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Appropriate Authority and Others Vs. Mass Traders Pvt. Ltd. and Others

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Court : Karnataka

Decided On : Mar-01-1993

Reported in : [1997]89CompCas242(Kar); [1993]202ITR741(KAR);
[1993]202ITR741(Karn); 1993(37)KarLJ316

Judge : K.A. Swami and; N.D.V Bhat, JJ.

Acts : Income-tax Act, 1961 - Sections 269UD; [Constitution of India](#) - Article 226

Appeal No. : Writ Appeals Nos. 2164 and 2165 of 1992 (T)

Appellant : Appropriate Authority and Others

Respondent : Mass Traders Pvt. Ltd. and Others

Advocate for Def. : Sarangan, ;S.G. Bhagavan and ;M.R. Naik, Advs.

Advocate for Pet/Ap. : H.L. Dathu, Adv.

Judgement :

S. Rajendra Babu, J.

1. These petitions are directed against two orders made under section 269UD(1) of the Income-tax Act, 1961 (for short, 'the Act'), on July 25, 1989, initiating action under Chapter XX-C of the Act.

2. Respondents Nos. 2 and 3 entered into an agreement to sell their respective undivided interest in the property comprised in Municipal Nos. 4 and 5 (new Nos. 9 and 11), situate at Infantry Road, Bangalore, with the petitioner herein. The agreement entered into between the aforesaid parties disclosed that the consideration for sale of the property was Rs. 1,38,04,850 as far as the share of respondent No. 2 is concerned and Rs. 46,01,475 as far as the share of respondent No. 3 is concerned. The property in question consists of land measuring 43,309 square feet comprising within it main building and outhouse with a plinth area of 960 square metres. It is located, one side facing Queen's Road and the other side facing Infantry Road, Bangalore. This property originally belonged to one H. M. Maneckji, who purchased the same in a court sale on March 20, 1952, and the sale in his favour was confirmed on March 10, 1953. The said Maneckji, transferred the said property in favour of one N. K. Irani and his wife, respondent No. 2, by a registered deed dated May 14, 1957. The said N. K. Irani died on January 5, 1972, leaving behind his wife and a son, who are respondents Nos. 2 and 3 in these proceedings. Under the law of succession applicable to parsis, the share belonging to N. K. Irani devolved upon his wife and son and thus respondent No. 2 became the owner of undivided three-fourths share while respondent No. 3 became owner of the remaining one-fourth share. The third respondent is residing in the United States of America and he is a non-resident Indian. He executed a power of attorney in favour of one G. K. Irani to deal with the property in question. Inasmuch as the third respondent was a non-resident Indian, he applied to the Reserve Bank of India for permission to sell the property. The Reserve Bank of India gave such permission. The property was agreed to be sold to Neat Holdings and Trading Company Private Limited, Bombay, for which purpose respondents Nos. 2 and 3 sought a no objection certificate which was also granted. The valuation mentioned in respect of the share of the third respondent is the same as the one accepted by the Reserve Bank of India. Subsequently, certain differences arose between Neat Holdings and Trading Company Private Limited and respondents Nos. 2 and 3 with the result that the agreement entered into between the parties stood terminated and they entered into another agreement with the petitioner on May 22, 1989. The appropriate authority invoked its powers under section 269UD of the Act and

directed purchase of the property by the Central Government for the sum of Rs. 1,84,06,325 as stated earlier. It is the validity of this order that is called in question in these writ petitions.

3. Several contentions have been urged before me including the contention that the provisions of Chapter XX-C of the Act are invalid. However, it is unnecessary to consider all these contentions. In the present case, it is necessary to notice that, on an earlier occasion, the authorities themselves had considered the matter and found that the consideration mentioned in the sum of Rs. 1,25,02,500 in far as the second respondent is concerned and the sum of Rs. 41,67,500 in so far as the third respondent is concerned were in order and granted a no objection to respondents Nos. 2 and 3 under section 269UL(1) of the Act by an order dated June 27, 1988. The agreement that was entered into with the first purchaser was on April 28, 1988, which fell through and in the result respondents Nos. 2 and 3 entered into another agreement with the second purchaser on May 22, 1989. Within the span of one year, some escalation has been shown in the price of the property in question. Considering the fact that the authorities themselves had granted a no objection certificate on an earlier occasion, I do not think they are justified in passing the impugned order just because there is a different purchaser now. The authorities having granted a no objection certificate under section 269UL(1) of the Act, merely because the purchaser is different now or the date of the agreement is a little later or the consideration now disclosed is much higher than what was earlier view in the absence of good and strong reasons. Moreover, the Reserve Bank of India is a statutory authority and it had accepted the price quoted in the agreement. When that is so, there is hardly any justification for the income-tax authorities to come to a different conclusion unless there are strong circumstances leading to suspicion in the mind of the authorities. No such circumstances are forthcoming in the course of the order nor does the order disclose as to who they resiled from their earlier view taken by them while granting the no objection certificate under section 269UL(1) of the Act. When the result of the order affects the rights of the parties, it is necessary that some good and tenable reasons must be available to the authorities to make the order which is impugned herein. Simply issuing an order in the usual format does not take the matter any further. In the present case, there is hardly any application of mind to

the relevant facts arising in the case. As tenable reasons are not forthcoming to sustain the impugned orders, the same cannot be allowed to stand and they stand quashed.

4. Pursuant to the interim order made by this court, the Department has paid a sum of Rs. 1,84,06,325 to respondents Nos. 2 and 3 and a little more than Rs. 30 lakhs has been deposited to the credit of the petitioner in the bank. That money shall be adjusted towards the monies that have been paid by the Department to respondents Nos. 2 and 3 and the balance amount shall be paid by the petitioner to the appropriate authority and on that the respondents shall consider the issue of a no objection certificate. It is certainly open to the petitioner to work out the modalities to get the sale deed executed from respondents Nos. 2 and 3 as also other documents after the no objection certificate is issued by the concerned authority. The amounts to be paid and adjusted shall be made within a period of 30 days from today.

5. The Department wants to recover interest from the petitioner. Such a question does not arise at all. Whatever amounts have been paid is in lieu of consideration of the sale of property. The property was in the possession of the Department until now just as the amount paid is in the possession of sellers. If, on that amount, the Department seeks to claim interest, the seller/petitioner can claim damages for deprivation of possession. Neither of the reliefs can be granted to either of them. Further, certain amount is deposited to the credit of the petitioner under interim order of this court and the Department cannot have any claim over the interest thereon.

6. In the circumstances, the petitions are allowed and the rule made absolute accordingly.