(2012) 09 P&H CK 0357

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 5327 of 2012 (O and M)

Patiala Urban Planning and Development Authority, Patiala — APPELLANT

Vs

Chief Commissioner of Income Tax and others — RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:
Income Tax Act, 1961 — Section 11, 12, 12A, 226(3)

Citation : (2012) 09 P&H CK 0357

Hon'ble Judges : Surya Kant, J;R.P. Nagrath, J

Bench : Division Bench

Advocate : Alok Mittal, for Mr. Akshay Bhan, for the Appellant; Savita Saxena, for the Respondent

Judgement

Surya Kant, J.—The Patiala Urban Planning and Development Authority, Patiala, is aggrieved by the notice dated 14.3.2012 (Annexure P-10) issued u/s 226 (3) of the Income Tax Act (for short ''the Act'') raising demand of Rs. 19,32,36,475/- towards income tax, penalty/interest etc. for the assessment year 2009-10. The notice under challenge is resultant to the assessment order dated 30.12.2011 (Annexure P-5). The short grievance of the petitioner-Authority is that the Assessing Officer has overlooked the exemption accorded to it by the Competent Authority namely the Commissioner of Income Tax, Patiala, u/s 12A of the Act vide order dated 28.9.2005 (Annexure P-4). The petitioner-Authority on its registration u/s 12A of the Act, the benefit of registration under Sections 11 and 12 of the Act has been made available to it w.e.f. 1.4.2005.

2. It is, however, not in dispute that the assessment order dated 30.12.2011 (Annexure P-5) is already under challenge in appeal before the Commissioner of Income Tax (Appeals). A copy of the grounds of appeal has also been placed on record (Annexure P-6).

3. In our considered view the effect of exemption granted or claimed by the petitioner-Authority pursuant to order dated 28.9.2005 (Annexure P-4) can be raised by the petitioner before the Appellate Authority who shall be obligated to

consider the same while deciding the petitioner''s appeal. Similarly, the plea taken by the Revenue in its counter-affidavit before us can also be gone into by the Appellate Authority, referred to above.

4. In these circumstances and without expressing our views on merits, we dispose of this writ petition with a direction to the Commissioner of Income Tax (Appeals)-respondent No. 2 to decide the petitioner-Authority''s pending appeal in accordance with law as early as possible and preferably within a period of 4 months from the date of receipt of certified copy of this order.

5. It may be mentioned here that vide interim order dated March 22, 2012, both the parties were restrained from encashing the fixed deposits of the petitioner-Authority with a further rider on the petitioner-Authority not to withdraw any amount other than the amount required for normal activities.

6. Mr. Alok Mittal, counsel for the petitioner-Authority points out that FDRs amount to over Rs. 90 crores whereas the demand raised against the petitioner is about Rs. 20 crores only. He further submits that some of the FDRs would be required to be encashed to discharge the due tax liability for the next assessment year and to perform other statutory responsibilities. Keeping the facts and circumstances in view and in order to protect the interest of the Revenue, we direct that the petitioner-Authority shall not withdraw or encash its fixed deposits to the tune of Rs. 20 crores till the decision of appeal by respondent No. 2, while it shall be at liberty to encash the rest of the FDRs.

7. Disposed of. Dasti.