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RAMESH BHAI J. PATEL ETC. ETC.

v.

UNION OF INDIA

DECEMBER 6, 2000

B

[S.P. BHARUCHA, N. SANTOSH HEGDE AND  
Y.K. SABHARWAL, JJ.]

C

*Income Tax Act, 1961—Section 269UA (b)—Apparent consideration—Discounted value of consideration—Interpretation of—Held, the discount relates to period between date(s) of payment under agreement and date of the agreement and not the period between date of payment by Central Government and date (s) of payment under agreement.*

D

Appellant-assesses filed writ petitions before High Court contending that the discounted value stated in Section 269UA(b) relates to the period between the date of payment of the purchase price by the Central Government and the date of the last payment stated under the agreement on the premise that the discount is made because the transferor is compensated by payment earlier than scheduled under the agreement; and that such compensation is for the period that is saved, that is, between the date of payment by the Central Government and the last date of payment under the agreement. The High Court dismissed the Writ Petitions. Hence the appeals.

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Dismissing the appeals, the Court

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**HELD :** 1.1. On a plain reading of Section 269UA(b) of the Income Tax Act, 1961, there is no interlinking of the apparent consideration to be determined thereunder with the payment to be made by the Central Government on purchase under Chapter XX-C of the Act. Section 269UA(b) prescribes how the apparent consideration under the agreement, that is, the consideration for the agreement, is to be determined, and it states that if the consideration under the agreement is payable on any date or dates falling after the date of the agreement, the value of the consideration that is payable after the date of the agreement shall be deemed to be the discounted value of such consideration as on the date of the agreement. In other words, the apparent consideration in such case will not be the consideration that is stated in the agreement but it shall be the amount thereof less a discount to be calculated in the manner set out in the definition. The period of such discount shall be the period between

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the date of the agreement and the date or dates on which the consideration or part thereof is payable. Since under the agreement, the transferor gives the transferee time to pay the consideration, the consideration is assumed to comprehend some element of interest for such delayed payment, and this is ascertained and deducted to arrive at the real consideration for the agreement, or the apparent consideration. The period of the delay necessarily starts on the date of the agreement. [427-B, C, D, E]

1.2. The purpose of Chapter XX-C and the definition of “apparent consideration” in the Act are to be determined whether immovable property has been sought to be transferred at an under-valuation. To determine whether there has been an under-valuation, the true consideration for the transfer has to be determined and, necessarily, it has to be determined as on the date of the agreement for transfer. That this is so is clear from the latter part of clause (b) of section 269UA, the phrase “the discounted value of such consideration, as on the date of such agreement for transfer” therein indicates the point of time from which the period for discounting must be calculated. [428-B-C]

*Shrichand Raheja & Anr. v. S.C. Prasad, (Appropriate Authority) & Ors., (213 I.T.R. 33), overruled.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1158 of 1998.

From the Judgment and Order dated 19.10.95 of the Gujarat High Court in S.C.A. No. 7506 of 1991.

WITH

Civil Appeal Nos. 1159/98 and 1160/98.

T.L.V. Iyer and R.P. Bhatt, Sr. Advs., Mayur R. Shah, Goodwill Indeevar, Laxmi Iyengar, Ajay Sharma, S.K. Dwivedi and S. Rajappa, H.J. Jhaveri for the appearing parties.

The Judgment of the Court was delivered by

**BHARUCHA, J.** These are appeals against the judgment and order of a Division Bench of the High Court of Gujarat, delivered on writ petitions. The controversy before us relates to the correct interpretation of Section 269UA(b) of the Income Tax Act, 1961.

Section 269UA falls within Chapter XX-C of the Act, which deals with

A the purchase by the Central Government of immovable properties in certain cases of transfer. Section 269UA is the definition section for the purposes of the Chapter. Clause (b) thereof defines 'apparent consideration'. So far as is relevant, 'apparent consideration' means:

B “(1) in relation to any immovable property in respect of which an agreement for transfer is made, being immovable property of the nature referred to in sub-clause (i) of clause (d), means,-----

(i) if the immovable property is to be transferred by way of sale, the consideration for such transfer as specified in the agreement or transfer;

C (ii) xxxxx

(iii) xxxxx

D and where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such agreement for transfer, the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf;

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The rate of interest in this behalf is prescribed by Rule 48(i) of the Income Tax Rules and it is eight per cent per annum.

F The contention on behalf of the appellants (assesseees) was that there can be no discount of the price mentioned in the agreement of transfer and, if there can, the discount must relate to the period between the date of payment of the purchase price by the Central Government and the date of the last payment under the agreement. No argument was, however, advanced in respect of the first contention. The only argument was based on the premise that the discount is made because the transferor is compensated by payment earlier than scheduled under the agreement; and that such compensation is for the period that is saved, that is, between the date of payment by the Central Government and the last date of payment under the agreement.

H It is relevant, before we proceed, to point out that Section 269UG provides that the amount of the consideration payable on purchase by the Central Government must be tendered to the person entitled thereto within a

period of one month from the end of the month in which the immovable property vests in the Central Government. Section 269UH states that if the Central Government fails to tender such payment within such time, the order of purchase by the Central Government of the immovable property shall stand abrogated and the immovable property shall stand re-vested in the transferor. A

On a plain reading of Section 269UA(b), there is no interlinking of the apparent consideration to be determined thereunder with the payment to be made by the Central Government on purchase under Chapter XX-C. Section 269UA(b) prescribes how the apparent consideration under the agreement, that is, the consideration for the agreement, is to be determined, and it states that if the consideration under the agreement is payable on any date or dates falling after the date of the agreement, the value of the consideration that is payable after the date of the agreement shall be deemed to be the discounted value of such consideration as on the date of the agreement. In other words, the apparent consideration in such case will not be the consideration that is stated in the agreement but it shall be the amount thereof less a discount to be calculated in the manner set out in the definition. The period of such discount shall be the period between the date of the agreement and the date or dates on which the consideration or part thereof is payable. B C D

To put it differently, because, under the agreement, the transferor gives the transferee time to pay the consideration, the consideration is assumed to comprehend some element of interest for such delayed payment, and this is ascertained and deducted to arrive at the real consideration for the agreement, or the apparent consideration. The period of the delay necessarily starts on the date of the agreement. E

Our attention was drawn by learned counsel for the appellants to the judgment of a Division Bench of the High Court at Bombay in *Shrichand Raheja & Anr. v. S.C. Prasad, (Appropriate Authority) & Ors.*, [213 I.T.R. 33]. It was argued by learned counsel for the Revenue before that High Court that, for the purpose of discounting, the relevant date is the date of the agreement and not the date of the payment by the Central Government and, in support of his submission, he relied upon the expression “as on the date of such agreement for transfer” in Section 269UA(b). The High Court did not agree because, in its view, the plain reading of the definition of apparent consideration made it clear that the value of the consideration payable after the date of the agreement was the discounted value and the definition did not prescribe that the discounted value should be ascertained with reference to the date of the agreement. In its view, the expression “as on the date of such agreement for F G H

A transfer” referred to the consideration payable on that date and was not indicative of the commencement of the period to ascertain the discounted value.

We are unable to agree. The High Court appears to have overlooked the purpose of Chapter XX-C and the definition of “apparent consideration” thereunder. The purpose is to determine whether immovable property has been sought to be transferred at an under-valuation. To determine whether there has been an under-valuation, the true consideration for the transfer has to be determined and, necessarily, it has to be determined as on the date of the agreement for transfer. That this is so, is clear from the latter part of clause (b), which we have quoted; the phrase “the discounted value of such consideration as on the date of such agreement for transfer” therein indicates the point of time from which the period for discounting must be calculated.

For these reasons, the appeals are dismissed with costs.

B.S.

Appeals dismissed.