

(2004) 05 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 2313 of 1990 5 May 2004

Udaipur Distilleries Co. Ltd.

APPELLANT

Vs

O.D. Mohindra

RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Income Tax Act, 1961 — Section 269UD(1)

Citation : (2004) 140 TAXMAN 267

Hon'ble Judges : R.M. Lodna, J;J.P. Devadhar, J

Bench : Full Bench

Advocate : J.D. Mistry, for the Petitioner R. Asokan, for the Appellant;

Judgement

J.P. Devadhar, J.

The compulsory purchase order passed by the Appropriate Authority under chapter XXC of the Income Tax Act, 1961 has been challenged in this petition mainly on the following grounds : Firstly, it is contended that the order passed u/s 269UD(1) of the Income Tax Act without giving an opportunity of hearing to the petitioner is bad in law. Secondly, it is contended that the order passed u/s 269UD(1) of the Income Tax Act on 22-2-1990 declining to rectify the wrongful deduction of Rs. 5,06,200 from the total consideration is bad in law. Thirdly, it is contended that in view of the failure on the part of the Central Government to pay the said consideration amount of Rs. 5,06,200 within the time stipulated under the Act, the order passed u/s 269UD(1) of the Act stands abrogated and the immovable property purchased u/s 269UD(1) stands re-vested in the petitioner as per section 269UD(1) of the Act. Accordingly, it is submitted that the orders passed under chapter XXC of the Act which are impugned in the petition are liable to be quashed and set aside.

2. The petitioner is a company incorporated under the Companies Act, 1956. The petitioner inter alia owned a plot of land admeasuring 1446 square metres together with a structure consisting of ground, first and second floor situated at

Andheri-Kurla Road, Sakinaka, Bombay 400 072. By an agreement dated 24-6-1989 the petitioner had agreed to sell the aforesaid property to H. Parson Private Limited (hereinafter referred to as the purchaser) at a total consideration of Rs. 74,00,000. On execution of the said agreement, the petitioner had received a sum of Rs. 4,00,000 from the purchaser and the balance amount of Rs. 70,00,000 was to be paid by the purchaser on completion of the sale. As per the agreement, the purchase was to be effected within one month from the date of receiving no objection certificate from the Appropriate Authority. Under the said agreement pocket expenses, stamp duty and registration fees were to be borne by the petitioner and the purchaser in equal shares.

3. On 30-6-1989 the petitioner and the purchaser filed duly executed form 37-1 before the Appropriate Authority. Without giving an opportunity of being heard, an order was passed by the Appropriate Authority u/s 269UD(1) of the Income Tax Act on 29-8-1989 stating therein that the aforesaid property belonging to the petitioner was fit for purchase by the Central Government. Out of the total consideration of Rs. 74,00,000, payment of the sum of Rs. 70,00,000 being deferred for a period of three months from the date of the agreement, in terms of section 269UA(b) read with rule 48-1 of the Income Tax Rules, 1962, the value discounted for three months was worked out at Rs. 1,33,700 and the same was deducted from the total consideration. Similarly, a sum of Rs. 3,72,500 being half share of stamp duty and registration charges has been deducted from the total consideration. Thus, by the said order, out of the total consideration of Rs. 74,00,000 a sum of Rs. 5,06,200 (Rs. 1,33,700 towards discounting charges + Rs. 3,72,500 towards half share of stamp duty and registration charges) has been deducted and the balance consideration of Rs. 68,93,800 has been held to be to the apparent consideration payable by the Central Government under the order passed u/s 269UD(1) of the Income Tax Act.

4. It is not in dispute that pursuant to the order passed u/s 269UD(1), possession of the property in question was taken by the respondents on 13-9-1989 and on 27-9-1989, the authorities have tendered the apparent consideration of Rs. 68,93,800 (Rs. 64,93,800 to the petitioner and Rs. 4,00,000 to the purchaser for and on behalf of the petitioner towards refund of earnest money).

5. By its letter dated 4-9-1989 the petitioner did not challenge the exercise of power u/s 269UD(1), however submitted that the deduction of the amount of Rs. 5,06,200 on account of discounting and stamp duty and registration charges from the total consideration was unauthorised and called upon the authorities to pay back the said amount forthwith. Another letter was also issued to that effect on 13-1-1990. By an order dated 22-2-1990 passed u/s 269UJ of the Income Tax Act it was held by the Appropriate Authority that the deduction of the aforesaid amount of Rs. 5,06,200 from the total consideration was in accordance with law and there is no mistake apparent from the record which could be rectified u/s 269UJ of the Income Tax Act. Challenging the aforesaid orders passed by the

Appropriate Authority u/s 269UD(1) dated 29-8-1989 as well as the order dated 22-2-1990 passed u/s 269UJ of the Income Tax Act, the present petition has been filed.

6. To complete the narration of facts, it may be noted that on 23-3-1990, the above purchased property was auctioned by the appropriate authority and on completion of auction sale the auction purchaser was put in possession of the said property on 8-6-1990. Thereafter, sometime in July, 1990 the present writ petition was filed and the same was admitted on 21-8-1990 without any interim relief. Subsequently, on 16-11-1990 conveyance of the property has been executed by the Appropriate Authority in favour of the auction purchaser.

7. Mr. Mistry, learned Advocate appearing on behalf of the petitioner submitted that the order passed by the Appropriate Authority u/s 269UD(1) of the Income Tax Act suffers from error apparent on the face of the record, as the said order has been passed in gross violation of the principles of natural justice. He relied upon the decision of the Apex Court in the case of C.B. Gautam Vs. Union of India and Others, . In that case, the Apex Court has held that before an order for compulsory purchase is made u/s 269UD, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority. Accordingly, the counsel submitted that in the present case, the impugned order being passed without giving an opportunity of bearing to the petitioner, the said order passed u/s 269UD(1) is liable to be quashed and set aside.

8. Mr. Mistry further submitted that the case of the petitioner cannot be treated as a completed transaction so as to fall outside the purview of the ratio laid down by the Apex Court in C.B. Gautam's case (supra). He submitted that even though prior to the filing of the writ petition in July, 1990, the possession of the property in question was forcibly taken from the petitioner on 13-9-1989 and the apparent consideration determined tender the purchase order was tendered on 27-9-1989 and on public auction, the auction purchaser was put in possession of the property on 8-6-1990, it cannot be said that the case of the petitioner is a completed transaction, because, in the present case, the conveyance has been executed by the appropriate authority in favour of the auction purchaser only on 16-11-1990 i.e., much after the filing of the writ petition in July, 1990. Accordingly, he submitted that the impugned order passed u/s 269UD(1) without giving an opportunity of hearing would not be covered under the exception carved out by the Apex Court in C.B. Gautam's case (supra) and, therefore, the orders impugned in the petition are liable to be quashed and set aside.

9. In support of the above contention, Mr. Mistry relied upon an unreported decision of this court in the case of Home Builders v. O.D. Mohindra (O.S. Writ Petition No. 2779 of 1990 dated 22-12-1995). In that case, order u/s 269UD(1) was passed on 29-6-1990 and possession of the property was taken by the appropriate authority on 23-7-1990. Writ petition challenging the order passed u/s 269UD(1) was filed on 11-9-1990, and pursuant to the interim order passed in

the above writ petition, the said property was sold in auction held on 6-1-1994. At the final hearing the said writ petition, on behalf of the Central Government it was contended that the transaction being a concluded transaction, the case was covered by the excluded category carved out by the Apex Court in C.B. Gautams case (supra) and that the main decision given by the Apex Court was not applicable. Rejecting the above contention, this court held that it was not a case of a completed transaction because, in that case

"(i) the writ petition was filed long prior to the pronouncement of the law by the Supreme Court in C.B. Gautams case,

(ii) the refund of earnest money was accepted under protest,

(iii) Writ court was approached within 3 months from the date of the passing of the purchase order, and

(iv) the auction sale was held during the pendency of the writ petition pursuant to the interim order passed in the writ petition."

Strongly relying upon the above judgment of this court in the case of Home Builders (supra), Mr. Mistry submitted that in the present case, the transaction cannot be considered as a completed transaction because deduction of the amount has been disputed from the inception and moreover, the conveyance has been executed in favour of the auction purchaser after the filing of the writ petition and, therefore, the impugned order passed u/s 269UD(1) of the Act in violation of the principles of natural justice is liable to be quashed and set aside.

10. Mr. Mistry further submitted that in the facts of the present case, even if it is held that the impugned order passed u/s 269UD(1) cannot be assailed on the ground of violation of principles of natural justice, the said order cannot be sustained, because, on account of the failure on the part of the Central Government to tender the entire amount of apparent consideration within the time-stipulated under the Act, the order passed u/s 269UD(1) stood abrogated and the Purchased property stood re-vested in the Petitioner.

11. Elaborating the above contention, Mr. Mistry submitted that u/s 269UE(1) of the Act, the property Purchased under Chapter XXC vests in the Central Government from the date on which the order u/s 269UD(1) is passed. u/s 269UF(1), the Central Government is required to pay the consideration for such purchase, an amount equal to the amount of apparent consideration as defined u/s 269UA(b) of the Act. The said consideration payable u/s 269UF(1) is required to be tendered by the Central Government to the petitioner u/s 269UG(1) within one month from the end of the month in which the immovable property concerned becomes vested in the Central Government. If there is failure on the part of the Central Government to tender the whole or any part of the amount of consideration within the stipulated time, then as per section 269UH(1), the order passed u/s 269UD(1) stands abrogated and the immovable property stands re-vested in the transferor. In the present case the petitioner had agreed to sell the

property to the purchaser for a sum of Rs. 74,00,000. The Central Government had purchased the said property by passing an order u/s 269UD(1) of the Act on 29-8-1989. Therefore, as per section 269U17(1), it was obligatory on the part of the Central Government to tender the entire consideration to the petitioner on or before 30-9-1989. However, in the resent case, a sum of Rs. 5,06,200 was deducted from the total consideration of Rs. 74,00,000 and only a sum of Rs. 68,93 800 (Rs. 64,93,800 to the petitioner and Rs. 4,00,000 to the purchaser) was paid on 27-9-1989. Since, the whole of the amount of consideration has not been paid to the petitioner on or before 30-9-1989 as per section 269UH(1) the order passed u/s 269UB(1) stood abrogated and the purchased property stood re-vested in the petitioner. Accordingly, it was submitted that this court be pleased to declare that the order dated 29-8-1989 passed u/s 269UD(1) of the Act stood abrogated and the purchased property re-vested in the petitioner.

12. Mr. Mistry further submitted that the deduction of the amount of Rs. 1,33,700 by way of discounting charges from the total consideration was not authorised under the Act. According to Mr. Mistry, where the Central Government decides to purchase an immovable property in respect of which an agreement for sale is entered into by and between the Vendor and the purchaser, then as per section 269UA(b) of the Act, the apparent consideration for such purchase shall be the consideration specified in the agreement for sale. He submitted that in the present case the consideration under the agreement of sale was Rs. 74,00,000 and, therefore, the Central Government could not have deducted a sum of Rs. 1,33,700 from the total consideration. He submitted that the Apex Court in the case of Ramesh Bhai J. Patel Vs. Union of India, has not upheld the principle of discounting as wrongly contended by the respondents. He drew support from the following observations made by the Apex Court in the case of Ramesh Bhai J. Patel (supra) which reads as follows :

"The contention on behalf of the appellants (assesseees) was that there can be no discount on the price mentioned in the agreement of transfer and if there can, the discount must relate to the period between the date of payment of the purchase price by the Central Government and the date of the last payment under the agreement. No argument was, however, advanced in respect of the first contention. The only argument was based on the premise that the discount is made because the transferor is compensated by payment earlier than scheduled under the agreement; and that such compensation is for the period that is saved, that is, between the date of payment by the Central Government and the last date of payment under the agreement." (p. 184)

Accordingly, he submitted that a sum of Rs. 1,33,700 has been wrongly deducted by way of discounting charges and since the consideration Of Rs. 1,33,700 has not been paid to the petitioner within the time stipulated under the Act, the purchase order stood abrogated and the property stood re-vested in the petitioner as per section 269UH(1) of the Act.

13. In support of the above submission Mr. Mistry strongly relied upon an

unreported judgment of the Apex Court in the case of Shrichand Raheja v. Union of India (Arising Out of S.L.P.(C) No. 18415-16 of 1994, dated 17-2-1995). In that case the Central Government had withheld a sum of Rs. 50,00,000 from the apparent consideration and the said amount of Rs. 50,00,000 was tendered by the Central Government much after the due date prescribed under the Act. The issue before the Apex Court was, whether failure on the part of the Central Government to pay part of the total consideration amounting to Rs. 50,00,000, within the stipulated time would abrogate the order passed u/s 269UD(1) of the Act so as to re-vest the property in favour of the transferor. In the facts of that case, the Apex Court held as follows :

"The plain language of section 269UG(1) leaves no doubt that in the facts and circumstances of the case, as a result of non-payment of the balance amount of Rs. 50 lakhs in terms of the express requirement of section 269UG(1), the failure of the Central Government has resulted in attracting section 269UH of the Act. Accordingly, the order dated 27-1-1994 made u/s 269UD(1) by the appropriate authority stood abrogated and the property was re-vested in the transferor in terms of subsection (1) of section 269UH of the Act with any other consequential resultants including those specified in sub-section (2) of section 269UH and sub-section (3) of section 269UG."

In the light of the aforesaid decision of the Apex Court, Mr. Mistry submitted that, in the present case, deduction of the amount of Rs. 1,33,700 towards discounting charges was unauthorised and since the said amount has not being paid to the petitioner within the stipulated time, the order passed u/s 269UD(1) stood abrogated and it is liable to be declared that the property in question has re-vested in the petitioner.

14. Mr. Mistry further submitted that even assuming that the deduction of Rs. 1,33,700 on account of discounting charges is held to be authorised and legal, even then, the order passed u/s 269UD(1) stands abrogated because of the wrongful deduction of Rs. 3,72,500 on account of stamp duty and registration charges and failure to pay the said amount within the time stipulated under the Act. He relied upon the decision of this court in the case of Polycon Paper Ltd. v. Union of India : [2002]253ITR181(Bom) wherein it is held that the stamp duty and registration charges cannot be deducted from the apparent consideration. In that case, this court had directed that the amount deducted on account of stamp duty and registration. charges be refunded with interest. Mr. Mistry submitted that in that case the issue of re-vesting the property on account of non-payment of a part of the apparent consideration was neither canvassed nor considered by the Court. However, in the present case, since the issue of re-vesting of the immovable property is raised, the petitioner is entitled to the said property and not the amount deducted from the apparent consideration. Thus in the light of the aforesaid decision of this court and the unreported decision of the Apex Court dated 17-2-1995 in the case of Shrichand Raheja (supra) Mr. Mistry submitted that once it is established that a sum of Rs. 3,72,500 out of the apparent

consideration has not been tendered within the time stipulated under the Act, then the order dated 29-8-1989 passed u/s 269UD(1) of the Act stands abrogated and the property purchased by the Central Government from the petitioner stands revested in the petitioner.

15. Reliance was also placed on the decision of the Apex Court in the case of Union of India (UOI) and Another Vs. Dr. A.K. Garg and Others, . In that case the Apex Court has held that failure on the part of the Central Government to tender the amount of apparent consideration within the time fixed by the statute attracts the wrath of section 269UH of the Act resulting in abrogation of the purchase order. Accordingly, Mr. Mistry submitted that in any view of the matter, the orders passed by the Appropriate Authority under the Act cannot be sustained and therefore, the impugned orders are liable to be quashed and set aside.

16. Mr. Asokan, learned Advocate appearing on behalf of the respondents submitted that in the present case, before filing the petition, not only the possession of the property was taken by the appropriate authority, but even the auction sale has been completed and auction purchaser has been put in possession of the property purchased u/s 269UD(1) of the Act. He submitted that in the light of the decision of the Apex Court in the case of C.B. Gautam (supra) the case of the petitioner being a concluded transaction no interference is called for in exercise of writ jurisdiction.

17. Mr. Asokan further submitted that the principle of discounting has been upheld by the Apex Court in tile case of Ramesh Bhai J. Patel (supra) and, therefore, no fault can be found with the deduction of the amount of Rs. 1,33,700 from the apparent consideration on account of discounting, As regards the deduction of the amount of Rs. 3,72,500 on account of stamp duty and registration charges, it was submitted that in view of the decision of this court in the case of Polycon Paper Ltd. (supra) the appropriate authority would refund the amount as per the directions of this Court.

18. On careful consideration of the rival submissions, we are of the opinion that this is not a fit case for exercise of writ jurisdiction in favour of the petitioner. In the present case, the order u/s 269UD(1) was passed on 29-8-1989 and the possession of the property pursuant to the said order was taken by the Appropriate Authority on 13-9-1989 and the apparent consideration determined under the purchase order was tendered on 27-9-1989. The said property was auctioned on 23-3-1990 and the auction purchaser was put ill possession of the said property on 8-6-1990. Thereafter, belatedly, some time in July, 1990 the present petition has been filed seeking to challenge the purchase order passed under the Act. Thus on the date of the filing the present writ petition, not Only the transaction between the petitioner and the Central Government was completed but even the property purchased by the Central Government was auctioned and the auction purchaser was put in possession of the said property. The fact that the deed of conveyance has been executed by the Central

Government in favour of the auction purchaser on 16-11-1990 (after the filing of the writ petition) does not render the purchase transaction between the petitioner and the Central Government incomplete. The Apex Court in the case of C.B. Gautam (supra) has held that as far as completed transactions are concerned, namely, where after the order for compulsory purchase is made u/s 269UD of the Income Tax Act and possession has been taken over, compensation is paid to the owner of the property and accepted without protest, then there is no reason to upset those transactions. Moreover, the Apex Court in the case of Union of India and Others Vs. M/s. Shatabadi Trading and Investment Pvt. Ltd. and Others, has held as follows :

"There is one other factor which is very significant, namely, that this court having allowed the auction of the property in question ending confirmation of the same and that order having become final, now to allow the order made by the Appropriate Authority to be set aside and to permit the parties to work out in appropriate proceedings for restitution of the property would lead to a serious anomalous position. When the transferor without demur allowed the property to be sold pursuant to the orders of this court and that sale having taken place and this court having affirmed the same and the proceedings by way of SLP filed under article 136 of the Constitution coming to an end as having become infructuous, the High Court could not have brushed aside that sale in the manner it has been done. The impact of such decision ought to have been taken note of by the High Court. Indeed in K. Basavarajappa Vs. Tax Recovery Commissioner, Bangalore and others, , this court has held that an agreement to sell creates no interest in the property and in the absence of a decree of specific performance of an agreement even though authorised by the general power of attorney holder of the original owner of the property had no locus standi to move an application for setting aside the auction sale on offer to deposit full tax dues. If we extend the said principle to the present facts, we find it hardly possible to come to the conclusion the High Court has arrived at. It is possible that the writ proceedings were still pending before the High Court but those writ proceedings were not at the instance of the owner of the subject property and the agreement holder did not have any interest other than what was indicated in K. Basavarajappa Vs. Tax Recovery Commissioner, Bangalore and others, . In that view of the matter, we do not think the High Court should have ignored the effect of the same." (p. 98)

Following the above dictum laid down by the Apex Court, this court in the case of Smt. Vimla Devi G. Maheshwari v. D.D. Mahindra (O.S.W.P. No. 3289 of 1987 dated 13-4-2004) has held that where the transaction is completed in all respects even during the pendency of the writ petition but before the judgment delivered by the Supreme Court in C.B. Gautams case (supra), then the exception carved out in C.R Gautams case (supra) would be fully attracted. Thus, from the aforesaid decisions, it is clear that in cases, where, before the passing of the order by the Apex Court in C.R Gautams case (supra), possession of the property pursuant to the order passed u/s 269UD(1) is taken over, compensation is paid and accepted without protest, then, irrespective of the fact that the

purchased property is auctioned pursuant to the interim orders of the court or not, all such transactions are liable to be treated as completed transactions and in such cases the purchase order passed u/s 269UD cannot be held to be invalid on the ground of violation of principles of natural justice. In the present case, pursuant to the order passed u/s 269UD on 29-8-1989 possession of the subject property was taken on 13-9-1989 and the apparent consideration was accepted by the petitioner without any protest (except for the amount deducted) on 27-9-1989. Thereafter, on 27-11-1992 the decision was delivered by the Apex Court in the case of C.R Gautam (supra). In these circumstances, we are firmly of the view that the case of the petitioner clearly falls within the category of concluded transaction and hence the validity of the order passed u/s 269UD(1) on the ground of violation of principles of natural justice is unassailable.

19. Strong reliance was placed by the counsel for the petitioner on the unreported decision of this court in the case of Home Builders (supra).

However, in our opinion, in view of the subsequent decision of the Apex Court in the case of Shatabadi Trading & Investment (P) Ltd. (supra), it is well settled that where the transferor without demur allowed the property to be sold and the sale has been confirmed whether during the pendency of the writ petition or not, then such transactions should not be disturbed by the Courts. In the present case much before the decision of the Apex Court in the case of CX. Gautam (supra), the possession of the property was taken, the apparent consideration determined has been paid and accepted by the petitioner and the said property has been auctioned and the auction purchaser has been put in possession of the property. Therefore, the case of the petitioner clearly falls under the category of completed transactions and hence the order passed u/s 269UD cannot be assailed on the ground of violation of the principles of natural justice.

20. The contention of the petitioner that the appropriate authority could not have deducted a sum of Rs. 1,33,700 from the total consideration by way of discounting and because of the failure to pay the said amount of Rs. 1,33,700 within the stipulated time, the order passed u/s 269UD(1) stood abrogated is also without any merit. The Consistent view taken by this court as well as the Apex Court is that under chapter XXC the appropriate authorities are entitled to discount the price mentioned in the agreement of transfer, because, even though under the sale agreement the transferor is entitled to receive the balance consideration at a later date specified in the sale agreement, on account of the purchase order passed u/s 269UD(1) the transferor gets the entire consideration within one month from the end of the month in which the immovable property vests in the Central Government. In the case of Ramesh Bhai J. Patel (supra) the Apex Court has categorically approved the principle of discounting. It is true that in the case of Ramesh Bhai J. Patel (supra) it was not specifically argued by the appellant before the Apex Court that there can be no discount of the price mentioned in the agreement of transfer. However, the Apex Court has expressly dealt with the principle of discounting and has held as follows :

"On a plain reading of section 269UA(b), there is no interlinking of the apparent consideration to be determined there under with the payment to be made by the Central Government on purchase under chapter XXC. Section 269UA(b) prescribes how the apparent consideration under the agreement, that is, the consideration for the agreement, is to be determined, and it states that if the consideration, under the agreement is payable on any date or dates falling after the date of the agreement. the value of the consideration that is payable after the date of the agreement shall be deemed to be the discounted value of such consideration as on the date of the agreement. In other words the apparent consideration in such case will not be the consideration that is stated in the agreement but it shall be the amount thereof less a discount to be calculated in the manner set out in the definition. The period of such discount shall be the period between the date of the agreement and the date or dates on which the consideration or part thereof is payable.

To put it differently, because, under the agreement, the transferor gives the transferee time to pay the consideration, the consideration is assumed to comprehend some element of interest for such delayed payment, and this is ascertained and deducted to arrive at the real consideration for the agreement, or the apparent consideration. The period of the delay necessarily starts on the date of the agreement." (p. 184)

In view of the aforesaid dictum laid down by the Apex Court it is futile on the part of the petitioner to contend that there is no provision under the Income Tax Act for discounting the price mentioned in the agreement of transfer. In the present case, under the sale agreement the purchase was to be effected within one month from the date of receiving no objection certificate from the appropriate authority. Under, section 269UD(1) an order for purchase by the Central Government cannot be made after the expiration of a period of two months from the end of the month in which the requisite statement is received by the appropriate authority. Thus, the discounting of the consideration amount specified in the sale agreement by three months is justified. The petitioner has not raised any dispute regarding the quantum of the amount deducted by way of discounting. In this view of the matter we hold that the deduction of sum of Rs. 1,33,700 from the total consideration by way of discounting was justified and consequently on account of non-payment of Rs. 1,33,700, it cannot be said that there was any failure on the part of Central Government to pay part of the consideration within the stipulated time, so as to hold that there is abrogation of the order passed u/s 269UD(1) of the Act.

21. Strong reliance was placed by the counsel for the petitioner on the unreported judgment of the Apex Court in the case of Shrichand Raheja (supra) delivered on 17-5-1995. In that case the agreement for sale was entered into by and between the transferor and transferee on 24-10-1993 for sale of the property for a consideration at Rs. 19.25 crores. On 27-1-1994 an order was passed u/s 269UD(1) for purchase of the property and the apparent

consideration after discounting was fixed at Rs. 18,68,54,154. Clause (10) of the agreement entered into by and between the transferor and the transferee therein on 24-10-1993 provided that in case the transferors are not able to obtain vacant possession of the servants quarters in the outhouses, then the sale will be completed but the purchasers will retain a sum as may be mutually agreed, but not exceeding Rs. 50,00,000 out of the apparent consideration. In view of aforesaid clause (10), the appropriate authorities withheld a sum of Rs. 50,00,000 from the apparent consideration determined and paid only Rs. 18,68,54,154 within the stipulated time. It appears that subsequently the said retained amount of Rs. 50,00,000 was paid to the transferor by the Central Government after the date specified under the Act. On these facts, the Apex Court held that on account of the failure on the part of the Central Government to pay, the said amount of Rs. 50,00,000 within the stipulated time the order passed u/s 269UD(1) stood abrogated and the property stood revested in the transferor. The said decision is not applicable to the case of tile petitioner because, firstly, the said case pertained to the period subsequent to the decision of the Apex Court in the case of C.B. Gautam (supra). Secondly, in that case, the amount deducted by way of discounting was not even disputed. In that case eventhough the total consideration under the agreement was Rs. 19.25 crores, the apparent consideration was determined at Rs. 18,68,54,154 after discounting and the same was accepted by the parties. What was disputed was the deduction of Rs. 50,00,000 from the apparent consideration determined at Rs. 18,68,54,154. Therefore, reliance placed on the decision of the Apex Court in the case of Shrichand Raheja (supra) is totally misplaced and the said decision does not support the contention of the petitioner. Similarly, the decision of the Apex Court in the case of Dr. A.K. Garg (supra) is also distinguishable on facts. In the said case it is held that where the amount of consideration is tendered beyond the stipulated period, then section 269UD(1) is attracted thus resulting in abrogation of the purchase order. In the said decision the issue pertaining to deduction on account of discounting was neither raised nor considered by the Apex Court. Therefore, the said decision does not support the case of the petitioner.

22. As regards the deduction of Rs. 3,72,500 on account of stamp duty and registration charges is concerned, it is fairly conceded by the counsel for the respondents that in view of the decision of this court in the case of Polycon Paper Ltd. (supra) the claim of the petitioner to recover that amount is liable to be upheld. The question now to be considered is whether, for non-payment of the said amount of Rs. 3,72,500 from the total consideration within the stipulated time, can it be said that there is failure on the part of the Central Government to tender part of the total consideration so as to abrogate the order passed u/s 269UD(1) of the Act and hold that the property stood revested in the petitioner. It is a settled position in law that where there is failure on the part of the Central Government to tender or deposit whole or any part of the consideration within the time specified under the Act then the order made u/s 269UD(1) stands

abrogated and the immovable property stands revested in the transferor. However, in the facts of the present case, in our opinion, it will be improper to hold that the order passed u/s 269UD(1) stands abrogated for the following reasons :

(a) While handing over possession of the property on 13-9-1989 or while receiving the apparent consideration and issuing a receipt on 17-9-1989 the petitioner had not objected to the order of compulsory purchase of property passed u/s 269UD(1) and had only reserved its right to receive the sum of Rs. 5,06,200 which was deducted by the Appropriate Authority from the total consideration.

(b) Even after the expiry of the statutory period prescribed under the Act, in the letters addressed by the petitioner to the Appropriate Authority on 4-12-1989 (Exhibit-G to the petition) and on 13-1-1990 (Exhibit-H to the petition) it was not contended that the order passed u/s 269UD(1) stood abrogated on account of the failure to tender the amount of Rs. 5,06,200 and it was specifically pleaded that the petitioner is entitled to receive the said amount of Rs. 5,06,200.

(c) In the above circumstances, the property in question was auctioned by the appropriate authority on 23-3-1990 and on finalisation of the auction sale, possession of the subject property was handed over to the auction purchaser on 8-6-1990. Thereafter, the writ petition was filed belatedly in July, 1990. Thus, the dispute as to abrogation of the order passed u/s 269UD(1) and revesting of the property was raised by the petitioner for the first time after the conclusion of the purchase transaction between the petitioner and the Central Government and after the subject property was auctioned and third party rights have been created in respect thereof.

(d) Even in the belated writ filed by the petitioner there is no specific ground taken in the petition regarding the abrogation of the order passed u/s 269UD(1). Although in the prayer clause of the petition, the petitioner has vaguely sought an order for re-vesting of the property, in the entire writ petition there is no pleading regarding abrogation of the order passed u/s 269UD of the Act and the entire emphasis in the petition is on claiming the amount of Rs. 5,06,200 with interest.

(e) The dictum laid down by the Apex Court in the case of C.B. Gautam (supra) regarding concluded transaction as well as the decision of the Apex Court in the case of Shatabadi Trading & Investment (P) Ltd. (supra) regarding the feasibility of unsettling the purchase order after the auction sale would equally apply to the present case. In other words, although deduction of the amount of Rs. 3,72,500 from the total consideration is unjustified, in the present case, since the subject property has been auctioned and third party rights have been created in respect of that property, it will not be proper to pass an order for restitution of the subject property in favour of the petitioner, as it would lead to serious anomalous position.

(f) The auction sale of the property in favour of the auction purchaser has become final and in the petition there is no challenge to the auction sale and even the auction purchaser has not been impleaded as party respondent to the petition. In these circumstances setting aside the order passed u/s 269UD(1) at this belated stage would be totally unjust, improper and would amount to upsetting the concluded transactions which is not contemplated under the Act.

For all the aforesaid reasons, we are of the opinion that the only relief that can be granted to the petitioner in the present petition is to direct the respondents to refund the wrongfully deducted amount of Rs. 3,72,500 with interest.

23. Accordingly, we decline to interfere with the orders passed under sections 269UD(1) and 269UJ(1) of the Income Tax Act. However, deduction of the amount of Rs. 3,72,500 from the total consideration being unauthorised, we direct the respondents to refund within four months from today, the said amount of Rs. 3,72,500 with interest at the rate of 9 per cent from 29-9-1989 till the date of payment.

24. The writ petition stands disposed of in above terms. However, there will be no order as to costs.