THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.14978 OF 2009

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, came to be filed seeking to declare the proceedings No.CCRA1/11358/2002 dated 09.06.2009 of the 1st respondent, as illegal and arbitrary.

The averments made in the affidavit filed in support of the writ petition, in brief, are as follows:

The petitioner is a registered partnership Firm registered vide document No.1408 of 1997 with a capital of Rs.14,50,000/- consisting of eight partners. The partners, who were liable to repay the loan amount to Andhra Bank, R.R. Street, Nellore, have decided to sell the properties and petitioner Firm has agreed to purchase the partnership Firm schedule property for a sum of Rs.2,70,000/- being 20% of their share in the Firm. The document was registered as document No.1413 of 1997. While so, the second respondent issued a notice on 18.06.2001, calling objections in writing, alleging that as per the remarks pointed out by the Accountant General Audit party, the market value of the property should be taken as Rs.13,00,000/- being market value of the document for the purpose of levy of stamp duty and registration and the document is chargeable with a stamp duty of Rs.1,43,000/- with deficit stamp duty being provisionally determined as Rs.1,18,450/-. On 30.08.2001, the petitioner submitted his explanation *inter alia* contending that the share of the partners brought into the partnership has became the property of the partnership Firm and the question of transfer of property in the partnership Firm does not arise as per Section 14 of the Partnership Act. However, without considering the explanation submitted by the petitioner, the second respondent vide proceedings dated 23.11.2001, directed the petitioner to pay the deficit stamp of Rs.1,18,450/- within a period of thirty days therefrom. Aggrieved by the same, petitioner filed an appeal before the first respondent, which was dismissed on 09.06.2009. Aggrieved by the same, present writ petition came to be filed.

Heard the learned counsel for the petitioner and the learned Government Pleader for Stamps & Registration.

The question that arises for consideration of this Court is 'whether the authorities were justified in directing the petitioner to pay the stamp duty for the entire value of the subject property?'

Admittedly, the value of the subject property is Rs.13,00,000/-. The sale deed, which has been placed before the Court, would show that the two partners relinquished their rights over the Firm and sold their share of property by virtue of document dated 17.12.1997. A reading of the entire text of the document dated 17.12.1997 would show that these two partners have agreed to sell their 20% of share over the property, for which the Firm has agreed to purchase the same for a sum of Rs.2,70,000/- and the sale consideration was paid to them. Thereafter, possession was also handed over to the petitioner Firm. It was further mentioned in the document that the petitioner-Firm would have absolute right over the schedule property and the said two partners have also stated that they have no-objection for receiving the original documents from the Bank by the Firm.

It is very clearly recited in the document dated 17.12.1997 that those two partners have sold 20% of the property, which fell to their share, to the petitioner-Firm.

The relevant observations made by the 1st respondent while dismissing the appeal filed by the petitioners are extracted hereunder for better adjudication of the matter:

> " …. The legal heirs of the schedule property (executants) acquired the property by virtue of their right of inheritance and constituted Partnership along with the claimants vide Partnership Deed Document No.1408/1997 dated 02.10.1997 registered on 15.12.1997 allocating different shares. But after two days the executants sold the entire property brought in by Deed of Sale vide Document No.1413/1997 in favour of the remaining partners (claimants). The executants equated the agreement of sharing the profit and loss in the Partnership business (Viz.,) 20% of the share in the entire schedule property inherited and thrown into business by them even though they had full (100%) share in the property vested in the Firm. The executants have clearly transferred immovable property vested in business in the name of remaining partners soon after vesting the property in the firm by taking some money as consideration from the claimants (remaining partners) vesting full rights in the entire property. Therefore the instrument is a Deed of Conveyance chargeable under Article 47-A of Schedule IA to the I.S. Act 1899."

In support of his contention, the learned counsel for the petitioner relied on ***Velo Industries v. Collector, Bhavnagar***[1] wherein it has been held that when a partner retires from the partnership, the amount of his share in the net partnership assets after deducting liabilities and prior charges is determined by taking

[1] [1971] 80 I.T.R. 291

into account the notional sale of the partnership assets given to him and what he receives is his share in the partnership.

If the said analogy is applied to the case on hand, only 20% of the share held by the two outgoing partners, who sold the same to Firm while leaving the partnership, alone has to be considered for determination of the stamp duty. As such, the view taken by the appellate authority that there was a transfer of 100% share in the property appears to be incorrect.

Further, the learned AGP was unable to place on record any material showing as to how the appellate authority was justified in arriving at such a finding. Under those circumstances, this Court is of the view that the impugned order is illegal and incorrect.

Accordingly, the Writ Petition is allowed by setting aside the order dated 09.06.2009 passed by the 1st respondent.

Consequently, miscellaneous petitions pending in this writ petition, if any, shall stand closed. No order as to costs.

JUSTICE C. PRAVEEN KUMAR

18.09.2017
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