

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

CRIMINAL APPEAL NO(s). 41 OF 2004

M/S. GOVIND IMPEX (P) LTD. & ORS.

Appellant (s)

VERSUS

APPROPRIATE AUTHORITY INCOME TAX DEPTT.

Respondent(s)

Date: 07/12/2010 This Appeal was called on for judgment today.

For Appellant(s)

Mr. Sanjay Kapur,Adv.

For Respondent(s)

Mr. B.V. Balaram Das,Adv.

Hon'ble Mr. Justice C.K. Prasad
pronounced the judgment of the Bench
comprising Hon'ble Mr. Justice Harjit Singh
Bedi and His Lordship.

The appeal is dismissed.

[SUMAN WADHWA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

Signed reportable judgment is placed on the file.
REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.41 OF 2006

M/S. GOVIND IMPEX (P) LTD. & ORS.

.... APPELLANTS

VERSUS

APPROPRIATE AUTHORITY,
INCOME TAX DEPARTMENT

..... RESPONDENT

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

1. Appellants are the owners of property bearing No.B-68,

Greater Kailash, Part-I, New Delhi and they let out the same at a monthly rental of Rs.2,50,000/- with effect from 1st June, 1991 for a period of nine years renewable for a further period of nine years. The appropriate authority of the Income-tax Department, respondent herein issued show cause notice to the appellant dated 4th December, 1995, inter alia, alleging that since the lease is for a period of nine years extendable for a further period of nine years, it was a lease for a period of more than 12 years and hence the provision of Chapter XXC of the Income-tax Act (hereinafter referred to as the "Act") would be attracted and the lessor and the lessee were obliged to submit Form 37-1 within 15 days of the draft agreement. Appellants

submitted their show cause on 12th January, 1996, inter alia, contending that the lessee had an option to renew the lease by giving three months' notice prior to the expiry of the lease and further a fresh lease deed was required to be executed and registered, hence the provision of Chapter XXC of the Act shall not be attracted. The show cause filed by the appellants was considered and finding no merit, the appropriate authority rejected the same by order dated 24th April, 2001 holding the appellants guilty of not complying with the provisions of Section 269UC of the Act. Accordingly, a complaint was laid on 30th April, 2001 under Section 267AB read with Section 278B of the Act before the Additional Chief Metropolitan Magistrate alleging contravention of Section 269UC of the Act. Learned Magistrate by its order dated 30th April, 2001 took cognizance of the offence and issued process against the appellants.

2. Appellants filed writ petition before the High Court for quashing the aforesaid order dated 24th April, 2001 of the appropriate authority rejecting their show cause and deciding to file criminal complaint. However, since the prosecution had already been launched against the appellants, the Division Bench of the High Court directed for treating the writ petition as an application under Section 482 of the Code of Criminal Procedure

Code. Ultimately, the learned Single Judge by order dated 10th October, 2002 dismissed the same and while doing so observed as follows:

"In the present case also, it is clearly stipulated in para 1 of the lease deed that the lease was extendable purely at the discretion and option of the Lessee on the second part for a further period of nine years. On a conjoint reading of paras 1 and 12 of the lease deed, it becomes clear that lessor intended the lease to last for 18 years. The lessor could not have refused to renew/extend the lease after first term if the lessee complied with the conditions for renewal/extensions. So in view of explanation to Section 269UA(f)(i) of the Act, the total terms of the lease will be 18 years no matter whether it is for a single term of 18 years or two terms of nine years each or three terms of six years each or six terms of three years each. Whether the subsequent terms are described as extensions or renewals is immaterial for the purpose of Section 269UA(f)(i). If the aggregate of the original term and stipulated extension/renewal comes to more than 12 years, such a lease will fall under the purview of explanation to Section 269UA(f)(i) of the Act and it will be considered to be a lease for not less than 12 years thereby making the provisions of Chapter XXC of the Act application thereto."

3. Aggrieved by the same the appellants have preferred this appeal with the leave of the Court.

4. Mr. Harish N. Salve, learned Senior Counsel, appearing on behalf of the appellants submits that renewal of lease and extension of lease are not one and the same thing and in view of the explanation to Section 269UA(f) of the Act a lease which provides for renewal of the lease cannot be fictionally taken into account for calculating the period of lease. He submits that the term of lease was for a period of nine years with contemplation of renewal for nine years and it did not provide for extension of the term of the lease; hence the total period is for less than 12 years. To bring home the distinction between renewal and extension of lease, Mr. Salve has relied on a large number of decisions of this Court viz. Provash Chandra Dalui and another v. Biswanath Banerjee and another, (1989) Supple.(1) SCC 487, State of U.P. and others v. Lalji Tandon (Dead) through Lrs., (2004) 1 SCC 1 and Hardesh Ores (P) Ltd. v. Hede and Company, (2007) 5 SCC 614.

5. Mr. Ramesh P. Bhatt, learned Senior Counsel, appearing on behalf of respondent, however, contends that from a bare perusal of the lease deed it is evident that the term of lease was extendable for a period of nine years more and, therefore, in view of the explanation to Section 269UA(f) of the Act, the total period of lease comes to more than 12 years and hence the provisions of Chapter XXC of the Act was clearly attracted. The rival submissions necessitate examination of Section 269UA(f) (i) of the Act, particularly its explanation, same reads as follows:

"269UA(f) "transfer", -
(i) in relation to any immovable property referred to in sub-clause (i) of clause (d), means transfer of such property by way of sale or exchange or lease for a terms of not less than twelve years, and includes allowing the possession of such property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882)

Explanation - For the purposes of this sub-clause, a lease which provides for the extension of the term thereof by a further term or terms shall be deemed to be a lease for a term of not less than twelve years, if the aggregate of the term for which such lease is to be granted and the further term or terms for which it can be so extended is not less than twelve years;

(ii) xxx xxx xxx xxx"

6. On a plain reading of the explanation aforesaid it is evident that a lease which provides for the extension of the term thereof by a further term it shall be deemed to be a lease for a term of not less than twelve years, if the aggregate of the period for which the lease is granted and period of extension counted together makes it more than twelve years. In the present case, we are proceeding on our assumption that explanation to Section 269 UA(f)(i) would be attracted only when lease provides for extension of term and in view thereof, we do not consider it expedient to examine the judgment relied on by Mr. Salve. In the case in hand, the lease was for a period of nine years and the question, therefore, is as to whether the same was extendable for a further period of nine

years so as to make it for not less than twelve years.

To

answer this one is required to refer to the lease deed and

Clauses 1 and 12 thereof which are relevant for the purpose,

same read as follows:

"1. That the Lessors of the First Part have agreed to lease out to the Lessee of the Second Part the demised premises as aforesaid which are being used for commercial purposes at present namely on the lower ground floor/basement, ground floor/upper ground floor, first floor, second floor and the terrace of the building known as B-68, Greater Kailash-I, New Delhi - 110048, and clearly delineated in green outlines in the site plan annexed herewith for a period of nine years, extendable purely at the discretion and option of the Lessee of the Second Part for a further period of nine years, commencing from the date when the possession of the premises is handed over i.e. 1.06.1991 and ending on the last date when the period of first nine years expires i.e. on 31.05.2000 at a monthly lease amount of Rs.2,50,000/- (Rupees Two lacs and fifty thousand only) subject to the periodic revision as mentioned in later para. The said premises comprise of a total area of about 12904 sq. ft. with floor wise rentals as per the details below:-

xxx

xxx

xxx

xxx

xxx

xxx

xxx

xxx

12. That the Lessee may at its option and discretion renew the lease for a further period of nine years after the expiry of the term of the present lease on 31st May, 2000. If the Lessee shall be desirous of such renewal it shall give a notice of such renewal to the Lessors at least three months prior to the expiry of the term in the present lease deed. The subsequent renewals of the Lease Deed shall also be got duly signed and registered. The renewals of the Lease shall be on the same terms and conditions."

7. Mr. Salve submits that statute providing for penal prosecution has to be construed strictly. He refers to Clause

12 aforesaid and contends that it shall govern the field. Mr.

Bhatt submits that it is Clause 1 of the lease deed which shall

govern the issue. We do not have the slightest hesitation in

accepting the broad submission of Mr. Salve that Penal statute

which make an act a penal offence or impose penalty is to be

strictly construed and if two views are possible, one

favourable to the citizen is to be ordinarily preferred but

this principle has no application in the facts of the present

case. There is no serious dispute in regard to the

interpretation of explanation to Section 269UA(f) of the Act

and in fact, we are proceeding on an assumption that it will cover only such cases where exists provision for extension in lease deed. In our opinion, what we are required to consider is the terms and conditions of lease. The terms of lease are not to be interpreted following strict rules of construction. One term of the lease cannot be taken into consideration in isolation. Entire document in totality has to be seen to decipher the terms and conditions of lease. Here in the present case, Clause 1 in no uncertain term provides for extension of period of lease for a further period of nine years and clause 12 thereof provides for renewal on fulfillment of certain terms and conditions. Therefore, when the document is constructed as a whole, it is apparent that it provides for the extension of the term. If that is taken into account the lease is for a period of not less than twelve years. Once it is held so the explanation to Section 269UA(f)(i) is clearly attracted. We are of the opinion that the High Court is right in observing that "on a conjoint reading of paras 1 and 12 of the lease deed, the lessor intended the lease to last for 18 years" and further the lessor could not have refused to renew/extend the lease after first term if the lessee complied with the conditions.

8. As the matter is pending since long, we direct the Magistrate in sesin of the case to conclude the trial within six months from the date of appearance of the appellants. We further direct the appellants to appear before the Court in sesin of the case within six weeks from today.

9. In the result, we do not find any merit in the appeal and it is dismissed accordingly with the direction aforesaid.

.....J
[HARJIT SINGH BEDI]

.....
.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
DECEMBER 7, 2010.