(1994) 04 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application No. 3129 of 1994

Smt. Shantaben Ratilal Patel — APPELLANT

Vs

Appropriate Authority — RESPONDENT

Date of Decision : 24-04-1994

Acts Referred:
Income Tax Act, 1961 — Section 230A(1), 269UA(b), 269UA(b)(1), 269UC, 269UD(1)

Citation : (1995) 79 TAXMAN 41

Hon'ble Judges : M.B. Shah, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : J.P. Shah, for the Appellant; B.J. Shelat, for the Respondent

Final Decision : Allowed

Judgement

M.B. Shah, J.—Petitioner Nos. 1 to 5 were the co-owners of final plot No. 718 in T.P. Scheme No. 28, admeasuring 834 sq. mtrs. (997 sq. yds.) (''said property''). They purchased the land by registered sale deed dated 24-7-1985 for a consideration of Rs. 6,13,384 (at the rate of Rs. 615 per sq. yard). After purchase of the land, they constructed a super-structure specially suited to automobile business in which their husbands were interested and who were doing business at Anand. However, the husbands of the petitioners were not interested in developing their business at Ahmedabad. On 20-10-1993, petitioner Nos. 1 to 5 entered into a written agreement of sale with petitioner No. 6, which is a public limited company, for a consideration of Rs. 64 lakhs in respect of the said property. Before that, the said property was got evaluated through a Government Approved Valuer who valued it at Rs. 62,93,000.

The petitioners submitted Form No. 37-1 on 27-10-1993. In the said form, it was specifically mentioned that Auto Parts Sales & Service were the tenants in the said property.

Thereafter, the transferee (petitioner No. 6) received a notice dated 4-1-1994 asking it to show cause as to why the said property should not be purchased under the provisions of Chapter XX-C of the income tax Act, 1961 (''the Act''). Petitioner No. 6 replied to the said show-cause notice by its letter dated 7-1-1994 stating, inter alia, that it paid Rs. 4 lakhs more than the market price because its principal, Telco, desired that they should have a separate show room for Tata cars at Ahmedabad and if the said property is purchased, the time for constructing a new building can be saved and the business could be started immediately and that a further sum of Rs. 5 or 6 lakhs would be required to be spent in modifying the building for its requirements, as the building was constructed for Fiat cars, which is smaller in size as compared to Tata Estate and Tata Sierra cars. It was also pointed out that the property is situated in the residential zone and there are no comparable sale instances.

In spite of the above stated reply, the petitioner No. 6 received an adverse order dated 27-1-1994 (Annexure ''G''). In the order, it was observed that the appropriate authority is satisfied that the said property is fit for preemptive purchase u/s 269UD(1) of the Act because the apparent consideration has been understated by more than 15 per cent. Hence, the appropriate authority ordered to purchase the said property for a net consideration of Rs. 58,99,581. That order is challenged in the present petition.

2. Mr. Shah, the learned advocate for the petitioners, vehemently submitted that-

(i) the impugned order is illegal because the show-cause notice issued by the appropriate authority is absolutely vague and in substance is no notice except an empty formality;

(ii) neither petitioner Nos. 2 to 5 nor the tenants were given any notice;

(iii) the market value arrived at by the appropriate authority is also on the face of it illegal and without appreciating the relevant factors;

(iv) the finding that there is difference of more than 15 percent between the market price and the apparent consideration is patently wrong, because the apparent consideration as mentioned in the agreement to sell is Rs. 64 lakhs and the value of the property as arrived at by the appropriate authority is Rs. 73,39,800. He contended that assuming that Rs. 73,39,800 is the market value of the property as determined by the appropriate authority, yet the sale consideration of Rs. 64 lakhs is within the permissible bracket. He pointed out that, if Rs. 73,39,800 are reduced by 15 per cent, then it comes to Rs. 62,38,830. Admittedly, it is less -than Rs. 64 lakhs or Rs. 62,67,581. He further submitted that the appropriate authority ought not to have deducted Rs. 3,68,000 towards stamp duty, registration charges, etc., for arriving at the apparent consideration. For this purpose, he relied upon the decision of this Court in the case of Pradip Ramanlal Sheth Vs. Union of India and Others, .

3. At this stage, we may state that except for the last contention, other contentions are not required to be dealt with in the present proceeding.

4. In paragraph 4 of the order (Annexure ''G''), the appropriate authority arrived

at the conclusion that the building was constructed in 1985-86, the depreciated value of the building comes to Rs. 50,48,300 and the total value of the land comes to Rs. 22,93,500 (834 X 2750 = 22,93,500). The appropriate authority held that the total value of the land and building comes to Rs. 73,39,800 (if we deduct 15 percent from that amount, the amount would be Rs. 62,38,830).

5. It is not disputed that as per the terms of the agreement, the apparent consideration for sale of the said property is Rs. 64 lakhs. The purchasers have paid Rs. 12,80,000 on the date of execution of the agreement to sell. It was also agreed that the remaining amount of Rs. 51,20,000 would be paid to the vendors by the purchasers within 15 days from the date of receipt of NOC as provided u/s 269UC and certificate u/s 230A(1) of the Act, whichever is later, from the appropriate authority and on execution and registration of sale deed and at the time of handing over actual physical possession of the said property. In the agreement to sell it is also mentioned in clause 13 that the stamp duty and registration fee only in respect of the documents to be executed by the vendors in favour of the purchaser shall be borne by the vendors and the purchaser in equal proportion while expenses for obtaining NOC and certificate under sections 269UC and 230A(1) and professional fee shall be borne and paid by the vendors alone.

6. Because of the aforesaid terms of the agreement to sell, the appropriate authority arrived at the conclusion that Rs. 51,20,000 were payable on receipt of NOC and that the NOC is expected to be issued by 31-1-1994. Hence, as per the agreement, there was deferred payment for a period of 180 days and keeping in view section 269UA(b), read with rule 48L of the income tax Rules, 1962, the amount of discount calculated at 8 percent per annum works out to Rs. 1,32,419 and the said amount is required to be deducted from the apparent consideration payable. Prima facie, the legality of the said exercise requires some consideration but in the present petition this question is not required to be dealt with because stamp duty and registration fees cannot be excluded for arriving at the apparent consideration.

7. The relevant part of section 269UA(b), which defines apparent consideration, is 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;

(ii) ****

(iii) ****

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.

Considering the definition given above, the Legislature has provided for discounting value of market price mentioned in the agreement to sell in those cases where the whole or any part of consideration for transfer is payable on any date or dates falling after the date of such agreement for transfer. There is no provision either in the Act or in the Rules which provides that the stamp duty or registration fee or other expenses which are required to be borne by the vendor should be deducted from that apparent consideration specified in the agreement to sell for arriving at the apparent consideration. Further, there is no provision or rule which provides that the value of the consideration specified in the agreement to sell is to be again discounted by deducting the cost for executing the registered sale deed. The other provision which provides for deduction from the apparent consideration is section 269UF(2). Sub-section (1) of section 269UF provides that where an order for the purchase of any immovable property by the Central Government is passed, it shall pay, by way of consideration for such purchase, an amount equal to the amount of the apparent consideration. This would also indicate that the amount which is required to be taken into consideration is the amount of apparent consideration defined u/s 269UA(b). Sub-section (2) of section 269UF further provides that after agreement for transfer of immovable property, if the property has been damaged otherwise than as a result of normal wear and tear, the amount of the consideration payable under that sub-section shall be reduced by such sum as the appropriate authority, for reasons to be recorded in writing, may by order determine. Therefore, the appropriate authority is given power to reduce the apparent consideration only as provided u/s 269UA(b) (1) and 269UF(2). There is no other power for reducing the apparent consideration. Hence, in our view, it is not open to the appropriate authority to reduce the apparent consideration by holding that as the vendor is required to pay for the stamp duty and charges for registration of the document, that amount of apparent consideration should be reduced.

8. Further, this question is also decided by this Court in the case of Pradip Ramanlal Sheth (supra) wherein the Court has held that the appropriate authority had no power, authority or jurisdiction to deduct the amount of registration fee and stamp duty from the total amount of apparent consideration on the supposition that, in future, if the sale had taken place, the petitioner would have been out of pocket to that extent.

9. In the case of C.B. Gautam Vs. Union of India and Others, , the Supreme Court held, on the basis of the affidavit in reply filed on behalf of the Central Government, that provision of Chapter XX-C can be resorted to only where there

is a significant under valuation of the property to the extent of 15 percent or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15 percent or more. In the present case it cannot be said that there is undervaluation of the property to the extent of 15 percent or more. Further, as observed by the Supreme Court in the aforesaid case, the very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell leads to the conclusion that, before such an imputation can be made against them, they must be given an opportunity to show cause that the undervaluation in the agreement for sale, was not with a view to avoiding tax. This aspect is also required to be kept in mind by the appropriate authority before passing an order for pre-emptive purchase.

10. In view of the aforesaid discussion, it can be held that the appropriate authority was not justified in passing the order for pre-emptive purchase u/s 269UD(1) because the apparent consideration is not less than 15 percent of Rs. 73,39,800 which is the market value fixed by the appropriate authority. If that market price is reduced by 15 per cent, it comes to Rs. 62,30,880 which is admittedly less than Rs. 64 lakhs. Further, even discounting it by Rs. 1,32,419 on the basis of proviso to section 269UA(b), as determined by the appropriate authority, it works out to Rs. 62,67,518 which is more than Rs. 62,38,870. In our view, there was no justifiable reason for reducing the amount of Rs. 62,67,581 by Rs. 3,68,000 towards stamp duty and registration charges. In the result, this petition is allowed. The impugned order (Annexure ''C'') is quashed and set aside. The appropriate authority is directed to issue a certificate in terms of section 269UD(1) in favour of the petitioners on or before 15-6-1994. Rule made absolute to the aforesaid extent with no order as to costs.

