

SUPREME COURT OF INDIA

Commissioner of Income-tax

Vs.

Gujarat State Warehousing Corporation Ltd.

(G. B. Pattanaik, Doraiswamy Rajuu Raju and S. N. Variava JJ.)

03.05.2000

ORDER

1. The Commissioner of Income-tax, Gujarat, approached this court failing in his attempt to get a statement of case being called for on the application filed under Section 256(2) of the Income-tax Act, 1961, which was dismissed by the High Court.

2. It appears that on the question of allowability of exemption under Section 10(29) of the Income-tax Act in respect of certain income, the Commissioner (Appeals) held in favour of the assessee and the Tribunal also affirmed the view of the Commissioner. The Department filed an application under Section 256(1), but the Tribunal having rejected the same, had approached the High Court under Section 256(2). The High Court having dismissed the same obviously on a conclusion that no question of law arises from the order of the Tribunal itself, the Department has approached this court. The question formulated by the Department is as follows :

"(1) Whether the claim of the assessee for exemption under Section 10(29) of the Income-tax Act, 1961, in respect of interest income of Rs. 6,03,374, staff quarter rent of Rs. 5,147, miscellaneous income of Rs. 5,647 and supervision charges of Rs. 79,081 was rightly accepted by the Commissioner of Income-tax (Appeals) and confirmed by the Income-tax Appellate Tribunal ?"

3. A similar question had been raised relating to certain income derived by the U.P. Warehousing

Corporation which was pending in this court, when this matter was placed before the court and the said civil appeal relating to the U.P. Warehousing Corporation stood disposed of by order dated November 20, 1990, calling upon the Tribunal to refer the question for the decision of the High Court. When this matter was listed before a Bench of the two judges of this court, the Bench (see CIT v. Gujarat State Warehousing Corporation Ltd.: [2000]245ITR1(SC) examined the two decisions reported in Union of India v. U. P. State Warehousing Corporation [1991] 187 ITR 54 and Orissa State Warehousing Corporation v. CIT: [1999]237ITR589(SC) and being of the view that the latter decision has taken a somewhat different view with regard to the interest income and there is an apparent conflict, thought it fit to refer the matter to a larger Bench.

4. In our opinion, it was not necessary for referring the matter to a larger Bench since the question for consideration, at this stage, is whether in refusing the application filed under Section 256(2) of the Income-tax Act, the High Court has failed to exercise jurisdiction vested in law.

5. Though, we prima facie do not find any conflict between the two decisions referred to above, but it is not necessary for us to express any final opinion on the same since at this stage the court is only required to find out whether a question of law arises and pass appropriate directions requiring the Tribunal to make a statement of case and refer the question of law to the High Court for its consideration and answer.

6. Having examined the question of law formulated as stated earlier, in the facts and circumstances, we have no hesitation to come to the conclusion that the aforesaid question of law arises from the order of the Tribunal and the Tribunal committed error in refusing to make a statement of case when an application was filed under Section 256(1) and the High Court also committed error in rejecting the application filed by the Revenue under Section 256(2) of the Income-tax Act. We, therefore, direct the Income-tax Appellate Tribunal to refer the question, i.e.,

"(1) Whether the claim of the assessee for exemption under Section 10(29) of the Income-tax Act, 1961, in respect of interest income of Rs. 6,03,374, staff quarter rent of Rs. 5,147, miscellaneous income of Rs. 5,647 and supervision charges of Rs. 79,081 was rightly accepted by the Commissioner of Income-tax (Appeals) and confirmed by the Income-tax Appellate Tribunal ?"

to the High Court of Gujarat for being answered by the said High Court. The appeal is disposed of accordingly.