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IN THE HIGH COURT OF JUDICATURE BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.509 OF 1993

1. Inter Equipments (India) Pvt.Ltd.,
a company incorporated under the
Company incorporated under the
Companies Act,1956 having its
registered office at 1111A, Mittal
Court, Nariman Point,
Bombay – 400021.

2. Dr.Nandu Chhabria,
a shareholder and Chairman
of the Petitioner No.1, of Bombay,
Indian Citizen, and residing at 232,
Maker Tower `B', Plot No.85,
Cuffer Parade, Bombay – 400 005.

..Petitioners

Versus

1. S.K.Laul
2. S.C.Tiwari
3. G.M.Tegeri

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All of Indian Inhabitant at present appointed as the Appropriate Authority under Chapter XXC of Income Tax Act having their office at Income Tax Department, 3rd Floor, Mittal Court, "A" Wing, Nariman Point, Bombay – 400 021.

4. Union of Indian
5. Palanpur Traders Ltd.,
a Company incorporated under companies Act, 1956 having their registered office at 402, Raheja Centre, Nariman Point, Bombay – 400 021.

..Respondents

Mr.P.S.Pardiwala with Mrs.Bina Pillai i/b. M/s.D.M.Harish & Co. for the Petitioners.

Mr.R.Asokan for Respondent Union of India.

Mr.Aniket Nair i/b. M/s.Khaitan & Jaykar for Respondent No.5.

Coram : Dr.S.Radhakrishnan &

J.P.Devadhar,JJ.

Date : 7th April, 2008.

JUDGMENT (PER : DR.S.RADHAKRISHNAN,J.)

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1. In this petition, the challenge is with regard to the order dated 18th February, 1993 was passed by the Appropriate Authority under Section 269UD(1) of the Income Tax Act, 1961 ('the Act' for short) whereby the flat no.232 on the 23rd floor of Maker Tower "B", Cuffe Parade, Mumbai-400005('property in question' for short) is sought to be purchased by the Appropriate Authority under Chapter XX-C of the Act. The facts relevant for the purpose of the present petition are that by an agreement dated 29th September, 1986 the petitioners had agreed to purchase from the respondent No. 5 the flat no.232 on the 23rd floor of Maker Tower "B", Cuffe Parade, Mumbai-400005("the said act") for an aggregate consideration of Rs.34,00,000/-. The payment was to be made in two installments- (i) Rs. 9 lakhs on or before 31-12-1986.(ii) Rs.25 lakhs on or before 30-6-1987.
2. On the 29th September, 1986, petitioner paid a sum of Rs. 9 lakhs and was put in possession of the flat and the balance of Rs.25 lakhs was paid before 30th June,1987.
3. An application is made in form No. 37 EE by the petitioner in respect of the transfer of the said flat. Respondent No.5 and the

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petitioner filed an application in form No. 37-I (Respondent 1 to 3) with the Appropriate Authority as a matter of abundant precaution.

4. On 23rd December, 1986, the Appropriate Authority passed an impugned order under section 269UD(1), directing the purchase of the flat by Union of India (Respondent 4) without giving any opportunity of hearing to the petitioners.

5. Aggrieved by the said order, the petitioners in January 1987, filed a Writ Petition bearing No. 233 of 1987 challenging the validity of the order passed u/s269UD(1), in this Court.

6. On 17th December, 1992, this Court quashed the said order dated 23rd December, 1986 remanding the matter back to the appropriate authority to decide the issue afresh in the light of the judgment of the Apex court in the case of **C.B Gautam v. Union of India reported 199 I.T.R 530**. Thereafter by a show cause notice dated 30/12/1992 the petitioners were called upon to show cause as to why the property in question agreed to be purchased by the

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petitioners should not be purchased under 269UD (1) of the Act. In the said show cause notice the Appropriate Authority referred to 3 sale instances.

7. The Appropriate Authority had determined the per sq. ft. rate for the transfer of the said flat at Rs.1906/- after reducing from the consideration of Rs. 34lakhs a sum of Rs. 25,000/-.

8. The Appropriate Authority has referred to 3 sale instances. One flat in the same building sold at a rate of Rs.2100 per sq.ft. Another flat referred to was in the adjacent building in Maker Towers "B" sold at a rate of Rs. 2535 per sq. ft. Four other flats in Maker Tower which were referred, were sold at a rate of Rs. 2311 per sq. ft.

9. On 27/9/1986, the Appropriate Authority has issued a no objection certificate for the flat No.131 in the very same building purchased by Palanpur Traders Ltd, Respondent No.5 herein, from System Communications at the same rate of Rs. 2000/- per sq. ft. the said flat(flat no.131) had an area of 3000sq.ft., better located and

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commanded a better view. Therefore, the difference in price between Rs.2000/- and Rs.1906/- is less than 15%.

10. The petitioners by their reply letter dated 22/1/1993 objected to the purchase of the property under Section 269UD(1) of the Act on various grounds set out therein. In the said reply, the petitioners inter alia stated that even on the basis of sale instances set out in the impugned show cause, it cannot be said that there is undervaluation by 15% of the fair market value. By the said reply, the petitioners had called upon the respondents to furnish all particulars and details of the sale instances referred to in the show cause notice. However, the Appropriate Authority had not furnished the same.

11. Mr.Pardiwala for the Petitioners and Mr.Aniket Nair for Respondent No.5 Palanpur Traders Ltd. Submitted that the impugned order dated 23rd December, 1986 suffers from serious infirmities and is liable to be quashed and set aside, because, firstly, the appropriate authority has not determined the fair market value of the property in question so as to arrive at a conclusion that there is any

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undervaluation to the extent of 15% of the fair market value. Secondly, it is contended that the impugned order passed without furnishing particulars and details relating to the sale instances set out in the show cause notice, which is in breach of the principles of natural justice. Thirdly, it is contended that even if the average sale prices of the sale instances set out in the show cause notice are taken as the fair market value, there is no undervaluation to the extent of 15% as enunciated by the Apex Court in the case of C.B. Gautam. For all the aforesaid reasons, Mr.Pardiwala, the learned Counsel for the petitioners submitted that the impugned order is liable to be quashed and set aside. It is an admitted position that the Appropriate authority in their impugned order have not determined its fair market value before passing the said order.

12. Mr. Ashokan, learned counsel appearing on behalf of the respondents, the revenue, on the other hand supported the order of the Appropriate Authority. He fairly stated that prior to the decision of this court in the case of **Vimal Agarwal v. Appropriate Authority reported in 210 I.T.R 16**, there was no practice of determining the

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fair market value in respect of property purchased u/s 269UD(1) of the Act. In these circumstances, on the basis of sale instances referred by the Appropriate Authority, the Appropriate authority was justified in passing the impugned order. Mr.Asokan also fairly admitted that the Appropriate Authority did not furnish details and particulars of the sale instances referred to by the Appropriate Authority, though demanded by the Petitioners.

13. We have carefully considered the rival submissions. The Apex Court in the case of C.B. Gautam (supra) has held that the provisions of Chapter XX-C can be resorted to only when there is a significant undervaluation to the extent of 15% of the fair market value with a view to evade tax. This Court, in **Vimal Agarwal's** case, has further held that without determining the fair market value, it is not only difficult but impossible to say that the apparent consideration is lower than the fair market value by 15%. In the present case, admittedly, the fair market value of the property in question is not determined and, therefore, purchase of the property in question on

the footing that there is undervaluation to the extent of 15% of the fair market value has to be held to be without any basis, whatsoever.

14. Moreover, before passing the impugned order, the appropriate authority has neither given the documents nor furnished details and particulars relating to the sale instances referred to in the show cause notice though demanded by the Petitioners. The Appropriate Authority, in the impugned order has not referred to the sale instance pointed out by the petitioners in their reply to the show cause notice which was in the same building and sale also took place in the same month. In these circumstances, the grievance of the petitioners that the impugned order suffers from serious infirmities deserves acceptance.

15. Apart from the above, in respect of the sale instances referred to in the show cause notice, the petitioners had specifically sought inspection of the documents and details and particulars thereof, but the same was not given. Failure to furnish relevant particulars and details of the sale instances by the revenue clearly



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constitutes a breach of the principles of natural justice, as those sale instances were strongly relied upon by the Appropriate Authority.

16. For all the aforesaid reasons, we are of the opinion, that the impugned order cannot be sustained and we have no option but to quash and set aside the same which was passed u/s 269UD(1) of the Act.

17. Accordingly, the petition is allowed. Rule is made absolute in terms of prayer clauses (a)(b), however with no order as to costs.

(J.P.DEVADHAR,J.)

(DR.S.RADHAKRISHNAN,J.)