

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 06.05.2014

W.P.(C) 829/2013 & CM 1596/2013

COMMISSIONER OF INCOME TAX, (C) - III

..... Petitioner

versus

VINEETA GUPTA AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr N.P.Sahni.

For the Respondents : Mr Parag Tripathi, Sr. Advocate with Mr Vivek Kohli, Ms Shivambika Sinha and Mr Kunal Bahri.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition has been filed by the Commissioner of Income Tax impugning the order dated 21.05.2012 passed by the Income Tax Settlement Commission under Section 245D(4) of the Income Tax Act, 1961. The respondent No.1 had approached the Settlement Commission by way of a settlement application in respect of Assessment Years 2003-04 to 2009-10.

2. The only point raised by Mr Sahni appearing on behalf of the Revenue/petitioner was that the respondent No.1 had not made a full and true disclosure and, therefore, the order dated 21.05.2012 was liable to be quashed and or set aside. It was contended by Mr Sahni that there was one transaction concerning the property at Motia Khan, Karol Bagh, in respect of which the respondent No.1 had declared only a sum of Rs 7.6 crores (along with her husband Sh. Gopal Gupta) as the undisclosed investment whereas the persons who were the sellers in the said transaction had declared an undisclosed income of Rs 16 crores. Mr Sahni further pointed out that insofar as the sellers (Smt. Lata Jain and Sh. Roshan Agarwal) are concerned the Settlement Commission had passed an order on 31.12.2010 accepting the figure of Rs 16 crores.

3. In a company known as D.J. Infrastructure Developers (P) Ltd., Smt. Lata Jain and Sh. Roshan Agarwal were shareholders at different points of time. The said D.J. Infrastructure Developers (P) Ltd. was allotted hotel land of 3992 Sq.Mt. at Plot No.1, Motia Khan, Deshbandhu Gupta Raod, New Delhi in an auction by the Delhi Development Authority in March, 2006 for a consideration of Rs 88.13 crores. Subsequently, the respondent No.1's husband Sh. Gopal Gupta was inducted as a director in the company and

thereafter shares were allotted to Gopal Infrastructures (P) Ltd. in the said D.J. Infrastructure Developers (P) Ltd. Gopal Infrastructure (P) Ltd. was a group company of the Gopal Gupta Group. At that point of time the total cost of land in the books of D.J. Infrastructure Developers (P) Ltd. was shown to be Rs 90 crores.

4. It is the case of the Revenue that when Sh. Gopal Gupta entered as a director through the modicum of purchase of shares by his group company Gopal Infrastructures (P) Ltd., the value of the property at Motia Khan was estimated at Rs 130 crores including a premium computed at Rs 40 crores. It is also the case of the Revenue that since 1/3rd of the shares in D.J. Infrastructure Developers (P) Ltd. were acquired by Gopal Infrastructures (P) Ltd., the share of the premium would be Rs 13.3 crores which was supposed to be paid by Sh. Gopal Gupta and his wife (the respondent No.1 herein) to the other Group from whom the said shares were acquired. It is further the case of the Revenue that in their statement of facts before the Settlement Commission, Smt. Lata Jain had declared a sum of Rs 8 crores in the Assessment Year 2008-09 as income derived from the sale of 1/3rd shares to Gopal Infrastructures (P) Ltd. A similar declaration was made by Sh. Roshan Agarwal to the extent of Rs 8 crores in respect of the very same

Assessment Year 2008-09. Thus, according to Mr Sahni, the sellers (Smt. Lata Jain and Sh. Roshan Agarwal) had declared that they had received a total sum of Rs 16 crores which had not been disclosed by them in their Income Tax Returns.

5. We also note that the report under Section 245D(2B) of the said Act which had been submitted by the Commissioner to the Settlement Commission on 10.02.2011 indicates that the property at Motia Khan, Karol Bagh, was acquired for Rs 90 crores. It is further stated therein that 1/3rd of the said property was sold to Sh. Gopal Gupta at a valuation of Rs 130 crores by the Dinesh Jain Group (Smt. Lata Jain) and the Pradeep Agarwal Group (Sh. Roshan Agarwal). It was also indicated that the expenses incurred on the construction of the property and that the unaccounted investment of the respondent No.1 and her husband was more than Rs 16 crores and that Sh. Roshan Agarwal and Smt. Lata Jain had disclosed Rs 16 crores on this account in their statement of facts before the Settlement Commission to which we have already referred to above.

6. It is, therefore, contended by Mr Sahni that the Settlement Commission ought not to have accepted the declaration of Rs 7.6 crores as

the undisclosed amount on behalf of the respondent No.1 and her husband when the sellers themselves had disclosed a sum of Rs 16 crores.

7. Mr Parag Tripathi, the learned counsel appearing on behalf of the respondent No.1 submitted that it is an admitted fact that 1/3rd of the Motia Khan Property would fall in the share of the respondent No.1 and her husband Sh. Gopal Gupta. It is also not disputed that the said share was acquired through the purchase of shares as indicated above. He further submitted that it is also not disputed by the Revenue and, in fact, it is the Revenue's case that the value of the property at Motia Khan was Rs 130 crores. A further sum of Rs 3 crores could, admittedly, be added by way of registration charges taking the value of the property, at the time of the transaction, to be Rs 133 crores.

8. Mr Parag Tripathi further submitted that 1/3rd of this value of Rs 133 crores would amount to Rs 44.34 crores. Thus, according to Mr Tripathi, this is the value of the 1/3rd share in the said property which the respondent No.1 along with her husband had acquired. He submitted that it is an admitted position that out of the sum of Rs 44.34 crores the respondent No.1 and her husband Sh. Gopal Gupta had disclosed payment/investment of Rs 36.73

crores in their books. Therefore, there was a gap between the value of Rs 44.34 crores as computed above on the basis of the admitted position and the sum of Rs 36.73 crores which had been disclosed. This gap was to the extent of Rs 7.61 crores and, this is exactly what has been declared before the Settlement Commission in the application submitted by the respondent No.1 and her husband Sh. Gopal Gupta.

9. Mr Tripathi also pointed out that at the time when the search and seizure operation was being conducted at the premises of Sh. Gopal Gupta he had made a statement. In that statement he had declared that a sum of Rs 6.5 crores had been paid in cash which had not been disclosed earlier. That figure was, however, enhanced to Rs 7.61 crores at the time the application was made before the Settlement Commission. Therefore, it was contended by Mr Tripathi that there was full and true disclosure on the part of the respondent No.1 and the impugned order of the Settlement Commission did not suffer from any perversity and ought not to be disturbed.

10. Mr Tripathi also pointed out that if the figure of Rs 16 crores, as suggested by the Revenue, is taken as the undisclosed amount of investment then there would be a discrepancy of Rs 8.39 crores (Rs 16 crores – Rs 7.61

crores), which in turn would mean that the value of the 1/3rd share in the Motia Khan property would be Rs 52.73 crores (Rs 44.34 crores + Rs 8.39 crores). Furthermore, since this represented only 1/3rd of the value of the Motia Khan property the full value of the property would be Rs 158.19 crores (Rs 52.73 crores X 3 = 158.19 crores). He submitted that it is nobody's case that the value of the Motia Khan property was Rs 158.19 crores. On the contrary, it is the Revenue's case that the value of the property was Rs 130 crores. Therefore, there is no question of there being an untrue or partial disclosure on the part of the respondent No.1.

11. We may also point out that Mr Sahni referred to the order of the Income Tax Settlement Commission dated 31.12.2010 in the case of Smt. Lata Jain and Sh. Roshan Agarwal and others. In that order it has been specifically mentioned that the Commissioner in his report under Rule 9 pointed out that the initial acquisition of the property was of Rs 90 crores and that the premium had been calculated at Rs 40 crores taking the valuation to Rs 130 crores at the time of the induction of Sh. Gopal Gupta through Gopal Infrastructures (P) Ltd. Paragraph 21.7 of the said order dated 31.12.2010 specifically notes that the value of the property was estimated at Rs 130 crores when Sh. Gopal Gupta was inducted and that the premium was

determined at Rs 40 crores. The said order also indicated that the disclosure made by Smt. Lata Jain and Sh. Roshan Agarwal, who were the members of the DJ and PA Groups, with respect to the Karol Bagh (Motia Khan) property, was to the extent of Rs 16 crores whereas the disclosure made by the S.G.Group (Sh. Gopal Gupta) was Rs 6.5 crores. It is also noted in the remarks column that as per the seized papers the undisclosed amount pertaining to the 1/3rd shares would be Rs 13.33 crores. Since this was less than what had been disclosed by the applicants (Smt. Lata Jain and Sh. Roshan Agarwal) the same was accepted. Paragraph 24 of the said order also indicates the same. The relevant portion of the said paragraph 24 is given below:-

“We have considered the rival submissions. The issues were discussed in detail during the hearing. There is one item which is figuring in the statement of Shri Gopal Gupta where he has surrendered Rs.6.5 crores. Even going by the calculation of premium, the amount comes to Rs.13.3 crores (1/3rd of Rs.40 crores). The applicants have declared more. So the amount of disclosure need not be disturbed.”

12. After having heard the arguments of the learned counsel for the parties and having examined the relevant papers on record as also a copy of the Settlement Commissioner's order dated 31.12.2010, which had been handed over to us by Mr Sahni across the bar, we are of the view that the

impugned order dated 21.05.2012 does not call for any interference. The fact that Smt. Lata Jain and Sh. Roshan Agarwal had together declared a sum of Rs 16 crores as undisclosed income in respect of the said transaction cannot, in our view, bind the respondent No.1 and her husband Sh. Gopal Gupta. The respondent No.1 and Sh. Gopal Gupta were not privy to the settlement application filed on behalf of Smt. Lata Jain and Sh. Roshan Agarwal. In any event, what the Settlement Commission has said in the order in respect of Smt. Lata Jain and Sh. Roshan Agarwal, is that as per their calculations the premium amount came to Rs 13.3 crores but since the applicants therein (Smt. Lata Jain and Sh. Roshan Agarwal) had declared more than that, the disclosure needed no disturbance. It was also noted that Sh. Gopal Gupta had surrendered a lesser amount of Rs 6.5 crores. We may point out that Rs 6.5 crores had been disclosed in the initial statement given by Sh. Gopal Gupta at the time of the search and seizure operation and the figure was subsequently enhanced to Rs 7.61 crores at the time the application for settlement was made before the Settlement Commission. The Settlement Commission in its order dated 31.12.2010 did not fix any figure as to the amount of undisclosed amount. It only stated that since the amount declared by the applicants therein (Smt. Lata Jain and Sh. Roshan Agarwal), was

much more than what had been surrendered by Sh. Gopal Gupta and what had been computed by the Department, the disclosure made by them needed no disturbance.

13. It is evident from the discussion above that there is no dispute that the value of the property in question, even as per the Revenue, was Rs 130 crores. If a further sum of Rs 3 crores was added to it, to which nobody objected, by way of registration charges, the value would be Rs 133 crores. 1/3rd of this would come to Rs 44.34 crores. The respondent No.1 and her husband had disclosed Rs 36.73 crores as investment in the said property leaving a balance of Rs 7.61 crores which they declared as undisclosed amount in their settlement application. In other words, the full value of the 1/3rd share in the property has been accounted for. The Revenue cannot attempt to add anything more to this value in the absence of any concrete evidence. If the stand taken by the Revenue were to be accepted, then the value of the property, as mentioned above, would come to Rs 158.19 crores, which, as pointed out by Mr Tripathi, is nobody's case. In any event there is not an iota of evidence to indicate that the value of the property was anything but Rs 130 crores.

14. In view of the foregoing discussion, we do not find any perversity in the impugned order dated 21.05.2012 passed by the Settlement Commission under Section 245D(4) of the said Act so as to warrant any interference. The writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

MAY 06, 2014
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