

## **I-T Deptt still has a chance with PUDA**

**FE EWSLINE**

**Chandigarh, Saturday, February, 16, 2002**

The Supreme Court decision to stay the recovery of Income Tax from Punjab Urban Planning and Development Authority (PUDA) is a vindication of this author's write-up entitled 'Why UDA is Eligible for Income Tax exemption', published in FE Newslines on October 12, 2001.

On a special leave petition filed by PUDA, a Division Bench of the Supreme Court comprising Mr. Justice Syed Shah Mohammad Quadir, and Mr. Justice S.M. Vaisava stayed the recovery of Income tax against PUDA.

The stay order that was passed on 8<sup>th</sup> January 2002, says : "Issue notice. There shall be interim direction to the petitioner to file the income-tax return, but the authorities shall not recover any tax pursuant to order of assessment, if passed, pending further orders of this court".

The Supreme Court has apparently viewed that :

1. PUDA income qualifies for exemption from Income tax under Section 10(20A) of the Income Tax Act.
2. PUDA is required to file Income Tax Return even if it is a nil return to enable the Income Tax deptt to ensure that exemption u/s 10(20A) is being availed by genuine assessee and that the application of income is towards the genuine purpose.

Here the Income Tax Department still stands a chance. How?

The Supreme Court held in *Aditanar Educational Institution v. Addl. CIT (1997) 224 ITR 310 (SC)* that "What is important is the application of income and not the source thereof."

Therefore to claim exemption u/s 10(20A) PUDA will have to prove that its income has been spent/utilized towards satisfying the need for having accommodation or for the purpose of planning, development or improvement of cities, towns or villages or for both.

Here I would like to refer to the statement of the Deputy Controller of Finance and Accounts, PUDA (as printed) "that PUDA has periodically made contribution of funds for Sangat Darshan being conducted by the Chief Minister".

Whether expenditure on Sangat Darshan by the Hon'ble Chief Minister out of PUDA funds should or should not qualify for exemption could be a matter of immense topical interest and a million dollar question.

A high level departmental probe or special audit of PUDA funds diverted for Sangat Darshan would be useful for a detailed study of the case from legal angles in the light of the main objectives in the Memorandum and Articles of Association of PUDA.

The Supreme Court has not only stayed the recovery of tax till further order but has also directed PUDA to file its Income tax Return. This means it clearly acknowledges the principle right of the Income Tax deptt to assess the genuinity of the claim under section 10(20A).

The Income tax department could, based on further investigation in the case place facts and figures to prove whether the diversion of funds for Sangat Darshan by Chief Minister falls within the four corners of proper expenditure/utilization and if it can be considered to have been incurred for attaining the main objective of PUDA. Perhaps, the Income Tax Department has a case here.

**The Supreme Court held in Aditanar Educational Institution v. Addl. CIT (1997) 224 ITR 310(SC) that “What is important is the application of income and not the source thereof. Therefore, to claim exemption u/s 10(20A), PUDA will have to prove that its income has been spent/utilised towards satisfying the need for having accommodation or for the purpose of planning.**