

ITEM NO.110

COURT NO.5

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 2314/2007

ASHOK PRAPANN SHARMA

APPELLANT(S)

VERSUS

COMMR.OF INCOME TAX & ANR.

RESPONDENT(S)

Date : 24/11/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE N.V. RAMANA

For Appellant(s)

Mr. Guru Krishnakumar, Sr. Adv.
Mr. Santosh Krishnan, Adv.

For Respondent(s)

Mr. Arijit Prasad, Adv.
Ms. Gargi Khanna, Adv.
Mr. Praneet Pranav, Adv.
Mrs. Anil Katiyar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2314/2007

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...APPELLANT

VERSUS

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& ANR.

...RESPONDENTS

ORDER

1. The Assessment Year in question is 1989-1990. The Assessee has been subjected to payment of income-tax on capital gains accruing from land acquisition compensation and sale of land. The dispute is as to how the cost of acquisition is to be worked out for the purposes of deduction of such cost from the receipts so as to arrive at the correct quantum of capital gains exigible to tax under the Income-Tax Act, 1961 (for short "the Act").

2. The Assessing Officer as well as the First Appellate Authority took into account the declaration made in the return filed by the Assessee under the Wealth Tax Act (Rs.2 per square yard) in respect of the very plot of land as the cost of acquisition. Some instances of comparable sales showing higher value at which such transactions were made (Rs.70/- per square yard) were also laid by the Assessee before the Assessing Officer. The same were not accepted on the ground that such sales were subsequent in point of time i.e. 1978-1979 whereas under Section 55(2) of the Act the crucial date for determination of the cost of acquisition is 1st April, 1974.

3. The matter reached the learned Income Tax Appellate Tribunal (for short "the Tribunal") by way of further appeal by

the Assessee. The learned Tribunal took the view that the comparable sales cannot altogether be ignored. Therefore, though the comparable sales were at a higher value of Rs.70/- per square yard, the learned Tribunal thought it proper to determine the cost of acquisition at Rs.50/- per square yard. In Second Appeal, the High Court exercising jurisdiction under Section 260A of the Act reversed the said finding bringing the Assessee to this Court by way of present appeal.

4. We have heard the learned counsels for the parties at length.

5. A declaration in the return filed by the Assessee under the Wealth Tax Act would certainly be a relevant fact for determination of the cost of acquisition which under Section 55(2) of the Act to be determined by a determination of fair

market value. Equally relevant for the purposes of aforesaid determination would be the comparable sales though slightly subsequent in point of time for which appropriate adjustments can be made as had been made by the learned Tribunal (from Rs.70/- per square yard to Rs.50/- per square yard). Comparable sales, if otherwise genuine and proved, cannot be shunted out from the process of consideration of relevant materials. The same had been taken into account by the learned Tribunal which is the last fact finding authority under the Act. Unless such cognizance was palpably incorrect and, therefore, perverse, the High Court should not have interfered with the order of the Tribunal. The order of the High Court overlooks the aforesaid severe limitation on the exercise of jurisdiction under Section 260A of the Act.

6. That apart, it appears that there was an on-going process under the Land Acquisition Act, 1894 for determination of compensation for a part of the land belonging to the Assessee which was acquired [39 acres (approx.)]. The Reference Court enhanced the compensation to Rs.40/- per square yard. The above fact, though subsequent, would not again be altogether irrelevant for the purposes of consideration of the entitlement of the Assessee. However, as the determination of the cost of acquisition by the learned Tribunal was on the basis of the comparable sales and not the compensation awarded under the Land Acquisition Act, 1894 (the order awarding higher compensation was subsequent to the order of the learned Tribunal) and the basis adopted was open for the learned Tribunal to consider, we

take the view that in the facts of the present case the High Court ought not to have interfered with the order of the learned Tribunal.

7. Consequently and taking into account all the reasons stated above, we are of the view that this appeal should be allowed which we hereby do. The order of the High Court is set aside and that of the learned Tribunal is restored.

.....,J.
(RANJAN GOGOI)

.....,J.
(N.V. RAMANA)

NEW DELHI
NOVEMBER 24, 2016