

(2000) 07 CAL CK 0007

Calcutta High Court

Case No: Writ Petition No. 1541 of 2000 12 July 2000

VIPER ESTATE and INVESTMENT
LTD. and Another

APPELLANT

Vs

APPROPRIATE AUTHORITY and
Others

RESPONDENT

Date of Decision: July 12, 2000

Acts Referred:

- Income Tax Act, 1961 - Section 269UD

Citation: (2001) 246 ITR 11

Hon'ble Judges: Amitava Lala, J

Bench: Division Bench

Advocate: Singhvi, for the Assessee and Rupen Mitra, for the Revenue, for the Appellant;

Judgement

Amitava Lala J.

In this writ petition, the petitioners have challenged the order of rejection in respect of issuance of "no objection certificate" passed by the Assistant Commissioner (OSG) being the appropriate authority under Letter No. AA/Cal/1930/Jan. 2000/184-185 dated 19-5-2000. According to the petitioners, the rejection cannot be given effect to in view of the applicability of the deeming provision after the expiry of 90 days from the date of submission of the form being Form No. 37-1 under the Income Tax Rules, 1962. In this context, Mr. Singhvi, learned counsel appearing for the petitioners, cited a judgment [DLF Universal Ltd. Vs. Appropriate Authority and Another](#), in paragraph 20 whereof it is held that the statement in Form No. 37-1 was in order and was furnished to the appropriate authority within the time prescribed. The appropriate authority did not make any order within three months of its receipt of the said statement for purchase of the immovable properties in question by the Central Government. That being the position, the appropriate authority is duty bound to issue no objection certificate to the transfer of the property. It is

categorically held under paragraph 19 of the said judgment that in effect "and substance, the appropriate authority has only two options, either to grant "no objection certificate" or to invoke section 269UD. It appears from section 269UD that the deeming provision will be applicable.

2. The respondents objected in passing such order taking the ground that the statement in Form No. M-1 was not in order and, therefore, the concerned authority is not obliged to pass such order unless the appropriate form is filed. The respondents have pointed out various defects. On an enquiry, I have come to know that the form is not required to be supplied by the authority but the format is to be prepared as per Form No. 37 by the assessee or the party concerned for the purpose of placing the same before the authority. The defects pointed out are mostly innocuous in the sense, i.e., the telephone numbers, etc., but the vital part is in respect of non-availability of the FAR (floor area ratio). However, according to the petitioners, original application was made on 7-1-2000, and the time had to be expired by 7-5-2000. As and when the necessary clarifications were sought for, the same were supplied including the area of the land occupied in superstructure, total area of plot of land as also the remaining balance floor area ratio worked out. Further information is also given that they have no calculation of utilised floor area ratio. However, by the process of correspondence more time has elapsed within the prescribed three months period. In fact, the Superintending Engineer of the office of the Income Tax authority has taken initiative as per the annexure from 18-1-2000, and even thereafter certain clarifications were sought for on 8/11-2-2000. But even after several correspondence nothing was finalised as a result whereof the authority concerned rejected in giving no objection certificate on 19-5-2000, which, according to the petitioners, is after the expiry of the 90 days period, that is 7-5-2000.

Mr. Rupen Mitra, learned senior counsel appearing for the authority, contended before this court that in the instant case deeming provision is not applicable since the matter was proceeded, as available from the correspondence, even within the prescribed period of 90 days. This has explained in answer to the query of the petitioners that there cannot be the rejection when the 90 days period is already over and deeming provision is operative. In this respect, I hold that the last letter dated 19-5-2000, is a matter of communication of the effect in respect of actual happening within the prescribed period. But it appears from the correspondence that the petitioners were well informed within the prescribed time by 11-4-2000, by a further letter being No. AA/Cal/1930/Jan. 20.00/4243. Now, good, bad or indifferent, if I construe either way in respect of the rejection being out of time or communication within the time, prejudicial effect in respect of either of the parties will not be ended.

Under such circumstances, I dispose of the writ petition with a direction upon the respondent-authority to complete all the formalities for the purpose of issuance of "no objection certificate" within a period of one month from the date of the

communication of this order without fail. It is to be remembered that no further form will be filed on account of any hyper technicality or discrepancies when it is crystal clear before this court that there is no such dispute save and except the floor area ratio as indicated initially and clarification was sought for and as supplied by the petitioner. Therefore, one month period as prescribed in the order itself will be useful by using it properly day-by-day for which necessary assistance of both the parties and co-operation in connection thereto is desired by this court which will be done as expected. In spite of the same in case of any failure on the part of the authority in respect of due compliance within the period as prescribed by the court, it will be deemed that no objection certificate has been issued by the authority concerned in the light of the judgment and the order passed by this court.

Thus, the writ petition is disposed of.

No order is passed as to costs.

Since no affidavit has been used by the respondents, no allegations in the writ petition are admitted by them.

All the documents filed are kept with the record.

Xeroxed certified copy of this judgment and the order will be supplied to the parties by the department within seven days from the date of putting in requisition for drawing up and completion of the order as well as the certified copy thereof.

All parties are to act on a signed copy minutes of the operative portion of this judgment and the order upon usual undertaking and as per the satisfaction of the officer of this court as regards furnishing requisitions as directed above.