P. Kumar and Co. and anr. Vs. Union of India (Uoi) and anr.

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SooperKanoon Citation : sooperkanoon.com/358133

Court : Mumbai

Decided On : Jul-30-1990

Reported in : [1991]190ITR672(Bom)

Judge : T.D. Sugla, J.

Acts : Income Tax Act, 1961 - Sections 269AB, 269AB(2) and 281; Constitution of India - Article 226

Appeal No. : Writ Petition No. 2141 of 1987

Appellant : P. Kumar and Co. and anr.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Balasubramanian, Adv.

Advocate for Pet/Ap. : Ashok N. Mody, Senior Counsel, ;Paresh Shah and ;Vileena Mirasee, Advs. i./b., Shah and Sanghavi

Judgement :

T.D. Sugla, J.

1. By this petition under Article 226 of the Constitution of India, the petitioners, a registered partnership firm, has challenged the legality and validity of the notice dated June 19, 1987, issued by respondent No. 2, Tax Recovery Officer, CW

Ward, Earnest House, Nariman Point, Bombay-400027.

2. The petitioners entered into an agreement for sale dated August 18, 1984, with Bharat Parikh and Co., in respect, of premises No. 617, Parikh Market, Opera House, Bombay-400 004, for a consideration of Rs. 3,65,000. The possession of the premises was handed over to the petitioners on the same day. On the same day, the petitioners and Bharat Parikh and Co.,jointly filed Form No. 37EE (under Rule 48DD) before the competent authority as required under Section 269AB(2) of the Income-tax Act, 1961. The permanent account number and the GIR number of Bharat Parikh and Co. were furnished in Part II of the Form. Nothing was heard from the competent authority or the Income-tax Officer on the subject and the petitioners were enjoying the premises peacefully.

3. In March, 1987, respondent No. 2, it appears, attempted to attach the above premises on account of purported dues from Bharat Parikh and Co. By its letter dated March 30, 1987, the petitioners, inter alia, contended that so far as they are concerned, they had purchased the premises for adequate consideration and without notice of the pendency of any proceedings against Bharat Parikh and Co. and that the so-called attachment was bad and illegal. By his impugned letter/notice dated June 19, 1987, respondent No. 2, however, informed the petitioners that he was holding a recovery certificate for an amount of Rs. 6,02,453 in respect of the assessment year 1983-84 against Bharat Parikh and Co. and that in view of Section 281(1) of the Income-tax Act, 1961, he was entitled to attach the premises. Bharat Parikh and Co., it was stated, had filed the return for the assessment year 1983-84 on February 27, 1984, though the date of completion of the assessment was not indicated.

4. On the basis of a photo copy of the demand notice, the court is informed that the assessment of Bharat Parikh and Co, for the assessment year 1983-84 was completed some time in March, 1986. It is pointed out that when the petitioners purchased the premises, there was no demand pending against Bharat Parikh and Co. the assessment itself having been completed in March, 1986. Moreover, information about the purchase of the premises by the petitioners from Bharat Parikh and Co. was furnished to the competent authority in Form No. 37EE and

the Income-tax Department did not take any steps for more than two years/The petitioners' case, thus, was that they had purchased the premises for adequate consideration and without notice of the pendency of any such proceedings.

5. Dr. Balasubramanian for the Department, on the other hand, stated that the Income-tax Department is a huge Department with a number of officers. It has to deal with more than a lakh of files at Bombay. It is impossible to co-ordinate information furnished in the shape of Form No. 37EE. The concerned Income-tax Officer may not be aware of any such information, Mere filing of information in Form No. 37EE is, thus, of not much consequence. If one is really serious about complying with the conditions of Section 281, the purchasers (the petitioners in this case) should have specifically asked the Income-tax Officer assessing Bharat Parikh and Co. to inform them whether or not any proceedings were pending against Bharat Parikh and Co. and should have finalised the deal only after hearing from the Income-tax Officer. The attention of the court was invited to Sub-clause (ii) of the proviso to Section 281 to show that if the petitioners wereto purchase the property without risk, they should have taken prior permission of the Income-tax Officer. This was admittedly not done by thepetitioners.

6. In my judgment, the petition has merit. Admittedly, the petitioners and Bharat Parikh and Co. jointly filed Form No. 37EE (under Rule 48DD) in the office of the competent authority as required under Section 269AB of the Income-tax Act, 1961, in August, 1984. Admittedly, again the G. I. R. No. and the permanent account No. of Bharat Parikh and Co. were given in that form. The fact is that Bharat Parikh and Co. had merely filed their return of income for the assessment year 1983-84 in February, 1984. The assessment was not completed until March, 1986. No demand could, thus, be pending against Bharat Parikh and Co. at the relevant time. According to me, the petitioners discharged their obligation by furnishing necessary information by filing Form No. 37EE. Thereafter, it was for the Department to raise objections, if any, against the purchase of the premises by the petitioners from Bharat Parikh and Co. Nothing of the type was done by the Department. In fact, even an affidavit-in-reply has not been filed though this writ petition was filed in 1987.

7. In the above view of the matter, I am inclined to take the view that the Department has no case for attachment of the premises in question which belongs to the petitioners since August, 1984. The petitioners purchased the premises for adequate consideration and without notice of the pendency of any proceedings including the demand of Rs. 6,02,453 against Bharat Parikh and Co.

8. Accordingly, the impugned notice dated June 19, 1987, is quashed. Rule is made absolute in terms of prayer Clauses (a) and (b).

9. No order as to costs.