(2006) 10 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 2463 of 2006

Mumbai Metropolitan Region Development Authority APPELLANT

Vs

Assistant Director of Income Tax (Exemptions) RESPONDENT

Date of Decision : 09-10-2006

Acts Referred:
Income Tax Act, 1961 — Section 10, 11, 12A, 265

Citation : (2006) 206 CTR 409 : (2006) 287 ITR 5

Hon'ble Judges : J.P. Devadhar, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : J.D. Mistri and A.K. Jasani, for the Appellant; R.K. Sharma, for the Respondent

Judgement

1. Heard Mr. Mistri in support of this petition.

2. Rule. Rule is made returnable forthwith. Mr. Sharma has appeared for the respondents.

3. The petitioner herein is an authority constituted under the Mumbai Metropolitan Region Development Authority Act, 1974 (for short "the said Act"). It has been granted a registration u/s 12A of the Income Tax Act, 1961. It is the case of the petitioner that it is eligible to claim exemption from Income Tax u/s 11 of the Income Tax Act.

4. Now, what has happened is that Clause (20A) has been deleted from Section 10. This Clause (20A) deals with incomes which do not form part of total income and based thereon, now a demand has been raised for the claimed arrears of tax to the tune of Rs. 225,26,91,435 for the assessment year 2003-04. The petitioner has filed an appeal before the Commissioner of Income Tax (Appeals) and that appeal is pending before the said authority.

5. The petitioner is a local authority constituted under the aforesaid Act. It is entrusted with various infrastructure projects like transport systems to be set up, cleaning of rivers in the city which caused floods during the monsoon and some

of the slum rehabilitation schemes. After filing of the appeal, the petitioner was asked to deposit an amount of Rs. one crore towards these arrears which the petitioner has deposited. The appeal is getting delayed since the officers of the Tax Department are seeking time. Now, because the appeal is getting protracted, the Assistant Director of Income Tax has written to the petitioner on August 29, 2006, that he cannot grant a further stay and, therefore, the petitioner is now required to pay 25 per cent, of the outstanding demand within a month. It is at this stage that the present petition has been filed.

6. It is submitted on behalf of the petitioner that if any such order is to be complied with, the projects of the petitioner will get affected. It is further submitted that it is because of the respondents that the appeal is getting delayed.

7. The petition came up before this Court on September 19, 2006, when the respondents sought time. Therefore, the matter was adjourned to October 3, 2006. In the meanwhile, the ad interim order was granted in terms of prayer (d) of the petition, thereby staying this order of recovery. Today the matter has come up. Once again time is sought for filing the affidavit.

8. Considering the facts as stated above, it is necessary that the petitioner must get an opportunity to make its submissions which the petitioner is seeking before the appellate authority under the statute itself. During the pendency of that appeal the petitioner has been asked to deposit Rs. one crore, which it has deposited. Now, if the appeal gets prolonged since the respondents are asking for time, surely, the petitioner deserves to be protected.

9. Mr. Sharma appearing for the Revenue referred to the recent circulars of the Central Board of Direct Taxes and Section 265 of the Income Tax Act to submit that even if the appeal is pending, the tax must be paid. Even so, considering that the petitioner is a statutory authority and its submissions as noted above, in our view, the petitioner deserves a limited protection in the facts of the present case. In the circumstances, we set aside the requisition under the letter dated August 29 2006. The respondents will not insist on payment of the tax arrears during the pendency and disposal of the appeal which is pending before the Commissioner of Income Tax (Appeals) where the petitioner will get an opportunity and its submissions will be examined by the Commissioner. This is something which is the minimum expected.

10. For these limited reasons, we set aside the order dated August 29, 2006, as stated above. The recovery will not be insisted upon during the pendency of the appeal and for a period of four weeks thereafter in the event the decision is given against the petitioner. We make it clear that this order does not mean any reflection on the merits of the submissions of the rival parties.

11. Rule is made absolute in the aforesaid terms. No order as costs.