

**202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**ITA No.326 of 2015 (O&M)
Date of decision : 03.02.2020**

The Principal Commissioner of Income Tax-I,
Chandigarh.

..... Appellant

versus

M/s Punjab Police Housing Corporation Ltd.,
SCO-171-172, Sector 8 C, Chandigarh.

..... Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE AVNEESH JHINGAN**

Present :- Ms. Urvashi Dhugga, Advocate for the appellant.

Mr. Sanjay Bansal, Sr. Advocate with
Mr. Amit Parsad, Advocate for the respondents.

AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the order of the Commissioner Income Tax and the Income Tax Appellate Tribunal setting aside the order of the Assessing Officer whereby the Assessing Officer held that the interest which had accrued to the Assessee was liable to tax.

2. The brief facts are that the Assessee is regularly given grants by the State of Punjab for various purposes including the construction of houses for police officials. It so happens that in a particular year the grant remains un-utilized and the money which is parked in the bank earns interest. As per the Assessing Officer this interest was exigible to tax whereas the Commissioner and the Tribunal held otherwise. The basis for the Tribunal's decision is that the amount of interest which accrues on any money parked in the bank would be deemed to be a further grant for

that particular purpose and can be used only for that purpose and in the event that it can not be used for that purpose the same has to be refunded back to the Government.

3. The primary grounds which weighed with the Assessing Officer to hold otherwise were, firstly that the Assessee was not able to show that it had ever returned the interest to the Government; secondly no such stipulation was there in the notification releasing the funds; thirdly the Assessee was not a Company registered under Section 25 of the Companies Act, 1956; fourthly that even in the hands of the Government it would be a revenue receipt and fifthly that the accrual of this interest can not be taken to be a casual income.

4. In our considered opinion, the findings of the Assessing Officer are conjectural. Instead of saying that the interest income has been utilized by the Assessee on its own free will, the Assessing Officer has inverted the law and has held that merely because the Assessee has never refunded any amount of interest to the Government it means it is its income.

5. On the other hand the Commissioner has found that certain funds are released to the State of Punjab by the Central Government and if those are un-utilized and interest accrues on them, the amount of interest is deducted by the Central Government while giving subsequent grant. The Commissioner further found that certain buildings which were required by the Punjab Government like the Cyber Police Cell had to be constructed by the Assessee out of the interest income because the Government did not release any funds for those purposes. The Tribunal also upheld the findings of the Government.

6. Before us the learned counsel for the appellant has vehemently argued that the absence of any instance where the interest income was ever returned to the Government and the absence of any stipulation to this effect in the letter releasing the various grants to the Assessee clearly show that the interest income belongs to the Assessee.

7. Counsel for the appellant has relied upon a judgment passed by the Supreme Court in ***Commissioner of Income-Tax, Bombay City II Vs. Sitaldas Tirathdas, 1961 AIR 728*** but that case is not applicable because in that case what the Supreme Court had decided that if the interest is spent by the Assessee as per his own desire it would constitute income whereas in the present case this is not so.

8. The argument that there is no such stipulation in the letter releasing the grant does not lead to the automatic conclusion that the interest is income of the Assessee. It is not the case of the appellant that the books of the Assessee ever revealed the diversion of any interest income. Had that been so something could have been said. The other argument raised by the counsel for the appellant is that the Tribunal wrongly invoked Section 10 (23BBA) of the Act and the invocation of that Section completely blind-sided the Tribunal into taking a wrong decision.

9. It would be pertinent to note that there is dispute raised by the counsel for the appellant against finding recorded by the Tribunal in para 11 of its order. The relevant portion is quoted below :-

“The assessee in the Paper Book filed on record has furnished the copy of notification issued by the Central Government for utilization of interest, placed at pages 22 and 23 of the Paper Book. As per the afore said notification

dated 17.3.1999, the interest earned on the amount deposited in the saving bank account out of funds not utilized under SJSRY scheme, are to be distributed between all the components of the scheme on pro rata basis and the expenditure out of such interest income is to be applied accordingly. In view of the above said instructions of the Central Government, the assessee society is not the recipient of the aforesaid income arising on account of interest earned on deposits with banks.”

10. Learned senior counsel appearing for the respondents has stated that the Assessee never claimed any exemption under Section 10 (23BBA) and in the circumstances, the only thing which can be held is that reference to Section 10 (23BBA) by the Tribunal was surplusage and was not required in view of the basic finding of fact that the income which accrued to the Assessee from the funds of the Government which were released to it were not diverted by it and could not be diverted by to any other purpose and had to be used only for the purposes which the Government directed and in case the funds were not used the Government had the right to recall them.

11. Questions of law raised by the appellant does not arise. Consequently, the appeal is dismissed.

12. Since the main case has been dismissed, the pending Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

03.02.2020
pooja sharma-I