

(1999) 09 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 3275 of 1990

Miss Kamla Khushaldas Teckchandani

APPELLANT

Vs

O.D. Mohindra and Others

RESPONDENT

Date of Decision : 09-09-1999

Acts Referred:

Constitution of India, 1950 — Article 136, 141
Income Tax Act, 1961 — Section 269UA

Citation : (1999) 4 ALLMR 588 : (2000) 160 CTR 112 : (1999) 240 ITR 796

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

Bench : Division Bench

Advocate : A.M. Kapadia, instructed by Satpute and Co, for the Appellant; M.I. Sethna and R. Asokan, for the Respondent

Judgement

D.K. Deshmukh, J.—By this petition filed under article 226 of the Constitution of India, the petitioner takes exception to the order dated August 29, 1989, passed by the Appropriate Authority (income tax Department), Bombay, under Sub-section (1) of Section 269UD of the income tax Act, 1961. By that order the appropriate authority in exercise of its power under Sub-section (1) of Section 269UD of the Income Tax Act ordered the purchase of the immovable property of the petitioner by the Central Government.

2. At the outset, it may be pointed out that in this petition, the entire order dated August 29, 1989, has not been challenged, but challenge has been restricted only to that part of the order whereby the amount of apparent consideration has been fixed at Rs. 21,14,684.

3. The facts that are material and relevant for deciding the present petition are that on June 14, 1989, the petitioner entered into an agreement to sell the immovable property to Trambak Holdings Private Limited, a company incorporated under the Companies Act. By that agreement, the petitioner agreed to transfer the property for consideration of Rs. 21,50,000. Out of the total amount of consideration, the amount of Rs. 3,01,000 was to be paid on the date

of the agreement and the balance amount of consideration was to be paid within 15 days of getting the necessary approval or no objection from the appropriate authority appointed under Chapter XX-C of the Income Tax Act. It transpires that pursuant to this agreement, on June 21, 1989, an application in Form No. 37-I prescribed by the Income Tax Rules, 1962, was submitted to the appropriate authority, and on August 29, 1989, the appropriate authority made an order for compulsory purchase of the property and fixed the apparent consideration as observed above at Rs. 21,14,684. In other words, from the amount of consideration mentioned in the agreement an amount of Rs. 35,316 was discounted. It is this discounting, which is challenged in the present petition.

4. Learned counsel appearing for the petitioner submits that discounting of the amount of Rs. 35,316 by the order impugned is contrary to the provisions of the Income Tax Act. He submits that, according to the agreement between the parties, the petitioner was to get the balance amount of consideration within 15 days from the date on which the appropriate authority grants no objection. In the submission of learned counsel, according to the provisions of the Income Tax Act, as it stood then, the appropriate authority, after application in Form No. 37-I has been submitted, can make an order for compulsory purchase within a period of two months and, thereafter, the amount of apparent consideration is to be tendered by the Government to the transferee within a period of 30 days of the order. Learned counsel submits that according to the terms of the agreement the petitioner was to get the balance amount of consideration at an earlier point of time than was tendered to him or paid to him by the Government and, therefore, there is no question of discounting any amount from the amount of consideration mentioned in his agreement. According to learned counsel discounting of any amount from the amount of consideration mentioned in the agreement can be made only in a case where, according to the agreement between the parties, the payment is required to be made at a point of time later than the period required for making payment under the provisions of the Act. He submits that according to the provisions of the Act as they were in force at the relevant time the appropriate authority had to make the order for purchase within two months from the date on which application in Form No. 37-I is submitted, otherwise, the appropriate authority has to issue a no-objection certificate. The petitioner was to get as per the agreement Rs. 21,50,000 within two months and 15 days from the agreement. However, now because the property is purchased by the Central Government, he gets only Rs. 21,14,184 and that too at a later date. According to learned counsel this is contrary to the stated object of the Act. Learned counsel in support of his contention relies on the judgment of this court in *Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, .*

5. Learned counsel appearing for the respondents, on the other hand, submits that according to the provisions of Section 269UD what is required to be paid by the Central Government to the transferee is the amount of apparent consideration. Learned counsel relying on the definition of the term "apparent

consideration" appearing in Section 269UA(b) submits that in any case where any part of consideration is payable at a date subsequent to the date of the agreement for sale, the value of the consideration payable after the date of the agreement is to be deemed to be the discounted value of such consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf. According to learned counsel this rate of interest is prescribed as 8 per cent. under the rules framed under the Act. According to learned counsel, in the present case as the balance amount of consideration was to be paid after the date of the agreement, therefore, in terms of the provisions of the Act the amount had to be discounted. Learned counsel in support of this proposition relies on the judgment of the Division Bench of this court in Smt. Vimla Devi G. Maheshwari v. S. K. Laul [1994] 208 ITR 734. Learned counsel submits that the judgment of the Division Bench of this court in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, , has been confirmed by the Supreme Court, inasmuch as, the petition for special leave to Appeal No. 5188 of 1993 was rejected by the Supreme Court by its order dated August 10, 1993, by a speaking order. He also relies on two other judgments of this court, one in Writ Petition No. 2025 of 1993--Mona Nitin Pradhan v. S. C. Prasad decided on 8/9th February, 1994, and the other in Writ Petition No. 366 of 1994--Mrs. Samira Jamil Parkar v. Union of India decided on February 25, 1994. In so far as the judgment of this court in Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, referred to above is concerned, learned counsel points out that the judgment of this court in Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, was challenged before the Supreme Court and the Supreme Court by its judgment dated February 17, 1995, allowed the appeal filed against that judgment and therefore in the submission of learned counsel the judgment of this court in Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, , cannot now be relied on as binding precedent.

6. It is to be seen that it is Section 269UD of the Income Tax Act, which lays down that the appropriate authority after receipt of statement under subsection (3) of Section 269UC in respect of any immovable property may make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration. It is thus clear that the Central Government can purchase immovable property under the provisions of Chapter XX-C of the Income tax Act at an amount equal to the amount of apparent consideration. The term "apparent consideration" has been defined in Section 269UA(b) of the Act. The provisions of Section 269UA(b) in so far it relates for the purpose of decision of this writ petition reads as under : "269UA. (b) "apparent consideration",--

(1) in relation to any immovable property in respect of which an agreement for transfer is made, being immovable property of the nature referred to in Sub-clause (i) of Clause (d), means,--

(i) if the immovable property is to be transferred by way of sale, the consideration for such transfer as specified in the agreement for transfer ; and where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such agreement for transfer, the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf ;"

7. It is thus clear from the perusal of the above definition that the amount of apparent consideration is the amount of consideration, which is mentioned in the agreement. However, when the agreement does not contemplate payment of the whole of the amount of consideration on the date of the agreement itself, but contemplates payment of balance amount of consideration at a date subsequent to the date of the agreement, then the amount of apparent consideration has to be arrived at by making deduction from the amount of consideration mentioned in the agreement. It is, therefore, necessary to see as to what are the stipulations in the agreement between the parties in this regard. It is Clause 1 and Clause 2 of the agreement between the parties dated June 14, 1989, which are relevant for this purpose, which read as under :

"(1) The vendor shall assign and transfer and the purchaser shall take over and acquire from the vendor the said shares and as incidental to the sale thereof the rights to use, enjoy and occupy as a member of the said society the said office Unit No. 605, on the sixth floor of the Dalamal Tower, Nariman Point, Bombay-400 021, at or for the agreed purchase price of Rs. 21,50,000 (rupees twenty-one lakhs fifty thousand only).

(2) The purchaser shall on the execution hereof pay to the vendor the sum of Rs. 3,01,000 (rupees three lakhs one thousand only) towards the agreed purchase price and the balance thereof within 15 days of getting the necessary approval or no objection from the prescribed authorities appointed under Chapter XX-C of the Income Tax Act, 1961, as referred to in Clause 13 hereunder."

8. A perusal of the above clauses in the agreement shows that the total amount of consideration was agreed at Rs. 21,50,000. Out of that, an amount of Rs. 3,01,000 was paid on the date of the agreement and the balance amount of consideration was agreed to be paid within a period of 15 days from the date on which approval or no objection from the appropriate authority under the provisions of Chapter XX-C of the Income Tax Act is secured. It is, therefore, clear that as by the terms of the agreement the entire amount of consideration mentioned in the agreement was not to be paid on the date of the agreement and payment of part of the amount of consideration was deferred, to be paid on a date subsequent to the date of the agreement, the amount of apparent consideration had to be arrived at by discounting some amount in accordance with the provisions of the Act and rules framed thereunder. In so far as the submission of learned counsel that the discounted value is to be determined with

reference to the date of the payment and not with reference to the date of agreement is concerned, in our opinion, the submission is not well founded. It is to be seen that the validity of Chapter XX-C of the Income Tax Act was challenged and that challenge was considered by the Supreme Court in its judgment in C.B. Gautam Vs. Union of India and Others, . The Supreme Court after considering the provisions of Chapter XX-C of the Act and the affidavits filed on behalf of the respondent before the Supreme Court and the circular issued by the Central Board of Direct Taxes, has observed thus (page 553) :

"In our opinion, before an order for compulsory purchase is made u/s 269UA, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned. As we have already pointed out, the provisions of Chapter XX-C can be resorted to only where there is a significant under valuation of property to the extent of 15 per cent. or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15 per cent. or more."

9. It is thus clear that when an application in Form No. 37-I is submitted to the appropriate authority, the appropriate authority at that juncture will have first to arrive at the amount of apparent consideration, then to compare that amount with the fair market value of the property and it is only thereafter, of course, after granting an opportunity of being heard to the parties concerned, that it can make an order for compulsory purchase of the property. Thus, it is clear that the appropriate authority has to arrive at the amount of apparent consideration before it decides finally to purchase the property. It is, therefore, obvious that the determination of the amount of apparent consideration has no connection with the date of actual payment. It is further to be seen here that the definition of the term of apparent consideration contemplates determination of apparent consideration whenever in the agreement concerned the payment of the balance amount of consideration is deferred and is not to be made on the date of the agreement itself. In our opinion, therefore, where the payment is required to be made as per the agreement within the period which is taken for making of the payment in case of compulsory purchase of the property under the provisions of the Act or not is totally irrelevant.

10. It is further to be seen that the Division Bench of this court in its judgment in Smt. Vimla Devi's case [1994] 208 ITR 734, referred to above has considered this aspect of the matter. The clauses of the agreement which the Division Bench was considering in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, have been quoted in that judgment and they read as under (page 738) :

" "The sum of Rs. 23,00,000 (rupees twenty-three lakhs) shall be paid by the transferee to the transferor as follows, that is to say, the sum of Rs. 2,00,000 (rupees two lakhs only) on or before the execution of this agreement as and by way of earnest money or deposit and part payment of the purchase price of Share Certificate No. 3 bearing five shares bearing Nos. 11 to 15 both inclusive

with incidental rights to use and occupy flat No. 1 (the payment and receipt whereof the transferor doth hereby admit and acknowledge) and the balance amount will be given by the transferee to the transferor on delivering the original certificates and actual vacant possession of the said flat to the transferee."

Clause 11 of the said agreement is also as follows :

"The transferor agrees with the transferee that they will do and execute such other acts and assurances as may be required by the society or the transferee whenever called upon by them in order to effectuate the said transfer in the manner aforesaid, but all the costs and expenses including transfer fees payable to the said society shall be paid by the transferor and the transferee in equal share. The balance payment will be given by the transferee within 30 days from the receipt of no objection letter in respect of Form No. 37-I strictly".

11. Comparison of the two clauses in the agreement, which was considered by the Division Bench in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, , and in the present case, shows that the clauses are almost identical, except that in the present case the balance amount of consideration was to be paid within 15 days of the grant of no objection and as per the agreement that was considered in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, , that payment was to be made within 30 days of the grant of no objection. The Division Bench after considering the above quoted clauses in the agreement and the definition of the term "apparent consideration" has observed thus (page 739) :

"In the present case, on a perusal of Clauses 3 and 11 of the agreement, we find that under the agreement the sum of Rs. 2 lakhs is paid on or before the execution of the agreement while the balance of Rs. 21 lakhs is to be paid within 30 days from the receipt of the no objection letter in respect of Form No. 37-I. This clearly prescribes a date for payment which is subsequent to the date of the agreement. The contention of Mr. Dastur that the exact date must be spelt out in the agreement itself does not appeal to us. So long as the agreement clearly provides that any part of the consideration is to be paid at a date later than the date of the agreement and such date is capable of being ascertained, there is no reason why the provision of Section 269UA(1) should not be attracted. In our view, in the facts of the present case, the discount has been properly calculated."

12. It is further to be seen that the judgment of this court in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, , was challenged before the Supreme Court in the petition for special leave to Appeal No. 5188 of 1993 and that petition was dismissed by the Supreme Court by its order dated August 10, 1993, which reads as under :

"We see no ground to interfere with the impugned judgment of the High Court. We agree with the reasoning and the conclusion reached therein.

The SLP is dismissed."

13. It is further to be seen that this question was again considered by this court

in its judgment in the case of Mono, Pradhan referred to above. In paragraph 5 the court has observed thus :

"Mr. Dastur, next contended that in the present appropriate authority by which Rs. 80,00,000 payable under the agreement 3.0 days after permission under Chapter XX-C of the Income Tax Act could not have been discounted. The petitioner submitted that the interpretation of Section 269UA(b) of the Income Tax Act given by the Division Bench of this court in the case of Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, , in Writ Petition No. 514 of 1993 decided on March 10, 1993, was also erroneous and it was contrary to the stand of the Department before the Supreme Court in the case of C.B. Gautam Vs. Union of India and Others, . We do not see any merit in the said contention. The Division Bench of this court in the case of Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, , has approved the method of discounting the deferred payment as being in conformity with Section 269UA(b) of the said Act. In the said judgment, it has been held that where the payment is subsequent to the date of agreement as in the present case the provision of Section 269UA(b) is attracted. In the present case the period of 156 days has been correctly calculated. Under the agreement Rs. 80,00,000 were payable 30 days after obtaining permission/certificate under Chapter XX-C of the said Act. The agreement is dated May 27, 1993. Form No. 37-I has been executed on June 4, 1993. The impugned order has been passed on September 27, 1993, and taking into account the above dates the period of 156 days has been properly calculated and if that is the basis then Rs. 80,00,000 have been properly discounted u/s 269UA(b) of the said Act as stated above. Further, the constitutional validity of the Act has also been upheld by the Supreme Court in the case of C.B. Gautam Vs. Union of India and Others, . As regards the said contention. Mr. Dastur contends that the writ petitions are pending in this court. However, the petitioner has not laid the foundation of her challenge to the constitutionality of Section 269UA(b).

14. We further find that this court considered in its judgment, in the case of Mrs. Samira Parkar referred to above, clauses in the agreement, which are identical to the one which are in the present case and the Division Bench in paragraph 7 of the judgment observes as follows :

"Mr. Dada next contended that the appropriate authority has not given the basis for calculating the deferred value of Rs. 29,81,504. We do not see any merit in the said contention. Under the above agreement, the total consideration was Rs. 30 lakhs. Rs. 23 lakhs was paid on or before September 10, 1993, and Rs. 7 lakhs was payable only after the expiry of 15 days from the receipt of NOC under Chapter XX-C of the Income Tax Act. In the circumstances, the appropriate authority has correctly calculated the deferred value of Rs. 29,81,504 on the basis that the payment was deferred for 127 days from September 10, 1993, i.e., the date of the agreement. This was also calculated in terms of Section 269UA(b) of the Income Tax Act read with Rule 48-I of the Income Tax Rules. In

the circumstances there is no merit in the said contention."

15. Now, this takes us to the judgment of the Division Bench of this court in the case of Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, . It is to be seen that by that judgment the Division Bench has decided two writ petitions. The first writ petition was Writ Petition No. 862 of 1994, which was filed by Shrichand Raheja and the other writ petition was Writ Petition No. 797 of 1994, which was filed by Laila Kitchens. In that case Laila Kitchens was the transferor, whereas Shrichand Raheja was the transferee. In that judgment, it is stated that though the transferor had challenged the validity of the entire order, the transferor thereafter gave up challenge to the entire order and restricted the challenge to the amount discounted from the amount of consideration mentioned in the agreement. The court considers the challenge raised by the transferee that the purchase order stands abrogated only in Writ Petition No. 862 of 1994 filed by the transferee and dismissed that petition. In so far as the petition of the transferor, i.e., Writ Petition No. 797 of 1994, is concerned, the court upheld the challenge to the order regarding discounted value and remanded the proceedings back to the appropriate authority. It appears that the transferee feeling aggrieved by the order dismissing his petition approached the Supreme Court challenging that order and the Supreme Court allowed the appeal filed by the transferee and allowed Writ Petition No. 862 of 1994. The operative part of the order of the Supreme Court dated February 17, 1995, reads as under :

"For the aforesaid reasons, these appeals are allowed with the result that the transferee's Writ Petition No. 862 of 1994 filed in the High Court stands allowed in the manner indicated above."

16. It is, thus, to be seen that in the two petitions which were decided by common judgment in Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, , referred to above the first challenge was that the purchase order stands abrogated and the second challenge on behalf of the transferor was about the discounted value. It is obvious that it would be necessary to consider the second challenge only, in case the court holds that the purchase is not abrogated. Because, in the event the contention that the purchase order is abrogated is accepted, then there is no need to consider the second challenge and, therefore, learned counsel appearing for the respondents submitted that the judgment of this court in Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, does not survive.

17. Learned counsel appearing for the petitioner, on the other hand, relying on the judgment of the Chancery Division in the case of Curtis Moffat Limited v. Wheeler [1929] Ch 224, submitted that the judgment of the Division Bench in Writ Petition No. 797 of 1994 has not been set aside by the Supreme Court and therefore it operates as binding precedent.

18. We have some doubt whether as a result of the judgment of the Supreme

Court referred to above dated February 17, 1995, the judgment of this court in Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, , would operate as a binding precedent or not ? However, in our opinion, it is not necessary for us to pronounce on that aspect of the matter for the purpose of deciding the present petition. The Division Bench in Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, , after referring to the judgment of this court in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, has observed thus (page 62) :

"Shri Sethna also submitted that the issue is no longer open for consideration in view of the decision of the Division Bench of this court in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, . The agree- merit before the Division Bench provided that the balance amount of Rs. 21,00,000 was to be paid within 30 days from the receipt of the no objection certificate from the appropriate authority. The Division Bench held that the date for payment of balance was subsequent to the date of agreement and consequently it was necessary to ascertain the discounted value. There cannot be any debate about the observations of the Division Bench."

19. It is to be seen that this court in the case of Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, , was considering the clauses in the agreement which are identical to the clauses in the present case. There is no dispute before us that the judgment in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, , covers this case against the petitioner. The judgment in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, , was challenged before the Supreme Court. The Supreme Court while dismissing the SLP preferred against that judgment has observed that the Supreme Court agrees with the reasons and conclusion reached in the judgment Article 141 of the Constitution of India lays down that the law declared by the Supreme Court shall be binding on all courts within the territory of India. It is now settled law that when the Supreme Court dismisses a SLP against the judgment of a High Court by a non-speaking order, the order of the Supreme Court does not amount to a law declared by the Supreme Court. However, when the Supreme Court while dismissing the SLP passes a speaking order and gives reasons for dismissing the special leave petition, then it amounts to the law declared by the Supreme Court in Union of India (UOI) Vs. All India Services Pensioners' Association and Another, . The Supreme Court in paragraph 6 at page 504 of its judgment in the case of All India Services Pensioners Association, referred to above, has observed thus :

"The first ground relied on by the Tribunal not to follow the said decision is that it had been rendered by this court while dismissing some special leave petitions. This is a wholly untenable ground. The special leave petitions were not dismissed without reasons. This court had given reasons for dismissing the special leave petitions. When such reasons are given the decision becomes one which attracts article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India."

20. Thus, in our opinion, in view of the order passed by the Supreme Court referred to above the judgment of this court in Vimla Devi's case [1994] 208 ITR 734, is binding on us, because the reasons given by this court in that judgment have been approved by the Supreme Court specifically.

21. We further find that the terms of the agreement which was considered by this court in its judgment in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, , as also in its judgment in Mona Pradhan's case, as also in its judgment in Smt. Samira Parkar's case are almost identical to the terms of the agreement in the present case, whereas the terms of the agreement which were considered by the Division Bench in Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, , were different, and therefore, as this court on the basis of identical terms in the agreement has held the order of discounting to be valid and in accordance with law, in our opinion, it is not possible for us to take a different view of the identical terms of the agreement in the present case.

22. So far as the submission of learned counsel for the petitioner that though as per the agreement of sale the petitioner was to get the amount of consideration, which is mentioned in the agreement, i.e., Rs. 21,50,000, now the petitioner gets a lower amount amount from the Government for his property, though the Government has also to make the payment within about the same period which is stipulated in the agreement, is concerned, in our opinion, this is the result of the provisions of the Act. The Act contemplates deduction of an amount from the amount of consideration which is mentioned in the agreement, the moment the agreement provides that payment of any part of the amount of consideration is deferred. The language of the provisions is clear. There is no ambiguity. It is settled law now that the intention of the legislation is to be gathered from the language of the provisions. It is only when the court finds that there is some ambiguity in the language that the court can refer to other sources to gather the intention of the legislation. In the present case we find that the language of the provision is clear and unambiguous. Therefore, we will not be justified, as urged by learned counsel for the petitioner, to refer to the affidavit filed before the Supreme Court in C.B. Gautam Vs. Union of India and Others, . It is further to be seen that the petitioner has not challenged the constitutional validity of the provisions in this petition. However, learned counsel appearing for the petitioner submitted that he should be given time to challenge the validity of the provisions of Section 269UA(b) of the Act. It is however, to be seen that Section 269UA(b) is found in Chapter XX-C of the Income Tax Act. The constitutional validity of entire Chapter XX-C was considered by the Supreme Court in its judgment in C.B. Gautam Vs. Union of India and Others, . It may be pointed out here that a writ petition was filed before the Delhi High Court challenging the constitutional validity of Chapter XX-C of the Income Tax Act. That petition was transferred to the Supreme Court and it was decided by the Supreme Court. The Supreme Court by its judgment in C.B. Gautam Vs. Union of India and Others, , has upheld the constitutional validity of Chapter XX-C of the Income Tax Act. In view

of the provisions of article 141 of the Constitution of India, the judgment of the Supreme Court holding the provisions of Chapter XX-C of the Income Tax Act to be constitutionally valid is binding on this court. Therefore, it is not possible for this court to entertain any challenge to the constitutional validity of any of the provisions contained in Chapter XX-C in view of the judgment of the Supreme Court in C.B. Gautam Vs. Union of India and Others, . In our opinion, the observations of the Supreme Court in its judgment in Kesho Ram and Co. and Others etc. Vs. Union of India (UOI) and Others, , in this regard are pertinent. The Supreme Court has observed (page 159) :

"Finality in litigation and public policy both require that a litigant should not be permitted to challenge validity of the provisions of the Act or notification at different times on different grounds. Once petitioners' challenge to Section 3 and the impugned notification was considered by the court and the validity of the same was upheld it must be presumed that all grounds which could validly be raised were raised and considered by the court. Learned counsel for the petitioners urged that the questions which are being raised in the present proceedings were neither raised nor considered by this court in Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others, , therefore, it is open to them to question the validity of Section 3 and the notification dated September 24, 1974. This submission is contrary to the principles of res judicata and it further ignores the binding effect of a decision of this court under article 141 of the Constitution of India. The binding effect of a decision of this court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced subsequently was actually decided in the earlier decisions."

23. In our opinion therefore, till the judgment of the Supreme Court in C.B. Gautam Vs. Union of India and Others, , stands, that judgment holding the provisions of Chapter XX-C of the Income Tax Act, to be constitutionally valid in view of the provisions of article 141 of the Constitution of India, is binding on this court and, therefore, no challenge to those provisions though on some different grounds, can be entertained by this court.

24. In the result, therefore, the present petition fails and is dismissed. Rule discharged with no order as to costs.