

(1994) 07 GUJ CK 0011
In the Gujarat High Court

Case No : Special Civil Application No's. 1342 and 2238 of 1994

Sanjay Chandrakant Raval and Dr. Chandrakant D. Raval and
Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-07-1994

Acts Referred:

Income Tax Act, 1961 — Section 269UA, 269UD, 269UF, 269UG

Citation : (1996) 219 ITR 748

Hon'ble Judges : Rajesh Balia, J;A.P. Ravani, J

Bench : Division Bench

Advocate : S.N. Soparkar, for the Appellant; M.J. Thakore, for R.P. Bhatt and Co., for the Respondent

Judgement

Rajesh Balia, J.—Both these petitions raised a common question. Hence, they are being decided by this common judgment. In Petition No. 1342 of 1994 the petitioner, Sanjay Chandrakant Raval, agreed to sell a parcel of land admeasuring 460 sq. yds. to Manibhadra Association for a consideration of Rs. 16 lakhs as disclosed in the agreement to sell, vide a document dated December 1, 1990. In Petition No. 2238 of 1994, the petitioner, Dr. Chandrakant D. Raval and Mrs. Kumudbala C. Raval, entered into an agreement with Manibhadra Association for sale of 460 sq. yds. of plot for a consideration of Rs. 16 lakhs.

2. In both the cases, on receipt of the statement in Form No. 37-I, the appropriate authority constituted u/s 269UD of Chapter XX-C of the Income Tax Act, made two separate orders in respect of both the agreements on February 20, 1991, for purchasing the properties specified in the two agreements, by the Central Government in terms of Section 269UD of the Income Tax Act.

3. While determining the consideration to be paid to the transferee, the appropriate authority decided to deduct two sums. In the first instance, it decided to deduct Rs. 49,008 out of the total consideration stated in the agreement in each case in terms of the provisions of Section 269UA for

determining the designated value of the apparent consideration as on the date of the agreement for transfer. The appropriate authority also decided to deduct a sum of Rs. 92,037 as 50 per cent of the stamp duty, registration fees chargeable on the apparent consideration of Rs. 16 lakhs in each case and directed the remainder to be paid to the transferors by the Government. The petitioners in both the cases have challenged the aforesaid two deductions made from the apparent consideration stated in the agreement for sale.

4. Firstly, it is contended by learned counsel for the petitioners that there cannot be any deduction on account of interest for arriving at the designated value of the apparent consideration as on the date of the agreement for sale, inasmuch as full consideration as stated in the agreement was to be paid to the transferor before the actual transfer was to take place and till then, possession of the property remained with the transferee. Therefore, the question of arriving at a designated value of the apparent consideration as on the date of the agreement for transfer was not at all a relevant consideration.

5. The second contention of learned counsel for the petitioner is that no deduction otherwise than the one provided under the Act or the Rules from the consideration as stated in the agreement is permissible. What is required to be paid to the transferor under the provisions of Chapter XX-C u/s 269UF is the amount equal to the amount of the apparent consideration. The term "apparent consideration" has been defined u/s 269UA(b) and the only adjustment of the apparent consideration to be made is regarding designated value of such consideration as on the date of the agreement for transfer by deducting such rate of interest as has been prescribed in respect of the amounts payable by the transferee after the date of such agreement for sale.

6. Learned counsel for the Revenue contests both the contentions and supports the decision of the appropriate authority. He contends that deduction on account of deferred payment after the date of the transfer by adopting the prescribed rate of interest is in accordance with the provisions of Section 269UA and that being a statutory provision, the appropriate authority has merely valued the same. Regarding the second contention, he contends that as the transferor has undertaken to bear 50 per cent. of the expenses of conveyance, namely, stamp duty and registration charges, the real consideration which was to reach the coffers of the transferor was only the consideration stated in the agreement less expenses to be incurred by the transferor.

7. We have carefully considered the rival contentions and are of the opinion that the petitions must succeed partly in respect of the second contention. So far as the first contention is concerned, the language of Section 269UA(b), the definition of apparent consideration, is clear in its terms and there is no ambiguity. The relevant part of the provision reads as under :

" (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."

8. According to us, where any part of the consideration referred to in the agreement for transfer is payable after the date of such agreement for transfer, the apparent consideration on the basis of Chapter XX-C has to be the discounted value on the date of the agreement for transfer by adopting such rate of interest as prescribed in this behalf and that is what has been done by the appropriate authority through impugned orders.

9. However, the second contention of learned counsel for the petitioner has force. Stamp duty and registration charges were payable only in the case, the provisions of Chapter XX-C were not invoked and the voluntary transfer was allowed to take place in its ordinary course. The property vests in the Central Government by virtue of the provisions of the statute on making of an order u/s 269UD and not as a result of any instrument of conveyance and is akin to compulsory acquisition. As no instrument of conveyance chargeable to stamp duty and requiring registration came into existence, the occasion for incurring such expenses simply does not arise. We are of the opinion that the expenses of the conveyance were to be borne by the transferor only in cases where they were required to be actually incurred and not otherwise. Where the property vested in the Central Government by virtue of the provisions of Chapter XX-C on making an order u/s 269UD and no expense was to be incurred for the purpose of conveying the property, no liability on account of conveyance expenses arises to be borne by the transferor which can result in reduction of real consideration. May be in a given case, if any expenses were to be incurred for conveyance and the transferor has undertaken to bear such expenses, he might have to pay at the time when exigency of incurring such expenses arises, but that does not affect the consideration that has to pass on from vendee to vendor as a result of the transfer. Even in such cases, stamp duty is payable on consideration named in the instrument and not on a sum reduced by expenses to be borne by the transferor. In this connection, it will not be out of place to make reference to Section 269UG which permits the appropriate authority to set off certain amounts against apparent consideration payable to the transferor. The enumeration of such set off u/s 269UG also does not include any such liability regarding stamp duty and registration charges, which a transferor may have undertaken to bear as part of conveyance expenses in connection with a

particular transaction. The set off is restricted to liability for any tax or any other sum remaining payable under the Income Tax Act, 1961, the Gift-tax Act, the Estate Duty Act, the Wealth-tax Act, or the Companies Act but no other liability on account of any tax is permissible to be set off by the appropriate authority out of consideration payable to the transferor.

10. Moreover, the liability in respect of stamp duty arises only on the execution of the requisite deed of conveyance and registration charges become payable only when the document is presented for registration before the appropriate authority. No such liability comes into existence merely on the execution of the agreement to sell. In the event, no such document is required to be executed and registered, no occasion for incurring such expenses arises. In a case where the property is pre-emptively purchased by the Central Government in exercise of the powers under Chapter XX-C by the appropriate authority and the property vests in the Central Government by virtue of the statutory provision as a result of an order made u/s 269UD, the law does not require the execution and registration of any sale deed, that may necessitate payment of stamp duty or incurring of registration charges on the hypothesis that if a sale deed had been executed and registered, had compulsory purchase not taken place, the amount of apparent consideration cannot be reduced by any such hypothetical sum. The consideration envisaged to be paid to the transferor is "apparent consideration" as defined in the Act and not the "net amount" that will be left with the vendor after incurring the expenses of conveyance.

11. Apart from that there is no provision under the statute for deducting any sum from the apparent consideration except the adjustment to be made for arriving at the discounted value of the apparent consideration, which alone is to be treated as consideration u/s 269UF and no other adjustment is permissible on general principles also. In our aforesaid conclusion, we are fortified by a Division bench decision of this court in Pradip Ramanlal Sheth Vs. Union of India and Others, where identical questions were raised before this court. While the Division Bench held that deferred payment is to be discounted in terms of Section 269UA(b)(i) read with Rule 48-I, deductions on account of registration charges, stamp duty and other expenses to be made by the vendor from the said consideration in the agreement does not justify discounting it. We are in respectful agreement.

12. In the result, these petitions are allowed to the extent as indicated above. Rule is partly made absolute. The orders at annexure "B" in each petition are quashed and set aside to the extent it has been directed to deduct Rs. 92,037 with 12 per cent. interest from April 1, 1991, till the amount is actually paid to the petitioners. The respondents shall make the aforesaid payment by September 30, 1994. Rule made absolute to the aforesaid extent with no order as to costs.