(1999) 10 BOM CK 0009

In the Bombay High Court

Case No : Writ Petition No''s. 2061 and 2062 of 1994 4 October 1999

JAGDISH ELECTRONICS (INDIA)(P) LTD. APPELLANT

Vs

APPROPRIATE AUTHORITY RESPONDENT

Date of Decision : 04-10-1999

Acts Referred:

Citation : (2000) 108 TAXMAN 587

Hon'ble Judges : Dr. B.P. Saraf, J;D.K. Deshmukh, J;B.P. Saraf, J

Bench : Full Bench

Advocate : Madon, for the Petitioner R.V. Desai, for the Appellant;

Judgement

In the Bombay High Court Dr. B.P. Saraf and D.K. Deshmukh, JJ.

Deshmukh, J.

By these two petitions, the same petitioner, namely, Jagdish Electronics (P) Ltd., challenges the two orders passed by the appropriate authority under Chapter XX-C of the Income Tax Act, 1961, for compulsory purchase of flat Nos. 13 and 14 in the building known as ''Belmont Co-operative Housing Society''. As the ground for challenging both the orders is identical, both the petitions can be conveniently disposed of by common order.

2. The facts that are material and relevant for deciding these two petitions are as under: Flat Nos. 13 and 14 in the building of Belmont Co-operative Housing Society were owned by the respondent Nos. 5 and 6 in both these petitions. The petitioner entered into an agreement to purchase both these flats with their respective owners on 28-1-1994. As required by the provisions of Chapter XX-C, application in Form No. 37-1 was submitted to the appropriate authority. The appropriate authority on 31-3-1994 issued show cause notices to the petitioner as also the owners of the two flats asking thein to show cause why both the flats should not be purchased under the provisions of Chapter XX-C. The petitioner submitted reply to the show cause notice. The appropriate authority passed order dated 28-4-1994 for compulsory purchase of both the flats. These orders

are challenged in these two petitions. This Court has granted interim relief in favour of the petitioner, as a result of which both the orders which are impugned in this petition have not yet been implemented.

3. The learned counsel appearing for the petitioner submitted that show cause notices in relation to both the aforementioned flats are defective and contrary to the law laid down by the Supreme Court in its judgment in the case of C.B. Gautam v. Union of India, (1993) 1999 ITR 530 : (1992) 65 Taxman 440 as also the judgment of the Division Bench of this Court in Nirmal Grover v. Appropriate Authority, 1995 (2) Mh. L.J. 755. He submits that both the show-cause notices neither disclose the reasons why the appropriate authority has reached the prima facie or tentative conclusion that the transactions have been undervalued nor the show cause notices disclose the material on the basis of which this tentative conclusion was reached by the appropriate authority. We have also heard the learned counsel for the respondents.

4. Now if in the light of these rival submissions the record of the case is perused, then it becomes clear that the show-cause notices issued in both these petitions are almost identical, except change in number of the flat and the amount of consideration. The show-cause notice to the petitioner in relation to flat No. 14 reads as under:

You have submitted Form No. 37-1 on 31-1-1994 for the property having description as per col. No. 7 of annexure to the Form as follows:

CTS No. 2756 forming part of plot No. 5 of Sur. No. 132, Bhambhurda, Shivaji Nagar, Pune.

2. The apparent consideration for the same has been declared Rs. 16,13,700.

3. You are required to show cause as to why the property should not be purchased under the provisions of Chapter XX-C of the Income Tax Act, 196 1.

4. Your reply should reach this office latest by 11-4-1994 at 3.00 p.m. positively, by speed post. If you desire personal hearing, you may attend this office at Aayakar Bhavan, Pune on 20-4-1994 at 3.00 p.m.

5. Perusal of the show-cause notice quoted above shows that in the show cause notice, the appropriate authority has not recorded a tentative conclusion that the transaction has been undervalued by the parties. It does not disclose any reason why the appropriate authority proposes to purchase the property under the provisions of Chapter XX-C. It does not disclose the material on the basis of which the appropriate authority has reached the tentative conclusion that the property is liable to be purchased under the provisions of Chapter XX-C.

6. We have considered the law laid down by the Supreme Court in its judgments in C.B. Gautams case (supra) referred to above as also by the Division Bench of this Court in Nirmal Grover case (supra) in our judgment in Shreyas Builders v. M.D. Kodnani Writ Petition No. 1918 of 1993 and Laxman Ganesh

Tulshibaughwale v. M.D. Kodnani (Writ Petition No. 2818 of 1994) dated 30-9-1999 in somewhat similar facts and we have held that before the show-cause notice is issued by the appropriate authority, it has to, on the basis of the material available before it, reach a tentative conclusion that the transaction has been undervalued and that there has been an attempt to evade the tax and it is only after reaching such tentative conclusion that the show-cause notice can be issued. In order to give an effective opportunity of showing cause and being heard to the persons who are likely to be adversely affected by the order, it is necessary that the authority discloses in the show-cause notice the material on the basis of which it has reached such tentative conclusion and the reason for reaching the tentative conclusion.

7. Perusal of the show-cause notice issued in the present case, as observed above, shows that the appropriate authority in the show-cause notice does not even say that it has reached the tentative conclusion and that the transaction has been undervalued. No reasons have been disclosed for issuing the show-cause notice nor is the material that was considered by the appropriate authority to reach that tentative conclusion disclosed and, therefore, in our opinion, there is no alternative, but to set aside the orders which have been issued pursuant to the said defective show-cause notices.

8. In the result, therefore, both the petitions succeed and are allowed. Rule is made absolute in terms of prayer clause (a) of both these petitions with no order as to costs.