(2015) 03 PAT CK 0070

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4737 of 2015

Bihar Industrial Area Development Authority APPELLANT

Vs

Assistant Commissioner of Income Tax and Others RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Constitution of India, 1950 — Article 289
Income Tax Act, 1961 — Section 197, 264

Citation : (2015) 279 CTR 165

Hon'ble Judges : Ramesh Kumar Datta, J;Anjana Mishra, J

Bench : Division Bench

Advocate : Ajay Kumar Rastogi, Sharad Kr. Sinha, Amit Kr. Anand, Titendra Kumar Roy, Shivendra Kumar Roy and Sheela Sharma, for the Appellant; Archana Sinha and Suman Kumar Mishra, Advocates for the Respondent

Judgement

Ramesh Kumar Datta, J—Heard learned counsel for the petitioner, learned senior standing counsel for the IT Department and learned counsel for the respondent Nos. 4, 5 and 6. The writ application has been filed seeking quashing of the communication dt. 11th March, 2015 issued by respondent No. 1, the Asstt. CIT (TDS), Circle, Patna in which it has been stated that the CIT, TDS Circle, Patna has rejected the proposal for issuance of exemption certificate under s. 197 of the IT Act for the financial year 2014-15 and for consequential reliefs.

2. The short facts of the case are that the petitioner is a statutory authority constituted under the Bihar Industrial Area Development Authority Act, 1974 being an instrumentality of the State. It has been constituted for planned development of industrial area and promotion of industries in the area and other amenities incidental thereto. The petitioner receives funds from the Central and State Governments for carrying out its objectives and is obliged to utilize the funds for the manner and purpose for which it has been constituted under the Act as also on the direction issued from time to time by the Central Government and State Government. It is the specific stand of the petitioner that after funds are received for the specified project, the same are utilized for the said project

only in accordance with the scheme formulated for implementation of the specified project and since the work is carried out in phases, the unutilized portion of the funds are invested in fixed deposits and the interest accruing thereupon also forms parts of the funds to be utilized for the specific purpose alone.

It is thus, the stand of the petitioner that the funds received by the petitioner either from the State or the Central Government does not form part of its assets, property and/or income and the interest accruing on the unutilized portion of the said funds also form part of the State funds and not the asset, property or income of the petitioner.

3. It is the further stand of the petitioner that if at all the interest accrued by the unutilized funds are treated to be income, it will be the income of the State Government and the State income is not taxable in view of the provisions of Art. 289 of the Constitution of India.

4. It is the further case of the petitioner that since the financial year 2008-09 onwards the petitioner has been applying for and getting exemption from deductions under the provisions of s. 197 of the IT Act. It is also the stand of the petitioner that in none of the assessments of any assessment year ever the said interest has been treated as the income of the petitioner and no tax has ever been levied upon the said interest. However, for the financial year 2014-15 by the impugned communication dt. 11th March, 2015 it has been informed by the Asstt. CIT, TDS Circle, Patna that the CIT, TDS Circle, Patna has rejected the proposal for issuance of certificate of no deduction of tax under s. 197 of the Act.

5. Learned counsel for the petitioner submits that the aforesaid action of the respondents is wholly unjust and whimsical and without any justification as the interest in question is not at all the income of the petitioner and not only it has never been taxed but has continuously been given the benefit of exemption certificate under s. 197 of the IT Act.

6. It is further submitted by learned counsel that earlier also in the year 2009 the aforesaid issue had arisen and the petitioner was compelled to approach this Court by filing CWJC No. 3800 of 2009 which was allowed by order dt. 20th July, 2009 of this Court to the extent and in similar terms with earlier directions to the IT Department by the order of the said date passed in CWJC No. 3795 of 2009, Infrastructure Development Authority Vs. The Commissioner of Income Tax (TDS) and Others in para 8 of which this Court had held as follows:

"8. Prima facie, this Court finds merit in the claim of the petitioner that the interest income over money belonging to the State of Bihar cannot be subjected to income-tax or TDS by the IT authorities. However, since the assessment orders have not been passed in respect of petitioner for the relevant years, hence this Court would not like to give a definite and positive finding over the issues involved, at this stage. Hence, the orders contained in Annexs. 3 and 4 are quashed and the matter is remitted back to the concerned authority of the IT

Department, i.e., Asstt. CIT, TDS Circle, Patna for passing fresh order in accordance with law and after due application of mind to all relevant facts, some of which have been noticed in this order. The said authority should pass fresh order in respect of petitioner''s application under s. 197 of the Act without any delay and preferably within one month from today. Till then no coercive action shall be taken to realize tax deduction at source in respect of interest income which the petitioner may receive."

7. It is further submitted that pursuant to the same the assessing authority had rejected the claim of the petitioner under s. 197, whereafter matter went before the CIT under s. 264 of the IT Act and by his order dt. 20th April, 2010 the CIT had decided the matter in favour of the petitioner with the observations in the following terms:

"Similar assertion was made in the writ petition and the Hon''ble Patna High Court in its order dt. 20th July, 2009 was prima facie satisfied that the interest income over money belonging to the State of Bihar cannot be subjected to income-tax or TDS by the IT authorities.

Further, in support of the facts stated in the returns and the averments made in the writ ''petition, the Secretary of the organization, namely. Dr. Girish Kumar has sworn an affidavit dt. 9th March, 2010 wherein it has been categorically stated on oath that the interest earned from such fixed deposits are part of the allotted sum granted for specific project. The entire allotted funds along with interest earned on investment of such fund in fixed deposit are to be spent on the project for which it has been granted. The surplus, if any, of a project is required to be returned back to the Government of Bihar and deficit, if any, is to be recovered from Government of Bihar.'' Further, it has been solemnly affirmed in the said affidavit ''that the interest earned from fixed deposits (details given in p. 33 of paper book) is the receipt/income of the Government of Bihar and is not receipt/income of the abovenamed organization.'' Further, in para 9, it has been stated that the funds/grants belonged to the Government of Bihar. The assessee has further, relied on the decisions of Hon''ble Delhi High Court and Hon''ble Karnataka High Court in Commissioner of Income Tax Vs. Delhi State Industrial Development, (2007) 295 ITR 419 : (2007) 162 TAXMAN 275 and Commissioner of Income Tax and Another Vs. Karnataka Urban Infrastructure Development and Finance Corporation, (2006) 203 CTR 422 : (2006) ILR (Kar) 202 : (2006) 284 ITR 582 : (2006) 155 TAXMAN 228 . On careful consideration of these two judgments, I find that the case of the assessee is covered by the judgments of Hon''ble Delhi and Karnataka High Courts."

8. After the aforesaid order dt. 20th April, 2010, the petitioner has been continuously getting the benefit of exemption under s. 197 of the IT Act so far as the said interest is concerned.

9. It is also submitted by learned counsel for the petitioner that the order dt. 11th March, 2015 suffers from complete non-application of mind as no reasons

have been assigned for rejecting the proposal for issuance of certificate under s. 197 particularly considering the fact that earlier the same was being allowed pursuant to the order dt. 20th April, 2010 of the CIT (TDS).

10. Learned senior standing counsel for the IT Department, on the other hand, submits that it is well-settled proposition that res judicata is not applicable to decision under the IT Act and it is open to the Department to take a different view of the matter in subsequent assessment years. Various grounds have been sought to be taken by learned counsel for the respondent IT Department including filing of ITR in ITR-7, failure to clarify whether r. 28AA or 28AB applies to its case, defaults on account of TDS obtained online, etc. It is also asserted that no certificate had been issued for the financial year 2013-14.

11. In reply to the aforesaid, learned counsel for the petitioner submits that no such ground has been stated in the order rejecting the application of the petitioner and the respondents cannot be permitted to take such grounds in the counter affidavit. It is contended that the application for the financial year 2013-14 has never been rejected and thus no benefit can be derived by the respondents on that account also.

12. With regard to the change in the PAN it is submitted that the earlier PAN had been issued to the petitioner as a trustee and it now claims to be a local authority and for that reason the PAN had to be changed which does not have any effect so far as the statutory status of the petitioner is concerned. It is also urged by learned counsel for the petitioner that all such issues have no relevance so far as the term "interest as income" is concerned as admittedly the said interest income accrues upon the funds provided by the Central Government or State Government for specific purposes which funds have to be utilized in accordance with the statutory provisions and directions of the Central Government or State Government or even the interest thereon has to be similarly utilized and the same can never be considered as the income of the petitioner. Thus, the status of the petitioner as a charitable institution and/or a local authority has no relevance in the matter.

13. On a consideration of the facts and circumstances of the case and the submissions of learned counsel for the parties, this Court finds sufficient force in the submission of learned counsel for the petitioner. The impugned order passed in the present matter does not show any application of mind as no reasons have been assigned for rejecting the proposal for issuance of exemption certificate under s. 197 of the Act whereas on a proper consideration of the direction of this Court in a similar writ application, the CIT (TDS) had passed earlier order dt. 24th April, 2010. The said order was a reasoned order after noting the prima facie satisfaction of this Court under its order dt. 20th July, 2009 and cannot be said to be unlawful by the IT Authorities and further relying upon the decisions of the Delhi High Court and Karnataka High Court in, Commissioner of Income Tax Vs. Delhi State Industrial Development, (2007) 295 ITR 419 : (2007) 162 TAXMAN 275 and Commissioner of Income Tax and Another Vs. Karnataka Urban

Infrastructure Development and Finance Corporation, (2006) 203 CTR 422 : (2006) ILR (Kar) 202 : (2006) 284 ITR 582 : (2006) 155 TAXMAN 228 . Thus, if at all, the respondent-authorities were of the view that they could take a different stand in a fresh assessment order, there being admittedly no question of res judicata in assessment of income for different assessment years, they were still required to do so acting properly in the matter by giving good reasons for disagreeing with the earlier order dt. 20th April, 2010 which has not been done in the present matter. As a matter of fact, there has been no change in the nature of interest earned on the funds provided by the State Government which have gone in the bank and it is not open to the Department to come to a different conclusion in view of the overriding effect of the provisions of Art. 289 of the Constitution of India. For the aforesaid reasons, the writ application is allowed. The impugned letter dt. 11th March, 2015 communicating the decision of the CIT (TDS) is quashed. The respondents shall issue exemption certificate to the petitioner, accordingly.

It is, however, made clear that it would be open to the respondents to take a fresh view in a subsequent year but only after giving full opportunity to the petitioner and passing a speaking order.

