

Chief CIT rightly ordered forfeiture of bidding amount on failure of petitioner to pay entire amount within time

Summary – The High Court of Gujarat in a recent case of Panchratna Real Estate (P.) Ltd., (the Assessee) held that where petitioner did not pay entire bid amount within stipulated time as per terms and conditions on which bids were invited by income-tax department for subject property, decision of Chief Commissioner for forfeiting amount already paid by petitioner was justified

Facts

- Income-tax department put subject property to auction. It was provided in the public notice/advertisement that subject to the terms thereof 25 per cent of the amount would have to be paid within 30 days of the auction and the balance amount would have to be paid within 90 days from the date of confirmation of sale by the Chief Commissioner of Income-tax.
- In the said public auction, the petitioner was the highest bidder and, therefore, the Commissioner *vide* letter dated 27-2-2014 confirmed the sale with respect to the abovementioned property in its favour.
- Petitioner made the payment of 25 per cent of the total bid amount within a period of 30 days of the auction as per the terms and conditions of the sale but failed to make the payment of the balance sale consideration within a period of 90 days. The petitioner requested for extension of three months' time to pay the remaining bid amount. Once again the petitioner *vide* letter dated 22-7-2014 requested for extension of time so as to pay the remaining bid amount.
- Till 3-7-2014, the petitioner made the payment of 65.62 per cent of the total bid amount. At this stage, the petitioner assured that remaining amount of Rs. 88 lakh would be paid within a period of 45 days.
- On 21-8-2014, the Chief Commissioner informed the petitioner-company that its request through letter dated 28-5-2014 and 22-7-2014 for extension of time to pay the remaining bid amount could not be accepted as the same was not in consonance with the terms and conditions under the [CBDT Instructions No. 1908 dated, 19-7-1993](#).
- Thereafter *vide* impugned notice/communication dated 17-9-2014, the Chief Commissioner informed the petitioner that the amount already paid by the petitioner stood forfeited in view of the terms and conditions of the CBDT Instruction No. 1908, dated 19-7-1993 as well as per the Auction Brochure of the subject property, as the petitioner failed to pay the entire bid amount within the specified period.

Held

- At the time of inviting the bids as well as even at the time of confirmation of sale in favour of the petitioner, the petitioner was informed that it has to make the payment of bid amount within a

period of 90 days from the date of confirmation of the sale, failing which the amount already deposited shall be forfeited. On the aforesaid terms and conditions the sale came to be confirmed in favour of the petitioner. Despite the above, the petitioner has failed to make the payment of bid amount within 90 days from the date of confirmation of sale. Under the circumstances, as such the consequences on breach of the terms and conditions on which the sale came to be confirmed must follow. At the time of making bid, the petitioner was required to make the provisions for deposit of the bid amount.

- As far as the request on behalf of the petitioner to grant extension to it to deposit the balance bid amount is concerned, the same cannot be accepted. Time to make the payment of entire bid amount had expired as far back in the month of May, 2014. Granting of further time and/or extension of time further would tantamount to varying the terms and conditions on which the bids were invited and even the terms and conditions on which the sale came to be confirmed in favour of the petitioner. If the prayer of the petitioner to extend the time to make the payment of bid amount is considered and accepted, in that case the other unsuccessful bidders are likely to be affected. They can very well say that if they would have known that time to make the payment of entire bid amount is extendable, in that case, they would have offered more amount. In any case the Court, in exercise of powers under article 226 of the Constitution of India, cannot extend the period to make the payment of bid amount which would tantamount to varying the terms and conditions of inviting the bids and/or terms and conditions on which the sale is confirmed in favour of the petitioner.
- In view of the above, it cannot be said that the impugned communication/decision of the Chief Commissioner forfeiting the amount on failure of the petitioner to make the payment of entire bid amount within stipulated time is illegal and/or arbitrary and/or in breach of the terms and conditions on which the sale came to be confirmed in favour of the petitioner.
- Under these circumstances, there is no substance in the petition and the same is accordingly dismissed.