

(2019) 04 CAL CK 0074

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 17461 (W) Of 2018

Sanjib Das

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 24-04-2019

Acts Referred:

Income-Tax Act, 1961 — Section 4, 5, 6(6), 10, 11, 12, 13, 14, 14A, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43D, 80A(1), 80B(5), 80B, 80C, 80D, 80E, 80F, 80G, 80H, 80I, 80J, 80K, 80L, 80M, 80N, 80O, 80P, 80Q, 80R, 80S, 80T, 80U

Citation : (2019) 04 CAL CK 0074

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Sandip Kumar Das, Amit Choudhury, Prasenjit Basu, Parikshit Basu, Sakhsa Sen, Amritalal Chatterjee

Final Decision : Dismissed

Judgement

Shampa Sarkar, J

1. This writ petition has been filed challenging the cancellation of the application of the petitioner for allotment of one MIG-II flat in AVIDIPTA-Phase II.

2. The facts of the case are that the West Bengal Housing Board (hereinafter referred to as the Board) was the exclusive owner of a land measuring 12.67 acres in Mouza Barakhola. The Board was directed by the State Government to implement a housing project there upon for different income groups of the public, in accordance with the policy of the State Government. On 8th July, 2009 the Board executed a registered agreement as well as a registered Power of Attorney by which the Bengal Peerless Housing Development Company Limited (hereinafter referred to as the said company) was appointed as the Board's lawful attorney and agent and was authorized to maintain, manage and develop the said land by implementing a housing project called, "AVIDIPTA" Housing Complex, to take all steps including defending all litigations in connection there with and to sell all the flats in the said housing project to the general public for

and on behalf of the Board. On 3rd June, 2017, the said company, published an advertisement inviting applications from the general public who were required to purchase a Brochure containing the General Terms and Conditions (in short 'GTC') for allotment of LIG and MIG type of flat in Avidipta Housing Complex Phase-II. Clause 8 of the GTC laid down the eligibility criteria for making an application for LIG or MIG flats.

3. On 17th July, 2017 the writ petitioner submitted his application form and the initial deposit of Rs.3,00,000/- for allotment of a MIG-II flat in the said complex. With his application the writ petitioner submitted his balance sheet, profit and loss account and income tax return for the Financial Year 2015-16 corresponding to Assessment Year 2016-17. By a letter dated 17th January, 2018 the Respondent no.4 duly informed the writ petitioner that his application was rejected on the ground that the financial statements and income tax return of the petitioner and his wife for the Financial year 2016-17 corresponding to Assessment year 2017-18 had not been submitted as was the requirement in the GTC. The deposit money of Rs.3,00,000/- was refunded to the bank account of the petitioner which the writ petitioner had admittedly received.

4. Subsequently, the writ petitioner went to the office of the respondent no.3 and 4 for further consideration of his application and the said respondents asked the writ petitioner to produce and submit the income tax return, profit and loss account, and balance sheet, for the Financial Year 2016-17, corresponding to the Assessment Year 2017-18 of the petitioner and also his wife as per the requirement of the GTC. The writ petitioner submitted the same, but the order of cancellation dated January 17, 2018 was not revoked.

5. In this writ petition, the petitioner has prayed that the cancellation letter dated January 17, 2018 issued by the Chief Executive Officer of the said company as also the letters dated January 18, 2018, January 19, 2018 and March 27, 2018 issued by the representatives of the said company reiterating the stand of the respondents be quashed and set aside and a flat be allotted to him.

6. Mr. Sandip Kumar Das, learned Advocate appearing on behalf of the petitioner submitted that the petitioner was eligible for allotment of a MIG flat in terms of clause 8 and 9 of the GTC and his application could not be rejected on the ground that the income tax return for the Financial Year 2016-17 corresponding to Assessment Year 2017-18 had not been filed. It was submitted that the income tax authorities had extended the date of filing of the return for the Financial Year 2016-17 upto March 31, 2018. Taking advantage of such extension the petitioner and his wife had filed their return for the Financial Year 2016-17 in January, 2018 and thus could not submit those financial statements and return along with the application. According to him, the ground for rejection of the application of the petitioner was arbitrary. As the assesses were allowed to file their income tax returns within March 31, 2018, the petitioner and his wife had not filed their returns before January 2018 and thus could not produce the same with the application, on 17th July, 2017.

7. Next, pointing to the ground of rejection as stated in the affidavit-in-opposition by the respondents it was contended on behalf of the petitioner that while calculating the gross monthly family income, the total income as reflected in the financial statements and the income tax return should be taken into account and not the gross total income. According to the learned Advocate for the petitioner the total income in the financial documents of an assessee was computed for the purpose of payment of income tax and such taxable income of the petitioner and his wife should be taken into consideration for the purpose of computing the gross monthly family income under clause 8(d) of the GTC, in order to ascertain whether the petitioner would fall within the middle income group.

8. Mr. Prasenjit Basu, learned Advocate appearing on behalf of the respondent Nos.2 to 4 submitted that the application of the petitioner for allotment of a MIG-II flat in AVIDIPTA Phase-II was at first rejected on the ground that the petitioner could not submit the papers relating to his income tax return and income expenditure statements for the Financial Year 2016-17 corresponding to Assessment Year 2017-18 as required under Clause 8(e)(iii) of the GTC but, later it was found that the petitioner's gross monthly family income had exceeded the prescribed slab. Mr. Basu drew the attention of the court to the provision of clause 8 of the GTC. According to him the petitioner was given a chance by the respondents to file the financial documents, namely, the balance sheet, profit and loss account and income tax return for the Assessment Year 2017-18, corresponding to the Financial Year 2016-17 of the petitioner and his wife even after the issuance of the letter of cancellation. He relied on the affidavit-in-opposition filed by the respondents wherein, it has been categorically stated that the gross total income as reflected in the income tax return and the financial statements of the petitioner and his wife for the Financial Year 2016-17 showed that their combined gross monthly family income was more than Rs.80,000/- . Mr. Basu submitted that in order to be eligible for a flat in Tower Gold MIG-II having a Standard Built Up Area from 901 sq ft. to 1100 sq ft., the gross monthly family income of the applicant should be between Rs.50,001/- to Rs.80,000/-.

9. I have heard the parties. The short point involved in the writ petition is whether the rejection of the petitioner's application for allotment of a MIG II flat in Tower Gold of Avidipta Phase II complex by the respondents was justified on the ground that the gross monthly family income of the petitioner for the Financial Year 2016-17, that is, the financial year immediately preceding the application was above the prescribed slab of Rs.50,001/- to 80,000/-.

10. Eligibility criteria for allotment of the flat as stated in the GTC is as follows:-

"8. ELIGIBILITY CRITERIA

a) An adult Indian citizen residing in India can submit only one application singly or jointly for a particular category under this project. Joint application is permitted only by the members of the same family. "Family" means husband,

wife, minor son and daughter and unmarried adult daughter (wholly dependent on the parents). In determining the 'Monthly Family Income' the decision of BPHDCL shall be final and binding.

b) Only one member of a family can apply for a flat in either of Tower "SILVER" or "GOLD".

c)

d) The gross monthly family income of the applicant(s) should be within the range stated below:

For Flat in Tower Silver (For LIG): upto Rs.30,000/-

For Flat in Tower Gold (for MIG II) having Standard Built Up Area from 901 sq ft. to 1100 sq ft: between Rs.50,001/- to Rs.80,000/-

The gross monthly income of an applicant shall include income of other member(s) of his/her family and income eligibility will be determined accordingly. "Gross Family Income" shall mean the aggregate family income of all family members of the Applicant(s) as per the definition of 'family' stated herein.

e) The applicant either single or jointly shall have to submit valid documentary evidence of his/her/their Gross Income, which shall include the following documents.

(i).....

(ii).....

(iii) For Self-employed: who are Income Tax Assesses Income and Expenditure/ profit and Loss Account and Balance Sheet for the immediately preceding financial year duly certified by a Practicing Chartered Accountant along with documentary evidence of the Gross Income and photocopy of acknowledgement from the Income Tax Department CPC, evidencing receipt of Income Tax Return for the immediately preceding Financial Year of Application."

11. Considering the eligibility criteria, it was mandatory that the income of the petitioner and his wife were required to be added up in order to arrive at the gross monthly family income, inasmuch as, wife was included in the definition of family. The gross monthly family income as per the said criteria would mean the aggregate family income of all the family members of the applicant. In this case, the petitioner and his wife were the earning members of the family. It further appears from the said clause that the gross monthly family income of the applicants for a MIG II flat in Tower Gold should be between Rs.50,001/- to Rs.80,000/-. In this case, even if the petitioner himself was the applicant his wife's gross income was required to be added up in order to compute the gross monthly family income. The next question to be answered is whether the respondents rightly took into account the gross total income of the petitioner and his wife for the financial Year 2016-17 corresponding to the Assessment Year

2017-18 in order to calculate the gross monthly family income.

12. 'Gross Income' has been defined in Black's Law Dictionary, 9th Edition, as the total income from all sources before deductions, exemptions, or other tax reductions. Whereas, net income has been defined as the total income from all sources minus deductions, exemptions, and other tax reductions. Taxable income has been defined as the gross income minus all allowable deductions and exemptions.

13. In this case, the GTC specified that for self employed persons income expenditure statements, profits and loss account and balance sheets of the immediately preceding financial year should be submitted before the authorities for proof of income, which means that the gross total monthly income of the family would be calculated as per the provisions of the Income Tax Act, 1961 (hereinafter referred to as the said Act) and as reflected in the books of accounts of the assessee. As the advertisement was published on 3rd June, 2017, the immediately preceding financial year would mean Financial Year 2016-2017 corresponding to Assessment Year 2017-2018.

14. As per the general dictionary meaning mentioned hereinabove gross income would include total income from all sources before allowing any deductions, exemptions, or tax reductions. Section 80B (5) of the Income Tax Act defines gross total income. Section 80B (5) is quoted below:-

"80B:- Definitions:-

5. "gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter."

15. Chapter II of the said Act provides for the Basis of Charge. Section 4 deals with the charge of income tax. Section 4 of the said Act is quoted below:-

"4. Charge of income-tax- (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and [subject to the provisions (including provisions for the levy of additional income-tax) of, this Act] in respect of the total income of the previous year of every person.

Provided that where by virtue of any provision of this Act, income-tax is to be charged in respect of the income of a period other than the previous year, income-tax be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act."

16. Section 5 of the said Act lays down the scope of total income. Section 5 of the said Act is quoted below:-

"5. Scope of total income-(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which-

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year; or

(c) accrues or arises to him outside India during such year:

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which-

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1. - Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

Explanation 2. - For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India."

17. Sections 10 to 13 under Chapter III of the said Act, provide that in computing the total income certain categories of income would not be included in the total income. Chapter IV of the said Act deals with computation of total income. Section 14 provides the method for the computation of total income. Section 14 is quoted herein below:-

"Head of income:- Save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income:-

A. Salaries

B.

- C. Income from house property.
- D. Profits and gains of business or profession.
- E. Capital gains.
- F. Income from other sources."

18. Section 14A provides that expenditure incurred in relation to earning such income would not to be included in the total income. This means that in case of self-employed/business persons like the petitioner and his wife, the expenditure incurred by them for business purposes will not be included in their gross total income. The petitioners fall under income head "D" of Heads of Income under Section 14 of the said Act. Section 28 of the said Act provides for the income which would be chargeable to income-tax under the head of profits and gains of business or profession. Section 29 of the said Act provides that the income from profit and gain of business or profession should be computed in accordance with the provisions contained in sections 30 to 43D.

19. Coming to the Income Tax Returns for the Assessment Year 2017-18 corresponding to Financial Year 2016-2017 the gross total income of the petitioner's wife was Rs. 3,51,913/- and the gross total income of the petitioner was Rs.7,28,460/-.

20. Clause 8(e) (iii) of the GTC required the petitioner to submit the financial statements and income tax returns for the Financial Year 2016-2017, that is, the financial year immediately preceding the date of application. The relevant portion is quoted below:

"iii) For Self-Employed:who are Income Tax Assesses Income and Expenditure/ Profit and Loss Account and Balance Sheet for the immediately preceding financial year duly certified by a Practicing Chartered Accountant along with documentary evidence of the Gross Income and photocopy of acknowledgement from the Income Tax Department CPC, evidencing receipt of Income Tax Return for the immediately preceding Financial Year of Application."

The gross monthly family income of the petitioner and his wife was approximately Rs.90,031.08/- for the Financial year 2016-2017, corresponding to the Assessment year 2017-2018, and as such, the respondents rightly contended that the petitioner's gross monthly family income was above the slab, that is, Rs. 50,001/- to 80,000/-

21. It is seen from the scheme of the Income Tax Act that chapter VIA provides for the tax deduction which should be allowed before computing the total income or the taxable income. Section 5 provides that the total income of any person would include all income from whatever sources derived. Section 10 provides that certain income should not be included in total income and sections 28 and 29 provide how the total income should be computed in case of income from business and profession. In this case, the gross total income as per its definition

under Section 80B(5) was arrived at after calculating the income of the petitioner and his wife as per Sections 30 to 43D of the said Act , that is, after allowing them all exemptions and deductions of the expenses incurred in the course of business while earning the said gross total income, and the calculations are available in the financial statements filed by the petitioner. Thereafter, applying the deductions under chapter VIA their net income or total income or the taxable income was arrived at. Section 80A(1) of the said Act provides that in computing total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of the said chapter, the deductions specified in sections 80C to 80U. This provision makes it amply clear that the gross total income of assessee minus the deductions under chapter VIA was the total taxable income of the assessee. Section 80B of the said Act defines gross total income to mean the total income computed in accordance with the provisions of the said Act before making any deduction in that chapter. In the instant case a harmonious reading of the provisions of sections 80A, 80B and sections 5, 10, 14, 28 and 29, would make it clear that the gross total income could not be the same as the total income of an assessee. The total income was arrived at in order to assess the taxable income of assessee and the taxable income multiplied by the rate of income tax would denote the income tax liability of the assessee. In this case, the gross total income of the petitioner's family was arrived at after calculating the income of the petitioner and his wife as per Section 29 of the said Act. The gross monthly family income of the petitioner and his wife calculated as per the said Act after allowing all the exemptions, deductions and allowable expenses incurred while earning the said income was more than the slab prescribed in Clause 8(d) of the GTC. The deductions under chapter VIA relate to investments made by the assessee from the gross total income for the purposes of saving the income tax liability. Such investments are made from the gross total income of the assessee for tax deductions and as such the submission of the petitioner that the total taxable income should be taken into account in order to arrive at the gross monthly family income of the petitioner is not acceptable. Tax liability will vary with the amount of investment, whereas, the gross income will be calculated as per the Income Tax Act. I hold that as per the GTC the respondents rightly took into account the gross total income of the petitioner and his wife and not their total income or taxable income in order to arrive at the conclusion that the gross monthly family income of the petitioner was above the ceiling limit, that is, above the slab of Rs.50, 001/- to 80, 000/- as prescribed in the GTC.

22. The writ petition is dismissed. There shall be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for be given to the parties on priority basis.