

(2016) 05 PAT CK 0021

In the Patna High Court

Case No : Miscellaneous Appeal No. 698 of 2014

Assistant Commissioner of Income Tax

APPELLANT

Vs

Bihar Industrial Area Development Authority

RESPONDENT

Date of Decision : 19-05-2016

Acts Referred:

Income Tax Act, 1961 — Section 4, Section 5

Citation : (2017) 390 ITR 475

Hon'ble Judges : Mr. Ramesh Kumar Datta and Mr. Sudhir Singh, JJ.

Bench : Division Bench

Advocate : Mr. Ajay Rastogi with M/s. Rajeev Ranjan Pd, Nilanjan Chatterjee and Parijat Sourav, Advocates, for the Respondent; Ms. Archana Shahi, Sr. S.C, Income Tax, for the Appellant

Final Decision : Dismissed

Judgement

Mr. Ramesh Kumar Datta, J. (Oral) - Heard learned counsel for the appellant - Revenue and learned counsel for the assessee.

2. The appeal has been filed assailing the order dated 8.7.2014 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in I.T.A. No. 22/Pat/2012 for the assessment year 2005-06. The Tribunal has dismissed the appeal of the Revenue.

3. The assessee is a statutory authority constituted under the Bihar Industrial Area Development Authority Act, 1974 for the purpose of development of the State by setting up industrial areas across the State and allotting the plots therein to entrepreneurs, for providing infrastructural facilities to the areas in the State and other amenities. For the assessment year in question the Assessing Officer by his assessment order dated 21.12.2010 had, inter alia, held that the interest earned by BIADA on the investment of funds, to the extent of Rs. 4,01,363/- and Rs. 33,84,159/-, is not attributable to specified funds and therefore liable to tax. He further held that incentive subsidy of Rs. 55,49,645/-

was a revenue receipt and therefore taxable.

4. On appeal the Commissioner of Income Tax (Appeals) set aside the findings of the Assessing Officer accepting the plea of the assessee that the funds have been provided by the State Government for carrying out specific projects under the BIADA Act and therefore interest earned thereon also partakes the character of capital. Since the funds which have been put in FDRs were capital outlay, therefore, interest thereon also partook the same character as held by the Delhi and Karnataka High Courts respectively in the case of Commissioner of Income Tax v. Delhi State Industrial Development : [2007] 295 ITR 419 (Delhi) and Commissioner of Income Tax and Anr. v. Karnataka Urban Infrastructure Development and Finance Corporation : [2006] 284 ITR 582 (Karn).

5. The CIT has also accepted the stand of the assessee that the Assessing Officer had misunderstood the nature of incentives and subsidies and presumed the same as having been given to the assessee, whereas the same were merely given to the assessee for passing on to the entrepreneurs and units who are entitled to such incentive and subsidy under the various schemes of the Government, such as, Vidyut Anudan, Generator sets, etc. and the assessee was not the beneficiary of these subsidies by any means but was only a safe keeper of the same for passing it on to various eligible units as per the schemes of the Government and accordingly the same was held to be not taxable receipt in the hands of the assessee and the addition was deleted. The finding of the Commissioner with regard to the interest earned was that the same was not taxable. Further, the interest being to the tune of Rs. 37,85,522/-, it was also held that there would be no surplus of Rs. 15,10,297/- remaining to be taxed in hand from its receipts.

6. Aggrieved by the order of the CIT the Revenue went in appeal before the Income Tax Appellate Tribunal, Patna Bench, Patna and by the impugned order dated 8.7.2014 the appeal was dismissed.

Aggrieved by the same the Revenue is before us.

7. Learned counsel for the appellant-Revenue has raised four alleged substantial questions of law before us. The first question is whether the Tribunal was justified in treating the assessee as artificial juridical person instead of local authority ignoring the definition of local authority given in Section 3(31) of the General Clauses Act. On our query as to how the said substantial question of law would have any positive effect on the case of the Revenue vis-a-vis the assessee, learned counsel is unable to satisfy us regarding the same. We are thus of the view that no such substantial question of law at all arises in the present matter.

8. So far as the charge-ability of tax upon the interest of Rs. 4,01,363/- and Rs. 33,84,159/- is concerned, learned counsel has reiterated the submissions made before the court below.

9. In the Karnataka High Court decision in the case of Karnataka Urban

Infrastructure Development and Finance Corporation (supra), it has been rightly pointed out by the High Court that once it has been found at the level of Tribunal that the interest was income derived out of funds received from the State Government and thus the interest was not taxable as having the same character, that would be a question of fact. We are in respectful agreement with the view expressed by the Karnataka High Court and thus no substantial question of law arises on the said issue.

10. Same would be the position with regard to the third question as to whether the interest on capital outlay also partook the same character and was not taxable; we find that no substantial question arises on the said issue.

11. With regard to incentive subsidy also it is evident that it was meant for entrepreneurs and industrialists who had established their units and made certain capital outlay and the assessee was merely required to ensure distribution of subsidies to the industrialists and thus it could not be treated as funds in hand of the assessee as taxable.

12. Thus, in the light of the above discussions, we do not find that any substantial question of law arises in the appeal. The appeal is dismissed.