(1980) 01 GUJ CK 0019

In the Gujarat High Court

Case No : Special Civil Application No. 582 of 1978

Gopal Industrial Estate APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 16-01-1980

Acts Referred:

Income Tax Act, 1961 — Section 220, 230A, 230A(1), 230A(1)(a), 230A(1)(b)
Registration Act, 1908 — Section 17

Citation : (1980) 3 TAXMAN 448

Hon'ble Judges : B.J. Divan, C.J;S.B. Majmudar, J

Bench : Division Bench

Advocate : K.H. Kaji and Ashok L. Shah, for the Appellant; N.U. Raval and R.P. Bhatt, for the Respondent

Final Decision : Allowed

Judgement

B.J. Divan, C.J.—The petitioners herein have prayed for a declaration that the order of the first respondent dated 8-10-1975 refusing to grant the certificate u/s 230A the income tax Act, 1961, was without authority of law & they have prayed for a writ of mandamus or any other appropriate writ, order or direction directing the first respondent to issue a certificate u/s 230A of the income tax Act, 1961 on an application made by the transferor on 28-08-1975. The petitioners have also prayed for a writ of certiorari or any other appropriate writ, order or direction quashing & or setting aside the order dated 9-10-1975 passed by the first respondent ordering provisional attachment of the plots in question. The short fact leading to this litigation are as follows : Petitioner Nos. 1 to 3 are different partnership firms duly registered under the Partnership Act & the Petitioner No. 4 is a co-operative industrial society registered under the provisions of the Gujarat Co-operative Societies Act, 1961. The third respondent is a (P.) limited company & this company was the owner of Plot Nos. 85/1, 85/5 & 85/6-7 in Town Planning Scheme No. 10 at Rakhial on the outskirts of Ahmedabad city. The third respondent-company executed an agreement of sale dated 18-1-1975 in favour of the first petitioner-firm agreeing to sell these plots of land at prices varying from Rs. 65 to Rs. 81 per square yard. The total price agreed to be paid for the said plots of land was Rs. 5,61,750. The first petitioner-firm decided to keep Plot No. 85/1 for itself & to sell the other plots of land for which the agreement for sale was entered into with the third respondent-company. The other plots of land, i.e., the plots other than final Plot No. 85/1, were agreed to be sold to the other three petitioners herein & sale deeds were executed in favour of the respective petitioners by the third respondent-company on 12-08-1975 & 14-08-1975. Thereafter, on the respective dates on which the sale deeds were executed, they were presented for registration under the provisions of the Indian Registration Act on 28-08-1975. The third respondent-company applied for certificate u/s 230A of the income tax Act. It is the contention of the petitioners that on the date on which this application was made no demands in respect of any direct taxes, namely, wealth-tax, gift-tax, income tax, estate duty, etc., were pending or outstanding against third respondent-company, though assessment proceedings in respect of different assessment years under the income tax Act were pending. On 8-10-1975, an order was passed by the ITO, concerned the first respondent herein, refusing to issue the < certificate u/s 230A of the income tax Act. On 9-10-1975 a petition for winding up of the third respondent-company was presented in this Court on 21-10-1975, the Court appointed provisional liquidator & on 27-1-1976 winding up order was passed in respect of the third respondent-company. On 24-11-1977 this special civil application was filed.

2. It may incidentally be mentioned that on 1-10-1975, by an amendment to the income tax Act, 1961, section 281B was inserted in the income tax Act & as a result of this amendment provisional attachment to protect revenue in certain cases could be made. On 9-10-1975, the ITO passed provisional orders of attachment but these orders which had an initial life of six months were not renewed & they stand lapsed by the very provision of section 280B of the income tax Act.

3. u/s 230A of the income tax Act, provision is made for a certificate of the ITO concerned when registration of transfers of immovable property is sought for. Under sub-section (1) of section 230A, notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1) of section 17 of the Indian Registration Act, 1908, purports to transfer, assign, limit or extinguish the right, the title or interest or any person to or in any property valued at more than Rs. 50,000 no registering officer appointed under that Act shall register any such document, unless the ITO certifies either under clause (a) or clause (b) of section 230A(1) & the application for certificate has to be made by the person referred to in that sub-section & shall be in such form & shall contain such particulars as may be prescribed. Sub section (3) of section 230A is not material for the purpose of this judgment.

4. It is clear that section 230A occurs in the group of sections, from section 220

to section 232 (both inclusive) & this group of sections deals with the collection & recovery of taxes & it is a part of the machinery for recovery of taxes under the various direct taxes statutes that section 230A has been brought on the statute book. The certificate to be issued by the ITO is to the effect that such person has either paid the different direct taxes or made satisfactory provisions for payment of all existing liabilities under those Acts, or the registration of the document will not prejudicially affect the recovery of any existing liability under any of those Acts. Even in the case of payment of making satisfactory provision, it is provided that payment should be of all the existing liabilities or the satisfactory provision for payment of all the existing liabilities should be made & then only the ITO concerned can issue certificate as contemplated by section 230A(1) of the income tax Act.

5. Under rule 44A of the income tax Rules, 1962, an application under sub-section (2) of section 230A for a certificate under subsection (1) of that section shall be made in duplicate in Form No. 34A to the ITO. Form No. 34A requires the necessary particulars to be furnished. Under column 4, in case any assessment has been made on the applicant under the Indian income tax Act, 1922, income tax Act, 1961, Wealth-tax Act, 1957, Expenditure Tax Act, 1957 & Gift-tax Act, 1958, particulars regarding the name of the income tax circle/ward/ district in which such assessment in respect of the latest year was made have to be furnished. Under column 6, particulars of existing tax liability as on the date of the application has to be furnished indicating against different Acts, the assessment year & the amount of the existing liability. Below column 6 it has been indicated that "if there is no existing liability against the applicant on the date of the application under, any one of the aforesaid Acts, this should be indicated by writing nil against the name of the relevant Act". In the form of the certificate, which the ITO has to issue (this form of the certificate is part of Form No. 35A), the ITO concerned has to certify to the Registrar/Sub-registrar that the assessee has no liabilities outstanding or that the assessee has made satisfactory provision for payment of taxes due under the income tax Act, 1961, Indian income tax Act, 1922, Excess Profits Tax Act, 1940, Business Profits Tax Act, 1947, Wealth-tax Act, 1957, Expenditure Tax Act 1957 & Gift-tax Act, 1958 or that the registration of the document mentioned against Item No. 7(i) of the application will not prejudicially affect the recovery of any of the taxes due under the aforesaid Acts. Therefore, the certificate is on the line of satisfaction of the ITO as indicated in section 230A(1). The crucial words in the light of the facts before us are the words "existing liabilities". Mr. Raval, appearing for respondent Nos. 1 & 2, has drawn our attention to the decision of the Supreme Court in Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, . At page 784 of the report, K. Subba Rao, J., as he then was, has quoted the following passage from the earlier decision of the Supreme Court in Kalwa Devadattam and Others Vs. The Union of India (UOI) and Others, . In that earlier decision Shah, J., as he then was, stated thus : "Under the Indian income tax Act, liability to pay income tax arises on the accrual of the income, &

not from the computation made by the taxing authorities in the course of assessment proceedings : it arises at a point of time not later than the close of the year of account.'''' & summarising the legal position Shah, J. stated "a liability to pay income tax is a present liability though it becomes payable after it is quantified in accordance with ascertainable data. There is a perfected debt at any rate on the last day of the accounting year & not a contingent liability." Relying on these two passages from the decision in Kesoram Industries''s case (supra) Mr. Raval contended that the words "existing liability" occurring in section 230A(1) must be interpreted to mean liability to pay income tax as explained in Kesoram Industries''s case (supra) without any reference to the order of assessment that may be passed subsequently in regular assessment proceedings.

6. We are unable to accept this contention of Mr. Raval. It is well settled law that the words have to be interpreted in the perspective in which the Legislature has enacted the particular provision of law & the words take colour from the context in which they occur. The Supreme Court has pointed out in Union of India (UOI) Vs. Raman Iron Foundry, in paragraph 6 at page 1270 that while interpreting the words, the context & collocation of particular expression have to be considered & the context in which the words occur that have an important role in the meaning to be attributed to the particular words occurring in a particular statute. In the case before us, we find that section 230A has been enacted as a part of the machinery for collection & recovery of the income tax & other taxes. Secondly, it is an aid to the recovery of taxes when they become due, in the sense of assessment orders having been passed & the exact amount of tax due from particular assessee in respect of a particular year having been determined. It is only after the tax liability has thus been determined that the recovery proceedings under the income tax Act can be started. It is to assist the machinery for recovery of tax dues that section 230A has been enacted & the object of the Legislature in enacting section 230A is to see that the immovable properties, which would be otherwise available for attachment & ultimately realisation of the tax dues of the person concerned, are not transferred away leaving the tax authorities without any recourse to such immovable properties. Under clause (b) of sub-section (2) of section 230A, it has been clearly provided that the ITO concerned can, inter alia, certify that the recovery of any existing liability under any of the Direct Taxes Acts referred to in clause (a) of sub-section (1) of section 230A will not be prejudicially affected by the registration of the document in question. Now, recovery of any existing liability as set out in section 230A(1)(b) can only refer to recovery of a tax which has already been assessed under the assessment machinery functioning under the respective taxation statute. Unless the tax liability has been finally determined by an assessment order, there cannot be recovery of any existing liability. Under these circumstances, it is obvious that section 230A(1)(b) refers to recovery of an existing liability arising from an order of assessment passed under the respective taxation statutes being one of the statutes set out in section 230A(1)(a). Thus, the words "existing liability" at least in section 230A(1)(b) would mean existing

liability to pay tax under an order of assessment already passed under the relevant taxation statute. Under clause (a) of sub-section (1) of section 230A, similar words "existing liability" are used by the Legislature. It is well settled canon of construction that the same words occurring in different clauses of the same section must bear the same meaning & applying that well known canon of construction to the words "existing liability" occurring in clause (a) of sub-section (1) of section 230A, it must be held that even under clause (a) the words "existing liability" refer to the liability in respect of tax assessed under the respective taxation statute. Unless & until there is a tax amount due & outstanding under an order of assessment already passed, there cannot be an "existing liability" under clause (a) of sub-section (1) of section 230A also. This interpretation that we put on the words "existing liability" gets support from the fact that section 230A is one of the sections in the group of sections dealing with the collection & recovery of income tax & other taxes & further the form in which the application for certificate u/s 230A has to be made & the form in which the certificate has to be issued by the ITO, support our conclusion as to the meaning of the words "existing liability" which we have derived from the words of clauses (a) & (b) of sub-section (1) of section 230A. Moreover, it is difficult to envisage any payment of any existing liability or provision being made for the payment of the "existing liability" unless the existing liability has become crystalised by virtue of an order of assessment passed by the concerned officer functioning under one of the taxation statutes mentioned in clause (a) of sub-section (1) of section 230A.

7. Therefore, it is not open to the ITO concerned to take into consideration any factor other than the circumstance whether any liability in respect of payment of taxes under an order of assessment already passed is outstanding or not. It is not open to him to say that because assessment proceedings are outstanding & have not been completed, the certificate will not be issued by him. It is peculiar that in the order dated 8-10-1975 passed by the ITO refusing to issue certificate u/s 230A(1), the only factor which weighed with the ITO for refusing the certificate was that since several assessments were pending in the case, the assessee was required to extend co-operation in furnishment of the information & attendance. At one stage it was also informed vide his office letter dated 26-09-1975 that "the application filed u/s 230A would not be considered because of lack of co-operation in completion of the assessments. For the above reasons & as the registration of the documents is likely to affect the recovery of the tax, I refuse to grant certificate." Lack of co-operation in completion of the assessment is not a ground germane to section 230A(1) & it is obvious that the ITO has allowed lack of cooperation to weigh with him in refusing to grant the certificate u/s 230A(1). Since there were no taxes outstanding in the sense of the taxes already assessed, there was no question of registration of document being likely to affect the recovery of taxes. In the light of the interpretation that we have put on the words "existing liability" occurring in clauses (a) & (6) of sub-section (1) of section 230A, it is obvious that since there were no taxes under any order of

assessment year unpaid, the question of recovery of such taxes being likely to be affected, could never arise.

8. The ITO concerned passed the order dated 8-10-1975 refusing to grant the certificate u/s 230A on the two grounds, one of which was not germane to the section under which he was functioning & the second ground was based on the wrong interpretation of the provisions of sub-section (1) of section 230A. Under these circumstances, it is obvious that the refusal of the ITO concerned was bad & illegal, &, therefore, the order dated 8-10-1975 must be quashed & set aside.

9. We, therefore, allow this special civil application & quash & set aside the order dated 8-10-1975 passed by the first respondent herein. We also direct that a writ of mandamus be issued against the first respondent directing him to issue certificate within two weeks from today. u/s 230A(1) in respect of the four transfer deeds in respect of which application u/s 230A was made to him. The certificate will have to be issued in the light of the facts & circumstances which prevailed at the time when the application for certificate was made or on 8-10-1975.

10. We must make it clear that nothing that we have stated in the course of this judgment will affect the course of the winding up proceedings before the learned company judge of this Court & nothing that we have stated in this judgment will affect the rights & liabilities interse of the transferee or transferor or the creditors, if there are any such, in the winding up proceedings. We are only concerned with the provisions of section 230A in the present proceedings. In the result, this special civil application is allowed. Rule is made absolute accordingly. Respondent Nos. 1 & 2 will pay the costs of this petition to the petitioners.

