(1998) 11 MAD CK 0155

In the Madras High Court

Case No : Writ Petition No. 7072 of 1994 and W.M.P. No. 10903 of 1994

Sanchetileasing Company Ltd. APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 05-11-1998

Acts Referred:
Income Tax Act, 1961 — Section 281, 281(1)

Citation : (2000) 158 CTR 190

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : Shenbagavalli for Ashok Menon and K. Ramagopal, for the Appellant; S.V. Subramanian for C.V. Rajan, for the Respondent

Judgement

R. Jayasimha Babu, J.—The petitioners are purchasers of two different items of properties from a common vendor. They are aggrieved by the order of the Income Tax Officer who has declared their purchases as void by his order dated 7-4-1994, which concludes as under :

Considering all the above facts, section 281(1) of the Act, is clearly attracted in respect of the sales effected by the assessee on 6-3-1985, and 15-7-1987. I, therefore, treat the following sales of immovable properties effected by the assessee as "null and void" u/s 281(1) of Income Tax Act, 1961.

(I) Property (Residential House) at Old No. 27(New No. 68) Bunder Street, Madras, sold on 6th March, 1985 to M/s Sanchetty Leasing Co. Ltd., as per document No. 222/1985 of the Registrar, North Madras.

(II) Property at No. 8 (Old No. 85) Varadha Muthiappan Street, Madras, sold on 16th July, 1987 to Sri. C. Balan as per document No. 827/1987 of the Sub-Registrar Sowcarpet, Madras.

2. The petitioners are the purchasers of the two properties mentioned in the order of the Income Tax Officer. The assessee referred to therein is their common vendor.

3. As stated, this order was made in 1994, 9 years after the first sale and 7 years after the second sale. It is the case of the petitioners that the sale deeds in their favour have been duly registered and that such registration took place after the Income Tax clearance certificate had been issued by the revenue authorities and consequently, there was full and effective transfer of title over these properties to the petitioners. The sale so effected in their favour cannot be declared as ''null and void'' by the Income Tax Officer who according to them has no jurisdiction to do so. It is also the case of the petitioners that they have no knowledge whatsoever regarding the liability, if any, of their vendor for payment of Income Tax, They have stated that they are bona fide purchasers for value who have acted in accordance with law.

4. It is not necessary in this case to go into the question as to whether the reasons given by the Income Tax Officer are tenable or lacking in any substance. The revenue''s claim that a notice had been issued to the assessee before the sale under the relevant provisions of the Act and that the alienation made by the assessee subsequently was without the permission of the Tax Recovery Officer even if assumed to be correct the impugned order cannot be sustained.

5. Section 281(1) of the Act had been relied upon by the Income Tax Officer. That section declares certain transactions only as void. The section, however, does not vest the authority with the Income Tax Officer to make such a declaration.

6. Before a transaction involving immovable property can be declared as void, all the requirements of law must necessarily be satisfied. The fact that a statute provides for such a declaration being made, if the conditions mentioned in the statute are satisfied, does not imply that an officer exercising powers under the provisions of the statute can assume to himself the power in jurisdiction to declare what is otherwise a legally valid transaction as void. Adjudication is the function of the courts. Any declaration of transaction being void must be sought in the civil court. The Income Tax Officer moreover in this case is an interested party as it is in the interest of the revenue to make such a declaration and proceed to recover the vendor''s arrears of tax from such person.

7. The Supreme Court of India in its recent decision rendered in the case of TRO v. Gangadhar Viswanath Ranade (dead) (1998) 149 CTR 90 has held that if the department finds that the assessee has transferred a property to a third party with the intention to defraud the Revenue, the revenue will have to file a suit under rule 11(6) of Sch. II to the Income Tax Act to have the transfer declared as void u/s 281 of the Income Tax Act.

8. It is, therefore, clear that the Income Tax Officer had no jurisdiction to declare the transaction of sale to which the petitioners were parties as purchasers, as void. The impugned order, insofar as it affects the petitioners'' interest in the property is, therefore, set aside. The writ petitions are allowed accordingly. Consequently Writ Misc. Petns. Nos. 10903 and 26026 of 1994 are closed.