IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

INCOME TAX APPEAL NO.15/2016

The Pr. Commissioner of Income Tax-2, Nagpur
...Versus...
Nagpur Improvement Trust, Nagpur

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Bhushan Mohta, Advocate for appellant
S/Shri L.S. & K.P. Dewani, Advocates for respondent

CORAM : SMT. VASANTI A. NAIK AND V.M. DESHPANDE, JJ.
DATE : 21.04.2016

By this Income Tax Appeal, the appellant – Department has challenged the order of the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur dated 24.9.2015 dismissing the appeal filed by the Department and upholding the order of the CIT (Appeals).

The respondent – Nagpur Improvement Trust, the assessee is a Trust, constituted under the Nagpur Improvement Trust Act, 1936 for the development of the Nagpur City.

There was an arrangement with the State Government and the respondent – assessee that the stamp duty collected by the Collector, Nagpur from the registration of sale of property, the assessee shall be given a percentage of the stamp duty so collected, so that the fund so received, could be utilized by the assessee for the development of the City of Nagpur. The Assessment Officer had found that the assessee had shown an amount of Rs.6,87,99,082/- as an amount receivable towards stamp duty contribution for the relevant assessment year i.e. 2006-07. Since the respondent – assessee was maintaining mercantile system of accounting for the year under consideration and since according to the Assessment Officer, the stamp duty contribution had accrued to the assessee for the relevant year, the Assessment Officer taxed the said amount in the hands of the assessee.

The order was challenged before the CIT (Appeals) by the respondent – assessee and the CIT (Appeals) by relying on the decision in the case of ***Godhra Electricity Company Limited,*** reported in ***225 ITR 746 (SC)*** held that the fund receivable from the stamp duty collection from the State was not in the nature of real income in the hands of the assessee. The CIT (Appeals) therefore held that the said amount was not taxable in the hands of the assessee. Being aggrieved by the said deletion, the Revenue Department filed an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal, by the impugned order, dated 24.9.2015 dismissed the appeal filed by the Department and upheld the order of the CIT (Appeals). The order of the Income Tax Appellate Tribunal is challenged in this appeal.

On hearing the learned Counsel for the parties, it appears that the CIT (Appeals) as well as the Income Tax Appellate Tribunal have recorded a clear finding of fact that the State Government was not disbursing the stamp duty fund to the assessee for past more than two decades and a huge amount of rupees 28.44 crores was due and payable by the State Government. Both the Authorities have concurrently recorded a finding of fact that as the State Government was not disbursing the amount that it had agreed to disburse to the assessee to be utilized for the development of Nagpur City, the income was only hypothetical and the same was never received by the respondent – assessee at any point of time during the past two decades. The Income Tax Appellate Tribunal as well as the CIT (Appeals) therefore held by placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***Godhra Electricity Company Limited*** (Supra), and specially paragraph no.9 thereof that the question whether there was a real accrual of income to the assessee could be considered by taking the probability or improbability of realization, in a realistic manner. Though there was an agreement that the percentage of stamp duty collected by the Collector, Nagpur from registration of sale of property would be paid to the respondent – assessee, the respondent – assessee had not realized the amount that was so payable during the relevant assessment year and even for the past several assessment years and hence, by relying on the judgment of the Hon'ble Supreme Court in the case of ***Godhra Electricity Company Limited*** (Supra), the Tribunal held that the fund receivable out of the stamp duty collected by the State Government was not in the nature of real income in the hands of the assessee. Apart from the judgment of the Hon'ble Supreme Court in the case of ***Godhra Electricity Company Limited*** (Supra) the learned Counsel for the assessee had rightly referred to the judgment rendered at the Principal Seat, dated 11.6.2014 in Income Tax Appeal

No.221/2012, where the mercantile system of accounting was followed and it was held that it was permissible for the assessee to disclose or show that the interest would have been brought to the profit and loss account, provided it was actually realized. It was held in the said decision that if recovery of some of the loans advanced by the Bank is considered doubtful, then even the interest on the loans advanced may not be realized and hence, the assessment of income could not have been made in respect of the amounts that could not have been realized.

In respect of the allocation of the funds by the State Government to the assessee towards Huj House Construction, Dalit Vasti Sudhar Yojana fund, National Slum Development fund etc., the Tribunal and the CIT (Appeals) held that the amounts received by the assessee were not in the nature of revenue receipts in the hands of the assessee as it was clear from the Government notifications that the assessee was the implementing agency of the State Government for the various development projects and was answerable to the State Government in respect of utilization of the funds. It was held that the amount received by the assessee was not the income of the assessee as it was acting as an agent of the Government and was required to utilize the funds as per Government directions and submit the utilization certificates with vouchers.

Since the findings recorded by the CIT (Appeals) and the Income Tax Appellate Tribunal are based on an appreciation of the material on record, specially the fact that the part of the stamp duty amount was never realized by the respondent – assessee, no substantial question of law would arise for determination of this appeal.

In the circumstances of the case, we dismiss the Income Tax Appeal with no order as to costs.

JUDGE **JUDGE**

Wadkar