



R-70,71,72 ;

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IN THE HIGH COURT OF DELHI AT NEW DELHI

{ ITSA -01 OF 1990, ITSA- 02 OF 1990 & ITSA -03 OF 1990 }

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Date of Decision: July 21, 2010.

ITSA 01 OF 1990

COMMISSIONER OF INCOME TAXAPPELLANT

Through: Ms. Prem Lata Bansal, Advocate

VERSUS

SMT. CHANDER KANT DUARESPONDENT

Through: Mr. Prakash Kumar, Advocate

ITSA 02 OF 1990

COMMISSIONER OF INCOME TAXAPPELLANT

Through: Ms. Prem lata Bansal, Advocate

VERSUS

SH. SHAM SARUP DUARESPONDENT

Through: Mr. Prakash Kumar, Advocate

ITSA 03 OF 1990

COMMISSIONER OF INCOME TAXAPPELLANT

Through: Ms. Prem lata Bansal, Advocate

VERSUS

B.R. TOWERS (P) LTD.RESPONDENT

Through: Mr. Prakash Kumar, Advocate

CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE REVA KHETRAPAL**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)



1. All these appeals have common factual background, therefore, our purpose would be served if we take note of the facts which appear in ITSA 01/1990. The Competent Authority had initiated proceedings under Section 269A (Chapter XXA) of the Income-Tax Act, 1961 for acquisition of property no. 16/78, Punjabi Bagh, New Delhi for which show cause notice was given. Thereafter, orders dated 30th March, 1989 were passed acquiring the said property. The said property belonged to Shri Chander Mohan Singh and Smt. Amrit Kuar and vide sale deed dated 25.9.1996 it was sold to Shri Shyam Sarup Dua and Smt. Chander Kanta Dua. Consideration stated in the sale deed was Rs. 15 lacs. According to the Competent Authority, the value of that property was Rs. 30 lacs and because of this reason, he initiated the proceedings for acquisition. The defence of the respondent was that the sale of the said property was almost a distress sale. It was pointed out that the transferees belonged to Sikh community and because of the riots which took place in October, 1984, the transferees had decided to dispose of this property with an intention to shift to Punjab. They had also taken the plea that they were in panic and wanted to shift to Punjab as early as possible. The transferee was also getting in exchange a house in Ludhiana for Rs. 12 lacs and this factor prompted him to sell the said property for Rs. 15 lacs. The transferee had thus, pointed out the following distressing factors which led to the fixing of the aforesaid consideration between the parties:-

- i) The said transaction was a distress sale since the transferee being a Sikh was anxious to dispose of this property following 1984 riots. As he was also getting in exchange, a house in Ludhiana for Rs. 12 lakhs, this factor thus prompted him to agree to sell for this amount;
- ii) At the time of purchase, partly the property was in a damaged condition and required major repairs;
- iii) The shape of the plot is taper and not rectangular;
- iv) At the time of purchase, the adjoining building was being utilized for running an institute for severely and profoundly mentally retarded people;



- v) There is a ganda-nalla immediately at the back side of it and also a washing clothes factory;
- vi) In the valuation report, the sale instance of Kirti Nagar has been taken which by no means can be considered comparable”.

2. The Competent Authority, however, did not accept this contention and passed the acquisition orders dated 30th March, 1989. The respondents preferred an appeal before the Income Tax Appellate Tribunal. The respondents have succeeded inasmuch as vide orders dated 31st August, 1989, the appeal of the respondents is allowed accepting the value of the property in question as Rs. 15 lacs in the given circumstances as explained above. We may also note that the Tribunal has set aside the process of initiation of acquisition proceedings also on the ground that there was no valid reasons to believe that fair market value of the property in question was Rs. 30 lacs as determined by the Competent Authority. The Tribunal has dealt with all these aspects in the following terms:-

“13. There is yet another way of looking at the things. For initiation of proceedings for acquisition and for ultimate acquisition of the property for the fair market value of the property has to exceed the apparent consideration by atleast 15 per cent. Apparent consideration is the consideration that is mentioned in the deed of conveyance. This is a case of exchange of immovable properties in which the difference in the value of the two properties has been made up by paying something in cash. The property in question belonged to a Sikh family, who wanted to migrate to Punjab and it has been purchased by a Hindu, who had been residing at Ludhiana and due to the conditions prevailing there wanted to migrate out of Punjab. The deed of sale mentions the considerations Rs. 15,00,000/- given in the form of a house bearing no. 507 and situate at Model Town, Ludhiana and another sum of Rs. 3,00,000/- in cash. That house at Ludhiana was also built on a plot measuring 2,000 sq. yds. Thus the consideration for the transfer of the house in question to the appellants is the



transfer in exchange of the house at Ludhiana plus the payment of Rs. 3,00,000/-. In order, therefore, that this consideration of house No. 507 and the sum of Rs. 3,00,000/- may be said to be under-stated, it should be found that the fair market value of the house at Ludhiana plus a sum of Rs. 3,00,000/- are less than the fair market value of the property in question. The learned Competent Authority has determined the fair market value of the property in question as Rs.30,00,000/-. Let us assume that the same is correct, then unless it is found that the fair market value of the house at Ludhiana and the sum of Rs. 3,00,000/- added together are substantially less than Rs. 30,00,000/- it cannot be said that the consideration has been under-stated. Therefore, in our view it was necessary for the Competent Authority to determine the fair market value of the Ludhiana property as well. Unless that was done we would not know whether the fair market value of the Ludhiana property and a sum of Rs. 3,00,000/- taken together are equal to the fair market of the Delhi property or more or are less. The mere fact that the parties estimated the value of the Ludhiana house at Rs. 12,00,000/- is not of any consequence when the competent Authority does not rely on the estimate of these parties about the Delhi property. When a deed of conveyance in respect of an immovable property is executed one has to estimate some value thereof for the purposes of payment of stamp duty and registration charges. When the parties mentioned the consideration in the deed of conveyance dated 25.9.1986 it was for that purpose and not as the real consideration for the conveyance which as stated was a transaction of exchange of a house for a house. It is possible that the manner in which the Valuation Officer and the learned Competent Authority have determined the value of the Delhi property, the value of Ludhiana property determined by them might have been about Rs. 28,00,000/-. Therefore, in the absence of that exercise it is not possible to say that the consideration for the property in question is under stated in the deed of conveyance. For the reasons discussed above, we hold that it is not established that the fair market value of the



property in question exceeds the apparent consideration by more than 15 per cent.

14. As already stated one of the points raised by the learned counsel for the assessee was that at the time of initiation the learned Competent Authority had no material before it on the basis of which it could have reason to believe that the apparent consideration is less than the fair market value by more than 15 per cent. The material that was available with the competent Authority was an instance of sale of plot no. 16-A, Punjabi Bagh, measuring 279.75 sq. yds. That was sold for Rs. 5,88,000/- in Sept., 1986 and another property being a house No. 37/44, measuring 275.44 sq.yds sold for Rs. 7,00,000/-. Both these properties are much smaller properties and as laid down in Mani Singh Avtar Singh Vs. I.A.C. (1985) 151 I.T.R. 233 sale instances. Therefore, that was not a material on the basis of which a reasonable person could have a reason to believe that the fair market value of the property in question exceeded the apparent consideration by more than 15 per cent. We, therefore, hold that the initiation of the proceedings under Section 269-C itself was bad.”

3. We are in agreement with the aforesaid approach of the Tribunal. These appeals are without any merit and accordingly dismissed.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

JULY 21, 2010
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