

(2001) 07 BOM CK 0111
In the Bombay High Court
Case No : Writ Petition No. 2424 of 1989

Polycon Paper Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 269UA, 269UC, 269UD, 269UE, 269UF

Citation : (2002) 104 BOMLR 210 : (2002) 176 CTR 205 : (2002) 253 ITR 181 : (2002) 122 TAXMAN 340

Hon'ble Judges : V.C. Daga, J; S.H. Kapadia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.C. Daga, J.

INTRODUCTION

1. This petition filed under Article 226 of the Constitution of India involves a question about interpretation and applicability of definition of "apparent consideration" given u/s 269UA(b) of the Income Tax Act, 1961 ("Act" for short) for the purposes of paying the amount to the vendor, when the order for purchase of a property, under Chapter XX-C u/s 269UD of the Act is made.

2. The Appropriate Authority, while giving order for purchase of the property has determined the amount payable for such purchase by applying provisions of Section 269UA(b). In doing so, from the apparent consideration stated in the agreement of sale, the sum payable on stamp duty by the purchaser under the agreement has been deducted. The sole grievance has been made regarding deduction made on account of stamp duty payable by the vendor, as cost of conveyance, while calculating the apparent consideration for the purposes of arriving at payment to be made u/s 269UF of the Act.

FACTUAL MATRIX

3. The factual matrix lies in narrow compass and it is thus:

By an agreement dated 30th November, 1988, the petitioner Company agreed to sell to M/s. Suraj Diamonds (India) Limited the property consisting of land and factory building situated at village Gundavali, Andheri (East), bearing City Survey Nos. 253, 253(1) to (3) (part) for apparent consideration of Rs. 2,49,25,500/- on the terms and conditions set out in the said agreement. The said agreement provided that stamp duty and registration charges on the conveyance shall be borne by the petitioner-Company.

4. In compliance with the provisions of Chapter XX-C of the Act the petitioner Company and M/s. Suraj Diamond (India) Ltd. submitted requisite statement in Form 37-I in respect of proposed immovable property. In the said statement it was specifically mentioned that the apparent consideration for the agreement for transfer of the property was Rs. 2,49,25,500.

5. The respondent Nos. 2 to 4 herein, after making necessary enquiry, passed order dated 27th January, 1989 u/s 269UD(1) of the Act directing purchase of the said immovable property by the Central Government (hereinafter referred to as the "first impugned order" for short). However, instead of directing that the full amount of Rs. 2,49,25,500/- be paid by the Central Government to the petitioner Company, respondent Nos. 2 to 4 ordered that the stamp duty and registration charges meant for the conveyance, in the total sum of Rs. 24,97,550/-, would stand deducted from the total consideration. Further additional deduction of amount of Rs. 5,65,898/- was ordered on the ground that the payment of apparent consideration was deferred and, consequently, discounted value of the said payment would have to be taken in lieu of the full amount of consideration. On that basis and footing, the total amount of Rs. 30,63,448/- (comprising of two amounts i.e. Rs. 5,65,898/- and Rs. 24,97,550/-) was deducted from the total consideration of Rs. 2,49,25,500/-. On that basis, it was directed that the consideration payable by the Central Government for purchase of the said property worked out to Rs. 2,18,62,052/-. However, the challenge, at the stage of final hearing of this petition, is confined to the deduction of Rs. 24,97,550/-, on account of stamp duty and registration charges for the conveyance.

6. On receipt of first impugned order referred to hereinabove the petitioner found that the alleged adjustment of Rs. 24,97,550/- towards stamp duty and registration charges was not authorised by any of the provisions of Chapter XX-C of the Act. The petitioner, therefore, vide its letter dated 6th February, 1989 addressed to respondent Nos. 2 to 4, drew their attention to the provisions of Section 269UF, which provides that the Central Government shall pay by way of consideration for the said purchase which should be equal to apparent consideration mentioned u/s 269UA(b) as also the provisions of Rule 48-I and pointed out that Chapter XX-C of the Act and the rules framed thereunder do not provide for any such deduction or any adjustment save and except those provided u/s 269UA(b) and that, therefore, there was no provision u/s 269UF

read with Section 269UA(b) or any other section of Chapter XX-C which provided for deduction of stamp duty and registration charges. The petitioner, therefore, requested them to rectify the said mistake. On receipt of the application, petitioner was personally called for hearing and at such hearing the petitioner's representative reiterated the said stand and submission.

7. In the meanwhile, pending the disposal of the application for rectification, petitioner handed over possession of the property as required under the provisions of Chapter XX-C. The petitioner also received cheque of Rs. 2,18,62,052/- dated 23rd February, 1989 subject to decision of the rectification application.

8. Pending disposal of the rectification application, certain more events leading to public auction of the property and consequent objection thereto have taken place. However, those facts are not being referred to as the same have no bearing on the question with which we are concerned in this petition.

9. Be that as it may, on 21st March, 1989, petitioner received an order dated 20th March, 1989 passed by respondent Nos. 2 to 4 u/s 269UJ (hereinafter referred to as the "second impugned order" for the sake of brevity). By the said order, respondent Nos. 2 to 4 rejected request for rectification of the order. It was stated in paragraph 4 of the said order that the petitioner had not objected to the deductions of the stamp duty and registration charges. It was further stated in the said order that as per Clause 16 of the agreement the stamp duty was to be borne and paid by the petitioner, which was correctly worked out to Rs. 24,97,550/- and rightly deducted from the apparent consideration. Thus the request of the petitioner for rectification came to be rejected by order dated 20th March, 1989. The petitioner through the subsequent correspondence refuted the observations made by respondent Nos. 2 to 4 in the second impugned order and informed the respondents that any sale of the property in the public auction would be at their risk as to cost and consequences.

10. The aforesaid orders i.e. first and second impugned orders are the subject matter of challenge in this petition.

LEGISLATIVE SCHEME

11. Before proceeding to appreciate rival contentions referred to herein above, in the light of the facts enumerated hereinbefore, it would be profitable to take stock of the relevant legislative scheme in this regard.

Section 269UA of Chapter XX-C is the defining section. An agreement to transfer is defined as an agreement, whether registered under the Indian Registration Act, 1908, or not, to transfer an immovable property. Clause (b) of the said section gives the definition of the term "apparent consideration".

269-UA. Definitions.- In this Chapter, unless the context otherwise requires,-

(a) "agreement for transfer" means an agreement, whether registered under the

Registration Act, 1908 (16 of 1908), or not, for the transfer of any immovable property;

(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;

(ii)

(2) 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 (ii) of Clause (d), means,-

(i) in a case where the consideration for the transfer consists of a sum of money only, such sum;

(ii)... ..(iii)

269UC. Restrictions on transfer of immovable property,-(1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or in any other law for the time being in force, no transfer of any immovable property of such value exceeding five lakh rupees as may be prescribed, shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property (hereinafter referred to as "the transferor"), and the person to whom it is proposed to be transferred (hereinafter referred to as "the transferee"), in accordance with the provisions of Sub-section (2) at atleast three months before the intended date of transfer.

(2)(3)(4)

269-UD. Order by Appropriate Authority for purchase by Central Government of immovable property.- (1) The Appropriate Authority, after the receipt of the statement under Sub-section (3) of Section 269UC in respect of any immovable property, may, notwithstanding anything contained in any other law or any instrument or any agreement for the time being in force, and for reasons to be recorded in writing, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of the apparent consideration.

... ..

269-UF. Consideration for purchase of Immovable property by Central Government.- (1) Where an order for the purchase of any immovable property by the Central Government is made under Sub-section (1) of Section 269-UD, the Central Government shall pay, by way of consideration for such purchase, an amount equal to the amount of the apparent consideration.

(2)

Rule 48-I. Rate of interest for determination of discounted value of consideration.

The rate of interest for determination of the discounted value of consideration under Sub-clause (1) or Sub-clause (2) of Clause (b) of Section 269UA shall be eight per cent per annum.

... ..

RIVAL CONTENTIONS

By Petitioner:

12. The learned Counsel appearing for the petitioner submitted that under the provisions of Chapter XX-C of the said Act, the Appropriate Authority and the Central Government, on making compulsory transfer of immovable property, are liable to pay apparent consideration in relation to the said property. In his submission, it is clear from the above definition of the apparent consideration that if the immovable property is to be transferred by way of sale, the apparent consideration is the consideration for the said transfer as specified in the agreement of sale. In his submission, it is further clear from the said provision that the only adjustment or modification which the Appropriate Authority is authorised to make in apparent consideration mentioned in the instrument of transfer is to that part of amount, of the apparent consideration the amount of which is deferred. In such a case appropriate authority is authorised to work out the present discounted value of the amount, the payment of which has been deferred. No other adjustment, amendment or alteration of the amount of the apparent consideration is authorised or permitted by Section 269UA(b) or any other provision of Chapter XX-C of the said Act and the Appropriate Authority is enjoined on the making of a compulsory purchase of the said property under that chapter to make payment of the full amount of apparent consideration as specified in the instrument of transfer.

13. The learned Counsel appearing for the petitioner, turning to the facts of the present case, pointed out that the amount of consideration for the transfer of the said immovable property, as specified in the instrument of transfer, was Rs. 2,49,25,500/-. It was thus contended that only adjustment or alteration, which the respondent Nos. 2 to 4 could in law make to that amount was to discount that part of the apparent consideration the payment of which was deferred. In his submission, that having been done, the Appropriate Authority may be justified in directing deduction of Rs. 5,65,898/- from the amount of apparent consideration in the impugned order. The petitioner has no objection to that adjustment or deduction. The petitioner, however, contended that no other adjustment or deduction in law was to be made by the Appropriate Authority. It was thus contended by the learned Counsel for the petitioner that the deduction of Rs. 24,97,550/- as mentioned in Clause 16 of the agreement of sale was equally illegal and de hors the aforesaid provisions and hence the respondents

are required to be directed to restore this amount to the petitioner with interest at the rate of 18 per cent thereon from 27th January, 1989.

14. The learned Counsel for the petitioner further contended that by virtue of Section 269UE(1) when a purchase order u/s 269UD is passed in respect of an immovable property, such property thereupon vests in the Central Government, free of all encumbrances. The said vesting of the property and transfer thereof from its erstwhile owner to the Government is by operation of law. Consequently, no stamp duty or registration charges are payable on such transfer. The learned Counsel for the petitioner, alternatively submitted that assuming but not admitting that the respondents can in law deduct, the amount of stamp duty and registration charges to determine the amount of apparent consideration, then such a deduction can only be made, if the stamp duty and registration charges are actually found to be payable by the seller i.e. the petitioner, at the time of purchase by the Central Government. In the present case, no stamp duty or registration charges were actually payable by the petitioner. Consequently, for these reasons the petitioner takes exception to the deduction of Rs. 24,97,550/- and contends that the said deduction is without any authority of law, illegal and bad in law.

By Respondents:

15. Per contra, byway of preliminary objection the learned Counsel for the respondents contended that the present petition is infructuous and not maintainable in law as much as the same is a completed transaction and sought to rely upon the observation of the Apex Court in the case of C.B. Gautam Vs. Union of India and Others, . On merits it was submitted by the learned standing counsel for the respondents that the deductions are legally sustainable. So far as grievance regarding deduction of Rs. 24,97,550/- is concerned, he submitted that the definition of apparent consideration itself showed that it would take in its sweep the entire consideration for the transfer as may be specified in the agreement for transfer and such clarification can be gathered from conjoint reading of the agreement and, if it is so done, Clause 16 which is part and parcel of the agreement, has also to be given effect to. It is to be found out as to what was the actual consideration agreed to be received by way of net monetary benefit by the seller. To enter into such an agreement as per Clause 16 thereof, the petitioner seller had agreed to bear all the costs of registration fees and stamp duty payable on the execution of the document of sale. That much amount was agreed to be received less by the seller from the purchaser. To that extent the apparent consideration for the purpose of relevant provisions of the Act has to be treated as reduced and that is precisely what is done by the Appropriate Authority and, hence, according to the learned Counsel for the respondents, no fault can be found with the said deduction of Rs. 24,97,550/-.

THE ISSUE

16. In the light of the rival contentions, following question arises for our

determination:

Whether the Appropriate Authority was justified in deducting Rs. 24,97,550/- by way of cost of stamp duty and registration charges agreed to be borne by the petitioner seller for execution of the sale deed to sell as per Clause 16 of the agreement of sale, while computing the apparent consideration for the purpose of Sections 269UD(1) and 269UF(1)?

ANALYSIS OF THE SUBMISSIONS

17. In order to answer the aforesaid question, it is necessary to turn to the relevant scheme of Chapter XX-C of the Act and relevant provisions incorporated therein. It is crystal clear from the relevant provisions falling under Chapter XX-C of the Act that the thrust of Section 269UD(1) read with Section 269UF(1) is that if the Appropriate Authority takes a view that, in exercise of its statutory powers of pre-emption, the immovable, property in question, which is sought to be transferred under agreement of sale is required to be purchased by the Central Government, the Central Government has to pay to the seller, with a view to become statutory purchaser of the said property displacing the purchaser of its choice, the full apparent consideration underlying such proposed transfer.

18. So far as the apparent consideration is concerned, the definition *prima facie* does not contemplate any deduction or reduction from the apparent consideration, save and except what is expressly provided in the last para of the said definition which we have extracted hereinabove. If one decides to dissect the definition, the words "apparent consideration", means, the whole or part of the consideration for such transfer, which is payable on any date or dates falling after the date of such agreement for transfer, and the value of such consideration payable after such date shall be deemed to be discounted value of such consideration as on date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf. Thus, discount from the value of deferred consideration is contemplated by the Legislature itself. On the express language of the last part of the definition, it becomes clear that where the payment of any part of the specified consideration as found in the agreement for transfer is deferred to a future date, then the value of such consideration payable after the said date mentioned on the execution agreement is, by statutory fiction, deemed to be discounted value of such deferred consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf by statutory rules. The statutory Rule 48-I of the Rules prescribed that rate of interest for determination of discounted value of consideration under Sub-clause (1) or Sub-clause (2) of Clause (b) of Section 269UA shall be 8 per cent per annum. Thus Section 269UA(b)(1)(i) refers to consideration for the transfer as specified in the agreement of transfer. The liability to pay or not to pay stamp duty and/or registration charges on conveyance is not within the sweep of definition of "apparent consideration". Consequently, the Appropriate Authority had no power, authority or jurisdiction to subtract incidence of stamp duty and registration

charges in this case to the tune of Rs. 24,97,550/- on the premise that in future if sale takes place, the petitioner would have been out of pocket to that extent. On such premise, such a deduction could not have been effected by the Appropriate Authority. The said deduction was absolutely unwarranted as found hereinabove on the canvass of statutory scheme of the Act.

19. The aforesaid question fell for consideration of the Gujarat High Court in case of Pradip Ramanlal Sheth Vs. Union of India and Others, , wherein it was held:

...The second part of the definition of "apparent consideration", therefore, rules out such deferment of any unascertained amount of consideration and contemplates only specified amount of consideration which is clearly fixed in the agreement but payment of which is deferred to a future date. We entirely concur with the aforesaid contention of Mr. Shah and hold that, for the purpose of the definition of the term "apparent consideration" only that part of the consideration is to be reckoned which is clearly fixed and ascertained in the agreement of sale itself and which is not likely to be ascertained and computed at a future date. Even on this ground, Clause 14 which does not indicate any specified amount cannot be treated to be forming part and parcel of the scheme of apparent consideration as envisaged by the agreement.

This conclusion of ours gets further strengthened if we look at Rule 48-I of the income Tax Rules. As noted by us earlier, before the sale is effect by the parties, they have to follow the procedure prescribed in Section 269UC(1) and have to furnish a statement to the Appropriate Authority in the prescribed form u/s 269UC(3) read with Section 269UC(1). The prescribed form is provided under Rule 48L which lays down that the statement to be furnished to the Appropriate Authority under Sub-section (3) of Section 269UC shall be in Form 37-I. When we turn to Form No. 37-I we find that the statement of transfer of the immovable property furnished u/s 269UC has to mention the total apparent consideration for the transfer of the property in words as well as in figures. It is easy to visualise that when such apparent consideration is to be mentioned in words as well as in figures by the concerned parties to the agreement to sell as per the aforesaid statutory provision, the parties have to mention the consideration in words as well as in figures on the date on which the property was agreed lo be transferred and that never contemplated a future contingency that had to take place as per Clause 14 when the sale deed was likely to be executed in the future after the entire gamut of Sections 269UC, 269UD and 269UE was undergone. It is, therefore, found that the relevant scheme contraindicates the contention of learned Counsel for the Revenue that the future cost of registration and stamp duty that the vendor had agreed to bear up to 50 per cent vis-a-vis the purchaser could be legally deducted from the specified apparent consideration for deciding the amount payable by the Central Government to the seller as per the relevant provisions. Consequently, point No. 2 will have to be answered in favour of the petitioner and against the respondents.

The aforesaid view of the Gujarat High Court was sought to be contested on

more than two occasions before the Apex Court but the said challenge was turned down by three Judges Bench in the case of Union of India and Others Vs. Kaumudini Narayan Dalal and Another, , the following manner:

The order under challenge in this appeal by the Revenue followed the earlier judgment of the same High Court in the case of Pradip Ramanlal Sheth Vs. Union of India and Others, , Learned Counsel for the Revenue states that the papers before us suggest that a SLP was preferred against that judgment but he has no instructions as to what happened thereafter. Learned Counsel for the respondents states that their enquiries with the Registry reveal that no appeal against that judgment was preferred by the Revenue.

If the Revenue did not accept the correctness of the judgment in the case of Pradip Ramanlal Sheth Vs. Union of India and Others, , it should have preferred an appeal there against and instructed counsel as to what the fate of that appeal was or why no appeal was filed. It is not open to the Revenue to accept that judgment in the case of the assessee in that case and challenge its correctness in the case of other assessees without just cause. For this reason, we decline to consider the correctness of the decision of the High Court in this matter and dismiss the civil appeal.

Also see Union of India Vs. Satish Panalal Shah, .

20. The learned Counsel for the respondents was also not in a position to controvert the above legal position. However, by way of preliminary objection he contended that since the amount of apparent consideration has been accepted without there being any protest, the petitioner is not entitled to claim any relief in the writ jurisdiction of this Court. The said argument needs outright rejection since the amount of apparent consideration was accepted pending disposal of the rectification application. Consequently, it cannot be said to be an acceptance without any protest.

21. Having overruled the preliminary objection on facts of this case and after having considered the scheme of Chapter XXC and provisions incorporated therein, we respectfully agree with the view taken by the Division Bench of Gujarat High Court in Pradip Ramanlal Sheth v. Union of India (supra) for answering the question framed hereinabove. Accordingly, we hold that so far as "apparent consideration" for the purpose of making payment is concerned, no discount or deduction could have been made from the consideration disclosed in the agreement of sale for stamp duty and registration charges. Thus, the deduction made in the sum of Rs. 24,97,550/- is not in accordance with law and to that extent the impugned order is liable to be quashed and set aside.

On Interest:

22. Having said so, the claim for interest at the rate of 18 per cent per annum claimed by the petitioner from 24th February, 1989 needs consideration.

23. As already found hereinabove. the respondents were not authorised by law to

deduct Rs. 24,97,550/- from the total amount payable to the petitioner by the Central Government, as such, the said deduction needs to be treated as unauthorised. If that is so, the liability to pay or refund to the petitioner the said amount, would at once arise. The petitioner was unlawfully deprived of the user of Rs. 24,97,550/- The said deprivation has to be compensated in terms of money by awarding suitable amount of interest. In our view, the petitioner shall be entitled for interest at the rate of 12 per cent per annum from 24th February, 1989 till the payment thereof as the impugned order passed by the Appropriate Authority effecting this deduction was found to be bad and illegal.

24. The impugned order dated 27th January, 1989 directing deduction of Rs. 24,97,550/- from the apparent consideration payable to the petitioner and reiteration thereof vide order dated 20th March, 1989 are set aside. We direct the respondents to pay additional amount of Rs. 24,97,550/- to the petitioner with interest at the rate of 12 per cent per annum from 24th February, 1989 till the amount is paid to the petitioner. The respondents shall make the aforesaid payment to the petitioner at the earliest, at any rate within 60 days from today.

In the result, the petition is allowed in terms of the above order. Accordingly, rule is made absolute with no order as to costs.