IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13571 of 2018

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MUKESHKUMAR PRABHATBHAI DESAI
Versus
INCOME TAX OFFICER WARD 2(3)(4)

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Appearance:
MR B S SOPARKAR(6851) for the PETITIONER(s) No. 1,2,3,4,5,6
MR.NIKUNT K. RAVAL, ADVOCATE for MRS KALPANAK RAVAL(1046) for the RESPONDENT(s) No. 1
UNSERVED REFUSED (N)(10) for the RESPONDENT(s) No. 2

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE UMESH TRIVEDI

Date : 29/10/2018

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Petitioners are erstwhile partners of respondent no.2 - M/s. Umiya Nagar, a partnership firm. The Assessing Officer has raised tax demands against the firm while framing assessment for the assessment year 2015-16. The petitioners claim to have retired from the firm on 16.12.2017 and thus were partners of the firm during the period in relation to which the tax demand has arisen. The firm is in appeal. Commissioner (Appeals) insisted the firm should deposit 50% of the disputed tax, upon which, the rest of the recovery would be stayed. To recover the tax

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dues of the firm, the Revenue authorities attached one of the bank accounts on 07.08.2018. Counsel for the petitioner submitted that thereafter another bank account was opened which was also put under attachment by the departmental authorities on 14.08.2018. On 14.08.2018, the firm wrote to the Additional Commissioner of Income Tax and requested for installments of Rs.10 lakhs per month to deposit 20% pending the appeal. Another letter was written on 16.08.2018 for the same purpose. The Assessing Officer has granted the facility of installments. We are informed by the counsel for the Revenue that by now, against the 20% tax which comes to approximately Rs.1.50 crores, the firm has deposited approximately Rs.53 lakhs. Therefore, there is no default in depositing any of the installments.

2. The grievance of the petitioners is that the departmental authorities have invoked section 188A of the Income Tax Act, 1961, ('the Act' for short) and issued notice to the petitioners on 07.08.2018 to deposit a tax as the erstwhile partners of the firm. In fact, the entire tax of Rs.852.87 lakhs is raised against the petitioners.

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3. Learned counsel for the petitioners was unable to establish that merely because the petitioners are erstwhile partners of the firm, no tax demand against them can be raised even if the case falls under section 188A of the Act or that first attempt must be made against the firm and its current partners before any recoveries can be raised against the erstwhile partners. He however, contended that in facts of the present case, at least at this stage, such demand cannot be raised against the petitioners. His grievance was that the firm and the current partners have sufficient means to repay the tax dues. Without causing such recoveries from them the department was chasing the petitioners. Counsel pointed out that after the department placed two of the bank accounts of the firm under attachment, yet another bank account was opened on 20.08.2018 being account no. 2480141052196 of The Sutex Co-operative Bank Ltd, Salabatpura branch.

4. On the other hand, learned counsel for the Revenue pointed out that the respondent no.2 has been paying the installments as promised by selling of some of the constructed properties which have not

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been put under attachment being stock-in-trade.

5. Present situation is that the Commissioner (Appeals) has granted stay against the recovery of entire tax on condition of depositing 20% thereof. The firm has also been granted the facility of such 20% through installments. Till date, the department does not complaint of any breach. Where, in any case, thus the firm has been protected by the interim order, subject to conditions which the firm is anyway fulfilling, the recoveries from the petitioners even otherwise would not be called for. We however cannot take care of the anxieties of the petitioners for the future developments, many of which are not possible to foresee with any clarity at this stage. We can only request the department to be vigilant about enforcing the conditions against the firm. The department would also look into the transactions of the firm in the said account number which is supplied by the petitioners.

6. Subject to above observations, the petition is disposed of at this stage. Further, providing that as long as the respondent no.2-firm continues to

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fulfill the conditions of depositing installments and till the stay pending appeal continues, there shall be no further recoveries from the petitioners. In case of either of these two conditions undergoing material change, the department would proceed in accordance with law.

7. Petition is disposed of accordingly.

(AKIL KURESHI, J)

(UMESH TRIVEDI, J)

ANKIT SHAH

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