(2002) 09 AHC CK 0164

In the Allahabad High Court

Case No : Writ Petition No. 682 (MB) of 2002

Jeevan Ji Mehrotra APPELLANT

Vs

Appropriate Authority and Others RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Income Tax Act, 1961 — Section 269UD(1A)

Citation : (2003) 180 CTR 142 : (2003) 260 ITR 308

Hon'ble Judges : S.K. Sen, C.J;U.K. Dhaon, J

Bench : Division Bench

Advocate : Y.J. Pardiwala and D.D. Chopra, for the Appellant; S.C. Misra, for respondent Nos. 1 and 2 and O.P. Dua and Amitabh Misra, for the Respondent

Final Decision : Disposed Of

Judgement

1. The petitioner has approached this court against the order dated December 27, 2001 passed by respondent No. 1 u/s 269UD(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for pre-emptive purchase of the property by respondent No. 2 belonging to respondent No. 3. The petitioner has alleged in the petition that he entered into an agreement to sell dated September 3, 2001, with respondent No. 3 for the purchase of the residential house No. 9/42, Suryodaya Colony, Rana Pratap Marg, Lucknow, for the total sale consideration of Rs. 30,00,000 (rupees thirty lakhs) and an advance of Rs. 11,00,000 (rupees eleven lakhs) was paid by the petitioner to respondent No. 3. Since the value of the property in question is more than rupees twenty lakhs, the transferor was under an obligation to obtain a no objection certificate under the provisions contained in Chapter XX-C of the Act. The petitioner and respondent No. 3 jointly applied on the prescribed Form No. 37-1 on September 18, 2001, for a no objection certificate from respondent No. 1. Respondent No. 1 inspected the property in question on November 6, 2001 and thereafter issued the show cause notice u/s 269UD(1A) of the Act to the petitioner as well as respondent No. 3 calling upon them to show cause as to why an order u/s 269UD be not passed

acquiring the property. In the show cause notice the value of the property was determined at Rs. 41,85,509. The petitioner as well as respondent No. 3 filed their reply on December 21, 2001, stating inter alia, that the evaluation of the fair market value of the property is not in accordance with law. The petitioner referred to two sale instances pertaining to the property Nos. 9/9 and 9/22 of the same locality wherein the rate of the land was taken at Rs. 4,450 per sq. mtr. Thereafter a second show cause notice dated December 22, 2001, was issued to the petitioner and respondent No. 3 and in response to the said show cause notice the petitioner submitted his reply dated December 26, 2001 before respondent No. 1. The reply was also filed by respondent No. 3 on December 26, 2001 before respondent No. 1 stating, inter alia, that respondent No. 3 had agreed to sell the Lucknow property only with a view to purchase another property at Delhi and as such there cannot be any question of evading tax. The appropriate authority after considering the replies to the show cause notice passed the impugned order dated December 27,2001 u/s 269UD(1) of the Act. Being aggrieved by the impugned order the petitioner has approached this court.

2. Sri Pardiwala, learned counsel for the petitioner has strongly urged before us that the proceedings u/s 269UD(1A) were not followed according to the procedure laid down in the Income Tax Rules, 1962, as respondent No. 1 has ignored the sale instances of similar properties situated at 9/9 and 9/ 22 Suryodaya Colony quoted by the petitioner solely on the ground that those transactions were not subject to the provisions of Chapter XX-C of the Act. He further urged that in determination of the fair market value of the property respondent No, 1 has not considered the rate fixed by the District Magistrate, Lucknow, proposed for determining the value of the property for levy of stamp duty and respondent No. 1 has passed the order only on the basis of a single comparable sale of the property at 9/31, Suryodaya Colony. The further contention of Sri Pardiwala, learned counsel for the petitioner is that Chapter XX-C has been deleted. He further submits that the valuation report was not supplied to the petitioner in time, and the same was given only on December 24, 2001 barely one day before hearing and as such the principle of natural justice was not followed. Learned counsel for the petitioner has relied upon the judgment in Ajeet Singh and Another Vs. Appropriate Authority and Others, . It is also submitted before us that the fair market value u/s 2, Sub-section (22B) of the Act was not properly considered. Sri O. P. Dua, senior advocate assisted by Sri Amitaba Misra for respondent No. 3 has adopted the arguments made by learned counsel for the petitioner. He further submits that sufficient opportunity was not afforded to respondent No. 3 by the appropriate authority as the valuation report was supplied on December 24, 2001.

3. Sri S.C. Misra learned Advocate General appearing on behalf of the Revenue, has strongly urged before us that there is no irregularity in the procedure followed by the competent authority and the sale instances, which were not taken into account were rightly left out of consideration in view of the fact that they were not sale under the Act. He further submits that it is not obligatory to

accept the District Magistrate''s valuation report, which is meant for the purpose of assessing stamp duty. The property, which was taken into as the sale instance, was the only property comparable to work out the valuation of the property under transfer.

4. We have heard Sri Y.J. Pardiwala, learned counsel for the petitioner assisted by Sri D.D. Chopra, and Sri S.C. Misra, learned Advocate General appearing on behalf of respondents Nos. 1 and 2 and Sri O.P. Dua, the senior advocate assisted by Sri Amitabh Misra for respondent No. 3.

5. After having considered the submissions of the respective parties, we are of the view that there is scope for taking into account further sale instances. It will be appropriate that further opportunity of hearing is given to the writ petitioner and respondent No. 3 who are aggrieved because the valuation report was not given well in time and they could not give proper comments on the same. Considering this aspect of the matter, we feel that the writ petitioner as well as respondent No. 3 should get an opportunity of hearing in the matter and the matter should be considered afresh so that the writ petitioner and respondent No. 3 shall get a proper opportunity to make their comments on the valuation report and on any other aspect, which they may feel appropriate. The appropriate authority was also not justified in not considering the sale instances of other property of the same colony on the ground that they were not subject to the provisions of Chapter XX-C of the Act. The impugned order is not sustainable.

6. We set aside the order passed by the appropriate authority dated December 27, 2001, and direct respondent No. 1 for reconsideration of the matter afresh. The show cause notice shall remain valid and the appropriate authority shall take a decision within six weeks after affording opportunity of hearing, as indicated hereinbefore. In view of the fact that Chapter XX-C of the Income Tax Act has already been repealed with effect from July 1, 2002, the appropriate authority shall take a sympathetic attitude in the matter.

7. It is stated by the learned Advocate-General that the premises in question are lying under lock and key and are not in occupation by anyone. The status quo as on today on the basis of the statement of the learned Advocate-General with regard to possession shall be maintained. Respondent No. 3 shall within two weeks return the money to the Union of India through the Chief Commissioner, income tax/ Lucknow, and as soon as the money is paid by respondent No. 3, the keys of the premises in question shall be handed over to the Registrar of this court. In the event the matter is decided by the appropriate authority in favour of the petitioner and respondent No. 3, the Registrar shall hand over the keys of the premises in question to respondent No, 3 and in the event it is decided in favour of respondent No. 2, the Registrar shall hand over the keys to respondent No. 2 after ascertaining that the money is paid to respondent No. 3 by respondent No. 2. The writ petition stands disposed of by this order.