

(1990) 03 MAD CK 0008
In the Madras High Court

N.C. Rangesh and Others

APPELLANT

Vs

Inspector General of Registration, Registration Department
Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 22-03-1990

Acts Referred:

Income Tax Act, 1961 — Section 230A
Registration Act, 1908 — Section 60
Stamp Act, 1899 — Section 3

Citation : (1991) 233 MLJ 1

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Division Bench

Judgement

K.S. Bakthavatsalam, J.—The common question involved in all these writ petitions is about the validity of the circular issued by the

Inspector General of Registration dated 29.5.1989 and the Circular dated 11.3.1977, issued by the same authority.

2. The petitioners in W.P. Nos. 408, 409, 1466 to 1470 of 1990 are purchasers of land from the one and the same owner Mrs. Subbulakshmi.

Each of the above mentioned purchasers purchased different extent of undivided interest from the said owner Mrs. Subbulakshmi, in No. 15,

Venkatarama Iyer Street, T. Nagar, Madras-17. Each of the petitioner entered into an agreement individually and has paid an advance of Rs.

1,001 and the sale consideration agreed by the parties in each transaction exceeds Rs.1 lakh.

3. The petitioners in W.P. No. 1389 of 1990 purchased a property measuring an extent of five grounds 1180 sq.ft. in T.S. No. 47, Block No. 37

of Kottur Village, and the property belongs to Hindu undivided family consisting of petitioners, that for the purpose of developing the said property

the petitioners demolished the old building standing therein and obtained a planning permission and building permit sanctioned by M.M.D.A. and

Corporation of Madras for construction of a new building. M/s. Sree Builders have undertaken the construction work with the purchasers of

undivided share interest in the said property. In the course of their business the petitioners entered into about 10 agreements of undivided share of

the property (365/13180).

4. Petitioners in W.P. Nos. 1525 and 1526 of 1990 have entered into an agreement of sale in favour of one Vasantha Rajamanickam for the sale

of property in No. 11, Crescent Park - II Road, Adyar, Madras, for a total consideration of Rs. 13,00,000. In view of clause 9 of the agreement,

the petitioners power of Attorney has executed five sale deeds in respect of undivided share in the said property.

5. The grievance is common in all these writ petitions. For the purpose of deciding these cases, it is not necessary to state the facts in extenso,

except to say that the petitioners in W.P. Nos. 1389, 1525 and 1526 of 1990 have come to this Court when the sale deeds are not registered in

view of the impugned circulars issued by the registering authority.

6. The same complaint is being made by the vendee, purchasers, the petitioners in W.P. Nos. 408, 409 and 1466 to 1470 of 1990.

7. The complaint of the petitioner in W.P.No.408 of 1990 is that a Circular dated 11.3.1977 has been issued by the Inspector General of

Registration, requiring the production of a Tax Clearance Certificate under the provisions of Section 230-A of Income Tax Act, in the case of a

transfer of a part of the property or an undivided share or interest in the property, even if the consideration for such transfer is less than Rs. 2 lakhs.

It is also stated by the petitioner that the Inspector General of Registration purported to issue a Circular dated 29.5.1989, which is impugned, in

these cases, to all District Registrars of Madras, Madurai and Coimbatore. It is also alleged in the affidavit that in pursuance of the Circular letter

dated 29.5.1989, wherever any document of sale is presented for" registration, conveying only, a portion or undivided interest carved out of a

larger extent of land (property) despite the contract of sale agreed to between the parties, for a transfer of conveyance of a specific interest or a

share of the vendor's property, the Sub Registrars in Tamil Nadu are insisting on

production of no objection certificate from the Appropriate Authority, Income Tax Department. It is alleged by the petitioner that both the circulars dated 11.3.1977 and 29.5.1989 are ex facie arbitrary, illegal and without jurisdiction. It is also stated that Section 230-A(1) of the Income Tax Act, 1961, (as amended by Finance Act, 1988) provides that a Tax Clearance Certificate is necessary, if the valuation of the property transferred exceeds Rs. 2 lakhs, that said value of the transfer being less than Rs. 2 lakhs, Section 230-A as it stands today is not at all attracted, that the mischief or illegality brought by the Circular issued by the Inspector General of Registration runs counter to the plain terms of Section 230-A of the Income Tax Act, 1961 and that the Circular cannot purport to give directions contrary to the enacted provisions of law and that the Inspector General of Registration and the Sub Registrars functioning under him have to be directed to ignore the circular. It is also stated that the Circular issued on 20.5.1989 is contrary to law, that the said circular, compelling the parties to a document to make an application to the Appropriate Authority, Income Tax Department, Madras for a No objection Certificate despite the fact that the transfer relates to a property less than Rs. 10 lakhs in effect, overrides and nullifies the provisions of Chapter XX-C of Income Tax Act, 1961 (Sections 269-UA and 269-UC of the said Income Tax Act, 1961) that the provisions of Section 269-UA contemplate the transfer of a part of the property or a building and unless such transfer of a part or portion of the property is exceeding Rs. 10 lakhs, there is no requirement of the parties to apply for and obtain a "No Objection Certificate" from the Appropriate Authority Income Tax Department. It is further stated that in all these cases, the apparent consideration of the sale deeds is far below the amount specified in Chapter XX-C and as such there is no need to provide "No objection certificate" from the Appropriate Authority. It is also stated in the affidavit that the provisions of Section 269-UC are attracted only if the apparent consideration agreed and stated in the document exceeds Rs. 10 lakhs, that Section 269-UC clearly supersedes the provisions of the Transfer of Property Act and Indian Registration Act, 1908, that the said circular dated 29.5.1989 clothed with powers under the Registration Act, 1908 interferes with and fetters the quasi-judicial functions performed by the District

and Sub Registrars in the matter of registering documents. A reference to a judgment of a Division Bench of this Court in M/s. Park View

Enterprises v. State of Tamil Nadu 1989 T.L.N.J. 375 is made in the affidavit. It is also stated in the affidavit that the circular dated 29.5.89 is

contrary to the scheme of Income Tax Act, 1961 (Chapter XX-C) and purports to enlarge and confer powers on the Appropriate Authority,

Income Tax Department, Madras to go into the question of grant of no objection or sanction even in respect of a transfer whose value is less than

Rs. 10,00,000. It is further stated by the petitioner that the Inspector General of Registration is bound to act in conformity with the provisions of

the Income Tax and the Indian Registration Act, 1908, that the Inspector General of Registration, is not empowered to insist on the production of

two certificates under the Income Tax Act, 1961 for the purpose of registering a sale or transfer, one being Section 230-A clearance certificate

and another being an application for "No objection" in a case where the apparent consideration for the transfer does not exceed Rs. 10 lakhs. It is

further stated in the affidavit that the Inspector General of Registration is under a legal duty and obligation to give effect and follow the object and

spirit of Indian Registration Act, 1908 read with Income Tax Act, 1961 and proceed to register the documents presented.

8. A counter affidavit has been filed by the Inspector General of Registration stating that the circulars, which are impugned in these writ petitions,

are only clarificatory in nature, that they have not laid down any law and that the circulars have only reiterated legal consequences that flow from

Section 230-A of Income Tax Act, 1961 and the provisions of Chapter XX-C of the Income Tax Act, 1961-. It is further claimed in the counter

affidavit that the provisions of Section 230-A and Chapter XX-C are applicable to the transfer of undivided interest or share which is valued less

than Rs. 2 lakhs, on account of the fact that the property transferred or conveyed is not a specific one but only a common interest. It is further

claimed in the counter affidavit that the term "property" referred to in Section 230-A of the Income Tax Act covered the whole property in the

case of transfer of undivided right or share therein, the consideration of the whole property has to be taken into account for obtaining "No

objection certificate" under Chapter XX-C of the Income Tax Act,-that the contention that the sale consideration for an undivided interest alone

has to be taken into account, for the purpose of obtaining "No objection Certificate" is not sustainable under law, that a single owner may split up the transaction to avoid obtaining "No Objection Certificate" under the Income Tax Act, that the said action is not permissible under the Act and that therefore as emanating from the provisions of Section 230-A and Chapter XX-C of the Income Tax Act, the impugned circulars have been issued. It is further submitted in the counter affidavit that the Inspector General of Registration as the supervising authority under the law is competent to issue classificatory circulars for the guidance of the Registering Authorities. It is also stated that the provisions of Section 230-A of the Income Tax Act and Chapter XX-C are independent provisions, that the circulars issued are in conformity with the provisions of the Indian Registration Act and Income Tax Act and that the circulars, which are impugned in these writ petitions, do not interfere with the quasi-judicial functions of the registering authorities.

9. In W.P. No. 1389 of 1990, the Appropriate Authority, Income Tax Department, Madras has filed a counter affidavit. Mrs. Nalini

Chidambaram, the learned Counsel appearing for the Appropriate Authority, Income Tax Department, submits that since the question involved in

all these writ petitions are one and the same., the counter affidavit filed in W.P. No. 1389 of 1990 may be treated as a counter affidavit in all other

cases also on behalf of the Income Tax Department. It is also claimed in the counter-affidavit, that Chapter XX-C of the Income Tax Act has been

introduced under the Income Tax Act, in order to discourage persons from undervaluing the properties at the time of transfer, that it has now

come to the notice of the Income Tax authorities that in order to avoid filing the necessary forms before the Appropriate Authority and obtain the

"No objection certificate" a single property is truncated into the several parts to deliberately reduce the value of the property less than Rs. 10

lakhs. A reference to Section 260-UL of the Income Tax Act, 1961 has been made in the counter-affidavit. It is further claimed that u/s 69 of the

Indian Registration Act, the Inspector General of Registration shall exercise the power of general superintendence over all the registration officers,

that it is the duty of the Inspector General of Registration to ensure that the provisions of Section 269-UC of Income Tax Act are complied with by

the Registrars all over Tamil Nadu and as such the impugned circulars have been issued. It is further claimed in the counter-affidavit that the tabular

statement given by the petitioners shows that the value of the property to be transferred exceeds Rs. 10 lakhs, that the provisions of Chapter XX-

C are clearly applicable to the property that it came to the notice of the Appropriate Authority that a single property is subdivided and sold to

various individuals to avoid going before the Appropriate Authority that it will not take the transfer out of the purview of Chapter XX-C and that if

the petitioners could file the necessary forms before the Appropriate Authority and if the Appropriate Authority is satisfied, it would issue a "No

Objection Certificate" u/s 269-UL of the Income Tax Act. It is further claimed in the counter affidavit that the impugned circulars are just and valid.

10. Mr. K.C .Rajappa, the learned Counsel appearing for the petitioners contends that the Inspector General of Registration, has no power, under

the statute, to issue both the circulars especially with regard to the applicability of the Income Tax Act. Referring to Section 230-A and Chapter

XX-C, the learned Counsel further contends that no certificate is necessary if the value of the property falls below the value fixed under the Income

Tax Act, that u/s 230-A of the Income Tax Act, 1961, the value should be more than Rs. 2 lakhs and that the authorities are concerned only to

see whether the agreement of sale can come u/s 230-A of the Income Tax Act, 1961. The learned Counsel further argues that ex facie Section

230-A of the Income Tax Act does not warrant a clearance certificate, and that the impugned circulars drive the parties to the Income Tax Act

does not warrant a clearance certificate, and that impugned circulars drive the parties to the Income Tax department, to get the Income Tax

Clearance certificate. That learned Counsel further refers to Section 3 of the Indian Stamp Act, 1899 and the definition of the term "conveyance"

defined in Item 23 schedule I read in the Section 2(10) of the Indian Stamp Act, 1899. What is conveyed is a part of larger extent. The learned

Counsel further relies upon the decision of a Division Bench of this Court which is reported in M/s. Park view Enterprises v. State Government of

Tamil Nadu 1989 W L.R 1. The learned Counsel referring to Sections 269-UA, 269-UC and 269-UL of Income Tax Act, 1961, contends that if

the value of the property exceeds Rs. 10 lakhs then alone those abovementioned sections will apply and that on facts in all these cases, it will not

apply. The learned Counsel further argues that the Inspector General of Registration cannot enlarge the scope of the Income Tax Act, 1961. The

learned Counsel refers to the decision in *Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others*, , with regard to the power of issuing

circulars under an enactment. The sum and substance of the argument of the learned Counsel is that if the value of the property in the sale deed is

below Rs. 2 lakhs, and that if the value of the property is below Rs. 10 lakhs there is no necessity to obtain a certificate from the Income Tax

Authorities when the person purchases an undivided share in the property and that what all the registering authority is to consider is to see whether

the value of the property mentioned in the sale deed or in agreement of sale is in accordance with the market value and nothing more. The learned

Counsel further argues that if the Registering Authority feels doubt about the market values, it is open to them to take action under the Registration

Act and without doing so they cannot bluntly follow the circulars, which are impugned here, and issued by the Inspector General of Registration,

especially when they exercise quasi-judicial function under the Registration Act and apply the provisions of the Indian Stamp, Act on facts of each

case.

11. Mrs. Nalini Chidambaram, the learned Counsel appearing for the Income Tax Department contends that the vendee purchasers cannot

maintain the writ petitions and if at all anybody is aggrieved it is only vendors. The learned Counsel further contends that the entire property is sold

by dividing into the undivided shares and as such the entirety has to be taken into account and not the single sale deed. The learned Counsel refers

to Section 230-A of the Income Tax Act. She further refers to Section 69 of Registration Act and contends that the Inspector General of

Registration has got the powers to issue circulars, especially when the vendors decided to divide the shares and try to get over Chapter XX-C.

The learned Counsel further argues that if all the sale deeds are to be calculated it exceeds Rs. 10 lakhs and as such there is no arbitrariness in

issuing the said circulars. The learned Counsel further contends that only to curb the tendency of sellers to divide the property into so many plots in

the undivided shares to evade revenue, the present circulars are issued The learned Counsel further argues that in so far as the certificate u/s 230-A

is concerned, it can go on though Chapter XX-C may not apply. The argument of the learned Counsel appearing for the Appropriate Authority,

Income Tax Department is that the circulars, which are impugned in these writ petitions are valid.

12 Mr. V. Sridevan, the Special Government Pleader appearing for the Inspector General of Registration contends that the circulars, which are

impugned here, are issued u/s 60 of the Registration Act, and that they are classificatory in nature. The learned Counsel contends that Section 269-

UL of the Income Tax Acts, casts a mandate on the Registering Authorities, that what the Registrar have done is to ask the certificate from the

Income Tax Department and as such the said circulars are within the powers of the Registrar under the Registration Act. The learned Counsel

further argues that there was some inconvenient circumstance to the petitioners herein and that there is no tax involvement in these cases.

13. Replying to the arguments of Mrs. Nalini Chidambaram, the learned Counsel appearing for the Appropriate Authority, Madras, and Mr.

Sridevan, the learned Counsel appearing for the Inspector General of Registration, Mr. K.C. Rajappa, the learned Counsel for the petitioners

states that the purchasers are also aggrieved inasmuch as the sellers are expected to do the same under the Act. The learned Counsel also

contends that Section 69 of the Registration Act gives the power of general superintendence to the Inspector General of Registration, that the said

circulars direct the transfer for a transferee to transferor which is not warranted under, the Income Tax Act, and as such, the power of the quasi-

judicial authority's function is fettered by these circulars. The learned Counsel at the time, time points out that it may be open to the Income Tax

Department to issue circulars and that the Inspector-General of Registration cannot issue circulars under the Registration Act. The learned Counsel

further replies that for the part of the property (undivided share) either Section 230-A of the Income Tax Act, 1961 or Chapter XX-C, will not

apply and as such both the circulars are illegal and void in law.

14. The argument of Mr. K.C. Rajappa, the learned Counsel appearing for the petitioners in W.P. Nos. 408, 409 and 1389 of 1990 had been

adopted by other counsel appearing for other petitioners.

15. I have considered the arguments of Mr. K.C. Rajappa, the learned Counsel

appearing for the petitioners in W.P. Nos. 408,409 and 1389 of 1990, the arguments of Mrs. Nalini Chidambaram, the learned Counsel appearing for Appropriate Authority, Income Tax Department, Madras, Mr. V. Sridevan, Special Government Pleader, the learned Counsel appearing for Inspector General of Registration. The question which falls under consideration in these cases is within a short compass.

16. It is necessary to refer to certain statutory provisions of the Income Tax Act, 1961 to understand to cases on hand.

17. Section 230-A of the Income Tax Act, 1961 provides for certain restrictions on registration of transfers of immovable property in certain cases

which reads as follows:

230-A(1): 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 (16 of 1908) purports to transfer,

assign, limit, or extinguish the right, title of interest of any person to or in any property valued at more than two lakhs rupees, no registering officer

appointed under that Act shall register any such document.

Chapter XX-C consisting of Sections.269-U to 269" VO of Income Tax Act, 1961 has been introduced by the Finance Act, 1986 with effect

from 1.10.1986. Section 269-UA(b) defines "apparent consideration" and it runs as follows:

(b) appareht consideration",

(1) in relation to any immovable property in respect of which an agreement for transfer is made, being immovable property of the nature referred to

in Sub-clause (i) of Clause (d), means,- (i) if the immovable property is to be transferred by way of sale, the consideration for such transfer as

specified in the agreement for transfer.

Section 269-UA(d) defines ""immovable property"" which is to the followings effect:

I immovable property ""means-

(i) any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with

any machinery, plant, furniture, fittings or other things, such machinery, plant,

fittings or other things also.

Explanation: For the purposes of this sub clause, "land, building, part of a building, machinery, plant, furniture, fittings and other things" include any rights therein;

(ii) any rights in or with respect to any land or any building or part of a building (whether or not including any machinery, plant, furniture, fittings or

other things therein) which has been constructed or which is to be constructed, accruing or arising from any transaction (whether byway of

becoming a member of, or acquiring snares in, a co-operative society, company or other association of persons or by way of any agreement or

any arrangement of whatever nature), not being a transaction by way of sale, exchange or lease of such land, building or part of a building.

Section 269-UC of the Income Tax Act, places certain restrictions on transfer of immovable property which is to the following effect:

269-UC (1): Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1982), or in any other law for the time being in force,

no transfer of any immovable property of such value exceeding 5 lakhs rupees as may be prescribed, shall be effected except after an agreement

for transfer is entered into between the person who intends transferring the immovable property (hereinafter referred to as the transferor) and the

person to whom it is proposed to be transferred (hereinafter referred to as the transferee) in accordance with the provisions of Sub-Section (2) at

least three months before the intended date of transfer.

(2) The agreement referred to in Sub-section (1) shall be reduced to writing in the form of a statement by each of the parties to such transfer or by

any of the parties to such transfer acting on behalf of himself and on behalf of the other parties.

(3) Every statement referred to in Sub-section (2) shall -

(i) be in the prescribed form;

(ii) Set forth such particulars as may be prescribed; and

(iii) be verified in the prescribed manner; and shall be furnished to the appropriate authority in such manner and within such time as may be

prescribed, by each of the parties to such transaction acting on behalf of himself and on behalf of the other parties...

Section 269-UL places certain restrictions on registration etc., of documents in respect of transfer of immovable property and Section 260-UL(1)

of the Act reads as follows:

Notwithstanding anything contained in any other law for the time being in force, no registering officer appointed under the Registration Act, 1908

(16 of 1908), shall register any document which purports to transfer immovable property exceeding the value prescribed u/s 269-UC unless a

certificate from the Appropriate Authority that it has no objection to the transfer of such property for an amount equal to the apparent

Consideration therefore as stated in the agreement for transfer of the immovable property in respect of which it has received a statement under

Sub-Section (3) of Section 260-UC, is furnished along with such document.

Section 3 of the Indian Stamp Act, 1899, speaks of instruments chargeable with duty and Section 3(a) of the said Act reads as follows:

(a)... every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899.

Section 2(10) of the Indian Stamp Act, 1899, defines "conveyance" as follows:

Conveyance - "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is

transferred inter vivos and which is not otherwise specifically provided for by Schedule-I.

Item 23 schedule I of the Indian Stamp Act 1890 defines "conveyance" as follows:

Description of Proper Stamp dut
instrument

Conveyance as defined
by Section 2(10), not
being a Transfer charged
or exempted under N. 62-

(a) of immovable property situated Eight Rupees for every within the Cities of Madras and Rs.100 or part thereof of Madurai and Municipal Towns of the market value of the Coimbatore, Salem property which is the and Tiruchir appalli. subject matter of conveyance;

(b) of any other property. Seven rupees for every Rs. 100 or part thereof of the market value of the property which is the subject matter of conveyance.

Section 269-UA also defines "agreement for transfer" which is to the following effect:

...(a) agreement of transfer"" means an agreement, whether registered under the Registration Act, 1908 (16 of 1908) or not, for the transfer of any immovable property...

18. A reading of Section 230-A of the Income Tax Act, 1961 shows that where a document is required to be registered under the provisions of

Section 17 of the Indian Registration Act, if it purports to transfer, assign, limit, or extinguish the right, title or interest of any person to or in any

property valued at more than Rs. 2 lakhs, no registering officer shall register the said document, unless a certificate is obtained. A reading of

Section 269-UL of the Income Tax Act also is to the effect that no registering officer shall register any document which purports to transfer

immovable property exceeding the value prescribed u/s 269-UC unless a certificate from the appropriate authority that it has no objection to the

transfer of such property for an amount equal to the apparent consideration therefore as stated in the transfer of the immovable property. A reading

of both the sections, mentioned above, shows that no registering authority is permitted from registering any document if the value of the said

property exceeds Rs. 2 lakhs in the case of Section 230-A of the Income tax Act and if the said value of the property exceeds Rs. 10 lakhs then

Chapter XX-C will apply. These provisions are enacted in the Income Tax Act, 1961 for the purpose of curbing the tendency of the vendors to

evade the tax due to the revenue. The purpose behind Section 230-A of the Income Tax Act, 1961 is that such person has either paid or made

satisfactory provision for payment of liabilities under various taxing enactments. The purpose for the introduction of Chapter XX-C was to enable

the Central Government to purchase the immovable property in certain cases of transfer. Various sections under this Chapter XX-C of Income

Tax Act provide for obtaining a "No objection Certificate" for the property valued and exceeding Rs. 10 lakhs. So, in my opinion, the provisions

of the Income Tax Act will apply only in a particular circumstances and as per the statute in the Income Tax Act, itself.

19. Now, the circulars, which are impugned in these cases, can be looked at. Circular dated 11.3.1977 issued by Inspector General of

Registration reads as follows:

Sub Registration procedure-LT.Clearance Certificate u/s 230-A of the I.T. Act, - Deeds affecting portions of properties - Liabilities revised order

issued. Ref: No. 1 Inspector General's proceedings D.Dis. No. I2053/B3/76 dated 6.3.1976.

2. Inspector General's proceedings No. 95473/ C2/76-1, dated 21.1.1977

3. Government Letter No. 10707/V/(1)/76-6 C.T.7 R.L., dated 15.2.1977. (Communicated in I.G.'s proceedings No. R.Dis. 609/B3/C2/76, dated 22.2.1977.

In modification of the orders contained in Inspector General's proceedings second read above the Registering Officer are informed that in respect

of transfer etc., of Specified separate portion of the property transferred, alone should be taken into account and that in cases where undivided

right, such as 1/3 or 1/2 common share is transferred the value of the whole property should be taken into account for the purpose of Section 230-

Aof the Income Tax Act.

2. District Registrars are requested to bring this to the notice of all Sub Registrars forthwith.

3. The receipt of this circular should be acknowledged forthwith..

circular dated 29.5.1989, which is one of the impugned orders, states that if a property which is valued for more than Rs. 10 lakhs is divided into

parts and sold and if the sale consideration thereof is below Rs. 10 lakhs, a "No objection Certificate" is required. In my view, both the circulars

impugned herein, are outside the purview of the Registration Act gives the power of superintendence to the Inspector General of Registration. But,

in my view, the inspector General of Registration cannot interfere with the quasi-judicial function of the registering authority. It cannot be disputed

that the power, is quasi-judicial in nature. In my view, the issuance of the said circulars are ex facie illegal and contrary to the provisions of the

Income Tax Act, 1961 and interfere with the power of a quasi-judicial authority. When Income Tax Act, 1961 prescribes the value of property to

obtain a certificate, in my view, the Inspector General of Registration purporting to act Under Registration Act cannot read something into the

Income Tax Act and require the Subordinates to follow the same. In my view, the criterion to obtain a certificate either u/s 230-A of the Income

Tax Act, 1961 or under Chapter XX-C should be the value of the property or the interest of the person in such property that was sought to be

transferred and it was only with respect to that extent that the Income Tax clearance certificate could be insisted upon. As such, in my view, in all

these cases before me, neither Section 230-A of the Income Tax Act, 1961 nor Chapter XX-C will apply especially when undivided share is sold

under a valid sale deed or under a valid agreement of sale as provided in the Transfer of Property Act. This view of mine is supported by the view

taken by a Single Judge of-High Court of Andhra Pradesh which is reported in Samudrala Ganesh Rao Vs. State of Andhra Pradesh and Others,

In that case when the valuation of the interest of 3/40th share was only Rs. 21,775 the learned single Judge has held that Section 230-A of the

Income Tax Act is not applicable. With respect, I agree with the view of the learned Judge of the High Court of Andhra Pradesh, in the above

mentioned case. In my view, it is the proper construction to be put forth on the provisions of the Income Tax Act with which we are concerned.

20. A Division Bench of this Court in a decision in M/s. Park View Enterprises v. State Government of Tamil Nadu 1989 WL.R. 1 has considered

what are the duties of the registering authority under Registration Act, when a document is presented for registration. In that case, with regard to

the powers of registering authority, the Division Bench has observed as follows:

... This right is not conferred upon the Registering Authority. He could only find out, whether the executants who appear before him are the

persons who have executed the document and on going through the document find out under what description in Schedule I it could be clarified, and what proper stamp duty is payable thereon. As far as valuation is concerned, if it is a document which comes u/s 47-A; and if he finds that the market value has not been properly set forth in the instrument, and then refer such a document to the Collector determining the correct market value and recover the property duty payable thereon. In respect of any other instrument listed in Schedule I, Section 47-A procedure cannot be followed...

Again at page 43, the Division Bench has further observed as follows:

...The role of the Collector is to find out the market value relating to the chargeability of the instrument and he has to go by the terms of the

document regarding the nature of the transaction. Hence, the impugned Circular is Contrary to the provisions of the Act, when it directs the

Registering Authorities that, when sale deeds relating to sale of an undivided share in land come for registration, they must be kept pending and

copies of them to be sent to the Inspector-General of Registration and that the Deputy Inspector General of Registration will inspect the properties

and decide whether it comes under Amendment Act 38 of 1987 and he will find whether there has been any suppression of facts relating to the

consideration of market value as required u/s 27, and communicate necessary orders to the concerned Registrar, so that the short fell noticed in

stamp duty could be collected and then only the documents should be registered. Therefore, this circular in pith and substance deals with

documents relating to "conveyance," which would come under Article 23 of Schedule-I to the Act, and in respect of them, as stated earlier, in

view of Section 47-A, what the Inspector General of Registration had directed is opposed to the provisions of the Act.

In the above mentioned case, the Division Bench of this Court was considering a Circular issued by the Registrar, directing the Registering

Authorities to keep the sale deed made on the undivided share of land pending in order to collect short fall of stamp duty. The Division Bench has

held that when a sale deed with a clear intention that only a share in the land is conveyed, and that there is no transfer of interest between the

parties in relation the building, if any, found thereon; then the chargeability to

stamp duty could be confined only to ,the market value of the share of the land and no other and that Article 23 of the Stamp duty alone will apply. The Division Bench has further held that except the Collector, no Authority of the Registration Department in any other capacity, could fix the market value and decide upon the proper stamp duty payable in respect of any instrument covered by Section 47-A of the Act. In the above mentioned case, the Division Bench has further held that when a conveyance under Article 23 is entered into between two parties in respect of a share in the land, its registration cannot be refused on the ground that an agreement which would come under Article 5(1) exists as between them and that it had not been duly stamped or registered. Applying the principles laid down in the above mentioned decisions, I am of the view, that the circulars, which are impugned in these writ petitions cannot stand.

21. Coming to the point with regard to the nature of the circulars, I am of the view that the said circulars are not classificatory in nature, as contended by Mr. Sridevan, the learned Special Government Pleader appearing for the State. In my view, the Registering Authorities are duty bound to register the documents produced, if there is no prohibition in the Income Tax Act, 1961. If at all any power is fettered, it is only by Section 230-A and Section 269-UL of the Income Tax Act, 1961. Once the Registering Authority has come to the conclusion that the deeds produced before them are out of the purview of both these sections, mentioned above, I do not think that they can rely upon the circulars and refuse the registration. In my view, the circulars purported to have been issued in these cases, have no legs to stand and they have no legal basis also. It is also well settled that the circulars cannot be conflicted with the provisions of the enactment or rules. If authority is needed, a reference to the decision in *Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others*, may be made.

22. Though the Inspector General of Registration can issue executive directions u/s 60 of the Registration Act, he cannot add something to the provisions of Indian Income Tax Act, 1961 and issue instructions. If the revenue feels that there is lot of tax evasion by resorting to such transactions, i.e., selling a property dividing into any shares, it is Worthwhile to consider about amending the Income Tax Act as well as the

Registration Act. As the provisions exist on date, the writ petitioners are bound to succeed.

23. S. Ramalingam, J. has held recently in an unreported decision in K.V. Kishore v. The Appropriate Authority Income Tax Department, Madras

and others, W.P. No. 4537 of 1988, dated 15.3.1990, that Chapter XX-C of Income Tax Act, 1961 cannot be applied taking the total

consideration of the collective shares. In the case, the value of each share was less than Rs. 10 lakhs and what was sold was the individual

undivided share in the said property.

24. In view of my conclusion arrived at, I hold that the Circulars issued in these cases are ex-facie illegal and as such the impugned circulars are

declared as illegal and invalid.

25. In the result, all the writ petitions are allowed. However, there will be no order as to costs.