

## **Why PUDA is eligible for I-T exemption**

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Recently the Income Tax Authorities directed the Punjab Urban Development Authority (PUDA) to file their Income-tax Returns which PUDA protested and went to the High Court. Based on the newspaper reading the following questions seem to have arisen in the given situation :

- (i) Is PUDA's income exempt from Income-tax ?
- (ii) Is PUDA required to file Income-tax Return ?
- (iii) Is the Income-tax Authority correct in instructing the Banks having PUDA's accounts to deduct tax at source on the interest earned by PUDA on its deposits?
- (iv) What are the implications of the statement given by the Deputy Controller of Finance and Accounts PUDA, who had appeared before the High Court on Aug. 1<sup>st</sup> stating that "PUDA had periodically made contributions towards funds for 'Sangat Darshans' being conducted by the Chief Minister"?

Here it would be pertinent to mention the provisions of Section 10(20A) of the Income-tax Act, which states that "Any income of an authority constituted in India 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 village or for both is not includable in total income."

In view of the latest Supreme Court rulings on exemptions under section 10, the following happen to be the key factors for being eligible to claim deduction under section 10 (various):

- (i) That the purpose should be charitable or the one covered expressly under various subsections of section 10 (various).
- (ii) That the income of the institution should be applied towards the purpose for which exemption is eligible under section 10 (various).
- (iii) That, it is the application of income which is important and not the sources of income, as held in *Aditanar Educational Institution v. Addl. CIT [1997] 224 ITR 310(SC)*. Thus income may be from interest, dividends etc.
- (iv) That the profit should not be in a position to have been appropriated by an individual or a group of individuals i.e. private profit is prohibited. It has to be for the public benefit.
- (v) What is exempt u/s 10(various) is the income and not procedural exemption from filing of returns. The Nil return should be filed.

Based on the above supreme court case analysis it can be safely included as follows :

- (i) PUDA's income qualifies for exemption from income-tax under section 10 (20A) of the income tax act.

- (ii) PUDA is required to file the income-tax return even though a nil return. The Income tax authority are well within their rights to cause the income tax return to be filed by PUDA in order to ensure that exemption under section 10(20A) is being availed by genuine assessee and that the application of income is towards the genuine purpose. The income tax authority can also seek any further information which they deem fit to seek from the assessee while permitting claims under section 10(20A).
- (iii) 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 any income from dividend, interest etc, shall be exempt if such income is/will be utilized towards the eligible cause under section 10(20A) i.e. towards satisfying the need for having Accommodation, or for the purpose of planning, development or improvement of cities, towns or villages or for both.

Hence, interest on deposit earned by PUDA is exempt from Income tax and the Income tax authority have erred in instructing the banks having PUDA’s accounts to deduct tax at source on the interest earned by PUDA on its deposits.(The PUDA is also duty bound to get a certificate from the Income tax authority and give to the bank that no TDS is to be deducted , but this is just a procedural formality. The income tax department can not go against the supreme court ruling).

- (iv) The statement of the Deputy Controller of Finance and Accounts, PUDA stating “that PUDA had periodically made contribution, funds for Sangat Darshan being conducted by “Chief Minister”, may prove to be damaging unless it can be proved that such ‘Sangat Darshan’ did in any way help PUDA to achieve its objectives i.e satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages or for both.