

(2001) 09 P&H CK 0092

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No"s. 9572 and 9921 of 2001

Chandigarh Housing Board

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 7, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 10(20A), 142, 142(1), 271(1)

Citation: (2002) 253 ITR 714

Hon'ble Judges: Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench: Division Bench

Advocate: A.K. Mittal and Akshay Bhan, for the Appellant; R.P. Sawhney, Senior Advocate, Rajesh Bindal and K.S. Waraich, for the Respondent

Judgement

Jawahar Lal Gupta, J.

Is the action of the Revenue in calling upon the petitioners in these two cases to file their returns of income under the provisions of the Income Tax Act, 1961, illegal ? Are the notices issued to the petitioners liable to be quashed ? These are the two questions that arise for consideration.

2. In CWP No. 9572 of 2001, the Chandigarh Housing Board is the petitioner. On January 29, 2001, the petitioner was served with a notice u/s 142(1) of the Income Tax Act, 1961. It was asked to file its return of income for the assessment year 2000-01. A copy of the notice dated January 29, 2001, is at annexure P-4. The petitioner sent its reply vide letter dated February 15, 2001. On March 23, 2001, the Deputy Commissioner of Income Tax (IDS)-respondent No. 3, issued notice to the various banks directing them to deduct tax at source on the deposits made by the petitioner. A copy of this notice is at annexure P-9. On June 18, 2001, the petitioner was served with another notice, a copy of which is at annexure P-7. It was called upon to show cause as to why an order imposing a penalty should not be passed u/s

271(l)(b). Aggrieved by these notices, the petitioner has approached this court through the present writ petition.

3. The petitioner alleges that the provisions of the Haryana Housing Board Act, 1971, were extended to the Union Territory of Chandigarh vide notification dated January 14, 1975. Thereafter, the petitioner was incorporated under the Act. In view of the provision of Section 10(20A), its income is exempt from levy of tax. Thus, it cannot be called upon to file any return of income. On this basis, the petitioner prays that the notices dated January 29, 2001, March 23, 2001 and June 18, 2001, copies of which have been produced as annexures P-4, P-9 and P-7, respectively, be quashed.

4. The second petition has been filed by the Punjab Urban Development Authority. It is aggrieved by the notices dated January 12, 2001, April 23, 2001 and June 13, 2001, copies of which have been produced as annexures P-2, P-4 and P-5, respectively. It prays that these notices be quashed.

5. The Revenue contests the claim of the petitioners. It maintains that the petitions are premature. The notices issued to the petitioners are in conformity with law. The petitioners are bound to file the return. Thereafter, the competent authority shall consider and decide the matter. The petitioners can claim refund in respect of the tax deducted at source only after filing the returns.

6. Learned counsel for the parties were heard. A. K. Mittal and B. B. Bagga contended that the notices do not conform to the requirements of Section 142. The income of the petitioners being exempt from tax, the provisions of Sections 139 and 142 are not attracted. Similarly, the directions for deduction of tax at source as issued by the Revenue are wholly illegal.

7. The claim made on behalf of the petitioners was controverted by Mr. R. P. Sawhney, learned counsel for the Revenue. He submitted that the petitioners have receipts beyond the minimum prescribed under the Act. They are bound to file their respective returns. The matter shall be considered and decided by the competent authority in accordance with law. At this stage, the petitions are wholly premature.

8. The short question that arises for consideration is-Have the respondents acted illegally in issuing the impugned notices to the petitioners ?

9. It is not disputed that the petitioners are dealing in real estate. Their income is in billions. Do they have any income which is exigible to the levy of Income Tax ? The petitioners claim that by virtue of the provisions of Section 10(20A), the entire income is exempt from the payment of tax. It may be so. However, the facts can only be determined on the basis of the evidence adduced by the petitioners before the competent authority.

10. A perusal of the notice dated January 12, 2001, issued to the Punjab Urban Development Authority indicates that according to the Revenue, the authority is "selling residential/commercial plots on (by) auction so that maximum profit could

be earned by it for helping the Government to tide over financial difficulties". On this basis, it has been observed that "a portion of income derived by it from auction could be said to be outside the purview of Section 10(20A) of the Income Tax Act and hence taxable". The position was reiterated in the notice dated April 23, 2001, Similar is the position in the case of the Chandigarh Housing Board.

11. Learned counsel for the petitioners contended that their activities were confined to housing, etc. Thus, their income was totally exempt u/s 10(20A). Consequently, the provisions of Sections 139 and 142 were not attracted.

12. Whatever be the correct position, the facts can only be found by the competent authority in the light of the evidence that may be placed on record by the petitioners. If the petitioners succeed in proving that their income falls within the exemption contemplated u/s 10(20A), their claim is likely to be accepted. However, the decision has to be taken by the authority under the Act. Not by this court. At least, not for the present.

13. Learned counsel for the petitioners referred to various provisions of the Act to contend that the objectives and functions of the board/authority are related to housing. The claim was controverted by counsel for the respondents.

14. After hearing counsel for the parties, we feel that it shall not be appropriate for us to express any opinion at this stage as the relevant facts have yet to be found, the writ court cannot convert itself into the assessing authority. We shall only say that the matter has to be considered by the authority in the light of the evidence that may be adduced by the petitioners.

15. In this context, it deserves mention that on August 1, 2001, Mr. Bhushan Lal Mehta, the Deputy Controller of Finance and Accounts, PUDA, had appeared and stated that the authority had periodically made contributions towards the funds for "Sangat Darshan" being conducted by the Chief Minister, Punjab. Later, an affidavit dated August 7, 2001, was filed by Mr. K. B. S. Sidhu, Chief Administrator of the authority. In this affidavit, an effort was made to explain the position. What is the truth ? How are the funds of the authority being utilised ? Only on housing, etc., or for other purposes also ? The factual position can only be ascertained by the authority after examination of the evidence.

16. Counsel for the petitioners contended that if the returns are filed, the tax is bound to be levied. Thereafter, they will be forced to file appeals, etc. On the other hand, counsel for the Revenue submitted that the petitioners fall within the criteria laid down under the proviso to Section 139(l)(b) of the Act. Thus, it is incumbent upon them to file their respective returns.

17. If the contention raised by the petitioners is accepted at this stage, it may be possible for almost every person with income beyond the lowest level for tax prescribed under the Act to refuse to file a return on the ground that its income is

exempt under one or the other provision of the Act. It may be open to every businessman to say that his entire income is from agriculture. An industrialist might claim that on account of recession, he has suffered loss and thus, it is not necessary for him to file any return. In our view, a person has to file a return when called upon to do so. Thereafter, the matter has to be considered and decided by the competent authority.

18. Counsel for the petitioners referred to the decisions in Orissa State Warehousing Corporation Vs. Commissioner of Income Tax, and Gujarat Industrial Development Corporation etc. Vs. Commissioner of Income Tax . On the other hand, counsel for the Revenue placed reliance on the decision in Aditanar Educational Institution Vs. Additional Commissioner of Income Tax .

19. On a perusal of these judgments, we find that the returns had invariably been filed. However, on facts and law, an opinion was expressed by the court according to the merits of each case. In the present case also, we feel that it would be appropriate for the petitioners to file their respective returns. We have no doubt that the competent authority shall consider the matter in the light of the facts proved on record. Any decision by us at this stage can result in foreclosing the options available to the petitioners and the authority under the statute. We are not inclined to do so.

20. In view of the above, we find that the notices are not illegal. The petitions are premature at this stage. The petitioners may file their respective returns and these shall be considered by the assessing authority in accordance with law. The issue of refund of the amount deducted at source shall also be decided by the authority.

21. The writ petitions are, accordingly, disposed of. No costs.