A.F.R.

Court No. - 4

1. Case :- INCOME TAX APPEAL No. - 231 of 2006
Appellant :- U.P. State Industrial Development Corp. Ltd. (Upsidc)
Respondent :- Commissioner Of Income-Tax-Ii, Kanpur
Counsel for Appellant :- S.K. Garg
Counsel for Respondent :- A.N. Mahajan,B.Agrawal

2. Case :- INCOME TAX APPEAL No. - 232 of 2006
Appellant :- U.P. State Industrial Development Corp. Ltd. (Upsidc)
Respondent :- Commissioner Of Income-Tax-II, Kanpur
Counsel for Appellant :- S.K. Garg
Counsel for Respondent :- A.N. Mahajan,B.Agrawal

3. Case :- INCOME TAX APPEAL No. - 233 of 2006
Appellant :- U.P. State Industrial Development Corp. Ltd. (Upsidc)
Respondent :- Commissioner Of Income-Tax-II, Kanpur
Counsel for Appellant :- S.K. Garg
Counsel for Respondent :- A.N. Mahajan,B.Agrawal

4. Case :- INCOME TAX APPEAL No. - 234 of 2006
Appellant :- U.P. State Industrial Development Corp. Ltd. (Upsidc)
Respondent :- Commissioner Of Income-Tax-II, Kanpur
Counsel for Appellant :- S.K. Garg
Counsel for Respondent :- A.N. Mahajan,B.Agrawal

5. Case :- INCOME TAX APPEAL No. - 235 of 2006
Appellant :- U.P. State Industrial Development Corp. Ltd. (Upsidc)
Respondent :- Commissioner Of Income-Tax-II, Kanpur
Counsel for Appellant :- S.K. Garg
Counsel for Respondent :- A.N. Mahajan,B.Agrawal

Hon'ble Sudhir Agarwal,J.
Hon'ble Prabhat Chandra Tripathi,J.

1. Heard learned counsel for the parties.

2. These appeals are connected having arisen from common judgment and order dated 17.11.2005 passed by Income Tax Appellate Tribunal (Lucknow) in five connected appeals i.e I.T.R. Nos. 1216, 1217, 1218, 1219 and 1220 relating to assessment years 1977-78, 1978-79, 1981-82, 1985-86 and 1987-88.

3. The appeals were admitted on the following three substantial questions of law:-

(i) Whether the ITAT, was legally correct in holding that UPSIDC did not have the status of “Authority” as stipulated in section 10(20A) of the Act and in rejecting its claim for exemption, thereunder ?

(ii) Whether the Tribunal was legally correct in holding that in the absence of a specific notification having been issued by the State Government to create UPSIDC, it cannot be treated to be an "Authority" constituted in India "for the purposes of planning, development or improvement of cities, towns or villages or both" as stipulated under Section 10(20A) of the Act so as to be entitled to avail exemption thereunder ?

(iii) Whether on a true and correct interpretation of the preamble of U.P. Industrial Development Act (Act No.19), 1962 and various provisions as appearing therein, as are related to setting of a requisite type of corporation and defining its area of operation, UPSIDC was liable to be treated as an 'authority' for the purposes of its claim for exemption under Section 10(20A) ?

4. The undisputed facts are that U.P. State Industrial Development Corporation (hereinafter referred to as 'UPSIDC') is a company incorporated under the Companies Act, 1956 (hereinafter referred to as 'Act, 1956') and is a State Government undertaking incorporated inter-alia to promote, establish and execute industries, works, projects and enterprises and/or to provide aid or assistance to industrial undertakings, and/or to establish industries in Industrial Areas and Industrial Estates in State of U.P.

5. UPSIDC claimed exemption from Income Tax Act, 1961 (hereinafter referred to as 'Act, 1961') on the ground that it is a "local authority" within the meaning of Section 10(20) or an authority constituted by or under an enactment in India under Section 10(20A) but it was not accepted by Income Tax Authorities, hence these appeals.

6. Learned counsel for appellant though has argued that UPSIDC may also be treated as a "local authority" under Section 10(20) of Act, 1961 but it does not appear that any such issue was raised before the court below. Even otherwise during the course of

argument it has not been disputed before us that the term "local authority" has not been defined under Act, 1961. It has been defined under Section 3 (31) of The General Clauses Act, 1897 which reads as under :-

> *"3(31). "local authority" shall mean a municipal committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund"*

7. Counsel for appellant fairly conceded that considering aforesaid definition of "local authority" it is difficult to advance any submission so as to claim status of local authority for UPSIDC.

8. Thereafter, he proceeded and confined his arguments with respect of Section 10(20A) of Act, 1961, founded whereunder three substantial questions of law as noted above were formulated and appeals have been admitted.

9. Though in memo of appeals, appellant has claimed its existence under U.P. Industrial Development Act, 1962 (hereinafter referred to as "UPID Act, 1962') but learned counsel for appellant fairly stated that neither before Tribunal nor before this Court, appellant could produce any notification showing its creation or existence under UPID Act, 1962.

10. In fact, learned counsel for appellant fairly admits that there is no notification issued under Section 3 of UPID Act, 1962 resulting in creation of UPSIDC thereunder, therefore, claim of appellant that it has been constituted under UPID Act, 1962 is not founded on any material on record. On the contrary, it is an admitted case of appellant that it is a company incorporated under Act, 1956.

11. We also find that status of UPSIDC has been discussed by this Court in I.T.A. No. 191 of 2006 connected with I.T.A. No. 192 of 2006 decided on 9.3.2015 and some observations made therein,

relevant for the purpose of present appeals, may be reproduced as under:

> *“11..........From the facts noticed by Tribunal, in the impugned judgment, it is said that Assessee M/s U.P. State Industrial Development Corporation Ltd. (hereinafter referred to as 'UPSIDC'), is a company registered under the Companies Act, 1956 and wholly owned by State of Uttar Pradesh, therefore, it is a State undertaking. The objects and purposes incorporating the aforesaid company is to acquire and develop land for the purposes of promoting industrialisation in State of Uttar Pradesh. UPSIDC, got the land acquired through State of Uttar Pradesh for developing industrial area, allot land to entrepreneurs and receives premium and lease rent etc., in instalments from such Entrepreneurs”*
>
> *“15...........UPSIDC was incorporated under the Companies Act, 1956 on 29th March, 1961. The object of incorporation, mentioned in the said letter was to provide loan, term advances to Industrial Entrepreneurs, by providing developed land on deferred payment basis and also loans. However, from the aforesaid order, we find that there is also some contradictory facts and in paragraph 7, it is mentioned that UPSIDC was formed under U.P. Industrial Development Act, 1962 (hereinafter referred to as 'UPID Act, 1962'), but paragraph 11 shows that UPSIDC was already incorporated on 29th March, 1961. Once UPSIDC was already incorporated on 29th March, 1961, it is not possible to claim that it could have been established under UPID Act, 1962, which came into existence after more than a year since when UPSIDC was already incorporated as a State Government Company under the provisions of Companies Act, 1956.*
>
> *16. We have also gone through the UPID Act, 1962, Section 3 thereof reads as under:*
>
> ***"Establishment and Constitution of the Corporation***
>
> *3. (1) For the purposes of securing and assisting in the rapid and orderly establishment, and organisation of industries in the State of U.P. there shall be established by the State Government notification in the Official Gazette, a Corporation by the name of the U.P. Industrial Development Corporation.*
> *(2) The Corporation shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name, and shall be competent to acquire, hold and dispose of property, both movable and immovable, and to contract, and do all things necessary for*

the purposes of this Act."

17. Term 'corporation' is also defined in Section 2(d) of UPID Act, 1962, and reads as under :

"2(d) "Corporation" means the U.P. Industrial Development Corporation established under Section 3;

18. Therefore, what was contemplated in Act, 1962, is a 'Corporation' named 'U.P. Industrial Development Corporation, while, Assessee in question was incorporated as "U.P. State Industrial Development Corporation Ltd." and came into existence much before the enactment of UPID Act, 1962. Whether there was any change in the name of Corporation at any subsequent point of time is not known.

19. Section 12 of UPID Act, 1962, on the contrary shows that 'Corporation' under the aforesaid Act, shall take over and employ all the existing staff serving for the purposes in U.P. State Industrial Development Corporation etc. who would give their willingness to serve in the Corporation.

20. Section 13 of UPID Act, 1962, which discusses the functions and powers of Corporation, further provides that Corporation would take over and manage industrial areas owned and managed by UPSIDC. ***It is thus clear that Corporation to be set up under UPID Act, 1962, is different then UPSIDC and the said legislation in fact intended for complete take over of UPSIDC by the Corporation, who would work to give effect to the objectives of UPID Act, 1962.***

21. Therefore, aforesaid Act would not provide any assistance for the purposes of understanding functions and objectives for which UPSIDC was incorporated in 1961."

12. In the present appeals, thus, the claim of UPSIDC about its origin under UPID Act, 1962 cannot be accepted.

13. Now we come to consider the above questions by excluding the applicability of UPID Act, 1962. Unless appellant is an authority constituted in India by or under any law enacted, Section 10 (20A) of Act, 1961 shall not be attracted. This is evident from a bare reading of the aforesaid provision which reads as under:-

"10(20A). any income of an authority constituted in India by or under any law enacted either for the purpose of dealing

> *with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;"*

14. This provision has been considered by Supreme Court in **Gujarat Industrial Development Corporation vs. CIT (1997) 227 ITR 414**. Therein "Gujarat Industrial Development Corporation" (hereinafter referred to as 'GIDC') claimed benefit under Section 10 (20A) of Act, 1961 on the ground that it is an authority constituted under Gujarat Industrial Development Act, 1962 (hereinafter referred to as 'GID Act, 1962'). Court recorded a finding to this effect by accepting this claim as is evident from para 3 of judgment:-

> *"3. Corporation has been created under the Gujarat industrial Development Act, 1962, (for short 'the Gujarat Act') with the right to hold properties and the right to sue and be sued in its own name............."*

15. Thereafter referring to Section 10(20A) of Act, 1961, Court said that in order to qualify exemption under aforesaid provision one must satisfy two requirements (i) it is an authority constituted by or under any enacted law (ii) the authority is constituted by law for dealing with the need to provide housing accommodation. There is another alternative of this second limb that if first alternative is not available, then authority must show that it is constituted by law for the purpose of planning development or improvement of cities, towns and villages or both.

16. This Court finds that in **Gujarat Industrial Development Corporation vs. CIT (supra)** that GIDC was created under a provincial enactment for the purpose of planning or development or improvement of cities, towns or villages or in combination of them. Court also negated the view taken by High Court that the second limb of the requirement was not satisfied since GIDC was established for the purpose of developing or establishing industries in

any particular area and not for the purpose of planning developing or improving a particular city, town or a particular area. This view taken by High Court was not approved by Supreme Court and referring to the provisions of GID Act, 1962, Court held that second alternative of second limb of Section 10(20A) of Act, 1961, as noticed above is satisfied. Relevant observations, in this regard, as contained in para 9, 10 and 11 of judgment are reproduced as under:-

> *“9. The Gujarat Act was enacted "to make special provision for securing the orderly establishment of industries in industrial areas and industrial estates in the State of Gujarat, and to assist generally in the organisation thereof, and for that purpose to establish an Industrial Development Corporation, and for purposes connected with the matters aforesaid as can be discerned from the preamble thereof.*
>
> *10. Section 2 (g) of the Act defines "industrial area" as any area declared to be an industrial area by the State Government by notification in the Official Gazette which is to be developed and where industries are to be accommodated. Section 2(n) defines "industrial estate" as any site selected by the State Government where the Corporation builds factories and other buildings and makes them available for any industries or class of industries. Section 13 of the Gujarat Act enumerate the functions of the Corporation and they contain, inter alia, "to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Gujarat.*
>
> *11. We have no doubt that a proper planning is absolutely necessary for creation of an industrial area. Inside roads, sub-roads buildings, sanitation, parks and other amenities have also to be provided in a planned industrial area as per the modern concept of any industrial complex. Even educational institutions may have to be provided in such complex. Therefore, development of industrial area would have its direct impact on the development or improvement of that part of the city or town or village where such area is located. Delinking industrial area from the scope of development of any area is, thus, without any practical sense.”*

17. The Court also relied on its earlier decision in **Sri Ramtanu Cooperative Housing Society Ltd. vs. State of Maharashtra (1971) 1 SCR 719** which was in respect of Maharashtra Industrial

Development Corporation (hereinafter referred to as 'MIDC') created under Maharashtra Industrial Development Act, 1962 (hereinafter referred to as 'MID Act, 1962') and reproduced following observations made in judgment in the context of MID Act, 1962 and Corporation created thereunder :-

> *"The functions and powers of the Corporation indicate that the Corporation government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing property for those purposes, constructing building, allotting building, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of lands buildings and other properties and also that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of sole purpose of establishment growth and development of industries. The Corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of work of the Corporation."*

18. It was also held that the word “development” under Section 10(20A) of Act, 1961 should be understood in its wide sense. There is no warrant to exclude all development programmes relating to an industry from purview of the word “development” in the said sub-section. There is no indication in Act, 1961 that development envisaged should confine to non-industrial activities. Development of a place can be accelerated through varieties of schemes and establishment of an industry is one of the modes for developing an area. Court also observed that the purpose of granting exemption from income-tax to certain authorities under Section 10(20A) of Act, 1961 is to protect public bodies, created under law, for achieving the purpose of developing urban or rural areas, for public good. When object is such, an interpretation which would preserve it should be accepted even if the provision is capable of more than one interpretation.

19. If we examine the present case in the light of aforesaid exposition of law laid down in **Gujarat Industrial Development Corporation vs. CIT (supra)** we find that the first limb of requirement to attract Section 10(20A) of Act, 1961 that one who is claiming exemption thereunder must be “an authority” constituted by or under any law enacted in India, is not satisfied. Therefore, even if second limb of Section 10(20A) of Act, 1961 is satisfied, appellant- UPSIDC will not qualify for exemption since satisfaction of both requirement is must.

20. A similar question was considered by a Division Bench of Karnataka High Court in **M/s Karnataka State Small Industries Development Corporation Ltd vs. The Assistant Commissioner of Income Tax** in I.T.A. No. 1281 of 2006 decided on 3rd September, 2012. Therein also Karnataka State Small Industries Development Corporation (hereinafter referred to as 'KSSIDC') claimed exemption under Section 10(20A) of Act, 1961. It was negated by assessing authority holding that KSSIDC is not an authority constituted in India by or under any law but is a creation incorporated under Companies Act. The appeal of KSSIDC also failed before Commissioner of Income Tax (Appeals) (hereinafter referred to as 'CIT (A)') and further appeal was rejected by Income Tax Appellate Tribunal at Bangalore. Like UPSIDC, KSSIDC was also promoted as Government Company incorporated under Companies Act. Karnataka High Court found that KSSIDC was incorporated for the purposes of (a) developing small scale industries; (b) constructing and managing of industrial estates; (c) granting financial assistance to small scale industrialists; (d) marketing products of small scale industries.

21. Examining Section 10(20A) of Act, 1961 and the functions and manner in which KSSIDC came into existence, Karnataka High

Court said that one, in order to claim exemption, must be an 'authority' and said authority should be constituted in India by or under any law and such law should be enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages or for both. KSSIDC was not constituted under any law. It was incorporated pursuant to a resolution of Government of Karnataka. The objectives and purposes for which it was incorporated and manner of its creation under Companies Act, cannot be equated with the authority constituted in India by or under any law enacted. Moreover, KSSIDC is not discharging functions of housing accommodation and also planning and development of cities, towns and villages or both. Hence, KSSIDC was not held entitle to claim exemption under Section 10(20A) of the Act, 1961.

22. Some part of observations and findings of Karnataka High Court with regard to purpose and objective for which KSSIDC was created is not consistent with the law laid down in **Gujarat Industrial Development Corporation vs. CIT (supra)** and to that extent we find ourselves in respectful disagreement thereto but the first part that KSSIDC was a 'company' incorporated under Act, 1956 and not an 'authority' constituted under any law enacted in India is fully applicable in the present case and consistent with what has been said above by Supreme Court in **Gujarat Industrial Development Corporation vs. CIT (supra)** and only to that extent we find ourselves in agreement therewith.

23. To the same extent is the law laid down by Madras High Court in **CIT vs. State Industrial Promotion Corporation of Tamil Nadu (2009) 311 ITR 197**, wherein Court said as under:-

> *"It was admitted that the assessee was not an authority constituted in India by or under any law enacted. It was also*

admitted that the assessee had been incorporated under the provisions of the Companies Act, 1956. Hence, the assessee could not claim the benefit under Section 10(20A)"

24. In view of above discussion, we answer all the three questions against appellant- assessee and in favour of Revenue by holding that since UPSIDC is a company incorporated under Act, 1956 and not an authority constituted by or under any enactment in India, therefore, is not entitled for claiming exemption under Section 10(20A) of Act, 1961.

25. The judgment of Tribunal is confirmed in so far as it denies exemption to appellant-assessee but in the manner and for the reasons as discussed above.

26. In the result, all appeals are dismissed. No costs.

Order Date :- 5.7.2016
Atmesh