IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2023

Pronounced on : 07.06.2024

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.2345 of 2023
and CMP.No.22203 of 2023

Ride Master Rims Private Limited
New No.40, Taylors Road
Kilpauk, Chennai - 600 010.

... Appellant / Respondent

Vs

1.Inspector General of Registration
and Chief Controlling Revenue Authority
No.120, Santhome High Road
Chennai - 600 028.

2.The District Revenue Officer (Stamps)
V Floor, Singaravelanar Maligai
Rajaji Salai, Chennai - 600 001.

3.The Sub Registrar of Assurances
Avadi, Chennai. ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 47-A(10) of the Indian Stamp Act, 1899, praying to set aside the order dated 06.05.2010 passed by the first respondent in proceedings No.57816/1/08 pertaining to document bearing No.2744/2002, registered with Office of the third respondent and allow the appeal filed by the appellant before the first respondent.

For Appellants : M/s.Rank Associates

For Respondents : Mr.M.R.Gokulakrishnan
Addl. Govt. Pleader for R1 to R3

JUDGMENT

The appellant herein challenges the proceedings of the first respondent, the Inspector General of Registration, dated 06.05.2010 by which he confirmed the proceedings of the DRO (Stamps) dated 25.08.2003, passed under Section 47A of the Stamp Act.

2. The facts leading to this case may be briefly stated :

a) An extent of 7.894 acres comprised in Sy.No.703/1, 704/1A, 704/1B, 704/2, 704/3, 704/4, 704/5A, 705, 706/5 & 706/6 at Paruthipet Village in Thiruvallur District originally belonged to M/s.Tube Investments of India Ltd., In fact, this is part of a larger property. Tube Investments is a listed company and when it found its bicycle manufacturing business had become commercially unviable, it chose to close the said business. It is in these circumstances, it offered for sale of the above said property measuring 7.894 acre with the factory buildings to the appellant herein for a total consideration of Rs.4.16 crores.

b) The Income Tax Department has also cleared the same Vide its order dated 26.04.2002 under Section 269-UL(1) of the Income Tax Act.

c) At the relevant time when sale of the property referred to above took place, the guideline value of the site was Rs.284/- per sq.ft. At that value, the total consideration payable would be Rs.9,74,65,727/-.

d) Suspecting that there might be a deliberate undervaluation of the property to defeat the revenue due to the Government, the concerned Sub Registrar had made a reference to the DRO (Stamps) under Section 47A of the Act.

e) On 07.01.2003, the Special Tahsildar issued Form-I notice, from which it could be derived that the guideline value of the property is Rs.284/- per sq.ft. This was followed by Form-II notice dated 07.08.2003, following which, the enquiry was held and the DRO fixed the rate at Rs.314/- per sq.ft. The dispute is over the justification for fixing the rate at Rs.314/- per sq.ft.,

3. The property which the appellant had purchased was only a small portion of a larger extent, and M/s.Tube Investments chose to convert the remaining portion into housing plots, for which, market price was fixed at Rs.115/- per sq.ft. This would imply that Rs.314/- per sq.ft. which the DRO has reckoned is around 200% more than the said value of the housing site. Here, the DRO of Stamps would state :

(a) that the housing site lies in a low lying area; and

(b) that the property described under the sale deed in question is at a higher level and also abets the main road.

Aggrieved by the said proceedings, the appellant herein moved the first respondent, the IG Registration. He confirmed it on all the grounds which has persuaded the DRO Stamps in coming to his decision. This is now under challenge.

4.1 Heard both sides. The learned counsel for the appellant submitted that:

a) The legislative purpose and intent behind Section 47A is to avoid deliberate under valuation of the property and to check revenue loss to the Government. Reference was made to ***V.N.Devadaoss Vs Chief Revenue Control Officer-cum-Inspector and others*** [(2009) 7 SCC 438].

b) So far as the present case is concerned, the appellant had purchased the property from a listed company which was in difficult circumstances at the relevant time, so much so it was forced to close down its factory for about 11 years owing to certain internal disputes, and ultimately closed the very business. Inasmuch as the sale is by a listed company and is approved by the Board of the said company, necessarily it cannot be considered that there is an effort to deliberately undervalue of the property. This apart, the Income Tax Department has also granted its approval as per the provisions which was in vogue at the relevant time. This would imply that the transaction is a *bonafide* transaction, genuinely made, and the consideration passed is just, fair and reasonable.

4.2 Turning to the specific valuation which both the DRO of Stamps, and also the IG Registration have arrived at, this is plainly arbitrary and they have not been justified:

a) why they continue to suspect that the consideration passed under the sale deed dated 26.07.2002 was deliberately undervalued despite the facts placed before it and;

b) how they arrived at the figure that they now quote as a reasonable market price;

c) this apart, it could be seen from Form-1 notice that the valuation of the building ought to be done separately after an inspection. But, if the inspection had taken place on 19.08.2022, few months prior to the issuance of Form-1, that makes it categorical that Rs.314/- per sq.ft. which the authorities determined as the fair market price could not include the building covered under the sale deed. This is reiterated in the subsequent order of the DRO (Stamps) dated 25.08.2003, and also in the impugned proceedings of the IG Registration dated 06.05.2010;

d) even here the authorities have not considered the guideline value is reflected in Form-1, but have chosen a higher value at Rs.314/- per sq.ft.;

e) this apart, in these proceedings, the DRO of Stamps has assessed the value of the buildings at Rs.3,66,51,579/- for a built up area of 98,784 sq.ft. but, what he has ignored is that 8,000 sq.ft. thereof is ACC roofed, and the building is 11 years old. In other words, he appears to have taken a uniform rate for the entire construction without providing for any depreciation for the building;

f) more than the fact that there is variance in the value of the property as between Form-1 and final decision of the DRO (Stamps) dated 25.08.2003, the entire decision making process is infested with arbitrariness and non-application of mind.

5. The learned counsel for the respondent however contended that the Registering Authority's power to fix the market value is not limited to the guideline value for the property as Sec.47A(1) of the Stamp Act does not impose any such fetters on the Registering Authority and justified the market value fixed at Rs.314/-sq.ft as determined by the respondents. He added that the DRO himself has given his reasons for the same.

6. The rival submissions are carefully weighed. More than the correctness

of the market value as determined by the respondents, the issue is all about the permissibility of invoking Section 47-A(1). Section 47-A reads :

"***47-A Instruments of conveyance etc., under valued how to be dealt with*** *– (1) If the registering officer appointed under the Indian Registration Act, 1908 (Central Act XVI of 1908) while registering any instrument of conveyance, [exchange, gift, release of benami right or settlement] has reason to believe that the market value of the property of which is the subject matter of conveyance [exchange, gift, release of benami right or settlement], has not been truly set forth in the instrument he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.*

(2) On receipt of a reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of conveyance, [exchange, gift, release of benami right or settlement], and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) [The Collector may, suo motu or otherwise, within five years] from the date of registration of any instrument of

conveyance, [exchange, gift, release of benami right or settlement], not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, [exchange, gift, release of benami right or settlement], and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any, in the amount of duty, shall be payable by the persons liable to pay the duty:

> *Provided that nothing in this sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Madras Amendment) Act, 1967.*

(4) Every person liable to pay the difference in the amount of duty under sub-section (2) or sub-section (3) shall, pay such duty within such period as may be prescribed. In default of such payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount

due, [interest at one per cent per month on such amount for the entire period of default :

Provided that where a person has preferred an appeal against the order under sub-section (2) or sub-section (3), the interest payable under this sub-section shall be postponed till the disposal of appeal and shall be calculated on the amount that becomes due in accordance with the final order passed in appeal as if such amount had been determined under sub-section (2) or sub-section (3), as the case may be.]

(5) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3), may appeal to such authority as may be prescribed in this behalf. All such appeals shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed by rules made under this Act.

Interpreting the same, in ***V.N.Devadoss Vs Chief Revenue Control Officer-cum-Inspector and Others*** [(2009) 7 SCC 438], the Hon'ble Supreme Court has held :

"13. Sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the legislature that there must be a reason to believe that the market value of the property which is the subject-matter of the conveyance has not been truly set out

in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to undervalue the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is wilful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty."

7. Now let it be contrasted with the facts of the present case. Here is a scenario where the appellant is a private limited company which has purchased certain extent of property whose correctness of the market value stated in the document in under consideration. The property was purchased from another public limited company, pursuant to its closure. Indeed, the entire manufacture of the goods of the vendor itself has come to an halt, and this state of affairs remained close for 11 years before the sale took place. In other words, this has passed through and the sale price was determined and approved by the Board of the vendor company. And the stamp duty was paid on the guideline value, which Form-I has indicated at Rs.284/- per sq.ft. Now could this be suspected given the spirit of interpretation of the

Supreme Court in ***V.N.Devadoss*** case. To state it differently, whether the sale deed in favour of the petitioner shows lack of *bonafides* of the parties to the document in attempting to undervalue the subject of conveyance fraudulently, for the registering authority to invoke Sec.47-A.

8. The facts which confronted to the Supreme Court in ***V.N.Devadoss Vs Chief Revenue Control Officer-cum-Inspector and Others*** [(2009) 7 SCC 438], is not vastly different from the one which that has visited the Court. The Supreme Court in ***V.N.Devadoss*** case has held :

> *"15. The stand of the State is that what has been disclosed is clearly a sale value and the same cannot be termed as market value. There is fallacy in this argument.*
>
> *16. Market value is a changing concept. The Explanation to sub-rule (5) makes the position clear that (sic market) value would be such as would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance. Here, the property was offered for sale in the open market and bids were invited. That being so, there is no question of any intention to defraud the revenue or non-disclosure of the correct price. The factual scenario as indicated above goes to show that the properties were disposed of by the orders of BIFR and AAIFR and that too on the basis of the value fixed by Assets Sales*

Committee. The view was expressed by the Assets Sales Committee which consisted of members such as representatives of IDBI, debenture-holders, Government of West Bengal and Special Director of BIFR. That being so, there is no possibility of any undervaluation and therefore, Section 47-A of the Act has no application. It is not correct as observed by the High Court that BIFR was only a mediator."

9. This Court finds the ratio in ***V.N.Devadoss Vs Chief Revenue Control Officer-cum-Inspector and Others*** [(2009) 7 SCC 438] applies squarely to the facts of the present case. There must be a *prima facie* statement to suspect the valuation of the subject matter of any deed of conveyance, and there must be a justification for it too. And, when the market value is re-fixed under 47-A, which is higher than the one stated, it should indicate how that value has arrived. The power to determine the market value must conform to the standards set forth in 47-A(5), but still it cannot be arbitrarily done. To state it differently, the power to fix the market price does not grant a power to fix certain value randomly. On this score, the respondents herein have failed to justify their stand.

10. To conclude, the appeal is allowed and the proceedings of the first respondent dated 06.05.2010 impugned herein, with regard to document No.2744/2002, registered with Office of the third respondent, is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

07.06.2024

Index : Yes / No
Internet : Yes / No
Speaking order / Non-speaking order
tsg/ds

To:

1.The Inspector General of Registration
and Chief Controlling Revenue Authority
No.120, Santhome High Road
Chennai - 600 028.

2.The District Revenue Officer (Stamps)
V Floor, Singaravelanar Maligai
Rajaji Salai, Chennai - 600 001.

3.The Sub Registrar of Assurances
Avadi, Chennai.

4.The Section Officer
VR Section
High Court, Madras.

N.SESHASAYEE.J.,

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Pre-delivery Judgement in
C.M.A.No.2345 of 2023

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