

ITEM NO.106

COURT NO.8

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2091/2006

THE ADDITIONAL COMM. OF INCOME TAX

Appellant(s)

VERSUS

VIDARBH IRRIGATION DEVELOPMENT CORPN.
(With office report)

Respondent(s)

Date : 16/02/2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Appellant(s) Mr. Rupesh Kumar,Adv.
Ms. Gargi Khanna,Adv.
For Mrs. Anil Katiyar,Adv.

For Respondent(s)
Mrs Sarla Chandra,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

The appeal is dismissed in terms of the signed
order.

Pending application, if any, also stands disposed
of.

(Anita Malhotra)
Court Master

(Mala Kumari Sharma)
Court Master

(Signed order is placed on the file.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2091 OF 2006

The Additional Commissioner of Income Tax ...Appellant

VS.

Vidarbh Irrigation Development Corporation ...Respondent

O R D E R

Heard learned counsel for the parties.

The issue that arises for our consideration in this matter is as to whether respondent, namely, Vidarbh Irrigation Development Corporation, is a local authority within the meaning of Section 10(20-A) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

Section 10(20-A) of the Act stipulates certain kinds of income which are not to be included in total income. Though this provision stands omitted vide Section 4(m) with effect from 1st April, 2003 by the Finance Act, 2002, the assessment period in question is much prior thereto and is, therefore, relevant. Section 10(20-A) reads as under:

"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."

This provision came for interpretation before this Court in the case of *Gujarat Industrial Development Corporation and others v. Commissioner of Income-Tax*, reported in 1997 Vol.227 ITR 414, and was interpreted in the following manner:

"Any income falling within the ambit of the said clause would automatically slip out of the exigibility under the Income-tax Act. The clause pertains to any income of an authority constituted by or under any enacted law. This first limb of the clause is squarely available to the Corporation as it has been constituted under the Gujarat Act.

The second limb of the clause consists of two alternatives, of which the first is that the authority constituted by law should be for dealing with the need to provide housing accommodation. That alternative is obviously not available to the appellant-Corporation as nobody has a case that the appellant-Corporation has anything to do with the obligation to provide housing accommodation. It is the second alternative in the clause under which the appellant seeks shelter to be absolved from the liability to pay income-tax. As per that alternative, if the authority is constituted for the purpose of planning or development or improvement of any city or town or village or a combination of them, the income of such authority is not exigible to income-tax."

We find that the High Court in the impugned judgment has referred to the aforesaid judgment and observed that since the Income Tax Appellate Tribunal did not consider the issue in the light of the provisions of

the Vidarbha Irrigation Development Corporation Act, 1997, under which the respondent-assessee has been constituted, as well as the provisions of Maharashtra Irrigation Act, 1976 and Bombay Canal Rules, 1934, the High Court has remanded the case back to the Tribunal for fresh consideration. The operative part of the judgment of the High Court in this behalf reads as under:

"So far as Section 10(20A) of the IT Act is concerned, it is in two parts. The first part contemplates the Authority constituted by or under any law enacted for the purpose of dealing with and satisfying the need for housing accommodation. The income of such Authority could be exempted from the tax. The second part of the Section provides that income of such Authority whose objective is of planning, development or improvement of cities, towns and villages or both, is also exempted from tax. It is, therefore, evident that if the Authority is constituted under enactment, either for satisfying the need for housing accommodation or for planning, development or improvement of cities, towns and villages or for both, income of such authority is exempted from tax under Section 10(20-A) of the IT Act. It was, therefore, necessary for the appellate Tribunal to consider the issue in the light of the provisions of the VIDC Act, Maharashtra Irrigation Act, 1976 and Bombay Canal Rules, 1934. However, the conclusion arrived at by the appellate Tribunal in respect of question No.1 mentioned hereinabove in the present appeal appears to be not correct and in our view, needs to be reconsidered by the appellate Tribunal."

We do not understand as to why the Income Tax Department has preferred the instant appeal against the aforesaid judgment of the High Court where the issue has only been remanded to the Tribunal for fresh

consideration. In these circumstances, we are not inclined to interfere with the impugned judgment and dismiss this appeal. There shall be no order as to costs.

.....J.
[A.K. SIKRI]

.....J.
[R.K. AGRAWAL]

New Delhi;
February 16, 2017.

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