



IN THE HIGH COURT OF DELHI

I.T.S.A.Nos. 6 and 7 of 1987

Date of Decision:- January 12, 2004

Commissioner of Income Tax.....Appellant

Through: Ms. Prem Lata Bansal with  
Mr. Ajay Jha, Advocates.

Versus

Smt. Kanta Kumari and others.....Respondents

Through:Mr. P. N. Monga with  
Mr. Manu Monga, Advocates.

CORAM:-

HON'BLE THE CHIEF JUSTICE  
HON'BLE Mr.JUSTICE BADAR DURREZ AHMED

1. Whether Reports of the local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

B.C.PATEL, CJ (ORAL)



1. This appeal is filed by the Income Tax Commissioner (Appeals) under Section 269-H of the Income Tax Act, 1961 against the order made by Income Tax Appellate Tribunal passed in Income Tax Acquisition Appeal No. 6 of 1986. Inspecting Assistant Commissioner of Income Tax Acquisition Range II, New Delhi directed acquisition of property, namely, 7, Court Road, Delhi. Acquisition Appeal No. 7 of 1985 was preferred by group of purchasers of the said property.
2. The property is known as No. 7, Court Road, Delhi. Details of transactions are given in paragraph 3 of the order made by the Tribunal. It was an agreement to sell between the parties, which was executed on 12.2.1975 by which the said property was agreed to be transferred for a consideration of Rs.15,03,500/-. Sale deed was executed on 1.11.1975 and was presented for registration on 14.11.1978 before the Sub Registrar, Delhi. However, the same was registered on 15.12.1978. On receipt of information under Section 269B of the

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Income Tax Act, an inspector was deputed to enquire and compute the fair market value. According to the inspector, the fair market value would be Rs.81,90,800/- and thus there was a difference from apparent consideration by more than 15%. It may be noted that the Competent Authority referred the matter to the Valuation Cell and the Valuation Officer reported that the value of the property as on December, 1978 to be Rs.26,37,000/-. Since this was also more than the apparent consideration by over 15%, proceedings were initiated for acquisition of the property by publication in the Gazette dated 1.9.1979. After receiving the objections from the parties, the Competent Authority arrived at a conclusion that the value of the property on 15.12.1978 would be Rs.60,61,000/- and on 12.2.1975 the value was Rs.22,95,000/-. Thus there was difference on the date and agreement as well. The order was passed for acquisition of property against, which an appeal was preferred before the Appellate Tribunal, which after hearing the parties and on appreciation of

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evidence, reversed the order made by the Competent Authority and hence the Revenue is before this Court by way of this appeal.

3. The Tribunal has observed that the Competent Authority did not make any attempt to investigate into the more important part of the proceedings, namely, whether there was an attempt to avoid taxes. The Tribunal also held that the Revenue could not point out whether there was any leased property in the neighborhood of the property in question and whether transfers of those lease hold lands were made at the value as shown in the circulars relied upon by the Revenue. The Tribunal also held that the circulars being of general nature cannot form a sound basis for determining the value of any particular piece of land.
4. It was admitted before the Tribunal that there was no sale instance of such a big parcel of land on record and, therefore, merely on the basis of the circulars, the fair market value cannot be arrived at. The Tribunal also observed that it was a case of a sale by an income tax and wealth tax assessee

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against whom huge tax liabilities were outstanding, and who sold the property after submitting a copy of the proposed sale deed to the Income Tax Department and after obtaining tax clearance. An inspector was even deputed to attend to the transaction of sale before the Sub Registrar and receive a demand draft of Rs.1,50,000/- out of the sale consideration towards payment of tax liability of the vendors. There was a heterogenous body of persons, who have purchased the property having come together in the form of society known as Brotherhood Society. The Tribunal pointed out that in the facts and circumstances of the case it was difficult to arrange an under the table transaction. It is also required to be noted that the plot was a very large one admeasuring 15,666 sq. yards. The Tribunal also observed that purchasers for such big and highly priced properties were rare. It is also known to every one that a big plot of this size is required to be used either for housing accommodation or commercial complex, in respect of which a lay out plan will have to be prepared and

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at least 40% of the land will have to be reserved for paths and passages as per the Municipal Regulations. It is also required to be noted that the prices of big plots of land could not be compared with smaller plots. It is in this context that it is worth referring to the Tribunal order that no material was placed before it about the sizes of the plots leased out by the Government and the nature of the development conditions and the terms of the lease deeds. In absence of such details and without evidence of actual transactions, the Tribunal opined that the fair market value of the property in question could not be determined. It is in view of this, the Tribunal held that from material on record, it was not proved that the fair market value of the property in question as on the date of transfer was more than 15% of the consideration shown in the instrument of transfer. Learned counsel insisted that at pages 215 and 216 of the paper book, sale instances are tabled. Reading the same, it is very clear that the plots are of a smaller size. As correctly stated by the Tribunal, one cannot compare the price of a plot

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admeasuring 367 sq. yards with a plot admeasurir  
15,666 sq. yards. We find no merit and the appeal is  
dismissed.

Badar  
CHIEF JUSTICE

Badar  
BADAR DURREZ AHMED, J.

January 12, 2004  
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