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UNION OF INDIA AND ANR.

v.

M/S. CHIRANJI ESTATE (P) LTD. AND ANR.

AUGUST 7, 2001

B

[S. RAJENDRA BABU AND K.G. BALAKRISHNAN, JJ.]

Income Tax Act, 1961.

C

Chapter XX C—Under-statement of value of property—Acquisition of property by Appropriate Authority—Whether correct—Held, comparison of incomparable properties and non comparison of comparable properties is fallacious—Hence order of appropriate authority rightly set aside by High Court.

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The Appropriate Authority in exercise of powers under Chapter XX-C of the Income Tax Act, 1961 considered the property in question to be under-valued upon comparison with property situated in another Block. The appropriate authority rejected the contention of the respondents that the value of property in other Blocks was higher compared to the Block where subject property was situated, and ordered acquisition of property. Respondent-sellers

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filed writ petition challenging the said order and it was allowed by the High Court. Hence this appeal by Union of India.

Dismissing the appeal, the Court

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HELD: 1. The show cause notice had indicated the salvage value of the property at Rs. 93,000 but in the order of the appropriate authority it was taken at about Rs. 9.92 lakhs, for coming to the conclusion that the fair market value was beyond the permissible 15 per cent limit. Neither the fact nor the basis for concluding that the building value is high as more than 10 times was disclosed to the parties. The two valuation reports obtained before the

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issue of show cause notice also did not indicate any under-valuation.

[367-H; 368-A]

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2. Just as the fact that comparison of incomparable properties is fallacious, non-comparison of comparable properties is equally fallacious. The instance of property relied upon by the parties was rejected on irrelevant

consideration. For one purpose valuation is sought to be relied upon and for another purpose the same is sought to be ignored. [368-B, D] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6053 of 1998.

From the Judgment and Order dated 17.12.97 of the Delhi High Court in C.W.P. No. 5613 of 1993. B

Dr. Gauri Shankar, T.L.V. Iyer, Ranbir Chandra, Ashok K. Srivasatava, B.V. Balramdas and Ms. Sushma Suri for the Appellants.

R.P. Bhatt, P.K. Jain, M.A. Khan and M.P. Bansal for the Respondents. C

The Judgment of the Court was delivered by

RAJENDRA BABU, J. Pursuant to an agreement entered into on August 28, 1993 the property comprised in A-3, East of Kailash, New Delhi measuring 306 sq. mts. is agreed to be sold for Rs.70 lakhs. The Appropriate Authority in exercise of the powers under Chapter XX-C of the Income Tax Act, 1961 considered that there is under-statement of value of the property on the basis of that property comprised in E-326, East of Kailash, New Delhi had been agreed to be sold for Rs.51 lakhs under an agreement dated May 23, 1993. While the salvage value of the sale instance property referred to in the notice was considered at about Rs.55,000, the value of the subject property was taken at about Rs.93,000. It was contended that the value of the building on property E-326, East of Kailash, New Delhi as on the date of agreement would be Rs.10 lakhs and that is to be taken into consideration while working out the land value and also the fact that the subject property is surrounded by jhuggi jhompri as compared to property comprised in E-326, East of Kailash, New Delhi which faces Greater Kailash-I, on the one side, and Nehru Place, on the other, and that the size of the plot of the subject property was bigger [while the subject property is measuring about 300 sq. mts., the sale instance property is measuring about 167 sq. mts.]. It is also contended that the value of the properties which are in C, D and E Blocks of East of Kailash, New Delhi is higher as compared to the value of the property in Block A. The Appropriate Authority rejected the contentions raised on behalf of the seller [respondents herein] and proceeded to order acquisition of the property. While in the High Court, it was noticed that the show cause notice had indicated the salvage value of the property at Rs.93,000, but in the impugned order it was taken at about Rs.9.92 lakhs, for coming to the D
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A conclusion that the fair market value was beyond the permissible 15 per cent limit. Neither the fact nor the basis for concluding that the building value is high as more than 10 times was disclosed to the parties. It appears that the two valuation reports obtained before the issue of show cause notice also did not indicate any under-valuation. Further the instance of property No.A-32

B relied upon by the parties was rejected on irrelevant consideration. For one purpose valuation is sought to be relied upon and for another purpose the same is sought to be ignored. Just as the fact that comparison of incomparable properties is fallacious, non-comparison of comparable properties is equally fallacious.

C Some other contentions were also advanced on behalf of the Department in this case which are identical to the one raised in C.A. Nos. 6050-51 of 1998. For the very reasons stated therein, these contentions are also rejected.

Therefore, the view taken by the High Court cannot be faulted with at all and the basis indicated in the order of the High Court as summarized

D above is sufficient to set aside the order made by the Appropriate Authority. Hence we decline to interfere with the order of the High Court and dismiss this appeal. No costs.

A.K.T.

Appeal dismissed.