(1990) 08 BOM CK 0089

In the Bombay High Court

Case No : Writ Petition No. 938 of 1988

VEENA ESTATE PVT. LTD. AND ANOTHER — APPELLANT

Vs

A. BAIDYA, COMPETENT AUTHORITY and ANOTHER. — RESPONDENT

Date of Decision : 06-08-1990

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1991) 102 CTR 303 : (1991) 189 ITR 456 : (1991) 54 TAXMAN 233

Hon'ble Judges : T. D. Sugla, J

Bench : Division Bench

Judgement

T. D. SUGLA J. - By this petition under article 226 of the Constitution of India the petitioner-company has challenged the jurisdiction of the Competent Authority to issue the notice dated July 14, 1987, u/s 269D of the Income Tax Act, 1961. An agreement was entered into between Kapadia Development Co-operative Society Ltd. M/s. Century Builders and the petitioner-company on August 26, 1986. The terms of the agreement broadly are that the petitioner-company in consideration of the societies and builders allowing and permitting the petitioner-company as developers rights to develop the property in dispute and construct buildings thereon and a further right to sell and dispose of the flats/shops/offices/garages and other premises so construed. The petitioner shall provide at its own cost 50 flats (each flat of the size of about 500 sq. ft.) to the society and pay Rs. 5,00,00,000 to the builders in the manner provided in the agreement.

Initially, the parties to the agreement filed a statement in Form No. 37EE (Rule 48DD) on August 26, 1986, itself for registration u/s 269AB (2) of the Act. A statement in Form No. 37-I was also filed on october 15, 1986. Subsequently, the statement in Form No. 37EE was withdrawn on the ground that the agreement was that of development of land and not of sale. A certificate u/s 269UL (3) was granted by the appropriate authority on February 18, 1987. The effect of the certificate was that the appropriate authority had no objection to the transfer of the property as per statement in Form No. 37-I. The certificate is issued without prejudice to any Income Tax proceedings pending or contemplated under or any other provisions of the Act.

Subsequently, the Competent Authority issued the impugned notice dated July 14, 1987, u/s 269D for acquisition of the suit property u/s 269C of the Act. The grounds taken were :

(i) the apparent consideration exceeds Rs. 1,00,000;

(ii) the apparent consideration is less then the fair market value of the property which exceeds the apparent consideration by more than 15% thereof; and

(iii) the understatement of the consideration in the agreement is with the object of (i) facilitating the reduction or evasion of tax liability of the transferor and/or (ii) that of the transferee.

This petition, in my judgment can be disposed of on a short ground. This court had already held in Writ Petition No. 916 of 1988 (Narpatraj Besarmal Mehta and others Vs. A. Baidya, Competent Authority and others,) (supra) disposed of today that, after the appropriate authority issues a no objection certificate u/s 269UL(3), it is not open to the Competent Authority to initiate proceedings for acquisition u/s 269C/269D in view of the Boards Circulars dated August 11, 1988. It has also been held that the Competent Authorities not stating clearly in the notice as to whether the object of understatement of consideration agreed upon in the agreements the reduction or evasion of the tax liability of the transferor or the transferee or both vitiates the notice. In view thereof, it must be held that the impugned notice is invalid and cannot be acted upon.

Accordingly, the rule is made absolute in terms of prayer clauses (a and (b).

No order as to costs.

