(1979) 06 CAL CK 0016

In the Calcutta High Court

Case No : Civil Rule No''s. 7696 (W) and 7697-7707 (W) of 1974

Jai Kumar Kankaria APPELLANT

Vs

Competent Authority and Others RESPONDENT

Date of Decision : 21-06-1979

Acts Referred:

Income Tax Act, 1961 — Section 269C, 269C(1), 269C(2), 269D

Citation : (1981) 130 ITR 593

Hon'ble Judges : Bimal Chandra Basak, J

Bench : Single Bench

Advocate : D. Pal, P. Pal and A.K. Roy Choudhury, for the Appellant; P. Pal, A.K. Sengupta and R. Mitra, for the Respondent

Judgement

Bimal Chandra Basak, J.—In this application under Article 226 of the Constitution of India, the petitioner is challenging a proceeding initiated u/s 269D(1) of the I.T. Act, 1961, relating to acquisition of the property of the petitioner''s undivided l/9th share in premises No. 6, Little Russell Street, Calcutta, and the notice issued u/s 269D(1) of the Act dated 7th of September, 1972, and the proceeding thereunder instituted by respondent No. 1 and the notice dated 25/28th of November, 1974, issued by respondent No, 2 and all proceedings thereunder. The facts are shortly as follows:

2. The petitioner purchased l/9th share of the premises No. 6, Little Russell Street, Calcutta, for a sum of Rs. 2 lakhs. This conveyance was executed on 9th of March, 1973. A notice was issued to the petitioner on the 3rd of August, 1973, by the Valuation Officer of the I.T. Dept. stating that a reference had been made to him for determination of the fair market value of the said premises. Time was fixed for such hearing. Thereafter, a notice under Sections 269D(1) of the I.T. Act, 1961, was received by the petitioner. This was published in the Calcutta Gazette on 22nd of September, 1973. A notice was issued by respondent No. 2 on 25/28th of November, 1974. whereby he requested the petitioner to show cause why the property should not be acquired as proposed by respondent No. 1.

In this case, an affidavit has been affirmed by one Sailesh Kumar Chakraborty on behalf of the respondent whereby the "reason to believe" has been disclosed in para. 26 of the petition. The grievance of the petitioner in this case is based on Section 269C which I quote hereinbelow :

"269C. Immovable property in respect of which proceedings for acquisition may be taken.--(1) Where the competent authority has reason to believe that any immovable property of a fair market value exceeding twenty-five thousand rupees has been transferred by a person (hereafter in this Chapter referred to as the transferor) to another person (hereafter in this Chapter referred to as the transferee) for an apparent consideration which is less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of--

(a) facilitating the reduction or evasion of the liability of the transferor to pay tax under this Act in respect of any income arising from the transfer; or

(b) facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the purposes of the Indian Income Tax Act, 1922 (XI of 1922), or this Act or the Wealth-tax Act, 1957 (XXVII of 1957),

the competent authority may, subject to the provisions of this Chapter, initiate proceedings for the acquisition of such property under this Chapter:

Provided that before initiating such proceedings, the competent authority shall record his reasons for doing so:

Provided further that no such proceedings shall be initiated unless the competent authority has reason to believe that the fair market value of the property exceeds the apparent consideration therefore by more than fifteen per cent. of such apparent consideration.

(2) In any proceedings under this Chapter in respect of any immovable property,--

(a) where the fair market value of such property exceeds the apparent consideration therefore by more than twenty-five per cent, of such apparent consideration, it shall be conclusive proof that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer;

(b) where the property has been transferred for an apparent consideration which is less than its fair market value, it shall be presumed, unless the contrary is proved, that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in Clause (a) or Clause (b) of Sub-section (1)."

3. Dr. Pal has submitted that in this particular case three conditions were

required on the basis of which such a reason to believe can be formed. He has submitted that in the present case there is no material to form such a reason to believe. The pre-condition for forming such a reason to believe are as follows :

4. That in fact an immovable property of fair market value exceeding Rs. 25,000 has been transferred by a person to another person for an apparent consideration which is less than the fair market value of the property. Secondly, the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer, and, thirdly, that it was done with the objects specified in Clauses (a) and (b) of Sub-section (1) of Section 269C of the said Act.

5. Dr. Pal stated that admittedly, in this case, for the purpose of the second and third conditions the appropriate authority has merely relied on the alleged conclusive proof and presumption specified in Sub-section (2) and apart from the same no material has been disclosed in support of such a reasonable belief. This, Dr. Pal has submitted, is contrary to the provisions of Sections 269C. The conclusive proof and presumption specified in Sub-section (2), according to Dr. Pal, does not apply in this case at this stage, that is, at the stage of initiation of the proceedings, but only after such proceeding has, in fact, been initiated and notice has been issued. In this connection, Dr. Pal has relied on the case of Smt. Bani Roy Chowdhury Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range II and Others, . This has been followed by Sabya-sachi Mukharji J. in his judgment delivered on 26th of February, 1979, in C.R. No. 5538(W) of 1974 in the case of SUBHKARAN CHOWDHURY AND OTHERS Vs. INSPECTING ASSISTANT COMMISSIONER OF Income Tax, ACQUISITION RANGE I, AND OTHERS., . Dr. Pal has also relied on a Division Bench judgment of the Gujarat High Court in the case of Commissioner of Income Tax, Gujarat II Vs. Vimlaben Bhagwandas Patel and Kamlaben Kanjibhai Patel, .

6. On behalf of the respondents, Mr. B. L. Pal has made it clear that on this point the judgment of the Calcutta High Court is against him. But he has stated that there is an appeal pending against the judgment in the case of Smt. Bani Roy Chowdhury Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range II and Others, .

7. In my opinion, the two judgments of this court of co-ordinate jurisdiction are on this very point and the same is binding on me. I cannot and I am not inclined to hold any different view. I fully agree with the reasoning in the said judgments.

8. I may add one or two words only. The language of Section 269C(2) is " any proceeding under this Chapter". Section 269D states that the competent authority shall initiate proceedings for the acquisition, under this chapter, of any immovable property referred to in Section 269C by a notice to that effect published in the Official Gazette. u/s 269C, it is provided that "where the competent authority has ''reason to believe''... the competent authority may,

subject to the provisions of this Chapter, initiate proceedings for the acquisition of such property under this Chapter". It is clear that the proceeding contemplated therein in the said Chap. XXA is started or initiated by a notice under Sections 269C. Before this notice can be issued there must be a "reason to believe" as contemplated in Section 269C. Accordingly, when Sub-section (2) of Section 269C states about "any proceeding under this Chapter" the preliminary condition before the initiation of the proceedings is not Within the scope of the same. In my opinion, the language of the relevant provision of Sections 269C and 269D makes it clear that the "proceeding under this Chapter" does not refer to a stage before a notice has been given. The formation of reasonable belief is not a part of such proceeding. At this stage of formation of such belief the question of " conclusive proof " or any "presumption" cannot and does not arise. There must be material for the formation of such opinion irrespective of the provision for such conclusive proof or presumption at the proceedings stage. Moreover, the expression "conclusive proof," and "presumption" contemplates that there are, two parties or that there is a lis. However, at the stage of formation of opinion, the opinion is subjective though based on objective facts. Accordingly, there is no lis at this stage. Accordingly, the question of conclusive proof of presumption cannot and does not arise at this stage. Conclusive proof means what another person cannot disprove ; presumption is when something is in favour of some one and which prevails unless there is some proof to the contrary. The assessee concerned has no voice at that stage either to rebut any presumption or face any conclusive proof. In my opinion, the expressions "presumption" and "conclusive proof" in Sub-sections (2) of Sections 269C makes it clear that such "conclusive proof" or " presumption " is not applicable prior to the initiation of the proceeding.

9. For the aforesaid reasons, I allow this application and make the rule absolute. There will be a writ of certiorari as prayed for quashing all proceedings u/s 269D read with Sections 269C of the I.T. Act, 1961. I make it clear that this is without prejudice to the rights and contentions of the parties in respect of other points. I have only heard this case on this point alone. I have not gone into any other point. I also make it clear that Mr. B. L. Pal did not make any concession on the point involved. There will be no order as to costs.

10. C. R. Nos. 7697-7704-(W) of 1974.--In view of the judgment delivered by me today in C. R. No. 7696(W) of 1974, I pass similar orders in these cases also.

