IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4737 of 2015

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M/s Bihar Industrial Area Development Authority, A Government of Bihar undertaking constituted under the Bihar Industrial Area Development Authority Act, 1974, having its office at 1st floor, Udyog Bhawan, East Gandhi Maidan, Patna through its Senior Accountant Officer, Yoganand Sinha, son of Late Jiwachh Sinha, Resident of A/372, A.G. Colony, P.O. Ashiana Nagar, P.S.- Shastri Nagar, District - Patna

.... Petitioner

Versus

1. The Assistant Commissioner of Income Tax (TDS), Circle, Patna
2. The Commissioner of Income Tax (TDS) Circle, Patna
3. The Joint Commissioner of Income Tax (TDS), Circle, Patna
4. Indian Overseas Bank, Patna through its Bank Manager
5. Union Bank of India, Boring Road, Patna through its Branch Manager,
6. Madhya Bihar Gramin Bank, Kankarbagh, Patna, through its Branch Manager,
7. Punjab National Bank, East Gandhi Maidan, Patna through its Branch Manager
8. UCO Bank, Patna Main Branch, Patna through its Branch Manager
9. Punjab National Bank, Gandhi Nagar, Patna through its Branch Manager

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Rastogi, Advocate
For Madhya Bihar Gramin Bank	:	Mr. Sharad Kr. Sinha & Mr. Amit Kr. Anand, Advocates
For Indian Overseas Bank	:	Mr. Titendra Kumar Roy Mr. Shivendra Kumar Roy Mrs. Sheela Sharma, Advocates
For the IT Deptt.	:	Mrs. Archana Sinha @ Archana Shahi, Sr. SC Mr. Suman Kumar Mishra, Jr. SC
For Resp. No. 5	:	Mr. Kumar Alok, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 30-03-2015

Heard learned counsel for the petitioner, learned Senior Standing Counsel for the Income Tax Department and learned counsel for the respondent nos. 4,5 and 6.

The writ application has been filed seeking quashing of the communication dated 11.3.2015 issued by respondent no.1, the Assistant Commissioner of Income Tax (TDS), Circle, Patna in which it has been stated that the Commissioner of Income Tax, TDS Circle, Patna has rejected the proposal for issuance of exemption certificate under Section 197 of the Income Tax Act for the financial year 2014-15 and for consequential reliefs.

The short facts of the case are that the petitioner is a statutory authority constituted under the Bihar Industrial Area Development Authority Act, 1974 being an instrumentality of the State. It has been constituted for planned development of industrial area and promotion of industries in the area and other amenities incidental thereto. The petitioner receives funds from the Central and State Governments for carrying out its objectives and is obliged to utilize the funds for the manner and purpose for which it has been constituted under the Act as also on the direction issued from time to time by the Central Government and State Government. It is the specific stand of the petitioner that after funds are received for the specified project, the same are utilized for the said project only in accordance with the scheme formulated for implementation of the specified project and since the work is carried out in phases, the unutilized portion of the funds are invested in fixed deposits and the interest accruing thereupon also form part of the funds to be utilized for the specific purpose alone.

It is thus, the stand of the petitioner that the funds received by the petitioner either from the State or the Central Government does not form part of its assets, property and/or income and the interest accruing on the unutilized portion of the said funds also form part of the State funds and not the asset, property or income of the petitioner.

It is the further stand of the petitioner that if at all the interest accrued by the unutilized funds are treated to be income, it will be the income of the State Government and the State income is not taxable in view of the provisions of Article 289 of the Constitution of India.

It is the further case of the petitioner that since the financial year 2008-09 onwards the petitioner has been applying for and getting exemption from deductions under the provisions of Section 197 of the Income Tax Act. It is also the stand of the petitioner that in none of the assessments of any assessment year ever the said interest has been treated as the income of the petitioner and no tax has ever been levied upon the said interest. However, for the financial year 2014-15 by the impugned communication dated 11.3.2015 it has been informed by the Assistant Commissioner of

Income Tax, TDS Circle, Patna that the Commissioner of Income Tax, TDS Circle, Patna has rejected the proposal for issuance of certificate of no deduction of tax under Section 197 of the Act.

Learned counsel for the petitioner submits that the aforesaid action of the respondents is wholly unjust and whimsical and without any justification as the interest in question is not at all the income of the petitioner and not only it has never been taxed but has continuously been given the benefit of exemption certificate under Section 197 of the Income Tax Act.

It is further submitted by learned counsel that earlier also in the year 2009 the aforesaid issue had arisen and the petitioner was compelled to approach this Court by filing CWJC No. 3800 of 2009 which was allowed by order dated 20.7.2009 of this Court to the extent and in similar terms with earlier directions to the Income Tax Department by the order of the said date passed in CWJC No. 3795/2009 (M/s. Infrastructure Development Authority Vs. The Commissioner of Income Tax (TDS) and others) in para-8 of which this Court had held as follows:-

> "8. Prima-facie, this Court finds merit in the claim of the petitioner that the interest income over money belonging to the State of Bihar cannot be subjected to income tax or TDS by the Income Tax Authorities. However, since the assessment orders have not been

> passed in respect of petitioner for the relevant years, hence this Court would not like to give a definite and positive finding over the issues involved, at this stage. Hence, the orders contained in Annexures 3 and 4 are quashed and the matter is remitted back to the concerned Authority of the Income Tax Department, i.e., Assistant Commissioner of Income Tax, TDS Circle, Patna for passing fresh order in accordance with law and after due application of mind to all relevant facts, some of which have been noticed in this order. The said Authority should pass fresh order in respect of petitioner's application under Section 197 of the Act without any delay and preferably within one month from today. Till then no coercive action shall be taken to realize tax deduction at source in respect of interest income which the petitioner may receive.**"**

It is further submitted that pursuant to the same the Assessing authority had rejected the claim of the petitioner under Section 197, whereafter matter went before the Commissioner under Section 264 of the Income Tax Act and by his order dated 20.4.2010 the Commissioner had decided the matter in favour of the petitioner with the observations in the following terms:

> "Similar assertion was made in the Writ Petition and the Hon'ble Patna High Court in its order dated 20.7.2009 was prima facie satisfied that the interest income over money belonging to the State of Bihar

cannot be subjected to income tax or TDS by the Income Tax authorities.

"Further, in support of the facts stated in the returns and the averments made in the writ petition, the Secretary of the organization, namely, Dr. Girish Kumar has sworn an affidavit dated 9.3.2010 wherein it has been categorically stated on oath that "the interest earned from such fixed deposits are part of the allotted sum granted for specific project. The entire allotted funds along with interest earned on investment of such fund in fixed deposit are to be spent on the project for which it has been granted. The surplus, if any, of a project is required to be return back to the Government of Bihar and deficit, if any, is to be recovered from Government of Bihar." Further, it has been solemnly affirmed in the said affidavit "that the interest earned from fixed deposits (details given in pages 33 of paper book) is the receipt/income of the Government of Bihar and is not receipt/income of the above named organization." Further, in para 9, it has been stated "that the funds/grants belonged to the Government of Bihar." The assessee has further, relied on the decisions of Hon'ble Delhi High Court and Hon'ble Kernataka High Court reported in 295 ITR page 419 and 284 ITR page 582 (Kernataka). On careful consideration of these two judgments, I Find that the case of the assessee is covered by the judgments of Hon'ble Delhi and Kernataka High Courts."

After the aforesaid order dated 20.4.2010, the petitioner has been continuously getting the benefit of exemption under Section 197 of the Income Tax Act so far as the said interest is concerned.

It is also submitted by learned counsel for the petitioner that the order dated 11.3.2015 suffers from complete non-application of mind as no reasons have been assigned for rejecting the proposal for issuance of certificate under Section 197 particularly considering the fact that earlier the same was being allowed pursuant to the order dated 20.4.2010 of the CIT (TDS).

Learned senior Standing Counsel for the Income Tax Department, on the other hand, submits that it is well settled proposition that res judicata is not applicable to decision under the Income Tax Act and it is open to the Department to take a different view of the matter in subsequent assessment years. Various grounds have been sought to be taken by learned counsel for the respondent-Income Tax Department including filing of ITR in ITR-7, failure to clarify whether Rule 28AA or 28AB applies to its case, defaults on account of TDS obtained online, etc. It is also asserted that no certificate had been issued for the financial year 2013-14.

In reply to the aforesaid, learned counsel for the petitioner submits that no such ground has been stated in the order rejecting the application of the petitioner and the respondents cannot be permitted to take such grounds in the counter affidavit. It is contended that the application for the financial year 2013-14 has never been rejected and thus no benefit can be derived by the respondents on that account also.

With regard to the change in the PAN No. it is submitted that the earlier PAN No. had been issued to the petitioner as a trustee and it now claims to be a local authority and for that reason the PAN No. had to be changed which does not have any effect so far as the statutory status of the petitioner is concerned. It is also urged by learned counsel for the petitioner that all such issues have no relevance so far as the term "interest as income" is concerned as admittedly the said interest income accrues upon the funds provided by the Central Government or State Government for specific purposes which funds have to be utilized in accordance with the statutory provisions and directions of the Central Government or State Government or even the interest thereon has to be similarly utilized and the same can never be considered as the income of the petitioner. Thus, the status of the petitioner as a charitable institution and/or a local authority has no relevance in the matter.

On a consideration of the facts and circumstances of the case and the submissions of learned counsels for the parties, this

Court finds sufficient force in the submission of learned counsel for the petitioner. The impugned order passed in the present matter does not show any application of mind as no reasons have been assigned for rejecting the proposal for issuance of exemption certificate under Section 197 of the Act whereas on a proper consideration of the direction of this Court in a similar writ application, the CIT, (TDS) had passed earlier the order dated 24.4.2010. The said order was a reasoned order after noting the prima facie satisfaction of this Court under its order dated 20.7.2009 and cannot be said to be unlawful by the Income Tax Authorities and further relying upon the decisions of the Delhi High Court and Karnataka High Court, reported in 295 ITR 419 and 284 ITR 582. Thus, if at all, the respondent-authorities were of the view that they could take a different stand in a fresh assessment order, there being admittedly no question of res judicata in assessment of income for different assessment years, they were still required to do so acting properly in the matter by giving good reasons for disagreeing with the earlier order dated 20.4.2010 which has not been done in the present matter. As a matter of fact, there has been no change in the nature of interest earned on the funds provided by the State Government which have gone in the Bank and it is not open to the Department to come to a different conclusion in view of the overriding effect of the provisions of Article 289 of the

Constitution of India.

For the aforesaid reasons, the writ application is allowed. The impugned letter dated 11.3.2015 communicating the decision of the CIT (TDS) is quashed. The respondents shall issue exemption certificate to the petitioner, accordingly.

It is, however, made clear that it would be open to the respondents to take a fresh view in a subsequent year but only after giving full opportunity to the petitioner and passing a speaking order.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Anjana Mishra, J)

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