(2008) 12 BOM CK 0121

In the Bombay High Court

Case No : Writ Petition No. 1904 of 1993

Harish Kanayalal Thawani APPELLANT

Vs

S.C. Prasad RESPONDENT

Date of Decision : 01-12-2008

Acts Referred:
Income Tax Act, 1961 — Section 269UD, 269UD(1), 269UL

Citation : (2009) 318 ITR 137

Hon'ble Judges : P.B. Majmudar, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : Soli Dastoor and Anil Menon, for the Appellant; R. Ashokan, for the Respondent

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—By filing this writ petition, the petitioners are challenging orders at exhibit "E" and exhibit "N". So far as the impugned order dated July 26, 1993 (exhibit "E") is concerned, the same was passed u/s 269UD of the income tax Act, 1961 ("the Act" for short). The petitioners, thereafter preferred rectification application and the same was rejected by order dated September 7, 1993, which is annexed at exhibit "N" to the petition. So far as petitioners Nos. 1 and 2 are concerned, they are purchasers of the flat sold by petitioners Nos. 3 and 4. A show-cause notice dated July 14, 1993, was issued for acquiring the said property under the provisions of section 269UD(1) of the Act. By the impugned order (exhibit "E"), the appropriate authority, after considering the sale transaction, came to the conclusion that the flat in question is superior as compared to other flats regarding whose transaction reliance was made on behalf of the petitioners. The authority found that the rate worked out at Rs. 5,074 per square feet is low and the fair market value of the flat in question should be at least Rs. 6,000 per square feet, built-up area. It was found that the suit property is fit for purchase by the Central Government in exercise of the powers vested in Appropriate Authority u/s 269UD(1) of the Act.

2. The petitioners thereafter preferred rectification application on the ground that certain sale instances cited by the petitioners before the authority were not taken into consideration. In the rectification application, it was also submitted that the figures of discounted value were not properly taken. A point was also taken in the rectification application that as per the decision of the Supreme Court of India in C.B. Gautam Vs. Union of India and Others, , a minimum of 15 per cent, undervaluation with reference to the fair market value was necessary and that in the instant case, all the three figures indicated a difference of less than 15 per cent, and that on that ground, the original order was required to be rectified. The authority has found that the sale instances, on which reliance was made by the petitioners, cannot be a matter of rectification and, therefore, the rectification application is not permissible in law. The authority also rejected other points raised in the rectification application. Accordingly, the petitioners filed the present petition challenging the original order at exhibit "E" and the order on rectification application at exhibit "N".

3. The learned counsel appearing for the petitioners submitted that the authority has not taken care to arrive at a correct market value by taking into consideration various sale instances produced before it. It is submitted that the authority is required to fix the fair market value after considering the relevant sale instances in the area. It is further submitted that before passing the impugned order at exhibit "E", the petitioners were not given reasonable opportunity to defend their case. It is further submitted that various sale instances, on which reliance is placed by the petitioners, have not been taken into consideration at all by the authority before passing the order. Copy of such sale instances have been annexed with the petition at exhibit "A" (page 66).

4. It is required to be noted that before arriving at the appropriate figure, the authority is duty bound to take into consideration necessary sale instances in the area and an attempt is required to be made to reach the fair market value. In this connection, it is required to be noted that there is no reference regarding the documents on which the petitioners relied on before the authority, copies of such documents are produced at exhibit A page 66 in the petition. Apart from that, in para. 6 of the order at exhibit "E", other sale instances, on which the petitioner has relied on have been brushed aside by observing that the flat in question is superior, without considering the details of such sale instances in the impugned order and ultimately it is observed that Rs. 5,074 is obviously very low and the fair market value was fixed at Rs. 6,000 per square feet. In our view, the sale instances on which reliance was placed by the petitioners should have been considered by the authority in an appropriate manner and the said documents should have been properly considered in the order. Since the said documents have not been taken into account in an appropriate manner, it can be said that the authority has failed to arrive at a fair market value. As pointed out earlier, the sale instances referred to at page 66, which were produced before the authority, have not been dealt with at all by the Appropriate Authority.

5. At this stage, it is required to be noted that the area of flat is 1880 square feet, discounted value of sale consideration is Rs. 96,39,983 and on the basis of the said rate, the rate per square feet comes to Rs. 5,128 and market rate per square feet considered by the authority is Rs. 6,000 as per the valuation fixed by the authority. If 15 per cent, is adjusted from the said rate fixed by the authority, it comes to Rs. 5,100. Going by the said calculation, the rate of the concerned property worked out by the authority is Rs. 5,128 and the same is within 15 per cent, of prescribed limit. This aspect is not in dispute. In view of the Supreme Court judgment in the case of C.B. Gautam Vs. Union of India and Others, , normally within the aforesaid bracket of 15 per cent., a presumption can be drawn that the transaction in question was not made with an ulterior motive to defraud the Revenue. Since the transaction in question is within the prescribed limit of 15 per cent, as per the price fixed by the authority, even on that ground, the proceedings initiated against the petitioners are required to be struck down.

6. Considering the abovesaid aspect of the matter, we are of the opinion that the authority has not taken into account relevant documents produced by the petitioners and care has not been taken to arrive at a reasonable market value. Even considering the fair market value arrived at by the authority, the transaction falls within the prescribed limit of 15 per cent, and, therefore, the orders at exhibits "E" and "N" are not sustainable.

7. Accordingly, we set aside both the orders at exhibit "E" and exhibit "N" and the proceedings initiated against the petitioners are also quashed. The authority is directed to issue necessary certificate u/s 269UL of the Act. Rule is made absolute accordingly. The writ petition is accordingly allowed. Rule is made absolute with no order as to costs.