

UNION OF INDIA AND ANR.

v.

U.P. STATE WARE HOUSING CORPORATION

OCTOBER 31, 1990

[M.M. PUNCHHI AND S.C. AGRAWAL, JJ.]

Income Tax Act, 1961—Section 10(29)—Exemption—Tests—Whether rental income derived from godowns and ware-house of U.P. State Ware Housing Corporation exempted.

The Income Tax Officer required the U.P. State Ware Housing Corporation, a creature of the Ware Housing Corporations Act, 1962, to pay a sum of money as advance tax for the Assessment Year 1974-75, taking the view that rental income derived by the assessee-Respondent from its godown and ware-houses was not exempted.

The claim of exemption under section 10(29) of the Income Tax Act of the assessee having been repeatedly rejected by the Appellants, it filed a writ petition in the High Court challenging the notice.

The High Court quashed the notice, allowing the case of the assessee-Respondent.

In the appeal by the certificate the Revenue-Appellants assailed the view of the High Court.

Dismissing the appeal, this Court,

HELD: 1. The assessee would be entitled to exemption, if (i) it is an authority constituted under any law; (ii) it is an authority constituted for marketing of commodities; (iii) the exemptable income is in respect of letting of godowns or ware-houses for storage, processing or facilitating the marketing of commodities. [525D-E]

2. Plain reading of Section 10(29) makes it evident that the authority must be constituted under any law for the time being in force, which in other words means that it should be a creature of law. As an artificial person, it should be clothed with a personality ordained by law. [525G]

3. In the instant case, the first test was proved that the assessee

A was an authority under the Ware Housing Corporations Act, 1962. [525F]

B 4. The second test requiring the authority to be constituted for marketing of commodities is also fully satisfied by Section 24(d) of the Ware Housing Corporations Act, 1962. The activities of the assessee as an agent were the activities facilitating the marketing of commodities, which have a business element and the second test was also established. [526B-C]

C 5. The third test with regard to the exemptable income being in respect of letting of godowns or ware-houses for storage, processing or facilitating the marketing of commodities presents no difficulty because it stands undisputed that the income derived by the assessee was from letting of godowns or ware-houses. The assessee having fulfilled all the tests was rightly entitled to the exemption as claimed. [526D-E]

D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 455 of 1976.

From the Judgment and Order dated 30th November, 1973 of the Allahabad High Court in Civil Misc. Writ No. 6122 of 1973.

E B.B. Ahuja and Ms. A. Subhashini for the Appellants.

Sheil Sethi for the Respondent.

The following Order of the Court was delivered:

F This appeal by certificate is directed against the judgment and order dated 30.11.1973 of Allahabad High Court at Allahabad in Civil Miscellaneous Writ Petition No. 6122 of 1973 whereby U.P. State Ware Housing Corporation, the respondent herein, was granted exemption as envisaged under Section 10(29) of the Income Tax Act, 1961.

G The U.P. State Ware Housing Corporation is a creature of the Ware Housing Corporations Act, 1962. The Income Tax Officer, Lucknow, required the respondent to pay a sum of money as advance tax for the Assessment Year 1974-75. The view of the Income Tax Officer throughout in the previous years was that rental income derived by the assessee from its godowns and warehouses was not
H exempt from income tax. The claim of the assessee having repeatedly

been rejected it thought it proper and did file a writ petition in the High Court of Allahabad challenging the notice. The High Court quashed the notice. The view of the High Court has been assailed here by the Revenue.

The claim of the assessee is based on Section 10 (29) of the Income Tax Act, 1961. It provides:

Section 10 "For computing the total income of previous year of any person, any income falling within any of the following clauses shall not be included.

(29) In the case of an authority constituted under any law for the time being in force for the marketing of commodities, any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities."

As is apparent, the assessee would be entitled to exemption if

- (i) it is an authority constituted under any law
- (ii) it is an authority constituted for marketing of commodities.
- (iii) the exemptable income is in respect of letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities.

The High Court had no difficulty in coming to the conclusion that the assessee had been established under law i.e. the Ware Housing Corporation Act, 1962. The question whether the assessee was an "authority" within the meaning of Section 10(29) of the Income Tax Act, 1961 led to a long discussion, as is plain from the judgment. The High Court agreed with the assessee that it was such an authority. Keeping apart, the reasoning given by the High Court, plain reading of Section 29 of Section 10 makes it evident that the authority must be constituted under any law for the time being in force, which in other words means that it should be a creature of law. As an artificial person, it should be clothed with a personality ordained by law. The power of the authority whether it is wide or narrow, as discussed by the High Court, with due respect, appears to us alien to the concept with which we are concerned in sub-section 29 of Section 10. So the ancil-

- A lary test, we say so unhesitatingly, was also satisfied that the assessee was an authority constituted under the law.

- The second test requiring the authority to be constituted for marketing of commodities is also fully satisfied by Section 24(d) of the Ware Housing Corporations Act, 1962 which enjoins upon a State Ware Housing Corporation to act as agent of the Central Ware Housing Corporation on the Government for the purpose of purchase, sale, storage and distribution of agricultural produce, seeds, manures, fertilisers, agricultural implements and individual commodities. These activities of the State Ware Housing Corporation as an agent, undoubtedly, would be activities facilitating the marketing of commodities.
- C This reasoning of ours is an addition to the reasoning assigned by the High Court in coming to the conclusion that the activities of the assessee have a business element. We agree with the High Court on that score also.

- D The third test with regard to the exemptable income being in respect of letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities presents no difficulty because it stands undisputed that the income derived by the assessee was from letting of godowns or warehouses.

- E The assessee having fulfilled all the tests was rightly entitled to the exemption as claimed. We are fully in agreement with the High Court that the assessee was entitled to relief on these premises. Accordingly, we dismiss this appeal. We should have awarded costs also but since there is no opposition, there shall be no order as to costs.

V.P.R.

Appeal dismissed.