

Mathew M. Thomas

Vs

Commissioner of Income Tax

Civil Appeal No. 1566 of 1993

(D. P. Wadhwa, M. Srinivasan JJ)

16.02.1999

JUDGMENT

M. Srinivasan, J.

1. The appellants purchased certain lands with buildings thereon in 1977 for a sum of Rs. 2,45,000/- . The Inspector of Income Tax valued them at Rs. 3,24,000/- and later in 1979 the Departmental Valuation Officer valued them at Rs. 7,24,000/-. The Inspecting Assistant Commissioner, Acquisition Range, Ernakulam ordered acquisition of the property on 31.3.1981. The appellants filed an appeal to the Tribunal by order dated 30.10.1981. The appeal was allowed and the proceedings were cancelled. As against the said order, the Revenue filed an appeal under Section 269 H in the High Court of Kerala.

2. During the pendency of the appeal, Chapter XX-C was introduced in the Income Tax Act (hereinafter referred to as 'Act') by Finance Act of 1986 w.e.f October 1, 1986. Under Section 269 RR, Chapter XX-A was made inapplicable in relation to transfer of an immovable property after September 30, 1986. The Central Board of Direct Taxes (hereinafter referred to as 'CBDT') issued Circular No. 455 dated 16.9.1986. The relevant part of the Circular reads as follows :-

"With a view to achieve early finalisation of proceedings under the existing Chapter XX-A of the Income Tax Act, 1961, the Board has decided that with effect from April 1, 1986, acquisition proceedings under section 269C will not be initiated in respect of an immovable property for which the apparent consideration is Rs. 5 lakhs or less and that where acquisition proceedings have been initiated by issue of notice under Section 269D, the proceedings will be dropped if the apparent consideration of the immovable property is below Rs. 5 lakhs."

3. When the appeal was taken up by the High Court, the appellants herein contended that the acquisition proceedings had to be dropped as the consideration was only Rs. 2,45,000/-. The matter was referred to a Full Bench of the High Court for decision on the question whether Administrative Circular issued by the CBDT under the Act to supplement the statute can supplant the same by deviating or detracting or going beyond or contrary to the statutory provisions.

4. The Full Bench opined that the Circular was not applicable to the case on hand as the acquisition proceedings were over by the order of the Competent Authority passed on 31.3.1981. The Full Bench observed that the pendency of the proceeding before the Competent Authority was necessary for the applicability of the Circular and as no such proceedings were pending in this case, the Circular had no application. Consequently, the Full Bench declined to answer the question referred

and directed the matter to be posted before the Division Bench for hearing.

5. Against the said order of the Full Bench the appellants have preferred this appeal on Special Leave. When leave was granted, the hearing of the pending appeal before the High Court was stayed. The only question to be considered is whether the Circular issued by the Board is applicable to proceedings pending in the Appellate stages or not. In other words, the question is, whether the Circular will not apply to proceedings in which the Competent Authority had passed an order earlier even though the same is subject matter of appellate proceedings.

6. Chapter XX-A of the Act was introduced by Taxation Laws (Amendment) Bill, 1971 to implement the recommendations of the Wanchoo Committee with a view to prevent or arrest evasion of tax through under statement of value of immovable property in sale transactions. The provisions of the Chapter enabled the Central Government to acquire any immovable property having a fair market value above Rs. 25 lakhs in cases where the consideration declared in the instrument of transfer was less than the fair market value of the property on the date of acquisition of the instrument. That power was available in cases where there were reasons to believe that the consideration agreed to between the parties had not been truly stated in the document with a view to facilitate tax evasion by the transferor or the transferee. It was also provided that proceedings could be initiated only if the fair market value exceeded the declared consideration by more than 15% thereof. The Government found that the provisions of the said chapter were not as effective as intended in the Finance Bill of 1986. Chapter XX-C was introduced and Chapter XX-A was deleted. It was proposed that no proceedings under Section 269C shall be initiated in respect of the property transferred after September 30, 1986. In the view Chapter XX-C, transfer of any immovable property of a value exceeding Rs. 5 lakhs or as may be prescribed was prohibited except after an agreement for transfer between the transferor and the transferee at least three months before the intended date of transfer. The agreement shall be in writing in the form of a statement by each of the parties to the transfer. The statement should contain in the prescribed manner such particulars as may be prescribed and shall be furnished to the Appropriate Authority constituted by the Central Government under the Chapter within such time as may be prescribed. Section 269 UD of the Act provides that the Appropriate Authority after receipt of such statement may, for reasons, to be recorded, order for the purchase of such moveable property by the Central Government for an amount equal to the amount of apparent consideration. If such an order is not made within a period of two months from the end of the month in which such statement is received by the Appropriate Authority, the power of the Appropriate Authority to make such an order shall lapse. The provisions of Chapter XX-C are thus in the nature of preemptive purchase by the Central Government to the proposed sale and they were applicable to the properties, the value of which exceed Rs. 5 lakhs.

7. In view of the change in the legislation, the CBDT thought fit to issue Circular No. 455, obviously with an object of achieving the earlier finalisation of the proceedings under Chapter XX-A. The Circular is undoubtedly a beneficial measure in order to bring an end to the uncertainty of litigious proceedings with reference to properties, the value of which does not exceed Rs. 5 lakhs. The language of the Circular does not in any manner indicate that it will apply only to proceedings pending before the Competent Authority. The mere fact that reference is made to the initiation of the proceedings by notice under 269D does not limit the operation of the Circular to proceedings immediately following such notice and culminating with the order of the Competent Authority. If proceedings are pending before the Tribunal in appeal and before the High Court on further appeal, they are also acquisition proceedings of the same nature as they are only in continuation of the proceedings initiated by the Competent Authority.

8. It is well settled that the word "Proceedings" shall include the proceedings at the appellate stage. It is sufficient to refer to the judgment of this Court in *Garikapati Veeraya v. N. Subiah Choudhry and others*, AIR 1957 SC 540 wherein the Court said at page 553 :-

"(i) That the legal pursuit of a remedy, suit appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceedings."

Hence we are unable to persuade ourselves to agree with the view expressed by the full bench of the High Court in the judgment under appeal that the Circular would apply only to proceedings pending before the Competent Authority.

9. Even before the matter was considered by the Full Bench of the Kerala High Court in the present case, the Delhi High Court had occasion to decide the question in *Commissioner of Income Tax v. Rattan Chand Sood and others*, 1987(166) ITR 497. After referring to the Circular and extracting the second paragraph thereof the High Court said :-

"The intention of the authorities clearly is that, after April 1, 1986, proceedings earlier initiated but subsisting should be dropped unless the apparent consideration exceeds Rs. 5 lakhs. In this case, the proceedings were initiated by the Competent Authority and finalised by him in 1976. But this was subject to orders in appeal and, as a result of the order of the Tribunal and the appeal to this court, the position is as if those proceedings are pending as on date. In this case, the apparent consideration is only the petty sum of Rs. 19,992 and it would seem, in view of the declaration by the Central Board of Direct Taxes and in view also of the various circumstances pointed out by us, that this is clearly not a case in which the proceedings should be allowed to drag on further."

10. In *Commissioner of Income Tax v. Export India Corporation (P) Ltd.*, 1996(219) ITR 461 the Punjab & Haryana High Court dealt with the matter at great length and refused to agree with the Kerala Full Bench. After tracing the relevant legislative background to the introduction of Chapter XX-A and XX-C and referring to the Circular and the Provisions thereof, the Division Bench of the High Court held that the proceedings once initiated will continue to have the same character until and unless they acquire finality under Section 269 I of the Act. The Court said that the proceedings which have been initiated by issue of Notice under Section 269 D were continuing as the Second Appeal was pending in the High Court under Section 269 H of the Act and thus the proceedings had not come to an end. As regards the orders, instructions and directions issued by the Board, the Bench referred to Section 119 of the Act and observed that all authorities employed in the execution of the Act are duty bound to observe and follow such orders, instructions and directions of the Board. The Bench pointed out that the Circular being a benevolent one would be binding on all authorities and would be applicable to the proceedings pending at the appeal stage as well, if the apparent consideration is below Rs. 5 lakhs. We are entirely in agreement with the opinion expressed by the High Court in that case.

11. The same High Court reiterated the above view in *CIT v. Gobind Ram*, 1996(221) ITR 892 (P&H) and *CIT v. Gursher Singh and another*, 1997(225) ITR 725.

12. The Patna High Court has also in *Competent Authority (Acquisition) v. Smt. Lalita Tody and others*, 1997(225) ITR 665 applied the Circular in pending appeals and held that the appeals would

abate. The Court had also gone into the merits of the decision of the Competent Authority and found it to be unsustainable on the facts and circumstances of the case.

13. The same view has been expressed by the Madras High Court in *Commissioner of Income Tax v. Sivan Soap Factory, 1997(227) ITR 126* which dissented from the Kerala Full Bench. It accepted the view of the Delhi High Court and Punjab & Haryana High Court.

14. We are, therefore, inclined to differ from the view expressed by the Full Bench of the Kerala High Court in the judgment under appeal. The appeal is hereby allowed and it is held that Circular No. 455 dated 16.5.1986 issued by the CBDT is applicable to all pending proceedings which have not attained finality under Section 269 I of the Act as defined in the explanation to the said Section. There will be no order as to costs.