(2016) 10 KAR CK 0004

In the Karnataka High Court

Case No : Income Tax Appeal Nos. 103-104 of 2016 and 337-388 of 2016 with I.T.A. No. 306 of 2014

Karnataka Municipal Data Society APPELLANT

Vs

Income-Tax Officer RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Citation : (2016) 389 ITR 441

Hon'ble Judges : Jayant Patel and Aravind Kumar, JJ.

Bench : Division Bench

Advocate : S. Parthasarathi, Advocate, for the Appellant; K.V. Aravind, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J. - As common questions are to be considered, they are considered simultaneously.

2. The assessee has preferred all appeals by raising the following questions of law :

"(a) Whether in law, the authorisation below are justified in treating the grant and the interest earned thereon as income of the appellant-society on the peculiar facts and circumstances of the case and also when the appellant was clearly guided by the directions of the Government of Karnataka with regard to both the grant as well as interest earned on the unspent money kept with banks?

(b) Whether in law, the authorities below are justified in rejecting the plea of the appellant and treating the grant and the interest earned thereon as income of the appellant when admittedly the funds were held by the appellant in the capacity of custodian only and the funds and interest were to be utilised as per the directions of the Government of Karnataka alone?

(c) Whether in law, the authorities below are justified in interpreting the order of the Government of Karnataka dated February 2, 2010 as an afterthought without understanding the true objects and spirits behind the formation, of the appellant as well as the aforesaid Government order : the Government order having only made it clear what was intended right from the creation of the appellant-society?"

3. The short facts of the case appears to be that as per the assessee, grant is being released by the Government for its various schemes to the appellant - assessee and such amount of grant is to be utilised for the purposes specified by the Government. Until the amount of grant is utilised, money is to remain in the respective bank account of the assessee-society and interest may accrue thereon. In the assessment proceedings, the Assessing Officer found that interest earned on the aforesaid deposits lying in the bank account can be termed as "income" of the assessee and therefore, exemption from income was unavailable. Matters were carried in the appeal before the Commissioner of Income-tax (Appeals) and the Commissioner of Income-tax (Appeals) dismissed the appeal. The matter was further carried in appeals before the Tribunal and the Tribunal observed thus :

"4.4.1. We have heard the rival submissions of both the learned authorised representatives for the assessee and the learned Depart mental representative for the Revenue and perused and carefully considered the material on record including the decision of the coordinate bench in the assessee''s case for the assessment year 2009-10 (supra). We find that identical issues were before the co-ordinate bench of this Tribunal or consideration in the assessee''s own case for the assessment year 2009-10. In its order in I.T.A. No. 1843/Bang/ 2013 dated May 9, 2014 the co-ordinate Bench adjudicated these issues in favour of the Revenue and against the assessee holding as under at paras 12 to 14 :

"12. We have given a careful consideration to the rival submissions. At pages 58 and 59 of the assessee''s paper book are copies of the English translation of the Government Order dated January 17, 2009 releasing grants to the assessee society for the year 2008-09. The order in vernacular is placed at pages 60 to 61 of the assessee''s paper book. The operative portion of the Government Order reads thus :

"Government Order No. UDD 15 SFC 2008 Bangalore, dated January 17, 2009.

As explained in the Preamble, the Government has released a sum of Rs. 274.00 lakhs to the Directorate of Municipal Administration for the operational cost of Rs. 77.00 lakhs for the year 2008-09 to the Karnataka Municipal Data Society and to reimburse a sum of Rs. 197.00 lakhs, which was released for the year 2007-08.

This grant should be incurred for the year 2008-09 under the account head "3604-00-193-0-01" (100) (plan).

In the Government Order, Director, Directorate of Municipal Administration has been authorised to draw from the State Huzur Treasury and to recover a sum of Rs. 197.00 lakhs, which was released to the Karnataka Municipal Data Society for the year 2007-08, and the remaining amount of Rs. 77 00 lakhs to the Karnataka Municipal Data Society for the operational cost and pay through cheque".

13. It is seen from the above Government Order that the purpose for which the grant is to be utilised and the utilisation of interest income out of the grant have not been specifically spelt out. However, in the addendum dated February 2, 2010, this lacunae has been filled up. This was done apparently after the rejection of the assessee''s application for grant of registration under section 12A of the Act, pursuant to order of the DIT (E) dated January 22, 2010. This addendum reads thus :

"Preamble :

Government has released a total sum of Rs. 299 lakhs as under, for meeting the expenditure of five Karnataka Municipal Data Society;

(1) Government Order No. 15 SFC 2008 dated March 7, 2008 Rs. 197 lakhs

(2) Government Order No. 15 SFC 2008 dated January 17, 2009 Rs. 77 lakhs

(3) Government Order No. 15 SFC 2008 dated August 27, 2009 Rs. 25 lakhs.

However, the Government has not specified the purposes for which the grant is to be utilised nor quantified the amounts to be utilised against such purpose. It is felt necessary to issue an addendum to the above Government orders specifying the conditions of the grants released. After careful consideration the following addendum.

Addendum to GO No. JDD/15/SFC/2008 Bangalore, dated February 2, 2010.

As explained in the preamble it is hereby directed that the amounts aggregating Rs. 299 lakhs granted to the society be utilised by the society after prior approved of the Government for specific purpose. The Government also reserves the right to direct the society to use the funds in a manner it may deem fit. The society shall hold the money as a custodian for the Government. It shall create a fund out of five grant money and any accrued interest and utilise the funds for assisting the member bodies in implementation of e-Governance. If any asset is created out of this fund shall belong to the Government Utilisation certificate shall be submitted to the Government after spending the funds. Further in case the amount is unspent the same shall vest in such an institution or body which the Government prescribes together with any accretion thereto."

14. It can thus be seen from the above that the addendum, if at all, would operate only for the previous year relevant to the assessment year 2010-11 and not to an earlier period viz., assessment year 2009-10. In other words during the previous year relevant to the assessment year 2009-10, there were no restrictions whatsoever on the use of the grant by the assessee. It cannot therefore be said that there was diversion of income by overriding title. Whatever the assessee does out of the grant and the interest accrued on the grant can only be said to be application of income and it cannot be said that there was diversion

of income by overriding title. Taking note of the above factual position for the assessment year 2009-10, the plea of the assessee that there was diversion of income by overriding title cannot be accepted. Accordingly, the order of the Commissioner of Income-tax (Appeals) is confirmed ..."

4.4.2. Following the aforesaid decision of the co-ordinate Bench of this Tribunal in I.T.A. No. 1843/Bang/2013, dated May 9, 2014 in the assessee''s own case for the assessment year 2009-10, we hold that in the factual matrix of the case, it is clear that even after the Addendum of GOK dated February 20, 2010, whatever the assessee does out of the grant and interest accrued can only be said to be application of income for the stated objects and activity of the assessee society and therefore reject the assessee''s plea that there was diversion of income by overriding title. Consequently, the grounds at S. Nos. 1 to 4 raised by the assessee are dismissed."

Similar is the view taken by the Tribunal in the other matters. Under these circumstances, the appeals before this court.

4. We have heard Mr. Parthasarathy, lean ed counsel appearing for the appellant and Mr. Aravind, learned counsel appearing for the respondent.

5. As such, when the assessee is to act as a custodian of the money and the utilisation thereof is fully controlled by the Government, money remains as given for specified purpose and the interest earned is also to be utilised for specified purpose, but under the control of the Government as per the conditions of the grant. There is no liberty available to the assessee to utilise the amount of interest as per its desire.

6. This court in more or less under similar circumstances had an occasion to consider the matter in the case of CIT v. Karnataka Urban Infrastructure Development and Finance Corporation in its decision reported at [2006] 284 ITR 582 (Karn) wherein of course, the Tribunal had held that it is not an income of the assessee but the Revenue was in appeal before this court. In the said decision, this court at para. 4 observed thus (page 584) :

"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."

7. If the observations made by the Tribunal is considered in the light of the above referred to observations made by this court, we find that when the assessee is to act as a custodian of the Government money released to the assessee by way of a grant and the interest thereon is also to be utilised as per the terms and conditions of the grant, the view taken by the Tribunal cannot be sustained for two reasons. One is that such money cannot be termed as ''income'' of the assessee and another is that even if the addendum is issued by the Government for controlling the utilisation of the amount of interest on the deposit at the later date the character of the money would remain the same and addendum can be termed as only by way of a clarification. It was not a matter where the question was to be considered with the retrospectivity as observed by the Tribunal. When the assessee is held as a custodian and the full command for utilisation of the money including interest earned thereon remains with the Government, the same cannot be termed as income of the assessee.

8. In view of the above, impugned order passed by the Tribunal is set aside and the questions are answered in favour of the assessee and against the Revenue. Appeals allowed accordingly.

