

Subject No. 60

Sub.- VUDA- Visakhapatnam- Re-opening of Income Tax Returns for Assessment years 2008-09 & 2009-10 – Issue of demand notices by the Income Tax Department on Sale proceeds of Government lands - Reg.

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All the UDAs were brought under the purview of Income Tax Act with effect from 2003 onwards. Hence the UDAs are liable for Income Tax payment @ 30% plus Surcharge on the gross income. This 30% Tax is really unbearable burden on the UDAs.

The VUDA was granted exemption under section 12AA of Income Tax Act as a Charitable Institution from the Financial year 2002-03. But the definition of the Charitable Institution has been amended in the Finance bill 2009-10 and the exemption was cancelled by Income Tax department vide their Demand Notice dt 29.12.2011

Originally the assessments were completed up to the Assessment year 2009-10

In the mean while the Government have entrusted the work of auction of Government lands and remittance to Government under Resource Mobilization to support State Budget. The VUDA has remitted an amount of Rs. 1180.00 Crores during the year 2007-08 to 2009-10 towards State Budget in which the funds of VUDA to a tune of Rs. 149.00 Crores were also utilized in addition to the amount realized from sale of Government lands. The VUDA has also not taken any A.S. Charges on receipts from Government Land auctions.

The income tax department has re-opened the old returns for the financial years 2007-08 & 2008-09 duly canceling the exemption U/S 12 A and issued a Notice U/S 143(3) of the Income Tax Act 1961 for payment of income tax on Gross total income of VUDA and also receipts on sale of Government lands. The Income tax department has issued demand notice U/S 155 of Income Tax Act for payment of Rs. 26,19,26,500/- for the Assessment year 2009-10 in which levied tax against the VUDA income Rs. 13.99 Crores and Sale proceeds of Government lands Rs. 49.07 Crores. The Income Tax Department has also issued demand notice for payment of tax of Rs. 356,28,06,893/- for the Assessment year 2008-09 on 19.03.2012 in which the income tax was levied on sale proceeds of Government lands of Rs. 1002.98 Crores.

During the course of various hearings, it was clearly explained to the Income tax Authorities that the auction of the Government lands was conducted as per the instructions of Government of A.P. with a specific purpose and also the sale proceeds were sent to Government towards Resource Mobilization to State Budget. It was also specified that VUDA acted as facilitator i.e., as an agent of Government only. Even then the income tax department has issued the above demand notice against the VUDA.

The Income tax department has also issued attachment order U/s 261 B of the Income Tax Act duly attaching the funds of VUDA under MDAs to a tune of Rs. 379,07,20,314/- in IOB VUDA Branch, the 2 years demand. But all these funds are not VUDA funds. The details of the deposits under attachment are as follows.

- a) The General funds of VUDA Rs.163.12 Crores
- b) Hantha Housing Project funds Rs.101.80 Crores.
- c) LRS funds Rs.79.05 Crores.
- d) 85% Accumulation funds for the year 2010-11 on Future Projects Rs.44.00 Crores which are identified for Income Tax exemption under 12A registration.

The Income Tax Department has also issued similar demand notices to the HMDA on sale proceeds of the Government Lands. It is learnt that the HMDA has taken up the issue with the Union Finance Minister & CBDT through the Hon'ble Chief Minister and could get a great relief on the tax demand and also their bank attachments were lifted.

Unless similar exemption is not received towards sale of Government Lands the VUDA will be in doldrums as there are immediate commitments of Rs.217.00 Crores for execution of ongoing works and for the works for which Tenders are called in addition to the establishment charges. Further an amount of Rs.151.80 Crores is required for execution of proposed new works.

Hence it was requested to the Government to take up the issue through the Hon'ble Chief Minister to pursue with the Union Finance Minister and CBDT for exempting the sale proceeds of Government lands from the tax net as VUDA has taken up the work as a facilitator with the direction of Government for a specific purpose of Resource Mobilization to State Budget.

When approached, the Union Finance Minister has expressed that as the matter is in the Court it should be decided legally only.

After the issue of demand notices stay petitions were filed before the JCIT and simultaneously Appeals were also filed in the High Court in WP No 2857/2012 & WP No 5209/2012 requesting to grant stay for collection of Income Tax demand till the matter is finalized by the CIT Appeals.

The JCIT has rejected our stay petitions and then we filed the Appeals before the CIT(Appeals) and before the ITAT also. In the mean while Hon'ble High Court has granted stay of collection of taxes till the finalization of the matter by the CIT Appeals vide orders dt 20.03.2012 for the Assessment year 2008-09 and posted the case of collection of tax for the Assessment year 2009-10 on 21.03.2012.

The CIT (Appeals) in his orders dt 16.3.2012 confirmed the decision taken by the Assessing officer in bringing to tax the sale proceeds of Government lands as income of the assessee.

Then we again filed appeal in the High Court against the orders of the CIT(Appeals) vide WP No 5209/2012 for the Assessment year 2008-09 and got stay of collection of tax till the matter is finalized in the ITAT.

Sri A.V. Raghuram, Advocate Hyderabad has been engaged for preparation of grounds and filing of stay vacate petition before the JCIT, filing of Appeal before the CIT (Appeals) and to assist the Senior Advocate in High Court and in preparing the ground work. He has claimed Rs. 5.00 lakhs for each Assessment years towards his fee.

Sri S.Ravi, Senior Advocate Hyderabad who is well versed in IT matters and also defending in the case of Jurong Project and also the best in IT matters as informed by Sri Y.Preethi Reddy, Standing Counsel Hyderabad has been engaged to defend in the above cases. He has claimed Rs. 2.00 Lakhs per each Assessment years towards his fee in the High Court.

At the initiation of the Hon'ble High Court the ITAT, Visakhapatnam Bench was formed to hear the Income tax cases for the above two years. Accordingly the ITAT bench has been formed and the bench in its order dt 13.04.2012 stayed the collection of demand for the Assessment year 2008-09 till the disposal of the appeal or six months from the date of the order which ever is earlier subject to payment 25% of the outstanding tax component of Rs. 309.92 Crores which comes to Rs. 77.48 Crores in six monthly instalments i.e., the 1<sup>st</sup> instalment of Rs. 12.91 Crores is to be paid on or before 15.05.2012 and second instalment is to be paid before 31.05.2012 and the remaining instalments are to be paid on or before the end of the succeeding months. The Court also directed the department to lift the attachment by the assessing officer.

Sri A.V. Raghuram, Advocate has prepared material for filing of Stay vacate petition before the JCIT and also prepared Appeal petition for filing before the CIT (Appeals). He has also prepared grounds of appeals for filing of Writ petitions in the High Court against the issue of demand notices by the Income tax Department for the two years. He has appeared for the hearings before the CIT(Appeals) and appeared and also appeared for the hearings at High Court along with Sri S.Ravi, Senior Advocate. He has also prepared appeal petition for filing before the ITAT Visakhapatnam Bench and he also attended the ITAT court along with the Senior Advocate. He was paid Rs. 5.00 lakhs for each Assessment year of 2008-09 & 2009-10 towards his professional fee.

Sri S.Ravi, Senior Advocate has appeared before the High Court in WP Nos 2657/2012 & 5209/2012 for three hearings in each writ petition to defend our cases. He was paid Rs.4.00 Lakhs in the above cases. He has also appeared before the ITAT bench for hearing on 13.04.2012 to defend the Appeal.

The matter is placed before the Board for favour of perusal and ratification for payment of fee to the above two Advocates.

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## VUDA RESOLUTION NO. 60, DT. 08-05-2012

The Board discussed the matter and resolved to approve the subject.

  
CHAIRMAN