

**IN THE HIGH COURT OF UTTARAKHAND**

**AT NAINITAL**

**SRI JUSTICE S.K. MISHRA, A.C.J.**

**AND**

**SRI JUSTICE ALOK KUMAR VERMA, J.**

**INCOME TAX APPEAL NO. 05 OF 2012**

**20<sup>TH</sup> MAY, 2022**

**BETWEEN:**

Mussoorie Dehradun Development Authority .....Appellant.

And

Additional Commissioner of Income Tax & another

....Respondents.

**With**

**INCOME TAX APPEAL NO. 06 OF 2012**

**BETWEEN:**

Mussoorie Dehradun Development Authority .....Appellant.

And

Additional Commissioner of Income Tax

....Respondent.

Counsel for the Appellant : Mr. Vinay Garg and Mr. Rahul  
Consul, learned counsel.

Counsel for the Respondents : Mr. Hari Mohan Bhatia, learned  
counsel.

***Upon hearing the learned Counsel, the Court made the following***

**COMMON JUDGMENT:** (per SRI S.K. MISHRA, A.C.J.)

Since common question of law and facts are involved in the above-numbered income tax appeals, the

same are being taken up together and adjudicated by this common judgment.

2. These appeals, filed under Section 206A of the Income Tax Act, 1961, were admitted to decide the following substantial questions of law:-

*"a. Under Article 289 of the Constitution of India, whether 'State' would include the statutory authorities particularly those which have been constituted exclusively for effective discharge of one of the State obligations as envisaged under the Directive Principles of State Policy under Part-IV of the Constitution?*

*b. Whether the collection of levies in the nature of fees, charges, tax etc. imposed by the State through an enactment, namely U.P. Urban Planning and Development Act, 1973, by the statutory authorities (appellant development authority in the present case) can be said to be the income of such authority to be taxed under the Income Tax Act, 1961?*

*c. Whether the amount of receipts by the development authority (appellant in the present case) under specified heads of levies to be collected in a separate account under the orders of the Government of Uttar Pradesh (G.O. dated 15.01.1998, as adopted by the State of Uttarakhand) and to be spent by the State Government through a Committee to be constituted by it, for the purposes of residential infrastructure strictly as per the orders of the State Government issued from time to time, would be governed by the doctrine of diversion of income by overriding title so as to get excluded from the income of the Development Authority?"*

3. Facts of both the cases are that the appellant, Mussoorie Dehradun Development Authority, was assessed

for the income tax for the assessment year 2006-07. The assessee raised two grounds of appeal. It had pleaded that the CIT (Appeals) should have held that prior period adjustments were not deductible. Such ground was not raised in the assessment year 2006-07. The assessee filed return of income on 23.01.2007 declaring NIL income. The return was processed under Section 143(1) of the Act on 14.02.2007, and the case of the assessee was selected for scrutiny assessment, and a notice under Section 143(2) of the Act was issued on 26.03.2007, which was served upon the assessee on 29.03.2007. In response to the said notice, the assessee appeared through the Chartered Accountant. The learned Assessing Officer issued a questionnaire on 16.09.2008 along with notice under Sections 142(1) and 143(2) of the Act. On scrutiny of the accounts, the learned Assessing Officer found that the assessee had claimed to be maintaining an "infrastructure fund" to which a fixed portion of its receipts are credited and, out of which infrastructure related expenses are incurred. The amount credited to this account in assessment year 2006-07 is of Rs.11,63,38,117/- only. The assessee had incurred expenses towards development at Rs.3,14,12,303/- only. The learned Assessing Officer has allowed this amount. With regard to the balance of Rs.8,49,25,814/-, it was submitted by the assessee that the State Government has a overriding title on these receipts and, therefore, they do not form part of the total income of

the assessee. The learned Assessing Officer rejected the arguments of the assessee in respect of diversion of income by overriding title and made the addition of Rs.8,49,25,814/-. The learned Assessing Officer further found that there is deficit of Rs.1,18,12,436/- in the income and expenditure account. He allowed this deficit while computing the total income of the assessee. However, he did not allow the prior period expenses of Rs.61,11,000/-. In this way, income of the assessee in the assessment year 2006-07 has been determined at Rs.7,92,24,3789/-.

4. Similarly, for the assessment year 2007-08, the assessee filed its return of income on 31.10.2007 declaring NIL income. The same process was adopted for the said assessment year, and another assessment of Rs.20,28,01,927/- only was made for the said assessment year.

5. Dissatisfied with the action of the Assessing Officer, the assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals) [hereinafter referred to as "CIT (A)"]. The First Appellate Authority, took into consideration the Office Memorandum issued by the Uttar Pradesh Government, as well as the provisions of the U.P. Urban, Planning & Development Act, 1973, which brought the assessee into existence. After a detailed analysis, the learned First Appellate Authority observed that there is no overriding

title over the alleged infrastructure fund account by the State Government, and this amount deserves to be included in the income of the assessee. The learned CIT (A) further observed that the assessee is a body corporate. It does not enjoy the status of a State Government which is exempt from taxation. Accordingly, the appeals of the assessee have been rejected in both the assessment years. Both such orders passed by the learned CIT (A) were again challenged before the Income Tax Appellate Tribunal (Delhi Branch 'E' New Delhi). The Tribunal, after careful discussion of the provisions of law, as well as taking into consideration different provisions of different statutes, came to the conclusion that the First Appellate Authority did not commit any error of law in dismissing the appeals of the assessee. Such order is assailed in these appeals.

6. Mr. Vinay Garg, the learned counsel for the appellant, would argue that the provisions of the Bihar Industrial Area Development Authority Act, 1974, in particular Section 17, is distinct from the provisions of Section 58 of the U.P. Urban, Planning & Development Act, 1973, as applicable to the State of Uttarakhand. It is also argued that the amount received by the Development Authority under specified heads of levies to be collected in a separate account under the orders of the Government of Uttar Pradesh, i.e. G.O. dated 15.01.1998, as adopted by the State of Uttarakhand, to be

spent by the State Government through a Committee to be constituted by it for the purposes of residential infrastructure strictly as per the orders of the State Government, which would be governed by the doctrine of diversion of income by overriding title so as to get excluded from the income of the Development Authority.

7. On the contrary, Mr. Hari Mohan Bhatia, the learned counsel appearing of the Revenue, would argue that this question is no more *res integra* in the sense that the Hon'ble Supreme Court has already decided the said question in the case of ***Adityapur Industrial Area Development Authority vs. Union of India, [2006] 153 Taxman 107 (SC)***. He would further submit that this question has already set at rest by the Hon'ble Supreme Court, and hence, there is no merit in these appeals.

8. In order to understand the contentions raised by the learned counsel for the appellant as well as the Revenue, we have to take into consideration Article 289 of the Constitution of India. Article 289 of the Constitution provides for Exemption of property and income of a State from Union taxation. We find it appropriate to quote the exact words used in Article 289 of the Constitution, which are as under:-

**"289.** *Exemption of property and income of a State from Union taxation*

*(1) The property and income of a State shall be exempt from Union taxation.*

*(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.*

*(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of government."*

9. In the case of **Adityapur Industrial Area Development Authority** (*supra*), a similar question arose regarding interpretation of Article 289 of the Constitution of India, as well as Section 17 of the Bihar Industrial Area Development Authority Act, 1974. The Hon'ble Supreme Court at Paragraph Nos. 8 and 9 has dealt with this matter. It is appropriate to take note of the exact words used by the Hon'ble Supreme Court, which are as under:-

*"8. A mere perusal of Article 289(1) discloses that a claim of exemption under it must proceed on the foundation that the exemption is claimed in respect of property and income of a State. Once it is held that the property and income is that of the State, a question may well arise whether it is still taxable in view of the provision of Clause (2) of Article 289 which dominantly is in the nature of a proviso. Clause (2) empowers the Union to impose any tax to*

*such extent as Parliament may by law provide, in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operation connected therewith. Thus, even the income of the State within the meaning of Clause (1) of Article 289 may be taxed by law made by the Parliament, if such income is derived from a trade or business of any kind carried on by or on behalf of the Government of a State or any operations connected therewith. Clause (1) of Article 289, therefore empowers Parliament to frame law imposing a tax on income of a State which is earned by means of trade or business of any kind carried by or on behalf of the State Government.*

*9. It is true, as submitted by Sri Venugopal, that Clause (2) of Article 289 empowers the Parliament to make a law imposing a tax on income earned only from trade or business of any kind carried by or on behalf of the State. It does not authorize the Parliament to impose a tax on the income of a State if such income is not earned in the manner contemplated by Clause (2) of Article 289. This, to our mind, does not answer the question which arises for our consideration in this appeal. Clause (2) of Article 289 pre-supposes that the income sought to be taxed by the Union is the income of the State, but the question to be answered at the threshold is whether in terms of Clause (1) of Article 289, the income of the appellant/ Authority is the income of the State. Having regard to the provisions of the Bihar Industrial Areas Development Authority Act, 1974, particularly Section 17 thereof, we have no manner of doubt that the income of the appellant/ Authority constituted under the said Act is its own income and that the appellant/ Authority manages its own funds. It has its own assets and liabilities. It can sue or be sued in its own name. Even though, it does not carry on any trade or business within the contemplation of Clause (2) of Article 289, it still is an Authority constituted under an Act of the Legislature of the State having a distinct legal personality, being a body*

*corporate, as distinct from the State. Section 17 of the Act further clarifies that only upon its dissolution its assets, funds and liabilities devolve upon the State Government. Necessarily therefore, before its dissolution, its assets, funds and liabilities are its own. It is, therefore, futile to contend that the income of the appellant/ Authority is the income of State Government, even though the Authority is constituted under an Act enacted by the State Legislature by issuance of a Notification by the Government thereunder."*

10. In that view of the matter, the matter is settled as far as Substantial Question Nos. 'a' and 'b' are concerned, as mentioned hereinabove.

11. It is further appropriate to take note of the exact words under by the Statute which was under consideration before the Hon'ble Supreme Court in the aforesaid reported case, i.e. Section 17 of the Bihar Industrial Area Development Authority Act, 1974. It reads as under:-

*"17. When the State Government is satisfied that the purpose for which the Authority was established under this Act has been substantially achieved so as to render the continuance of the Authority unnecessary, the Government may by notification in the official Gazette, declare that the Authority shall be dissolved with effect from such date as may be specified in the notification and the authority shall be deemed to be dissolved accordingly from the said date and all the properties, funds and dues realizable by the authority alongwith its liabilities shall devolve upon the State Government."*

12. It is also appropriate to take note of the corresponding provision, i.e Section 58 of the U.P. Urban, Planning & Development Act, 1973. It reads as under:-

**"58. Dissolution of Authority.-**

*(1) Where the State Government is satisfied that the purposes for which the Authority was established under this Act have been substantially achieved so as to render the continued existence of the Authority in the opinion of the State Government unnecessary, that Government may by notification in the Gazette, declare that the Authority shall be dissolved with effect from such date as may be specified in the notification; and the Authority shall be deemed to be dissolved accordingly.*

*(2) From the said date-*

*(a) all properties, funds and dues which are vested in or realisable by, the Authority shall vest in, or be realisable by, the State Government;*

*(b) all nazul lands placed at the disposal of the Authority shall revert to the State Government:*

*(c) all liabilities which are enforceable against the Authority shall be enforceable against the State Government: and*

*(d) for the purpose of carrying out any development which has not been fully carried out by the Authority and for the purposes of realising properties, funds and dues referred to in Clause (a) the functions of the Authority shall be discharged by the State Government."*

13. It appears from the comparison that both the provisions are *pari materia* in substance. Only, there is a word '*when*' in the Bihar Industrial Area Development Authority Act, 1974, and in the U.P. Urban, Planning & Development Act, 1973, the word is '*where*'. The rest of the

provisions, as far as sub-section (1) of Section 58 of the U.P. Urban, Planning & Development Act, 1973 is concerned, are same. But there is a further clarificatory note in sub-section (2) of Section 58 of the U.P. Urban, Planning & Development Act, 1973, which contain another portion of the provision.

14. Thus, it is apparent from the record that Mussoorie Dehradun Development Authority, constituted under the U.P. Urban, Planning & Development Act, 1973, is a separate entity and distinct from the State, having its own legal identity. It is a corporate body. It can sue or be sued in its own name. It has its own assets, liabilities. But only when the State Government decides that the purpose of the Development Authority has been achieved, and there is no need for continuance of such Authority, then it may pass the order of dissolution of the same. In that event, the income, assets, liabilities of the Authority will vest with the State Government, and not otherwise. Thus, it is apparent from the record that the Hon'ble Supreme Court has already dealt with this matter, and we, are in deference to the observations made by the Hon'ble Supreme Court in the case of **Adityapur Industrial Area Development Authority** (*supra*), come to the conclusion that substantial Question Nos. 'a' and 'b' are already covered, and there is no need to further agitate with the issue.

15. As far as substantial Question No. 'c' is concerned, the learned counsel for the appellant, would argue that the amount that has been collected for infrastructure development is being spent on infrastructure development, and it should also be excluded from the income on the basis of doctrine of diversion of income by overriding title.

16. We make it clear that the earlier observations regarding substantial Question Nos. 'a' and 'b' also cover this issue. Any fees collected for infrastructure development by the Development Authority will be treated as income and the expenses incurred by the Authority for the purposes of infrastructure development would be deducted from the income, and the rest is taxable, and that has been done, and in fact, this issue was not at all raised before the first and second appellate authorities.

17. We find it appropriate to mention herein that before the ITAT, the only ground that has been taken by the assessee is as under:-

*"That on the facts and in the circumstances of the case and in law, the authorities below erred in holding that the claim of the appellant that there was diversion by overriding title in respect of infrastructure contribution is untenable."*

18. However, by filing these appeals before this Court, the assessee has developed its case, and included the

substantial Question No. 'C', and that is also a good ground to dismiss the appeals.

19. Thus, in the conspectus of the facts of the case, and the law applicable to this case, along with the ratio decided by the Hon'ble Supreme Court in the case of ***Adityapur Industrial Area Development Authority*** (*supra*), we are of the opinion that there is no merit in these appeals, and the same are, hereby, dismissed.

20. Urgent certified copy of this order be issued to the learned counsel for the parties, as per Rules.

**(S.K. MISHRA, A.C.J.)**

**(ALOK KUMAR VERMA, J.)**

Dated: 20<sup>th</sup> May, 2022

NISHANT