(2011) 10 BOM CK 0168

In the Bombay High Court

Case No : Writ Petition (L) No. 2297 of 2011

City and Industrial Development Corporation of Maharashtra Ltd — APPELLANT

Vs

Assistant Commissioner of Income Tax and Others — RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Companies Act, 1956 — Section 617, 619(4)
Constitution of India, 1950 — Article 226
Maharashtra Regional and Town Planning Act, 1966 — Section 113(1), 113(1A), 113(3A), 113(A), 160

Citation : (2012) 250 CTR 415 : (2012) 343 ITR 102

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : S.E. Dastoor, with Madhur Agarwal and Atul K. Jasani, for the Appellant; Tejveer Singh, for the Respondent

Judgement

1. In these proceedings under article 226 of the Constitution, the petitioner has questioned an order of the Commissioner of income tax declining to grant a stay on the recovery of a demand for the assessment year 2006-07.The issue before the court essentially is whether a case for the grant of stay, pending the appeal, against the order of assessment was made out. Hence, the facts in so far as they are relevant would be dealt with in this order not with a view to expressing any final or conclusive opinion on the issues which arise, but, only for determining whether on the well settled tests in law, a case for stay has been made out.

2. The petitioner was appointed as the New Town Development Authority for the Navi Mumbai region by a resolution dated March 18, 1970, of the State Government issued in exercise of powers conferred by section 113(1A) of the Maharashtra Regional and Town Planning Act, 1966. Similar Government resolutions have been issued by which the petitioner has been appointed as a special planning authority for diverse areas of the State Aurangabad, Nasik, Nanded, Vasai Virar, Walunj, Koras and Nagpur between 1972 and 1996.

3. For the assessment years 2003-04, 2004-05 and 2005-06, the Assessing Officer accepted the contentions of the petitioner that it is an agent of the Government for the Navi Mumbai project. The petitioner was, however, held to be chargeable to tax in respect of the other projects. Appeals filed by the petitioner against the assessment orders, in which the petitioner contends that it is only liable to tax in regard to the agency commission received from the State Government, are pending before the Commissioner of income tax (Appeals). For the assessment year 2006-07, the petitioner incurred a loss in respect of projects other than the project at Navi Mumbai. There is an excess of income over expenditure incurred for Navi Mumbai. In response to a notice u/s 148 the petitioner filed a return of income declaring a loss of Rs. 16.18 lakhs. A reference was made to a special auditor u/s 142(2A) who submitted a report and a supplementary report revising the total income to Rs. 2430.67 lakhs. The special auditor, it appears, accepted that the petitioner is acting as an agent of the Government for the Navi Mumbai project. A notice was issued u/s 142(1) following which an assessment order was passed for the assessment year 2006-07 holding the petitioner to be chargeable to tax for all its projects including the Navi Mumbai project and determining the total income at Rs. 63811.67 lakhs. A demand was raised in the sum of Rs. 453 crores. The petitioner filed an appeal before the Commissioner of income tax (Appeals) with an application u/s 220(6). The first respondent rejected the application for stay on September 5, 2011. On October 11, 2011, the application for stay was rejected by the second respondent.

4. The learned counsel appearing on behalf of the petitioner submitted that before the Assessing Officer the contention of the petitioner was that CIDCO is an agent of the State Government both for the Navi Mumbai project (in respect of which it is a New Town Development Authority) and for other projects (in respect of which it is a special planning authority). The attention of the court was drawn to the order of the Assessing Officer which records the following submissions :

7.3 In this regard, the assessee has also made the following submissions :

(a) CIDCO is a company incorporated on March 17, 1970, under the Companies Act, 1956, and its share capital being subscribed wholly and exclusively by the Government of Maharashtra, it is a Government company within the meaning of section 617 of the Companies Act.

(b) The State Government has created CIDCO with a view to carry out the objects of creation of new towns which is evident from the preamble of the MR&TP Act, 1966.

(c) In order to create the new town of Navi Mumbai in a planned manner, the Government of Maharashtra, in exercise of the powers u/s 113(3A) of the MR&TP Act, appointed the CIDCO as the ''New Town Development Authority''.

(d) The State Government, in exercise of its powers u/s 40(1) (b) of the MR&TP

Act, also appointed CIDCO as the special planning authority for the new towns of New Aurangabad, New Nashik, New Nanded, Tarapur, Walunj Mahanagar, Oros, Vasai Virar Sub region ,Nagpur and Mhaismal Projects.

(e) The appointment of CID CO. as a new town development authority and special planning authority is with an intent to carry out objects of new towns as a statutory agent of the Government of Maharashtra (GOM).

(f) The GOM, in exercise of the powers u/s 113A of the MR&TP Act, further acquired all the privately held lands within the notified area and vested it along with Government lands to the CIDCO for the purpose of planned development and disposal.

(g) The GOM has vested the lands for orderly development of Navi Mumbai. Accordingly, CIDCO is incurring huge expenses on behalf of the GOM for development of infrastructure such as roads, railways, water supply, storm water drainage, sewerage, etc.

(h) After the completion of the development of the New towns, it is obligatory on the part of CIDCO to submit final account to the State Government in view of the express provisions of section 160 of then MR&TP Act. As per section of the MR&TP Act, the State Government is empowered to dissolve the regional board, special planning authority or the development authority, where the Government is satisfied that the purpose for which such board or authority was established has substantially achieved so as to render continued existence of the board or authority unnecessary.

(i) It is obligatory on the part of CIDCO to invest and spend money on account of development of infrastructure, also the CIDCO has to grant subsidies for the allotment of plots for the social facilities and allotment of plots to the project affected persons, all these subsidies granted by the CIDCO is to be loaded on the land of the CID CO.

(j) Looking to the various statutory obligations of the corporation, including providing housing at affordable and concessional rates, allotment of land to the co-operative housing societies at fixed rate, the object of the corporation is not commercial for earning profit. On the contrary, CIDCO is acting as a statutory agent of the State Government to carry out development of new towns who also performs functions of the local authority for these new towns. In view of the above facts, it is stated that CIDCO is not liable to income tax."

5. The grievance of the petitioner is that these submissions have not been dealt with by the Assessing Officer prima facie, for deciding the application for stay. Diverse circumstances have been relied upon in support of the submission that the petitioner, both in its'' capacity as a new town development authority constituted u/s 113(3A) of the Maharashtra Regional and Town Planning Act, 1966, and as a special planning authority constituted u/s 40(1B), acts as an agent of the State Government. Reliance was placed on the provisions contained

in that Act. It has been urged before the court that (i) the land for Navi Mumbai project was acquired by the State Government; (ii) compensation was paid by the State Government; and (iii) the lands have been registered in the name of CIDCO for and on behalf of the State Government. The cost of acquisition, it is submitted, is zero because the lands were acquired by the State Government and compensation was entirely paid by the State Government. The submission is that CIDCO is an agent of the Government of Maharashtra and as its agent it cannot be assessed in respect of the income of the principal. In the petition it has been averred that the Comptroller and Auditor General of India has commented u/s 619(4) of the Companies Act, 1956, that the Navi Mumbai project is executed by the petitioner on behalf of the State Government and that the income of the project is payable to the Government. Similarly, if there is a deficiency it is recoverable from the State Government.

6. On the other hand, it was urged on behalf of the Revenue that the petitioner must make out (i) a prima facie case; (ii) financial hardship; and (iii) balance of convenience. The learned counsel submitted that in the present case, there is no financial hardship and that some part of the demand should be directed to be paid.

7. The material before the court indicates that for the assessment years 2003-04, 2004-05 and 2005-06 the Assessing Officer accepted the position of the petitioner as an agent of the State in respect of the Navi Mumbai project. The petitioner was, however, brought to tax in respect of its other projects but the matter is pending in appeal. Section 113(1) of the Maharashtra Regional and Town Planning Act, 1966, provides that the State Government may designate an area as a site for a proposed new town where it is satisfied that it is expedient in public interest that any area should be developed as sought for the new town as reserved or designated in any draft or regional plan. Sub-section (3A) of section 113 provides as follows :

(3A) Having regard to the complexity and magnitude of the work involved in developing any area as a site for the new town, the time required for setting up new machinery for undertaking and completing such work of development, and the comparative speed with which such work can be undertaken and completed in the public interest, if the work is done through the agency of a corporation including a company owned or controlled by the State as a new town, the State Government may, notwithstanding anything contained in sub-section (2), require the work of developing and disposing of land in the area of a new town to be done by any such corporation, company or subsidiary company aforesaid, as an agent of the State Government; and thereupon, such corporation or company shall, in relation to such area, be declared by the State Government, by notification in the Official Gazette, to be the new town development authority for that area." (emphasis1 supplied)

8. Similarly, section 40(1B) empowers the Government to appoint an agency or authority created by or in accordance with a Government order or instrument, or

any company or corporation established by or under any State or Central law, to be the special planning authority for any specified area. Under sub-section (3) of section 40(1B), the provisions of Chapter VI of the Act apply mutatis mutandis to the special planning authority as they apply to the development authority as if the notified area were to be a new town, subject to certain modifications including the deletion of section 113A. u/s 160, upon dissolution of the special planning authority or new town development authority, all properties, funds and dues vest in the State Government and all liabilities are enforceable against the State Government.

9. In a judgment in Percival Joseph Pareira v. Special Land Acquisition Officer (Writ Petition No. 1211 of 2009 decided on November 7, 2009), a learned single judge while relying on the provisions of the MR & TP Act has held that CIDCO was appointed as an agent of the State Government for the work of development of the site of the city of New Bombay.

10. The Commissioner of income tax (Appeals) had listed the appeal for final hearing yesterday. We are now informed that the appeal has been posted for hearing on November 14, 2011. The issues which have been raised by the petitioner merit serious consideration. In our view, having regard to the circumstances which have been adverted to in the earlier part of this order, the relevant statutory provisions and the decision of the Assessing Officer for the assessment years 2004-05, 2005-06 and 2005-06, the ends of justice would be met if a direction is issued to the appellate authority to expedite the disposal of the appeal and in the meantime a stay is granted of the recovery of the dues. The petitioner is set up under a legislative enactment. The dues of the Revenue are secure. We are not expressing any opinion on the merits with a view not to prejudice the respective rights and contentions of the parties.

11. In the circumstances, we issue the following directions on the petition :

(i) The hearing of the appeal before the Commissioner of income tax (Appeals) pertaining to the assessment year 2006-07 shall be expedited and the appellate authority shall make an endeavour to dispose it of as expeditiously as possible;

(ii) Pending the disposal of the appeal and, in the event that an adverse order is passed, for a period of six weeks after the disposal of the appeal, no coercive steps shall be taken against the petitioner for recovery of the demand in respect of the assessment year in question.

The petition is accordingly disposed of.

There shall be no order as to costs.

