

(2006) 02 KAR CK 0081
In the Karnataka High Court
Case No : IT Appeal No. 2418 of 2005

Commissioner of Income Tax and Another	APPELLANT
Vs	
Karnataka Urban Infrastructure Development and Finance Corporation	RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:

Income Tax Act, 1961 — Section 10, 4

Citation : (2006) 203 CTR 422 : (2006) ILR (Kar) 202 : (2006) 284 ITR 582 : (2006) 155 TAXMAN 228

Hon'ble Judges : Vishwanatha Shetty, J;N. Kumar, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant;

Judgement

N. Kumar, J.—The Revenue has preferred this appeal against the order passed by the Tribunal, Bangalore Bench in ITA No. 868/Bang/2000 dt. 3rd Nov., 2004 setting aside the orders passed by the assessing authority as well as the first appellate authority holding that the income earned by the respondent to the tune of Rs. 4,66,75,814 cannot be treated as income liable to tax under the provisions of the IT Act (for short hereinafter referred to as "the Act") as the respondent is acting as a nodal agency for implementing certain Central and State Government projects.

2. Few facts leading to this appeal, are as under:

The respondent M/s Karnataka Urban Infrastructure Development and Financial Corporation (for short hereinafter referred to as "the assessee") is a fully Karnataka State Government owned company. The assessee was appointed as a nodal agency for the implementation of the mega-city scheme worked out by the Planning Commission of Ministry of Urban and Employment for development of urban infrastructure to Bangalore city. The Central Government has provided the money to the assessee for implementing the said scheme. The money so received from the Government of India was parked by the assessee in various

bank deposits during the unutilised period. The interest earned during the year on these deposits were transferred to the mega-city scheme account directly with an appropriate disclosure in the notes to the accounts. The assessee has been involved in other projects of development of infrastructure apart from the activity as a nodal agency for the implementation of the mega-city scheme undertaken by the Government of India. The interest earned and received by the assessee out of the amount which it had received from the Central and State Governments and deposited in various banks, was treated as an income of the assessee and the AO brought the aforesaid amounts to tax. The assessee preferred an appeal and the said appeal came to be dismissed affirming the order of the AO. Aggrieved by the same, the assessee preferred second appeal to the Tribunal. The Tribunal looked into the guidelines which provided the background of the scheme. The Tribunal also looked into the terms of the scheme. Therefore, the Tribunal proceeded to hold that the assessee is nothing but trustee of funds entrusted to carry out the objects of the Government while implementing the scheme. The assessee infact acted as an agent of the Governments of both the Central and the State for implementing the scheme of the Government, This being the factual position, the lower authorities committed serious error in treating the interest as income of the assessee and bringing the same to tax. Therefore, the Tribunal set aside the orders of the AO and the first appellate authority and the claim of the assessee was allowed. As noticed by us earlier, aggrieved by the said order the Revenue has preferred this appeal.

3. Sri M.V. Seshachala, learned Counsel for the Revenue submitted that all incomes, which are not exempted u/s 10 of the Act, are liable to tax u/s 4 of the Act and, therefore, the order of the Tribunal requires to be set aside.

4. The material on record shows that the very purpose of constitution of the assessee was to act as a nodal agency for implementation of mega-city scheme worked out by the Planning Commission. Both the Central and the State Governments are expected to provide requisite finances for implementation of the said project. The funds from the Central and State Governments will flow directly to the specialised institutions/nodal agencies as grant and the nodal agency will constitute a revolving fund with the help of Central and State shares out of which finance could be provided to various agencies such as water, sewerage boards, municipal corporations, etc. The objective is to create and maintain a fund for the development of infrastructural assets on a continuing basis and, therefore, the assessee is a nodal agency formed/created by the Government of Karnataka as per the guidelines; there is no profit motive as the entire fund entrusted and the interest accrued therefrom on deposits in bank though in the name of the assessee has to be applied only for the purpose of welfare of the nation/States as provided in the guidelines; the whole Of the fund belongs to the State Exchequer and the assessee has to channelise them to the objects of centrally sponsored scheme of infrastructural development for mega-city of Bangalore. Funds of one wing of the Government is distributed to the other wing of the Government for public purpose as per the guidelines issued.

The monies so received, till it is utilised, is parked in a bank. The finding recorded by the Tribunal clearly shows that the entire money in question is received for implementation of the scheme which is for a public purpose and the said scheme is implemented as per the guidelines of the Central Government and, therefore, the assessee is only acting as a nodal agency of Central Government for implementation of these projects. It is not the case of the Revenue that the assessee was carrying on any business or activities of its own while implementing the scheme in question. The unutilised money, during which the project could not be fully implemented, is deposited in a bank to earn interest. That interest earned is also again utilised for the implementation of the mega-city scheme which is also permitted under the scheme. Therefore, in computing the total income of the assessee for any previous year the interest accrued on bank deposits cannot be treated as an income of the assessee as the interest is earned out of the money given by the Government of India for the purpose of implementation of mega-city scheme.

5. Therefore, we do not find any error in the conclusion reached by the Tribunal that there was no income earned by way of interest by the assessee and setting aside the order of AO which is affirmed by the first appellate authority. The finding given by the Tribunal is purely a question of fact. We do not find any substantial question of law involved in this appeal and therefore, this appeal is liable to be dismissed at the stage of admission itself.