

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 05TH DAY OF OCTOBER, 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

ITA NOS.103-104/2016 & 337-388/2016

C/W

ITA NO.306/2014

BETWEEN:

M/S KARNATAKA MUNICIPAL DATA
SOCIETY, MRC, 6TH FLOOR,
1-4 IT PARK, RAJAJINAGAR
INDUSTRIAL ESTATE
BANGALORE-560010
REPRESENTED BY ITS
SECRETARY
DR.N. MANJULA
AGED ABOUT 40 YEARS
D/O SRI. K.N. NARAYANAPPA NAIK

....APPELLANT

(BY SRI.S PARTHASARATHI, ADVOCATE)

AND:

THE INCOME TAX OFFICER
WARD-9(2), BANGALORE.

...RESPONDENT

(BY SRI.K.V. ARAVIND, ADVOCATE)

THESE APPEALS ARE FILED UNDER SECTION 260A OF INCOME TAX ACT 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW AND ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE ITAT DATED 14.08.2015 BEARING ITA NOS. 1430 & 1431/BANG/2014 AND S.P.NOS.19 & 20/BANG/2015 FOR THE ASSESSMENT YEARS 2008-09 AND 2010-11 AND ETC.,

THESE APPEALS COMING ON FOR ADMISSION THIS DAY, **JAYANT PATEL J**, DELIVERED THE FOLLOWING:

ORDER

As common questions are to be considered, they are considered simultaneously.

2. Assessee has preferred all appeals by raising following questions of law:

“(a) Whether in law, the authorization below are justified in treating the grant and the interest earned thereon as income of the Appellant-society on the peculiar facts and circumstances of the case and also when the Appellant was clearly guided by the directions of the Government of Karnataka with regard to both the grant as well as interest earned on the unspent money kept with banks?

(b) Whether in law, the authorities below are justified in rejecting the plea of the Appellant and treating the grant

and the interest earned thereon as income of the Appellant when admittedly the funds were held by the Appellant in the capacity of custodian only and the funds and interest were to be utilized as per the directions of the Government of Karnataka alone?

(c) Whether in law, the authorities below are justified in interpreting the order of the Government of Karnataka dated 02.02.2010 as an after thought without understanding the true objects and spirits behind the formation of the Appellant as well the aforesaid Government order: the Government order having only made it clear what was intended right from the creation of the Appellant-society?"

3. The short facts of the case appears to be that as per the assessee, grant is being released by the Government for its various schemes to the appellant – assessee and such amount of grant is to be utilised for the purposes specified by the Government. Until the amount of grant is utilised, money is to remain in the respective Bank account of the assessee – Society and

interest may accrue thereon. In the assessment proceedings, assessing officer found that interest earned on the aforesaid deposits lying in the Bank account can be termed as “income” of the assessee and therefore, exemption from income was unavailable. Matters were carried in the appeal before the CIT (Appeals) and CIT (Appeals) dismissed the appeal. The matter was further carried in appeals before the Tribunal and the Tribunal observed thus:

“4.4.1. We have heard the rival submissions of both the learned Authorised representative for the assessee and the learned Departmental Representative for revenue and perused and carefully considered the material on record including the decision of the co-ordinate bench in the assessee’s case for Assessment Year 2009-10 (supra). We find that identical issues were before the co-ordinate bench of this Tribunal or consideration in the assessee’s own case for Assessment Year 2009-10. In its order in ITA No.1843/Bang/2013 dated 9.5.2014 the co-ordinate bench adjudicated these issues in favour of

Revenue and against the assessee holding as under at paras 12 to 14:-

“12. We have given a careful consideration to the rival submissions. At pages 58 & 59 of the assessee’s paper book are copies of the English translation of the Government Order dated 17.1.2009 releasing grants to the assessee society for the year 2008-09. The order in vernacular is placed at pages 60 to 61 of the assessee’s paper book. The operative portion of the Government Order reads thus:-

“Government Order No.UDD 15 SFC 2008 Bangalore, dated 17.01.2009

As explained in the Preamble, Government has released a sum of Rs.274.00 lakhs to Directorate of Municipal Administration for the Operational Cost of Rs.77.00 lakhs for the year 2008-09 to Karnataka Municipal Data Society and to reimburse a sum of Rs.197.00 lakhs, which was released for the year 2007-08.

This grant should be incurred for the year 2008-09 under the Account Head “3604-00-193-0-01” (100) (plan).

In the Government Order, Director, Directorate of Municipal Administration has been authorized to draw from State Huzur Treasury and to recover a sum of Rs.197.00 lakhs, which was released to Karnataka Municipal Data Society for the year 2007-08, and the remaining amount of Rs.77.00 Lakhs to Karnataka Municipal Data Society for the Operational Cost and pay through cheque”.

13. It is seen from the above Government Order that the purpose for which the grant is to be utilized and the utilization of interest income out of the grant have not been specifically spelt out. However, in the addendum dated 2.2.2010, this lacunae has been filled up. This was done apparently after the rejection of the assessee's application for grant of registration u/s. 12A of the Act, pursuant to order of the DIT (E) dated 22.1.2010. This addendum reads thus:-

“Preamble:

Government has released a total sum of Rs.299 lakhs as under, for meeting the

expenditure of the Karnataka
Municipal Data Society;

1) Government Order No.15
SFC 2008 dated 07/03/2008
Rs.197 lakhs

2) Government Order No.15
SFC 2008 dated 17/01/2009
Rs. 77 lakhs

3) Government Order No.15
SFC 2008 dated 27/08/2009
Rs. 25 lakhs

However, the Government has not specified the purposes for which the grant is to be utilized nor quantified the amounts to be utilized against such purposes. It is felt necessary to issue an addendum to the above Government orders specifying the conditions of the grants released. After careful consideration the following addendum.

**Addendum to GO
No.UDD/15/SFC/2008
Bangalore, Dated 02-02-2010**

As explained in the preamble it is here by directed that the amounts aggregating Rs.299/- lakhs granted to

Society be utilized by the Society after prior approval of the Government for specific purpose. The Government also reserves the right to direct Society to use the funds in a manner it may deem fit. The Society shall hold the money as a custodian for the Government. It shall create a fund out of the grant money and any accrued interest and utilize the funds for assisting the member bodies in implementation of e-Governance. If any asset is created out of this fund shall belong to the Government.

Utilization certificate shall be submitted to Government after spending the funds. Further in case the amount is unspent the same shall vest in such an institution or body which Government prescribes together with any accretion thereto.”

14. It can thus be seen from the above that the addendum, if at all,

would operate only for the previous year relevant to A.Y.2010-11 and not to an earlier period viz., A.Y.2009-2010. In other words during the previous year relevant to A.Y.2009-10, there were no restrictions whatsoever on the use of the grant by the assessee. It cannot therefore be said that there was diversion of income by overriding title. Whatever the assessee does out of the grant and the interest accrued on the grant can only be said to be application of income and it cannot be said that there was diversion of income by overriding title. Taking note of the above factual position for the A.Y.2009-10, the plea of the assessee that there was diversion of income by overriding title cannot be accepted. Accordingly, the order of the CIT (Appeals) is confirmed.”

4.4.2. Following the aforesaid decision of the co-ordinate bench of

this Tribunal in ITA No.1843/Bang/2013 dated 09.05.2014 in the assessee's own case for Assessment Year 2009-10, we hold that in the factual matrix of the case, it is clear that even after the Addendum of GOK dated 20.2.2010, whatever the assessee does out of the grant and interest accrued can only be said to be application of income for the stated objects and activity of the assessee society and therefore reject the assessee's plea that there was diversion of income by overriding title. Consequently, the grounds at S. Nos. 1 to 4 raised by the assessee are dismissed."

Similar is the view taken by the Tribunal in the other matters. Under these circumstances, appeals before this Court.

4. We have heard Mr.Parthasarathy, learned counsel appearing for appellant and Mr.Aravind, learned counsel appearing for respondent.

5. As such, when the assessee is to act as a custodian of the money and the utilization thereof is fully controlled by the Government, money remains as given for specified purpose and the interest earned is also to be utilised for specified purpose, but under the control of the Government as per the conditions of the grant. There is no liberty available to the assessee to utilize the amount of interest as per its desire.

6. This Court in more or less under similar circumstances had an occasion to consider the matter in the case of **COMMISSIONER OF INCOME TAX AND ANOTHER vs KARNATAKA URBAN INFRASTRUCTURE DEVELOPMENT AND FINANCE CORPORATION** in its decision reported at **(2006)284 ITR 0582** wherein of

course, Tribunal had held that it is not an income of the assessee but the revenue was in appeal before this Court. In the said decision, this Court at para 4 observed thus:

“4. The material on record shows that the very purpose of constitution of the assessee was to act as a nodal agency for implementation of mega-city scheme worked out by the Planning Commission. Both the Central and the State Governments are expected to provide requisite finances for implementation of the said project. The funds from the Central and State Governments will flow directly to the specialised institutions/nodal agencies as grant and the nodal agency will constitute a revolving fund with the help of Central and State shares out of which finance could be provided to various agencies such as water, sewerage boards, municipal

corporations, etc. The objective is to create and maintain a fund for the development of infrastructural assets on a continuing basis and, therefore, the assessee is a nodal agency formed/created by the Government of Karnataka as per the guidelines; there is no profit motive as the entire fund entrusted and the interest accrued therefrom on deposits in bank though in the name of the assessee has to be applied only for the purpose of welfare of the nation/States as provided in the guidelines; the whole Of the fund belongs to the State Exchequer and the assessee has to channelise them to the objects of centrally sponsored scheme of infrastructural development for mega-city of Bangalore. Funds of one wing of the Government is distributed to the other wing of the Government for public purpose as per the guidelines issued. The monies so received, till it is utilised, is parked in a bank. The

finding recorded by the Tribunal clearly shows that the entire money in question is received for implementation of the scheme which is for a public purpose and the said scheme is implemented as per the guidelines of the Central Government and, therefore, the assessee is only acting as a nodal agency of Central Government for implementation of these projects. It is not the case of the Revenue that the assessee was carrying on any business or activities of its own while implementing the scheme in question. The unutilised money, during which the project could not be fully implemented, is deposited in a bank to earn interest. That interest earned is also again utilised for the implementation of the mega-city scheme which is also permitted under the scheme. Therefore, in computing the total income of the assessee for any previous year the interest accrued on

bank deposits cannot be treated as an income of the assessee as the interest is earned out of the money given by the Government of India for the purpose of implementation of mega-city scheme.”

7. If the observations made by the Tribunal is considered in light of the above referred observations made by this Court, we find that when the assessee is to act as a custodian of the Government money released to the assessee by way of a grant and the interest thereon is also to be utilised as per the terms and conditions of the grant, the view taken by the Tribunal cannot be sustained for two reasons. One is that such cannot be termed as ‘income’ of the assessee and another is that even if the addendum is issued by the Government for controlling the utilization of the amount of interest on the deposit at the later date the character of the money would remain the same and addendum can be termed

as only by way of a clarification. It was not a matter where the question was to be considered with the retrospectivity as observed by the Tribunal. When the assessee is held as a custodian and the full command for utilization of the money including interest earned thereon remains with the Government, same cannot be termed as income of the assessee.

In view of the above, impugned order passed by the Tribunal is set aside and the questions are answered in favour of the assessee and against the revenue. Appeals allowed accordingly.

**SD/-
JUDGE**

**SD/-
JUDGE**

*sp