abatement or deduction from the amount or from the gross reckoning or value of anything and is used in commerce to mean a deduction made for payment before it is due. Discount is primarily a rebate and such allowance is reduction of the total sum payable. It is subtracted from the amount in consideration of pre-payment before the due date. Stroud's Judicial Dictionary, fourth edition, sets out that the discount has no technical or universal meaning, and perhaps its most common meaning is that it is equivalent to the payment of interest in advance. The principle of discounting is prescribed under Chapter XX-C of the Act. Even though the agreement between the parties provides for deferred payment of consideration for transfer, the Central Government is required to pay the entire consideration within the stipulated period from the date of purchase. Broadly, the order for purchase is to be made within a period of three months from the date of receipt of Form No. 37-I by the appropriate authority and in case the purchase order is passed, then the Central Government has to tender the purchase price within a period of one month therefrom. In other words, though the agreement

provides for deferred payment, the transferors receive payment within the stipulated period and that is not necessary in consonance with the terms of the agreement. As the transferors get an advantage of payment which was due in future . . ."

17. The above view of the Bombay High Court was followed by the Karnataka High Court in *C. Venkata Rao Vs. Union of India (UOI) and Another*, wherein it was held that discounting should be done only from the date of actual payment by the appropriate authority. I am in entire agreement with the view expressed by the High Court of Bombay. A plain reading of the definition contained in Section 269UA(b) of the Act makes it clear that the value of the consideration payable after the date of the agreement is the discounted value and the definition has nowhere provided that the discounted value should be ascertained with reference to the date of agreement. In my view, the expression, "as on the date of transfer" in Section 269UA(b) refers to the consideration payable on that date and the section is silent as to the commencement of the period to ascertain the period for the determination of the discounted value. As already observed by me, "discount" means the present value of the amount due in future and if that is the object of discount there are no justifiable reasons to hold that the discounting should be done from the date of the agreement. The later decision of the Bombay High Court has dissented from the view expressed by the Gujarat High Court referred to above, and for the same reasons, I am unable to share the views expressed by the Gujarat High Court. In so far as the earlier decision of the Bombay High Court is concerned, the controversy that arose for consideration was different.

18. There was some discussion as to whether it is permissible to have a discounting from the date of the purchase order. u/s 269UD(1) of the Income Tax Act, the title of the transferor is divested on the passing of the order under the said section and under the general law, the transferor is allowed to enjoy his property till the date of the passing of the order. After the order of transfer, the transferor is granted fifteen days time to surrender and deliver possession of the property to the appropriate authority from the date of passing of the order u/s 269UD(1) of the Act. Therefore, till the date of passing of the order u/s 269UD of the Act, the transferor continues to be the owner of the property and as owner of the property, he is entitled to enjoy the property, though an agreement of sale was entered into. Under the general law, the transferor is allowed to enjoy the benefits that flow from the possession of the property till his title is divested and is equally well settled in the absence of an express distinct stipulation to the contrary between the parties to the contract, he is not entitled to enjoy the benefits that flow from the possession of the purchase money. An English Judge, Knight Bruce V. C. has observed that the estate and purchase money are mutually exclusive and one cannot have both money and mud. Therefore, it is impermissible for the transferor to enjoy simultaneously the benefits that flow from the ownership of the property and the benefits that flow from the possession of the purchase money. As already observed by me, till the order of

purchase is made u/s 269UD of the Act, the transferor has entitled to enjoy the property and consequently, there is no warrant to hold that the discounting of the purchase consideration should be done from the date of the order of purchase or even prior to that date as the transferor has not paid the apparent consideration and under the law, the amount of apparent consideration is required to be tendered u/s 269UG of the Act, within a period of one month from the end of the month in which the immovable property concerned vested in the Central Government. The time limit to surrender possession u/s 269UE(2) of the Act would, invariably, expire prior to the date for tender of the apparent consideration to the transferor. Therefore, it is not possible to accept the view that the period for discounting should commence from the date of the purchase order as there is no simultaneous enjoyment of both the property and money by the transferor. Moreover, the concept of discount is quite alien and not connected with the enjoyment of the property ; and the discounting is done as the consideration due in future is paid earlier. Further, there would have been some justification to take the date of agreement as the starting point to determine the discounting value, had the appropriate authority made the payment on the date of the agreement itself, which is impossible under the scheme of Chapter XX-C of the Income Tax Act, 1961. Further a fair reading of Section 269UA of the Act shows that it has not fixed the date of the agreement as the starting point to determine the period of discounting and it merely provides that the discounted value shall be the apparent consideration as on the date of the agreement.

19. I hold that the first respondent was not correct in determining" the discounted value payable to the petitioner commencing from the date of the agreement. I hold that the discounting should be done for the period commencing only from the date of tender of payment of the consideration to the transferor and ending with any stipulated date if any fixed for payment of balance sale consideration under the agreement entered into between the parties. Since the appropriate authority has not determined the discounted value in accordance with the provisions of Section 269UA(b)(1)(i) of the Act, the appropriate authority is directed to redetermine the discounted value payable to the petitioner in accordance with law and pay the correct amount of the purchase consideration to the petitioner within a period of one month from this date and the petitioner will also be entitled to interest at the rate of 8 per cent. per annum from this date till the date of payment.

20. In the result, Writ Petition No. 17591 of 1997 is dismissed. Rule nisi is also discharged. Writ Petition No. 17590 of 1997 is allowed and rule nisi is made absolute. However, considering the circumstances of the case, there will be no order as to costs.