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(1994) 11 KL CK 0058

In the High Court Of Kerala

Case No : Writ Appeal No. 1345 of 1994-C

Income Tax Officer APPELLANT

Vs

P.K. Yusuf and Another RESPONDENT

Date of Decision : 08-11-1994

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 256, 269UC

Citation : (1995) 127 CTR 343 : (1995) 213 ITR 594 : (1995) 82 TAXMAN 553

Hon'ble Judges : V.V. Kamat, J;K. Sreedharan, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant;

Judgement

K. Sreedharan, J.—First respondent in Original Petition No. 15568/ 93-C (see P.K. Yusuf and Another Vs. Income Tax Officer and Another,) is the appellant. The petitioners in the original petition who .are respondents herein purchased two items of properties in their separate names. The plots so, purchased lie contiguous. The total extent of the properties is 15.5 cents. They constructed a building in the plot by taking a loan from a bank. The building is so constructed that it covers portions of both plots. They wanted to sell the property to a third party for a total consideration of Rs. 12.75 lakhs. On getting information about their intention to sell the property, the Income Tax Officer enquired with the petitioners whether the proposal to transfer the property had been communicated to the appropriate authority u/s 269UC of the Income Tax Act, 1961. The petitioners replied that the agreement of sale related to their separate rights in the properties, and the consideration for their respective shares was less than Rs. 10 lakhs. Therefore, they contended that the provisions of Chapter XX-C of the Act are not applicable. They approached the Deputy Commissioner of Income Tax to issue appropriate directions to the Income Tax Officer to enable them to obtain the necessary clearance certificate u/s 230A of the Act. This request was turned down by the Deputy Commissioner of Income Tax. Questioning the above action of the Income Tax Officer and the Deputy

Commissioner of Income Tax, the petitioners moved this court by filing Original Petition No. 15568 of 1993. The learned single judge took the view that the petitioners are separate owners of different parcels of land and co-owners of the building with an equal share therein. The total sale consideration of the plots and the building being Rs. 12.75 lakhs they are not bound to get the certificate as stated by the Income Tax Officer because the consideration for the sale of the right of each petitioner does not exceed Rs. 10 lakhs. This decision of the learned single judge is under challenge.

2. The fact that the petitioners in the original petition are separate owners of different parcels of land is not in dispute. They have constructed a building in the property. In relation to that building they are having equal shares. The plots separately belonging to the petitioners are sought to be sold to a stranger together with the building thereon for a total consideration of Rs. 12.75 lakhs. It has also come out in evidence that the first petitioner has an extent of 7.5 cents of land and the area owned by the second petitioner is 8 cents. Thus virtually they are having equal shares in the value of the property. The total consideration for the entire property and the building is Rs. 12.75 lakhs. From this, it is crystal clear that the value of each share of the two petitioners is less than Rs. 10 lakhs. This being the factual position, the stand taken by the Income Tax Officer that they should have communicated the factum of the agreement of sale to the authorities under the Income Tax Act u/s 269UC of the Income Tax Act, 1961, is not legal. Since the consideration obtained by each of the two petitioners is far below Rs. 10 lakhs, the stand taken by the officer cannot be sustained. In the impugned judgment, the learned single judge took this view and allowed the original petition in the following terms (se P.K. Yusuf and Another Vs. Income Tax Officer and Another,) :

"The direction contained in exhibit P-8 that the petitioners should approach the appropriate authority under Chapter XX-C of the Act is not, therefore, valid in law. The original petition is allowed and exhibit P-8 is quashed. Any application for a clearance certificate u/s 230A will be dealt with in the light of the observations contained in this judgment. There will be no order as to costs."

3. We are in full agreement with the said decision rendered by the learned single judge. We do not find any ground to interfere with the same. The appeal is dismissed.

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