
(2003) 05 JH CK 0014

In the Jharkhand High Court

Case No : Writ Petition (T) No. 1222 of 2003

Adityapur Industrial Area Development Authority

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-05-2003

Acts Referred:

Constitution of India, 1950 — Article 285, 289, 289(1)
Finance Act, 2002 — Section 10(20)

Citation : (2003) 185 CTR 384 : (2003) 262 ITR 289 : (2003) 3 JCR 4

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : S.L. Sariwala, R.C.P. Sah and C.A. Bardhan, for the Appellant; K.K. Jhunjhunwala, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—When this writ petition came up for admission on the adjourned date, it was submitted by the counsel for the parties that the pleadings are complete and the writ petition itself may be heard and finally disposed of. Accordingly, we have heard the writ petition in full and the judgment is being pronounced thereon.

2. The petitioner is the Adityapur Industrial Area Development Authority, a body corporate under the Bihar Industrial Area Development Authority Act, 1974 having perpetual succession and a common seal. The petitioner challenges Annexure-P/1 issued by the Deputy Commissioner of Income Tax, T.D.S. Circle, Jamshedpur to the Central Bank of India, the Petitioner's Banker. Admittedly, interest as due to the petitioner from Central Bank of India on the fixed deposits of the petitioner in the Bank. In view of the amendment brought to Section 10(20) of the income Tax Act by the Finance Act 2002 explaining which are the local authorities whose incomes are not chargeable to tax under the Act and the deletion of Section (20A) providing for exclusion of the income of an authority constituted under any law enacted for the purpose of meeting the need for

housing accommodation and for the purpose of planning, development or improvement of the cities, towns and villages, the Deputy Commissioner of Income Tax. T.D.S. Circle, Jamshedpur informed the Manager of the Central Bank of India that the bank was bound to deduct tax at source from the interest accrued on the fixed deposit of the petitioner-authority for the concerned period. It is this notice that is sought to be challenged by the petitioner on the ground that the income of the petitioner-authority is not liable to be assessed under the Indian Income Tax Act in view of Article 289(1) of the Constitution of India and consequently, the notice (Annexure P/1) was liable to be quashed. We may mention here that the petitioner-authority has not questioned the stand of the authority under the Income Tax Act that the income of the petitioner-authority was not liable to exclusion in terms of Section 10(20) of the Income Tax Act, as amended. Nor has the petitioner-authority questioned the deletion of Sub-section (20-A) of Section 10 of the Income Tax Act or questioned the stand of the department that in view of the deletion the petitioner- authority was not entitled to the exclusion of its income.

3. Learned counsel for the petitioner pitched his case only on the exemption contained in Article 289(1) of the Constitution of India. The said provision reads "the property and income of a State shall be exempt from union taxation." According to counsel, since the petitioner-authority was created under the Bihar Industrial Development Authority Act, 1974, the property owned by the petitioner was the property of the State Government and the income derived by it, was the income of the State Government. It was contended that Article 289(2) of the Constitution had no application and consequently the authority under the Income Tax Act could not assess the income of the petitioner-authority under the Act in view of the exemption of the income of a State contained in Article 289(1) of the Constitution. This stand of the petitioner-authority was met by the respondents by pointing out that the income of the authority created under the Bihar Industrial Areas Development Authority Act was not income of the State or the property of the State and hence Article 289(1) of the Constitution had no application.

4. Neither counsel brought to our notice any direct authority on the question. The nearest authority we could come across was the decision in Gujarat Industrial Development Corporation etc. Vs. Commissioner of Income Tax, . The said appeal arose from the decision of the Gujarat High Court, reported in Gujarat Industrial Development Corporation Vs. Commissioner of Income Tax, . Two questions were formulated for being answered in that decision. One was that the income of the Development Corporation was not liable to be taxed under the Income Tax Act in view of Article 289(1) of the Constitution. The second was whether the income was liable to be excluded u/s 10(20A) of the Income Tax Act. The Gujarat High Court held that the income was not liable to be excluded under Article 289(1) of the Constitution. It also held that the income was not liable to be excluded u/s 10(20A) of the Income Tax Act. Before the Supreme Court, the assessee, the Development Corporation, did not press its claim under Article

289(1) of the Constitution. It only pressed its claim for exclusion u/s 10(20A) of the Income Tax Act before its deletion by the Finance Act of 2002. The Supreme Court reversing the decision of the Gujarat High Court held that Section 10(20A) of the Income Tax Act was wide enough to cover incomes of Corporations like the Gujarat Industrial Development Corporation, But what is to be noted here is that the claim based on the exemption under Article 289(1) of the Constitution was not pursued before the Supreme Court.

5. On Article 289(1) of the Constitution of India the Gujarat High Court held that the State is different from Corporations which are created by laws enacted then by Parliament or by State Legislatures for different and distinct purposes. They are separate entities in law. They sue and they are sued in their own capacities and for any contractual liability of the Corporation no person can sue the State, because every Corporation in itself is not State but a separate legal entity. The decision of the Bombay High Court in Vidarbha Housing Board Vs. Income Tax Officer, City and Refund Circle, Nagpur and Others, holding that income of the Housing Board could not be regarded as the income of the State Government and consequently immunity under Article 289(1) of the Constitution was not available to the Board was noticed.

6. We also find a few decisions of the Supreme Court arising under Article 285 of the Constitution of India exempting the properties of the union from all taxes imposed by a State or any authority within the State. Obviously, while Article 285 of the Constitution exempted the property of union from State taxation, Article 289 of the Constitution exempted the property of the State from union taxation. To that extent, the provisions are similar and the claim for exemption should stand on the same footing. It is seen that in Food Corporation of India Vs. Municipal Committee, Jalalabad and Another, and Food Corporation of India Vs. The Sub-Collector, Narsapur and others, , the Supreme Court held that the property of the Food Corporation of India, a Corporation established under the Food Corporations Act, was not the property of the Union and was not exempted from State tax in view of Article 285(1) of the Constitution. In The Board of Trustees for the Visakhapatnam Port Trust Vs. The State of Andhra Pradesh and Others, , the Supreme Court held that property belonging to a Port Trust is not the property of the Union within the meaning of Article 285(1) of the Constitution. In Municipal Commissioner of Dum Dum Municipality and Others Vs. Indian Tourism Development Corporation and Others, , property of the Air Port Authority was held to be not that of the Union. In Central Warehousing Corporation v. Municipal Corporation 1994 Sup (3) SCC 316, the property of Warehousing Corporation was held to be not the property of the union within the meaning of Article 285(1) of the Constitution. In Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, , it was held that the property of a Company incorporated u/s 617 of the Companies Act, 1956 in which the entire shares were held by the Union Government, was not the property of the Union in terms of the Article 285(1) of the Constitution. This line of decisions, in our view, show that the properties of a statutory corporation or a

Government owned Company or other authority established by the Government are not the properties of the Government for the purpose of Article 285 or Article 289 of the Constitution of India.

7. Learned counsel for the petitioner relied on the observations in *Andhra Pradesh State Road Transport Corporation Vs. Income Tax Officer, B-I B-ward, Hyderabad, and Another*, in support of its claim that the income of the petitioner-authority was exempted from tax under Article 289(1) of the Constitution. He referred particularly to paragraphs 19 to 21 of the judgment. In that judgment, their Lordships held that the income of the Andhra Pradesh Road Transport Corporation established under the Road Transport Corporation Act was not exempt from Union taxation under Article 289(1) of the Constitution. Counsel submitted that it was so held in that case because the shares were also held by the public and not exclusively by the State Government and here, the situation is different and no share is held by any member of the public or any other non-State Government entity. Counsel relied on Section 17 of the Bihar Industrial Area Development Authority Act to point out that the State Government, by a notification, could dissolve the Authority and from the date of dissolution of the Authority, its properties, funds and dues realizable by the authority along with its liabilities shall devolve upon the State Government. With respect to counsel, we think that this Section only indicates that until such dissolution and vesting, the property or income is exclusively that of the authority, the petitioner and not that of the Government and the liabilities are also only that of the authority and not of the State Government. Therefore, nothing turns on the argument based on Section 17 of the Development Authority Act or the distinction sought to be made to seek support from the decision of the Supreme Court, in *Andhra Pradesh Road Transport Corporation Case*. The other decision relied on by the learned counsel in *Shri Ramtanu Co-operative Housing Society Ltd. and Another Vs. State of Maharashtra and Others*, , cannot lend any assistance to the petitioner. There, the question involved was whether the particular legislation was within the legislative competence of the Maharashtra State. It was held that in pith and substance the enactment fell under Entry 24 of List II of the Seventh Schedule and hence the legislation was competent. Of course, the object of the Act is also referred to therein. But from that it is not possible to proceed and hold that the income of the Development Authority is that of the State and consequently is exempt from taxation under Article 289(1) of the Constitution. Similarly, the passage read from Marshal on Constitutional Theory and the quotation from Halsbury contained therein, also do not advance the case of the petitioner. What is involved herein is the question whether the property owned by the petitioner-Development Authority, a Corporation created under the Development Authority Act is the income or property of the State Government.

8. Learned counsel for the Department cited the decision of the Supreme Court in *In re, Sea Customs Act* AIR 1963 SC 1760. Therein it was opined that by and large taxes on Income, duties of customs and duties of excise are within the exclusive power of legislation by Parliament. It was also stated therein that

Article 289 of the Constitution and its contemporary Article 285 together read, clearly express the intention of the constitution makers that Article 285 would govern all properties of the Union from all taxes on property levied by a State or by any authority-within the State and Article 289 contemplates that all properties of the State would be exempt from all taxes on property which will be levied by the Union. Their Lordships further observed that the contention that these two Articles should be read in a restricted sense of exempting the property or income of a State in one case and the property of the Union in the other from the taxes directly either on property or on income, as the case may be, is correct. It was held that exemption did not extend to customs duty or excise duty levied by the Union. This decision, in our view, only enables the Department to contend that Article 289 of the Constitution must be read strictly and its scope should not be expanded so as to include not only the properties of the State but also property held by Corporations or Companies controlled by the State, since they are not States themselves.

9. Obviously, explanation to Section 10(20) of the Income Tax Act was introduced by Finance Act, 2002 clarifying which are local authorities and excluding from them, Corporations or authorities like the petitioner herein and the deletion of Section 10(20A) of the Income Tax Act clearly indicates that the mischief sought to be remedied was to keep out Corporations or authorities like the petitioner created under various enactments from claiming exclusion of their income under the Income Tax Act and to bring them within the purview of the Income Tax Act. If we apply the Heydon's rule it is clear that the intention in bringing in these amendments by Finance Act of 2002 is to bring within taxation, the income of an authority constituted under any law enacted for the purpose of satisfying the need of housing accommodation or for the purpose of planning, development or improvement of the cities, towns and villages, like the petitioner-authority. Since we are not in a position to accept the contention of learned counsel for the petitioner that the income of the petitioner is exempt under Article 289(1) of the Constitution of India, we are constrained to hold that the notification, Annexure-P/1 is perfectly valid and cannot be successfully challenged on the ground urged by the petitioner- authority. Hence, we find no merit in this writ petition. The writ petition is dismissed.

R.K. Merathia, J.

I agree.