

A GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION
v.
THE COMMISSIONER OF INCOME TAX

AUGUST 20, 1997

B [B.N. KIRPAL AND K.T. THOMAS, JJ.]

C *Income Tax Act, 1961—Section 10(20A)—Gujarat Industrial Development Act, 1962—Section 2(9)(n) & 13—Income of Appellant from industrial development—Whether falls within "planning, development or improvement of cities, towards villages or both"—Held, yes.*

D The Appellant Corporation was formed under the Gujarat Industrial Development Act, 1962, for the the purpose of securing the orderly establishment of industries in the State of Gujarat. The Appellant claimed exemption from payment of Income Tax under Sec. 10(20A) of the Act of 1961.

E The claim of the Appellant was disallowed by the Income Tax Officer but allowed by the Appellate Commissioner. On second Appeal the Tribunal reversed the view taken by Appellate Commissioner. The High Court dismissed the claim of the Appellant and held that since development of an area would require roads, buildings, sanitation, parks, sports, educational institutions and several other amenities, a city or town or village could be well developed without any industry.

F On appeal, the Appellant contended that as per Section 10(20A) if an Authority is constituted for the purpose of planning or development or improvement of any city or town or village or a combination of them, the income of such Authority is not exigible to Income Tax.

Allowing the Appeal, the Court

G HELD : 1.1. The development of industrial area would have its direct impact on the development or improvement of that part of the city, town or village where such area is located. Delinking industrial area from the scope of development of any area is, without any practical sense. [470-F-G]

H 1.2. The word "development" in Section 10(20A) for the I.T. Act should be understood in its wide sense. These is no warrant to exclude all develop-

ment programmes relating to any industry from the purview of the word "development" in the said sub-section. There is no indication in the Act that development envisaged therein should confine to non-industrial activities. Development of a place can be accelerated through varieties of schemes and establishment of industries is one of the modes of developing an area.

[471-E-F]

Shri Ramtanu Co-operative Housing Society Ltd. & Anr. v. State of Maharashtra and Ors., [1970] 3 SCC 323, relied on.

1.3. One of the reasons for incorporating a specific provision of exemption from income tax such as sub-section 10(20A) is to protect public bodies created under law for achieving the purpose of developing urban or rural areas for public good. When the object is such, an interpretation which would preserve it should be accepted even if the provision is capable of more than one interpretation. That principle of interpretation is very much applicable to fiscal statutes also. [471-G]

State of Tamil Nadu v. M.K. Kandaswami, [1976] 1 SCR 38; *Calcutta Jute Manufacturing Company & Anr. v. Commercial Tax Officer & Ors.*, JT (1997) 5 SC 690, referred to.

1.4. The authorities constituted by law for facilitating all kinds of development of cities, towns and villages for public purposes shall not be subjected to the liability to pay income tax. The High Court interpreted the exemption clause too rigidly and narrowly which result in the anomaly of bringing authorities like appellant Corporation within the tentacles of income tax liability while the authorities dealing with housing schemes which provide houses to private individuals would stand outside the taxing sphere. [472-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2950 of 1985 Etc.

From the Judgment and Order dated 28.6.84 of the Gujarat High Court in I.T.R. No. 37 of 1976.

Sameer Parekh, Ms. Musharaf Chawdhary for P.H. Parekh for the appellants.

Ranbir Chandra, Arun K. Sharma and B.K. Prasad for the Respondent.

A The Judgment of the Court was delivered by

THOMAS, J. The question raised, in its broad parameters, is whether industrial development could be enveloped within the expression "planning, development or improvement of cities, towns and villages or for both" in Section 10(20A) of the Income- tax Act, (for short 'the I.T. Act').

B Appellant, Gujarat Industrial Development Corporation, (for short 'the Corporation') claimed exemption from taxation under the I.T. Act on two alternative premises, one under Article 289(1) of the Constitution and the other under clause (20A) of Section 10 of the I.T. Act. A Division
C Bench of the High Court of Gujarat disallowed the claim under both. Hence the Corporation has filed this appeal by special leave.

Corporation has been created under the Gujarat Industrial Development Act, 1962, (for short 'the Gujarat Act') with the right to hold properties and the right to sue and be sued and in its own name. The
D Income-tax Officer concerned repelled the claim of the Corporation for exemption from tax on both grounds, but the Appellate Assistant Commissioner (AAC), on appeal, upheld their claim on both counts. When the Revenue challenged the said decision in second appeal the Income Tax Appellate Tribunal reversed the view taken by the AAC on both counts.
E Two questions were thereupon formulated to be answered by the High Court, one relating to Article 289(1) of the Constitution and the other relating to Section 10(20A) of the I.T. Act. Answers were given by the High Court, as mentioned above, against the Corporation.

F Learned counsel for the appellant Corporation stated, at the outset, that he does not press the claim under the first question under Article 289(1) of the Constitution. His arguments were confined entirely to the scope of Section 10(20A) of the I.T. Act. Therefore, we need not vex our mind with the former question.

G Section 10(20A) of the I.T. Act reads thus :

H "Any income of an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both."

Any income falling within the ambit of said sub-section would automatically slip out of exigibility under I.T. Act. The sub-section pertains to any income of an authority constituted by or under any enacted law. This first limb of the sub-section is squarely available to the Corporation as it has been constituted under the Gujarat Act. A

The second limb of the sub-section consists of two alternatives, of which the first is that the authority constituted by law should be for dealing with the need to provide housing accommodation. That alternative is obviously not available to the appellant Corporation as nobody has a case that appellant Corporation has anything to do with the obligation to provide housing accommodation. It is the second alternative in the sub-section under which appellant seeks shelter to be absolved from the liability to pay income tax. As per that alternative, if the Authority is constituted for the purpose of planning or development or improvement of any city or town or village or a combination of them, the income of such Authority is not exigible to income tax. B C D

The Division Bench of the High Court while agreeing that "industrial activity is one of the facets of general development" adopted a reasoning that since development of an area would require roads, buildings, sanitation, parks, sports, educational institutions and several other amenities "a city or town or village could be well developed without any industry". The Division Bench posed a question and answered it in the following manner: E

"The question, therefore, is whether when a particular Corporation is established for the purpose of developing or establishing industries in any particular area, can any one say that it is for the purpose of planning, developing or improving a particular city, town or village or a particular area? One may establish an industry in a given area. That area for the purpose of industry may develop. But it does not necessarily mean that the particular area develops by that industry alone. There may be advantages and disadvantages. On the one hand, because there are industrial activities in the area, some trade and commerce may grow, but that does not necessarily mean that it would develop that particular area. It may also create pollution and several other problems. Apart from F G H

- A that, the question which is required to be considered is as to whether the purpose of the Corporation or the object of the Corporation is to develop any city, any town or any particular area. The answer would be in the negative."
- B The Gujarat Act was enacted "to make special provision for securing the orderly establishment of industries in industrial areas and industrial estates in the State of Gujarat, and to assist generally in the organisation thereof, and for that purpose to establish an Industrial Development Corporation, and for purposes connected with the matters aforesaid" as can be discerned from the preamble thereof.
- C Section 2(g) of the Act defines "industrial area" as any area declared to be an industrial area by the State Government by notification in the official Gazette which is to be *developed* and where industries are to be accommodated. Section 2(n) defines "industrial estate" as any site selected
- D by the State Government where the Corporation builds factories and other buildings and makes them available for any industries or class of industries. Section 13 of the Gujarat Act enumerates the functions of the Corporation and they contain, *inter alia*, "to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Gujarat".
- E We have no doubt that a proper planning is absolutely necessary for creation of an industrial area. Inside roads, sub-roads, buildings, sanitation, parks and other amenities have also to be provided in a planned industrial area as per the modern concept of any industrial complex. Even educational institutions may have to be provided in such complex. Therefore,
- F development of industrial area would have its direct impact on the development or improvement of that part of the city or town or village where such area is located. Delinking industrial area from the scope of development of any area is, thus, without any practical sense.
- G In this context a reference to Maharashtra Industrial Development Act, 1962, which is almost analogous to the Gujarat Act, is of some use. While examining issues relating to the validity of the Maharashtra Act a Division Bench of this Court has said in *Shri Ramtanu Co-operative Housing Society Ltd. and Another v. State of Maharashtra and Others*, [1970] 3
- H SCC 323 :

"The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing building, allotting buildings, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of sole purpose of establishment, growth and development of industries. The Corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of work of the Corporation."

The scheme of the Gujarat Act, as is seen from a survey of the relevant provisions referred to above, would indicate that the Corporation set up thereunder is to chalk out plans for development of industrial area and industrial estate in different places which may locate in cities or towns or villages. Such schemes would normally involve planning and development of such areas.

The word "development" in Section 10(20A) of the I.T. Act should be understood in its wide sense. There is no warrant to exclude all development programmes relating to any industry from the purview of the word "development" in the said sub-section. There is no indication in the Act that development envisaged therein should confine to non-industrial activities. Development of a place can be accelerated through varieties of schemes and establishment of industries is one of the modes of developing an area.

One of the reasons for incorporating a specific provisions of exemption from income tax such as sub-section 10(20A) is to protect public bodies created under law for achieving the purpose of developing urban or rural areas for public good. When the object is such, an interpretation which would preserve it should be accepted even if the provision is capable of more than one interpretation. That principle of interpretation is very much applicable to fiscal statutes also, (vide *State of Tamil Nadu v. M.K. Kandaswami*, [1976] 1 SCR 38. This Court has reiterated the said principle

A in *Calcutta Jute Manufacturing Co. & Another v. Commercial Tax Officer & Others*, JT (1997) 5 SC 690.

The position is, therefore, clear that authorities constituted by law for facilitating all kinds of development of cities, towns and villages for public purposes shall not be subjected to the liability to pay income tax.

B The Division Bench of the High Court seems to have interpreted the exemption clause too rigidly and narrowly which resulted in the anomaly of bringing authorities like appellant Corporation within the tentacles of income tax liability while the authorities dealing with housing schemes which provide houses to private individuals would stand outside the taxing sphere.

C

In the result, we allow these appeals, set aside the judgment under challenge. The answer to the question will, therefore, be in favour of the assessee and against the Revenue.

V.M.

Appeals allowed.