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(1991) 03 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition No. 683 of 1991

Irwin Almeida and others APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 11-03-1991

Acts Referred:
Income Tax Act, 1961 — Section 269UA, 269UC, 269UD, 269UD(1), 269UE

Citation : (1991) 94 CTR 191 : (1992) 197 ITR 609 : (1991) 59 TAXMAN 416

Hon'ble Judges : S.M. Jhunjhunwala, J;M.L. Pendse, J

Bench : Division Bench

Advocate : S.E. Dstoor, for the Appellant; F.H.J. Taleyarkhan and V.R. Bhatia, for the Respondent

Judgement

M.L. Pendse J.

1. Rule, returnable forthwith.

2. Mr. Taleyarkhan on behalf of respondents Nos. 1 to 3 and Mr. Batia on behalf of respondent No. 4 waive service.

3. Heard counsel.

4. By this petition filed under article 226 of the Constitution of India, the petitioners are challenging the legality of the order passed by the Deputy Commissioner of Income Tax, Appropriate Authority, Bombay, and communicated to the petitioners by letter dated December 18, 1990. A copy of the letter is annexed as exhibit ''E'' to the petition. The facts giving rise to the passing of the order are not in dispute and are required to be briefly stated to appreciate the grievance of the petitioner.

5. The petitioners are owners of immovable property bearing City Survey Nos. A/613, 614, 615 and 616 admeasuring about 15812.71 sq.meters situate at Chinchpokli Road, Bandra (West), Bombay. The petitioners are also owners of property bearing House No. 7 and Houses Nos. 5 and 5A. The petitioners had

entered into an agreement of sale dated November 12, 1980, with one Bhawanji Meghji Gala for a consideration of Rs. 12.5 lakhs. It appears that the parties did not take any further steps in pursuance of the agreement. The petitioners entered into a fresh agreement dated October 16, 1990, for sale of the property inn favour of respondent No. 4. The consideration for the agreement with respondent No. 4 is Rs. 60 lakhs and in addition respondent No. 4 agreed to hand over three flats, each admeasuring 1,200 sq.ft. to the petitioners.

6. Chapter XX-C of the Income Tax Act, 1961, provides for purchase by the Central Government of immovable properties in certain cases of transfer section 269UC of the Act, inter alia, provides that no transfer of immovable property of value exceeding five lakh rupees shall be effected, except after an agreement for transfer is entered into in accordance with the provisions of sub-section (2) provides that the agreement shall be reduced to writing in the form of a statement by the transferor and the transferee or by one of the parties acting on behalf of the other party. Sub section (3) demands that every statement shall be in the prescribed form, that is in Form No. 37-I, of the Schedule to the Act. The statement requires to set forth such particulars as may be prescribed and is required to be verified in the prescribed manner. The statement is required to be furnished to the appropriate authority in such manner and with in such time as may be prescribed. The "appropriate authority" as defied u/s 269UA(c) means an authority under Chapter XX-C. It is not in dispute that in accordance with the requirement of section 269UC the requisite statement in respect of the transfer proposed by the petitioners in favour of respondent No. 4 was duly filed before the appropriate authority.

7. Section 269UD(1) provides that the appropriate authority, after the receipt of the statement may, notwithstanding anything contained in any other law or ny instrument or any agreement for the time being in force, and for the reasons to be recorded in writing, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of the apparent consideration. This section confers upon the appropriate authority to direct that the immovable property in respect of which the statement is to be filed shall be purchased by the Central Government. Section 269UE of the Act provides that where such an order is passed by the appropriate authority to direct that the immovable property in respect of which the statement is to be filed shall be purchased by the Central Government. Section 269UE of the Act provides that where such an order is passed by the appropriate authority does not make an order under sub-section (1) of section 269VD or where such order stands abrogated under sub-section (1) of section 269UH, then the appropriate authority shall issue a certificate of no objection and deliver copies thereof to the transferor and the transferee. The appropriate authority is required under the proviso to sub-section (1) of section 269VD to pass an order for purchase by the Central Government within a period of two months from the end of the month in which the statement referred to is received by the appropriate authority.

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8. After lodgment of the statement in Form No. 37-I by the petitioners on October 25, 1990, the appropriate authority has communicated to the petitioners by letter dated December 18, 1990, that the petitioners did not have transferable title to transfer the immovable property in favour of respondent No. 4. The letter recites that the petitioners had earlier entered into an agreement dated November 12, 1980, with Bhawanji Meghji Gala and that agreement has not yet been cancelled. The petitioners had also issued a general power of attorney in favour of Gala and that power of attorney is also in operation. The appropriate authority communicated that as the agreement with Gala has not been cancelled, the petitioners have no transferable interest and, therefore, Form No. 37-I cannot be treated as valid. Shri Dastoor, learned counsel appearing on behalf of the petitioners, submitted that the decision of the appropriate authority is wholly incorrect and the appropriate authority took into consideration extraneous considerations while exercising powers u/s 269VD of the Act. We find considerable merit in the submission of learned counsel. The provisions of Chapter XX-C of the Income Tax Act confer powers upon the appropriate authority on the filling of the statement by the transferor and the transferee only to determine whether the property agreed to be transferred should be purchased by the Central Government at an amount equal to the apparent consideration. It is neither the function nor the jurisdiction of the appropriate authority to examine whether the transferor has any transferable interest in the property proposed to be transferred. The appropriate authority is not conferred with jurisdiction to determine right or title to the property. In the case the appropriate authority determines that the property should be purchased by the Central Government, then the property vests in the Central Government, then the property vests in the Central Government free of any encumbrances. It has repeatedly come to our notice that the appropriate authority exceeds its jurisdiction while exercising its powers u/s 269UD of the Act and enters into an inquiry about the rights of the transferor to transfer the property and in some cases even as to whether the transferee can use the property and in some cases even as to whether the transferee can use the property inn accordance with the Municipal Rules or the Development Control Rules. In our judgment, such enquiry by the appropriate authority is entirely uncalled for and the appropriate authority had no jurisdiction whatsoever to enter into this area. The right to the title or interest to the property is not to be determined by the appropriate authority. The appropriate authority may either decide that the property should be purchased by the Central Government or issue no objection certificate. It is not permissible to examine the issue of title to the property and then hold that Form No. 37-I filed by the transferor and the transferee is not valid. In our judgment, the action of the appropriate authority in the present case is entirely unsustainable and contrary to law and it, therefore requires to be struck down.

9. Shri Dastoor submits that as the appropriate authority has failed to exercise jurisdiction under sub-section (1) of section 269UD within the period of two months from the end of the month in which the statement was received in

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accordance with the proviso to sub-section (1), the jurisdiction of the appropriate authority to direct purchase of the property by the Central Government stands extinguished and the petitioners are entitled to secure the no objection certificate as contemplated by sub-section (3) of section 269UL of the Act. The submission is correct and deserves acceptance. We hope and trust that hereafter the appropriate authority will exercise jurisdiction as conferred by the Act and shall not enter into enquiry which is de hors or extraneous to the provisions of the Act. In our judgment, the petitioners are entitled to the relief sought.

10. Accordingly, the rule is made absolute in terms of prayers (a) and (d). The appropriate authority shall issue a no objection certificate to transfer the property in favour of respondent No. 4 within a period of four weeks from the date of service of writ on the authority.

11. There will be no order as to costs.

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