(2000) 10 GUJ CK 0087

In the Gujarat High Court

Case No : Special Civil Application No''s. 9572 to 9574 of 2000

Troika Parentals APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:
Income Tax Act, 1961 — Section 158BC, 230A

Citation : (2002) 173 CTR 334 : (2002) 253 ITR 410 : (2002) 124 TAXMAN 302

Hon'ble Judges : D.M. Dharmadhikari, C.J;Anil R. Dave, J

Bench : Division Bench

Advocate : D.V. Parikh, for the Appellant; Akshay H. Mehta and Akil Qureshi, for Manish R. Bhatt, for the Respondent

Final Decision : Allowed

Judgement

A.R. Dave, J.—As the question of law involved in all these three petitions is the same, at the request of the learned advocates, all these petitions are heard together and are decided by this common judgment.

The petitioners in these petitions wanted to transfer their properties and, therefore, they had approached the respondent-authorities with a prayer that they be given tax clearance certificates under the provisions of section 230A of the Income Tax Act, 1961, (hereinafter referred to as "the Act"), so that they can get the relevant documents registered under the provisions of Section 17 of the Indian Registration Act. The respondent-authorities, by the impugned order dated July 31,2000, denied the certificate mainly on the ground that certain details of the accounts for the accounting year 1999-2000 were not produced before the authorities and notices dated July 17, 2000, u/s 158BC of the Act had been issued to the petitioners, which were served upon the petitioners on July 18, 2000, and the petitioners were required to file their returns in pursuance of those notices.

In the circumstances, the petitioners have approached this court with a prayer that necessary certificates under the provisions of Section 230A be directed to be furnished to the petitioners so that they can effect transfer of their properties and get the transfer deed registered with the registration authorities.

It has been submitted by the learned advocate appearing for the petitioners that it was improper on the part of the respondent-authorities to refuse issuance of necessary certificates under the provisions of Section 230A of the Act for the reason that the petitioners were not liable to pay any amount of tax on the date on which the applications for the said certificates were made. It has been submitted by him that the respondent-authorities can refuse issuance of certificate if there is any existing liability on the part of the petitioner assessee, but, in the instant case, as there was no existing liability, the authorities could not have refused issuance of the certificates. It has been submitted by him that in the case of Gopal Industrial Estate and Others Vs. Income Tax Officer, Ward "E" (Revenue), Bhavnagar and Others, this court has observed that Section 230A of the Act has been enacted as a part of the machinery for collection and recovery of the Income Tax and other taxes. It has also been held that only after the tax liability has been determined, the recovery proceedings under the Act can be started. If tax liability has not been determined, the recovery proceedings cannot be initiated. On the basis of the ratio of the said case, it has been submitted by the learned advocate appearing for the petitioners, that in the instant case, as the block assessment is still not over and as no tax demand has been raised, it would not be proper on the part of the respondent-authorities to deny certificates u/s 230A of the Act as the petitioners were not liable to pay any amount of tax at the time when they had submitted their applications for the certificates.

It has been further submitted that notices u/s 158BC had been issued on July 17, 2000, and they were received by the concerned petitioners on July 18, 2000. Even as per the notices, the petitioner-assessees were given time of 20 days to submit the returns. Thus, the petitioner-assessees were supposed to submit their returns, in pursuance of the notices u/s 158BC, on or before August 9, 2000, whereas the order refusing certificates u/s 230A of the Act was passed on July 31, 2000. It has been submitted that as on July 31,2000, even the last date for filing the return was not over and, therefore, there was no question of pendency of any tax liability on that day.

So far as the demand with regard to accounts for the accounting year 1999-2000 is concerned, it has been submitted by the learned advocate appearing for the petitioners that the accounts for the said period had not been made up. Moreover, it has been submitted that the respondent-authorities could not have expected the petitioner-assessees to make up their accounts for the accounting year 1999-2000 before the last date for filing the return.

It has been also submitted by the learned advocate for the petitioners that as on the date of filing of the applications for certificates u/s 230A, no amount of tax was payable by the petitioners and, therefore, the respondent-authorities could not have denied the certificates u/s 230A of the Act.

The learned advocate Shri Akil Qureshi, appearing for the Department, has tried to support the impugned order by submitting that there is a possibility of a substantial amount of tax being determined as a result of the block assessment and if the tax which might be determined is not paid by the peti-tioner-assessees, the Revenue might suffer and in the circumstances, the certificates u/s 230A of the Act have been rightly refused.

We have heard the learned advocates and looking to the facts of the case, we are of the view that the petitioners could not have been denied the certificates u/s 230A of the Act so as to enable the petitioners to get the transfer deeds registered and get the transactions with regard to sale of their properties over.

It is crystal clear that at the time when the certificates were refused by the respondent-authorities, the petitioner-assessees were not liable to pay any tax or they were not in arrears so far as payment of tax was concerned. There was no demand with regard to any tax which was unpaid and the said fact has not been disputed even by the learned advocate appearing for the respondents. In our opinion, there was no justifiable reason on the part of the respondent-authorities in refusing issuance of the certificates u/s 230A of the Act. Even as per the law laid down by this court in the case of Gopal Industrial Estate and Others Vs. Income Tax Officer, Ward "E" (Revenue), Bhavnagar and Others, , as the petitioners were not liable to pay any tax at the relevant time, the respondent-authorities could not have denied issuance of the certificates u/s 230A of the Act to the petitioners.

In view of the facts stated hereinabove, the respondent-authorities are directed to issue the certificates u/s 230A of the Act to the petitioners within a period of 15 days from today.

The petitions are finally disposed of as allowed. Rule is made absolute in each petition with no order as to costs.