

Sarwarben Temas Khambata and ors. Vs. Appropriate Authority

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Court : Gujarat

Decided On : Mar-09-1994

Reported in : (1995)129CTR(Guj)355; [1995]216ITR850(Guj)

Judge : D.H. Nasir and; M.B. Shah, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 269UD, 269UD(1) and 269UD(1A)

Appeal No. : Special Civil Application No. 11697 of 1994

Appellant : Sarwarben Temas Khambata and ors.

Respondent : Appropriate Authority

Advocate for Def. : M.J. Thakore, Adv.

Advocate for Pet/Ap. : J.P. Shah, Adv.

Judgement :

M.B. Shah, J.

1. On April 21, 1994, petitioners Nos. 1 to 3 entered into an agreement to sell the property under consideration to petitioner No. 4. The petitioners submitted Form No. 37-I to the appropriate authority as required under Chapter XX-C of the Income-tax Act, 1961 (for short hereinafter referred to as 'the Act'), on June 27, 1994. On July 1, 1994, the petitioners were asked by the Valuation Officer of the

appropriate authority to furnish certain information and documents. On July 7, 1994, the petitioners furnished the requisite documents to the Valuation Officer.

2. Thereafter, on September 14, 1994, i. e., virtually after a period of two-and-a-half months, the appropriate authority issued notice under section 269UD(1A) of the Act to the petitioners calling upon them to show cause as to why an order of pre-emptive purchase should not be made of the property under consideration and the appropriate authority fixed the date September 26, 1994, for the hearing of the matter.

3. It is the say of the petitioners that they gave a detailed reply to the above-said show-cause notice, along with the municipal corporation map showing the location of the property under consideration and other comparative sale instances. It is their further say that on September 28, 1994, two members of the appropriate authority inspected the property under consideration. Again, on September 30, 1994, petitioner No. 1 gave a letter dated September 29, 1994, addressed to the appropriate authority, pointing out:

(i) that the review of the ceiling law case of the petitioners by the State Government was pending; and

(ii) that availing of higher F. S. I. increases the cost.

4. Thereafter the petitioners received from the appropriate authority, the order dated September 30, 1994 (annexure-K to the petition), ordering purchase of the property under consideration and determining Rs. 66,93,113 as the amount payable to the vendors, and along with the said order the petitioners were directed to hand over possession of the property on October 12, 1994. The petitioners have challenged the said order at annexure-K in this petition by raising various contentions.

5. It is the contention of the petitioners that petitioners Nos. 1 to 3 who are the co-owners of the property under consideration, agreed to sell Final Plot No. 213 of T. P. Scheme No. 14, Ahmedabad, admeasuring 2,095 sq. mtrs. situated in Shahibaug Area to petitioner No. 4. They have agreed to sell the said plot to

petitioner No. 4, which is a co-operative housing society for a consideration of Rs. 69 lakhs. Petitioner No. 4 purchased the said plot for the residential requirements of the members of the said housing society.

6. It is the further say of the petitioners that they received the notice dated September 14, 1994, under section 269UD(1A) of the Act (annexure-G) issued by the appropriate authority, wherein in paragraph 2, the said authority has relied upon one sale instance. The relevant part of the said paragraph 2 is as under:

'Your attention is invited to the following sale instance:
-----Property under Sale
instanceconsideration
property-----1. File No. 855 6362.
Date of agreement May, 1994 4-5-19933. Description of property Land and
building at Land at Dariapur-Kazipur,Dariapur-Kazipur-Naroda F.P. No.
229/2/C+D/PartDivision No. 6, of T.P.S. 14, Ahmedabad.F.P. No. 213 ofT.P.S. 14,
Ahmedabad4. Consideration :Apparent Rs. 69,00,000 Rs. 15,87,454Discounted
Rs. 66,93,113 Rs. 15,56,824Area of land 2,095 sq. mtrs. 490.926. F.S.I.
permissible 1.5 1.07. Rate per sq. mtr. after Rs. 3,216 Rs. 3,103considering scrap
valueof building as perapparent considerationAs per discountedconsideration Rs.
3,117 Rs. 3,041.'

7. In the said notice, in paragraph 3, it is further stated that the apparent rate of Rs. 3,216 per sq. metre and discounted rate of Rs. 3,117 per sq. metre appear to be understated by more than 15 per cent., particularly when the F. S. I. permissible for the two properties and the time lag between two transactions are considered.

8. To the said notice, the petitioners gave detailed reply dated September 26, 1994, which is at annexure-H to the petition, wherein, it has been pointed out as under:

(a) That the sale instance relied upon is not the correct comparison because -

(i) the plot of the comparable sale instance is very small to the property under consideration.

(ii) The sale instance property is better located as it is situated in the heart of Shahibaug area, while the property under consideration is situated at a distance of more than one kilometre from that plot and is situated at the border of Cantonment area.

(iii) The property under consideration is a low-lying plot and during monsoon, rain water would enter into it.

(iv) There is a slum area near-about the property under consideration which rules out getting of good sale price.

(b) That there is no question of transacting any unaccounted money in the deal.

(c) That the total stamp duty is to be borne by the buyer, which would be an additional cost to the buyer.

(d) Other comparable sale instances were also pointed out by the petitioners in the said reply.

9. On behalf of the petitioners, it is contended that without considering the aforesaid contentions raised in the reply to the notice and the arguments advanced on their behalf, the appropriate authority has passed the impugned order on September 30, 1994, ordering to purchase the property under consideration and determining Rs. 66,93,113 as payable to the petitioners.

10. It is contended that the impugned order is illegal for the following reasons:

(i) The petitioners have filled in Form No. 37-I on June 27, 1994. The period prescribed for deciding the matter is three months. The appropriate authority waited for a period of two and a half months and on September 14, 1994, gave the notice fixing the hearing on September 26, 1994, i. e., prior to the last date for passing the order.

(ii) On September 28, 1994, two members of the respondent inspected in hot haste the lands referred to and relied upon by the petitioners in their reply.

It is alleged that the members of the respondent authority saw entirely a different property than the one relied upon by the petitioners, but stated in the impugned order that the said property is not comparable without stating as to which is the property they saw, and why it is not comparable.

(iii) Submissions made by the petitioners by their letter dated September 29, 1994, are not considered by the authority.

(iv) Reliance placed by the appropriate authority on the sale instance is totally without application of mind because -

(a) the property under consideration is four times bigger plot than the alleged comparative case and, therefore, its market price is always lower;

(b) the property involved in the sale instance is situated in the heart of Shahibaug area.

(c) the property under consideration is a low-lying plot and there is waterlogging in monsoon;

(d) the property under consideration is situated at the end of the civil area;

(e) there is a slum area near the property under consideration;

(f) stamp duty, registration charges and other expenses were payable by the purchaser, which would make the effective price of the property under consideration even more; and

(g) the sale instances cited by the petitioners were taken into consideration without application of mind.

11. Further it has been pointed out that the impugned order is also bad because -

(a) in the impugned order, there is no finding of fair market price of the property under consideration, for arriving at the conclusion that the property under

consideration is undervalued by more than 15 per cent.;

(b) there is no finding that there was any attempt on the part of the petitioners to deal in unaccounted money, to evade tax or to undervalue the property under consideration;

(c) the appropriate authority has not considered the fact that the property under consideration is owned by three co-owners because of the will executed in their favour and that the valuers give a discount of ten per cent. for the undivided share in the property.

12. Here, it may be stated that no affidavit-in-reply has been filed on behalf of the respondent-appropriate authority refuting the contentions raised in the petition.

13. However, for deciding this petition, it is not necessary to deal with the various contentions raised by the petitioners except the one contention with regard to the non-application of mind by the respondent-appropriate authority with regard to the fair market value of the property under consideration.

14. In the present case, admittedly, while passing the impugned order, the appropriate authority has not arrived at a conclusion about what, according to it, would be the fair market value of the property under consideration, except stating that there is understatement of apparent consideration by more than 15 per cent.

15. The relevant part of the order is in paragraph 4 thereof, which reads as under:

'The permissible F. S. I. of the property under consideration is of 1.5 as per the re-development plan of Ahmedabad Municipal Corporation. Since, the F. S. I. available is 1.5, it is obvious that the built-up area of property under consideration will be more than sale instance property. Moreover, property under consideration is situated on 100' Main Road, whereas the sale instance property is situated on 20' wide private road abutting 60' wide road. Hence, the contention that permissible F. S. I. is 1.0 is not tenable. Considering the above facts, the time lag of above one year between the two transactions and also considering the minus points of property under consideration, i. e., large plot and situation and location of the property, there is an understatement of apparent consideration by more than.

15 per cent. ' .

16. Even in the notice at annexure-G also, it is not stated as to what would be the market rate of the property under consideration. As stated earlier, what is stated in the notice is that the apparent rate of Rs. 3,216 per sq. mtr. appears to be understated by more than 15 per cent. particularly when the F. S. I. permissible for the two properties and the time lag between the two transactions are considered.

17. From the aforesaid order and also the notice, it is apparent that with regard to the fair market value of the property under consideration, there is total non-application of mind by the respondent-authority. On this count, the notice as well as the order are totally vague. While comparing the sale instance, what is the increase in the price because of the timing is not mentioned. Whether, it is exactly more than 15 per cent. or more than 20 per cent. or more is not mentioned. Further, the appropriate authority has not at all arrived at the finding as to what would be the fair market price of the property under consideration, on the basis of the comparable sale instance relied upon by it. In any case, what is the increase in the price is absolutely a matter of conjecture.

18. In support of the aforesaid contention, Mr. J. P. Shah, learned counsel appearing for the petitioners, rightly relied upon the decision of the Bombay High Court in the case of Vimal Agarwal v. Appropriate Authority : [1994]210ITR16(Bom) wherein the court has observed that in order to draw an inference of undervaluation, it is necessary to determine first the fair market value of the property in question in the light of all the attending circumstances. Without doing so, it is not only difficult but impossible to say that the apparent consideration is lower than the fair market value by 15 per cent. or more. The figure of fair market value cannot be left to conjectures and surmises, and to justify the order under section 269UD(1), the appropriate authority must come to a definite conclusion that the undervaluation is by more than 15 per cent. of the fair market value.

19. In the present case, admittedly, the appropriate authority has not determined the fair market value of the property under consideration, and the order is based on the surmise that the property under consideration would fetch a price which

would be more by 15 per cent. of the apparent consideration. In this view of the matter, the impugned order under section 269UD(1) of the Act passed by the appropriate authority is illegal and without application of mind to the relevant facts and, therefore, is required to be quashed and set aside.

20. In the result, this petition is allowed. The impugned order dated September 30, 1994 (annexure-K to the petition), passed by the appropriate authority, under section 269UD(1) of the Income-tax Act, 1961, is quashed and set aside. The respondent-authority is directed to issue the requisite 'no objection' certificate to the petitioners within a period of 30 days. Rule made absolute accordingly with no order as to costs.

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