(2009) 01 BOM CK 0102

In the Bombay High Court

Kalyanji Kanjibhai Vithani and Others APPELLANT

Vs

S.C. Prasad and Others RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:
Income Tax Act, 1961 — Section 269UA, 269UD

Citation : (2009) 01 BOM CK 0102

Hon'ble Judges : V.C. Daga, J;Anoop V. Mohta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.

Perused petition.

1. Heard learned Counsel for the petitioners and learned Counsel for the respondents.

2. The petitioner is challenging the order dated 18-3-1994 inasmuch as the said order made u/s 269UD(1) of the Income Tax Act, 1961 (hereinafter referred to as "Act") contending that the order is erroneous, incorrect and contrary to the provisions of Section 269UA(b) of the Act and erroneously discounted the consideration payable under the agreement of Rs. 63,25,000 (excluding the earnest money of Rs. 5 lakhs for 114 days and determined the apparent consideration of Rs. 61,74,778) to the petitioner.

3. The factual matrix giving rise to the petition is that the petitioners, on 21-12-1993, had filed a statement of transfer of immovable property in Form No. 37-1. The consideration was shown as Rs. 68,25,000.

4. The notice u/s 269UD(1) of the Act was received by the petitioner from the competent authority on 7-3-1994 stating therein that the payment of Rs. 63,25,000 was deferred for a period of 114 days from the date of the agreement. Rs. 5,00,000 was paid towards earnest money. So, the respondents worked out

apparent consideration of Rs. 61,74,778 by discounting of Rs. 1,50,222 for the period of 114 days from the date of the agreement. The notice also contained details of the agreement.

5. The show-cause notice was resisted and the same was replied by the petitioner. The option to purchase property was exercised by an order dated 18-3-1994 by the Central Government.

6. The balance consideration payable was as per Clause (3) of the said agreement for sale dated 21-12-1993, amounting to Rs. 63,25,000 to the vendor within fifteen days from the date of obtaining the documents including no objection certificate from the Appropriate Authority and the approval of the society. The impugned order came to be passed on 18-3-1994 u/s 269UD(1) of the Act. The Appropriate Authority has taken possession on 22-4-1994. The payment of Rs. 66,41,965 was made by cheque on 28-4-1994 to M/s K.K. Vithani Family Trust/the petitioners.

7. The factual matrix further reveals that the balance amount of consideration was payable within fifteen days from the date of no objection from the competent authority. The order of purchase is dated 18-3-1994, if taken into account, then the amount of balance consideration was payable on 4-4-1994. As against this, the payment was made on 28-4-1994 by the Central Government. In this view of the matter, it is not possible to hold that the payment was made prior to the agreed date of payment of consideration by the Central Government attracting concept of principle of discounting.

8. The petitioner submits that as a result of such erroneous interpretation of the provision relating to the discounting, the apparent consideration payable under the order has been wrongly determined, which, according to the petitioners, needs to be corrected in exercise of writ jurisdiction of this Court. In other words, the challenge in this petition is restricted to the calculation of the apparent consideration and erroneous application of the concept of discounting resulting in reduction of the apparent consideration causing substantial loss to the petitioner.

9. Having heard both parties, we must observe that the Division Bench of this Court, to which one of us was Member (Daga, J.), had an occasion to consider concept of discounting in the case of Mukund L. Vora Vs. Union of India (UOI) and Others, wherein it was held as under:

19 In plain words, discount means present value of payment due in future. The word discount in the Oxford English Dictionary means an abatement or deduction from the amount or from the gross reckoning or value of anything and is used in commerce to mean as a deduction made for payment before it is due. The word discount has no technical or universal meaning and perhaps its most common meaning is that it is equivalent to the payment of interest in advance.

20. The principle of discounting is prescribed under Chapter XX-C of the Act. Even though agreement between the parties provides for transfer, the Central

Government is required to pay the entire consideration within he stipulated period from the date of purchase. Broadly, the order for purchase is to be made within a period of three months from the date of receipt of Form No. 37-1 by the competent authority and in case the purchase order is passed, then the Central Government has to tender the purchase price within one month therefrom. In other words, though the agreement provides for deferred payment, the transferors receive payment within the stipulated period and that may not necessarily be in consonance with the terms of the agreement. As the transferors get an advantage of payment which was due in future, in that event the transferors cannot complain if the payment is made with discount. If payment is made before the date stipulated in the agreement, then the concept of discounting as already stated hereinabove, which is primarily a rebate results in reduction of the sum payable. In other words, the amount of rebate as prescribed under the rules is subtracted from the amount payable in consideration of prepayment or payment before the due date and if amount is subtracted then what remains is discounted value of the property. If the delayed payment is to be made i.e., after the date of payment of consideration mentioned in the agreement, then, for want of prepayment the concept of discounting shall not be attracted

10. In the case at hand, as already observed hereinabove, the consideration was payable on 4-4-1994. As against this, consideration was paid by the Central Government by cheque on 28-4-1994, as such the payment was made after the due date mentioned in the agreement. Had there been a payment before due date, then the concept of discounting would have attracted. In the facts of this case, the concept of discounting is not attracted. As such the said concept could not have been invoked by the Central Government.

11. The learned Counsel for the respondents has relied on decision of the Division Bench of this Court in Writ Petn. No. 646 of 1993, Raj Nair v. S.K. Laul and Ors., decided on 7-8-2007 The facts of that case are totally distinct and distinguishable. That was not the case of advance payment made by the authority. The payment was made subsequent to the due date of payment prescribed in the contract.

12. So far as the issue of transfer fee to be paid to the society is concerned, the said issue is covered by the judgment in the case of Raj Nair v. S.K. Laul (supra). The learned Counsel for the respondents, in view of above decision has fairly conceded to this issue of transfer fee.

13. In the result, petition is allowed. The respondents are directed to refund the amount in favour of the petitioners with interest at the rate of 8 per cent per annum from the date of retention till payment. Rule is made absolute in terms of this judgment.

No order as to costs.

