(2009) 08 BOM CK 0130

In the Bombay High Court

Suleman Usman Chamadia APPELLANT

Vs

Appropriate Authority and Others RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Income Tax Act, 1961 — Section 269UD

Citation : (2009) 08 BOM CK 0130

Hon'ble Judges : F.I. Rebello, J;D.G. Karnik, J

Bench : Division Bench

Judgement

D.G. Karnik, J.—This petition is directed against the order dated 24th June, 1994 passed by the Appropriate Authority (respondent No. 1) u/s 269UD(1) of the Income Tax Act, 1961 (for short "the Income Tax Act").

2. The petitioner is the owner of the land, together with the structures standing thereon, bearing survey No. 140-A, Hissa No. 30 of village Vile Parle and bearing CTS No. 1951, original plot No. 508 and final plot No. 501 of the Town Planning Scheme No. V of Vile Parle (East), Bombay (hereinafter referred to as "the said property"). By an agreement of development dated 17th March, 1994, the petitioner agreed to transfer the development rights of the said property to the respondent No. 6 for consideration of Rs. 66,00,000 to be calculated @ Rs. 1,500 per sq. ft. of the saleable area of the building to be constructed. The petitioner then filed these necessary statement in Form No. 37-1 prescribed under Rule 48L of the IT Rules to the Appropriate Authority. By an order dated 24-6-1994, the respondent No. 1 passed an order directing purchase of the said property by the Central Government u/s 269UD(1) of the Income Tax Act. That order is impugned in this petition.

3. The respondent No. 1 in its order noted that the total consideration of the said property was Rs. 66,00,000; the area of the property as mentioned in the agreement was 339 sq. mtrs. the area as mentioned in Form No. 37-1 was 439.8 sq. mtrs. and the area mentioned in the property register card was 436.8 sq. mtrs. The respondent No. 1, therefore, took the area of the property to be 436.8.

sq. mtrs. and held that the property was agreed to be sold @ Rs. 1,500 per sq. ft. of the saleable area. The Appropriate Authority then held that the fair market rate was Rs. 2,000 per sq. ft. and the rate of Rs. 1,500 per sq. ft. of saleable area was less than the market rate.

4. For determining the market rate, the respondent No. 1 relied upon the three sale instances, details of which were already informed to the petitioner by a show-cause notice dated 17-3-1995. The petitioner objected to the sale instances inter alia on the ground that they were not comparable. Objections of the petitioner are summarised by the respondent No. 1 in para 3(ii) of its order and they are:

(i) The first sale instance was in respect of a commercial property while the said property was a residential property and to be exploited for residential use. The first sale instance was therefore, not comparable.

(ii) The second sale instance was in respect of a land situated at a prime location at Vile Parle (East) and that land was not comparable with the said property.

(iii) The third sale instance was also objected to on the ground that it was of a land having a better location.

5. The objections of the petitioner were overruled by the respondent No. 1. We notice that the reasons given by the respondent No. 1 are scanty and show non-application of mind. Specific objection of the petitioner that the sale instance No. 1 was in respect of a commercial property has not been dealt with. The objection regarding other two sale instances that they are situated at better locations as against the said property was situated in a bye lane has not been dealt with at all by the respondent No. 1. Before passing an order for acquisition, it is incumbent on the respondent No. 1 to arrive at the market value of the property.

6. Counsel for the petitioner handed in the calculations of the sale price of three sale instances relied upon by the respondents. The calculations are made on the basis of the data supplied to him by the respondents themselves. It shows that the rate for sale instance No. 1 was Rs. 2,218.93 per sq. ft. the rate for sale instance No. 2 was Rs. 154.72 per sq. ft. and the rate for sale instance No. 3 was Rs. 955.37 per sq. ft. It shows wide difference in the rate. Even if the 2nd sale instance is ignored, 1st and 3rd sale instances show a wide disparity. This is obviously because the properties were situated in different localities having different potentials. Neither have the respondents placed material before us to show that the calculation arrived at by the petitioner based on the documents in their possession cannot be relied upon. We are therefore satisfied that the finding recorded by the Appropriate Authority that the price of the said property at the relevant time was Rs. 2,000 per sq. ft. of saleable area, is not based upon the proper scrutiny of the materials supported by facts or the sale instances relied upon by it, and is reached without proper application of mind.

7. The impugned order dated 24th June, 1994 is therefore, required to be set

aside. The matter is remanded back to the respondent No. 1 for determining the issue afresh in accordance with law. The entire exercise to be completed within three months. The respondents, if they are relying upon any agreement, to make available to the petitioner a copy of the agreement in order to enable him to meet the contents of the same.

8. Rule is made absolute to the extent indicated above.