(2004) 02 BOM CK 0122

In the Bombay High Court

Case No : Writ Petition No. 1417 of 1994

Ranjit Dugal APPELLANT

Vs

Appropriate Authority and Others RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Income Tax Act, 1961 — Section 269UD

Citation : (2004) 188 CTR 422 : (2004) 270 ITR 520

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : Shobha Jagtiani, instructed by D.M. Harish and Co, for the Appellant; Asokan, instructed by T.C. Kaushik, for the Respondent

Final Decision : Allowed

Judgement

V.C. Daga, J.—These two petitions are directed against the common order passed by the Appropriate Authority, Ahmedabad, u/s 269UD(1) of the IT Act (''the Act'' for short) for compulsorily purchasing the piece and parcel of land at Mouje Aund, District Pune, bearing old plot No. 374/375 and new No. 228 and bearing old survey number and sub-division Nos. 3 to 55, 57, 58, 61 to 78, 135, 136 and new survey No. 74 admeasuring 1,000 sq. mtrs. in Sindh Co-op. Soc. Ltd. Aund, Pune (hereinafter referred to as suit property for short).

2. The basic ground of the challenge raised in both these petitions relates to the validity of the show-cause notices dt. 31st Jan., 1994 issued by the Appropriate Authority to both the petitioners calling upon them to show cause as to why their properties in question should not be purchased under Chapter XX-C of the Act. The show-cause notices referred to herein are incorporated at Exhibit ''H'' annexed to the petitions, the contents of which are identical. The same are reproduced hereinbelow :

"You have submitted Form No. 37-I on 1st Nov., 1993 for the property having description as per col. No. 7 of annexure to the form as follows :

Plot No. 228, Sind Co-op. Hsg. Soc, Ltd., Aund Rd., Pune-411007 (to the extent of 1,000 sq. mtrs. within ceiling limit).

The apparent consideration for the same has been declared Rs. 25,00,000.

You are requested to show cause as to why the property should not be purchased under the provisions of Chapter XX-C of the IT Act, 1961:

Your reply should reach this office latest by 14th Feb., 1994 at 3:00 p.m. positively by speed post, If you desire personal hearing, you may attend this office on 15th Feb., 1994 to 3.30 p.m."

3. The learned counsel appearing for the petitioners contends that the aforesaid show-cause notices impugned in these petitions are vague and contrary to the law laid down by the Supreme Court in the case of C.B. Gautam Vs. Union of India and Others, , followed by the Division Bench of this Court in the judgments delivered in the case of Mrs. Nirmal Laxminarayan Grover Vs. Appropriate Authority and Others, and Jagdish Electronics (India) Pvt. Ltd. and Another Vs. Appropriate Authority, Income Tax and Others, .

4. The learned counsel submits that both the show-cause notices neither disclose the reasons why the Appropriate Authority has reached to a prima facie or tentative conclusion that the transaction has been undervalued and that there has been an attempt to evade the tax nor do they disclose the material on the basis of which such a tentative conclusion has been reached by the Appropriate Authority.

5. The learned counsel further submits that identical show-cause notice was the subject-matter of judicial scrutiny in the case of Jagdish Electronics (India) (P) Ltd. (supra) and the same was quashed by the Division Bench of this Court holding it to be vague and defective as such in breach of principles of natural justice. It is also brought to our notice that the said judgment of the Division Bench of this Court in the case of Jagdish Electronics (India) (P) Ltd. (supra) has been affirmed by the apex Court in the case of Appropriate Authority of Income Tax Vs. Jagdish Electricians India P. Ltd. and Others, . Learned counsel for the petitioners thus submits that the impugned notices and the consequent orders directing the Central Government to purchase the properties under the provisions of Chapter XX-C of the Act are liable to be quashed and set aside.

6. In reply, the learned counsel appearing for the respondents tried to support the impugned notices and the orders, but faced with the Division Bench judgment affirmed by the apex Court in the case of Jagdish Electronics (India) (P) Ltd. (supra) wherein identical show-cause notice was held to be bad and illegal, could not take his arguments to its logical and. We have perused the judgment and the copies of the show-cause notices. The impugned show-cause notices are identical with that of the show-cause notice which was a subject-matter of judicial scrutiny in the case of Jagdish Electronics (I) Ltd. (supra) which was ultimately-quashed and set aside by the Division Bench of this Court and

affirmed by the apex Court. In this view of the matter, for the reasons recorded in the case of Jagdish Electronics (India) (P)''Ltd. (supra), we quash and set aside the show-cause notices and the consequent orders passed u/s 269UD(1) and hold them to be bad, illegal and in breach of principles of natural justice. Needless to say that with the disposal of the petitions, the interim orders in both petitions shall automatically come to an end.

7. In the result, we allow both these petitions and accordingly make the rule absolute in terms of prayer Clause (a), with no order as to costs.

