IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.08.2008

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.10 of 2008

M/s. Tamilnadu Warehousing Corporation,
100 Anna Salai, Guindy, Chennai 32. Appellant//Respondent

v.

The Deputy Commissioner of Income Tax,
Company Circle III (1), Chennai 34. Respondent/Appellant

Tax Case Appeal filed under section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 27.09.2007 passed in ITA No.1487/Mds/2002 against the order of the Commissioner of Income Tax (Appeals)-V, Chennai dated 29.4.2002 in TR 386/01-02/A.III and against the order of Deouty Commissioner of Income Tax, Company Circle (1), Chennai dated 20.2.2001 in PAN/GIR No.9.T. for the Assessment Year 1998-1999.

For appellant : Dr.Anitha Sumanth

JUDGMENT

(Judgment of the Court was delivered by
K.RAVIRAJA PANDIAN, J.)

This appeal is filed against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 27.09.2007 passed in ITA No.1487/Mds/2002.

2. The appellant is the Tamilnadu Warehousing Corporation established under the Warehousing Corporation Act, 1962 and is owned by the Government of Tamilnadu. The appellant is an assessee under the respondent. For the assessment year 1998-99, the assessee filed returns and claimed exemption under section 10(29) of the Income Tax Act in respect of the income derived from the activities carried on by the assessee, and those are warehousing

charges, supervision charges, weigh bridge receipts, DESS receipts, rent receipts (quarters), interest on staff advances, fumigation receipts, interest on bank deposit, etc., The said exemption was claimed on the premise that the appellant is an authority constituted under law for marketing of commodities and any income derived from letting out the godowns and warehouses for storage, processing or facilitating the marketing of the commodities, would qualify for exemption under section 10(29) of the Income Tax Act. The assessing officer restricted the exemption only to warehousing charges and has charged the income pertaining to other activities as income under house property and other sources of tax.

3. The assessee carried the matter on appeal to the Commissioner of Income Tax (Appeals), who by his order, held that the appellant's primary business is the maintenance of warehouses owned by them for the purposes of storage, processing or facilitating marketing of commodities, and any income from the above activities would qualify for exemption under section 10(29) of the Act. The goods stored in the warehouse or at the safe custody of the warehousing authorities are liable for any damage or loss. It is natural that they have to maintain security for supervision of the warehouse and the goods stored therein. The charges is based on the weight of the goods. Hence, the maintenance of the way bridge is essential for the purpose of carrying on the business of the appellant. Further, for the proper maintenance of goods from any pests, fumigation is essential. Thus, the receipt from the three items, viz., supervision charges, weigh bridge receipts and fumigation receipts are held to be exempt under section 10(29) of the Act.

4. The revenue, aggrieved by the order of the Commissioner of Income Tax (Appeal), went on further appeal to the Income Tax Appellate Tribunal. The Tribunal, following the assessee's own case for the earlier assessment year and taking in aid the judgment of the Supreme Court in the case of Orissa Warehousing Corporation Ltd. And Rajasthan State Warehousing corporation v. CIT, 237 ITR 589, has come to the conclusion that the words "any income" as appearing in the body of the section is restrictive in its application by reason of the user of the expression 'derived from' and hence the income derived as supervision charges, fumigation charges and way bridge receipt are not eligible for deduction under section 10(29) of the Income Tax Act. The assessee is before us, on appeal against the said order by formulating the following substantial questions of law:

1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in Law in allowing the Department's appeal concerning exemption under section 10(29) of the Income Tax Act?
2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in not noting that the Hon'ble Supreme Court had

referred the identical issue to a larger Bench of the Hon'ble Supreme Court for its consideration on account of conflicting decisions of two benches of the Hon'ble Supreme Court?

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in not holding that the appellant is engaged in warehousing activities as a result of which, all its incomes are directly derived from the same, thus being eligible for exemption u/s 10(29) of the Income Tax Act?
4. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that incomes from Supervision charges, Fumigation activities and Weigh Bridge Receipts, are not eligible for exemption u/s 10(29) of the Income Tax Act, 1961?

5. We heard the arguments of the learned counsel for the appellant and perused the materials available on record.

6. The appellant being a State owned Corporation before filing an appeal against the Income Tax Department, we are of the view has to obtain clearance from the Committee of Disputes (CoD). The apex Court, in the case of ONGC v. City and Industrial Development Corporation, Maharashtra Ltd., (2007) 7 SCC 39, after referring to the earlier cases in ONGC (I) v. CCE, 1992 Supp (2) SCC 432; ONGC (II) v. CCE, 1995 Supp (4) SCC 541; ONGC (III) v. CCE, (2004) 6 SCC 437; in which directions have been issued to set up governmental committee to resolve the dispute between the intra-governmental or intergovernmental disputes involving Government Departments or Government owned companies of the Central and State Governments, rather than adjudicating the same before Courts of law, and having regard to the fact of the particular case, that the matter was pending since 1990 and considering the nature of the controversy, which is a recurring feature, directed that a Committee be formed to sort out the differences between the Central Government and the State Government entities. The composition of such committee is also stated to be as follows :

1. The Cabinet Secretary of the Union;
2. Chief Secretary of the State;
3. Secretaries of the departments concerned of the Union and the States; and
4. Chief Executive Officers of the undertakings concerned.

7. The Supreme Court in the case of Chief Conservator of Forests, Govt. Of A.P. vs. Collector and Others reported in (2003)3 Supreme Court Cases 472 has held as follows:-

"Disputes between Government Departments cannot be contested in Court. States/Union of India must evolve a mechanism for resolving interdepartmental controversies. Constitution of Committees suggested which should consist of Chief Secretary, Secretaries of the departments concerned, Secretary of Law and Secretary of Finance (where financial commitments are involved) whose decision should be binding on all departments concerned".

8. The apex Court also held that it shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with. The same has been reiterated in the latest decision of the Supreme Court in the case of CIT, Delhi VI v. M/s. Oriental Insurance Co. Ltd., in Civil Appeals Nos.4529 of 2008 etc., decided on July 18, 2008.

9. In order to discharge that obligation, when we posed a question to the learned counsel as to whether such a clearance has been obtained from the CoD, he admitted that such a certificate from COD has not been obtained. Hence, the appeal is dismissed as not entertainable in the absence of the clearance, however, by giving liberty to the appellant to move this Court after obtaining clearance from CoD. No costs.

rg/mf

Sd/-
Assistant Registrar

/ True Copy /

Sub. Assistant Registrar

To

1.The Assistant Registrar
Income-tax Appellate Tribunal
Rajaji Bhavan, Besant Nagar,
Che18 of 1998ai-90. (Five copies with records)

2. The Secretary,
Central Board of Direct Taxes,
New Delhi. (Three copies)

3. The Deputy Commissioner of Income Tax,
    Company Circle III (1), Chennai.

4. The Deputy Commissioner of Income Tax,
    Company Circle I (1), Chennai.

5. The Income Tax Appellate Tribunal,
    Chennai 'C' Bench, Chennai.

1 cc to M/S.Dr.Anita Sumanth, Advocate, SR. 42486

1 cc to M/s. Pushya Sitaraman, Advocate, SR. 42897

ssn (co)

dv/22.8.

T.C. (A) No.10 of 2008