

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No. 638/CHD/2015
Assessment Year : 2012-13

The ITO (TDS), Chandigarh Vs. M/s Sukham Infrastructure Pvt Ltd.,
SCO 123-124, Sector 17-C,
Chandigarh

PAN No. AAJCS5706M

&

ITA NoS. 249 & 250/CHD/2015
Assessment Years : 2010-11 & 2011-12

The ACIT, Circle-2(1), Chandigarh Vs. M/s Sukham Infrastructure Pvt
SCO 123-124, Sector 17-C,
Chandigarh

PAN No. AAJCS5706M

(Appellant)

(Respondent)

Appellant by : Sh. Ashish Abrol, CIT DR
Respondent by : Sh. Amitoz Singh Kamboj, CA

Date of Hearing : 06.06.2018
Date of Pronouncement : 07.06.2018

ORDER

Per Sanjay Garg, Judicial Member:

The present appeals have been preferred by the Revenue against the separate orders dated 02.03.2015 (in ITA No.638/Chd/2015) and dated 3.12.2014 (in ITA Nos. 249 & 250/Chd/2015) of CIT(A)-1, Chandigarh [hereinafter referred to as 'CIT(A)'].

2. Since the issues involved in the captioned appeals are identical, these were heard together and are being disposed of by this common order. For the sake of convenience, the ITA No. 638/Chd/2015 is taken as a lead case for discussion.

3. The Revenue in this appeal has taken the following grounds:-

1. *That the Ld. CIT(A), Chandigarh has erred in law as well as on facts and has wrongly based his decision on the basis of decision of the Hon'ble ITAT, Amritsar Bench in the case of Branch Manager, Jammu & Kashmir Bank Ltd., Jammu in ITA No. 206-21G(ASR)/2011, which is not binding.*

2. *That the facts of the case relied by the Ld. CIT(A), Chandigarh on the basis of decision of the Hon'ble ITAT, Amritsar Bench in the case of Branch Manager, Jammu & Kashmir Bank Ltd., Jammu in ITA No. 206-210(ASR)/2011 are distinguishable to the present case as the case before Hon'ble ITAT, Amritsar pertains to deduction of tax at source on the interest accrued on FDRs in the bank in the case of Jammu Development Authority, where provisions of section 194A are attracted.*

3. *That the GMADA is an independent legal entity and is subject to tax under the provisions of Income Tax Act, 1961. As per notification issued by the State Government, the payments received by the GMADA on account of External Development Charges (EDC) are to be utilized by the GMADA itself. As per notification the EDC is to be utilized for the connectivity as well as providing of other amenities to the concerned mega projects from whom EDC is*

received.

4. That the payments on account of EDC amounting to Rs. 1,90,38,000/- is in the nature of service contract and is covered under the provisions of section 194C of the Income Tax Act, 1961.

5. That the payments on account of interest amounting to Rs. 1,46,19,500/- is in the nature of interest other than interest on securities and is covered under the provisions of section 194A of the Income Tax Act, 1961.

6. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at or before the hearing of the appeal.

A perusal of the above grounds of appeal reveal that the Revenue is aggrieved by the action of the CIT(A) in deleting the demand of Rs. 22,84,960/- made by the Assessing officer u/s 201(1) / 201(1A) of the Income-tax Act, 1961 (in short 'the Act') holding the assessee as assessee in default u/s 194C and 194A of the Act.

4. The brief facts relating to the issue are that the assessee has been engaged in the business of development of property. The assessee had paid External Development Charges (herein referred to as 'EDC') of Rs. 1,90,38,000/- and interest on late payment of EDC of Rs. 1,46,19,500/- to Greater Mohali Area Development Authority (herein referred to as 'GMADA'). The Assessing officer held that tax was required to be deducted u/s 194C and u/s 194A on interest payment made to GMADA. As the assessee had not deducted tax at

source, he treated the assessee/person responsible as 'assessee in default' and created demand u/s 201(1) / 201(1A) of the Act.

5. In appeal, the Ld. CIT(A) while relying on his own decision in the case of assessee for assessment year 2009-10, deleted the demand so created by the Assessing officer u/s 201(1)/201(1A) of the Act. The relevant part of the order dated 24.4.2014 for assessment year 2009-10 is reproduced as under:-

“3.2 During the course of appellate proceedings, the Ld. Counsel for the appellant has reiterated the submissions filed before the Assessing officer.

3.3 I have considered the facts of the case. Similar issue had come up for consideration before Hon'ble ITAT, Amritsar in the case of Branch Manager, Jammu; Jammu & Kashmir Bank Ltd in ITA No. 206-210(ASR)/2011 and Hon'ble Tribunal had held vide order dated 24.04.2012 that tax was not required to be deducted on interest on FDRs held by Jammu Development Authority. In the instant case also, the payment of EDC and interest on delayed payment of EDC has been made to GMADA, which is a creation of Punjab Regional and Town Planning and Development Act, 1995 as per notification No. 13/52/2006-1HG2/7443 dated 14.8.2006. These payments were received by GMADA on behalf of Punjab Government, since GMADA was a nodal agency and so tax was not required to be deducted by the PR on these payments. Therefore, it is held that the Assessing officer was not right in creating demand u/s 201(1) & 201(1A) on these payments and the demand created is accordingly deleted. Grounds of assessment proceedings Nos. 2 & 3 are allowed.”

6. Following the above order passed for AY 2009-10, the Ld. CIT(A) vide impugned orders deleted the identical demand raised by the Assessing officers for the assessment years under consideration also. Being aggrieved by the aforesaid orders of the CIT(A), the Revenue has come in appeals before this Tribunal . It is pertinent to mention here that the appeal of the Revenue for assessment year 2009-10 has been dismissed on the ground of low tax effect.

7. Now, in this appeal for assessment year 2010-11, the contention of the Revenue is that the GMADA is an independent authority and is subjected to income tax as an independent organization. The claim of the assessee that the payments were received by the GMADA on behalf of the Punjab Government was wrong. That though the GMADA has shown the said receipts as its liability in its balance sheet, however, the same in fact, is the income of the GMADA. That the EDC charges were received by the GMADA from the assessee in pursuance of work contract executed between the assessee and the GMADA for carrying out the External development work of the project developed / being developed by the assessee and, hence, the payment of EDC charges was in the nature of work contract / service contract and therefore, the assessee was required to deduct TDS on the said payments u/s 194C of the Act. Further the assessee had paid interest on account of delayed payments of EDC charges which was in the nature of interest other than the interest on securities and hence, was covered u/s 194A of the Income-tax Act, 1961. That the

Assessing officer rightly treated the assessee as 'assessee in default' as per the provisions of section 201(1) / (201(1A) of the Act.

8. The contention of the Ld. AR of the assessee, on the other hand, has been that firstly the GMADA was a nodal agency who had received the payment on behalf of the Punjab government, hence, the tax was not deductible on these payments as the payments to the government was not subjected to TDS. The Ld. Counsel for the assessee has further submitted that even the payments were not made under a work contract or a service contract as alleged by the Assessing officer. The assessee was statutorily liable to make these payments. That there was no right to the assessee under the contract requiring the GMADA to perform any specific work on behalf of the assessee. That the GMADA was entitled to utilize the funds received on account of EDC charges as per the decision of its office bearers, hence, there was no work contract / service contract between the assessee and GMADA. The Ld. counsel has further pleaded that even the interest amount paid by the assessee to the GMADA did not fall in the definition of the interest as defined under the Income Tax Act and, hence, the provisions of section 194A were not applicable.

9. We have considered the rival submissions and have gone through the records. So far as the plea that the collection of the EDC charges by the GMADA from the developer / assessee was on behalf of the state government and that it is not an income of the GMADA and that the GMADA has shown this amount as liability in its

account, in our view, any finding on this issue at this stage cannot be conclusively arrived in the case of a third party (assessee before us) as the GMADA is not a party to the present litigation/appeals. Whether the EDC charges received by the GMADA would constitute income at the hands of the GMADA is an important issue which has been strongly contested by the GMADA and even by other such authorities in other appeals, but, no specific or conclusive findings, arrived at in any of such cases either by the Tribunal or any higher authority, has been brought into our knowledge. Hence, at this stage in this case of the assessee due to lack of the adequate facts and evidences and at the back of GMADA, neither it is appropriate nor possible to give any conclusive finding as to whether the receipts of the GMADA on account of EDC charges from various developers would constitute taxable income of GMADA or not?

However, after hearing the Ld. representatives of the parties at length, we are of the view that these payments made by the assessee would not attract the provisions of sections 194C and 194A of the Act on other grounds also. Hence, we proceed to discuss and adjudicate the issues in the following paras of this order.

10. Firstly, to see the nature of EDC charges paid by the assessee to the GMADA, whether the said payments are made on account of work contract so as to attract the provisions of section 194 C of the Act, we deem it proper to go through the contents of the agreement, copy of which has been placed on the file, contents of which are reproduced as under:

“AGREEMENT

Memorandum of Agreement made this 11" day of October 2006 between the M/s Sukhm Infrastructure Pvt. Ltd., a Company (Registered under the Companies Act. 1956) and having its Administration office at SCO No. 161-162. Sector-8 C, Chandigarh (hereinafter referred to as 'the company') of the one part and the Governor of Punjab, through the Secretary Industries & Commerce, Government of Punjab, Udyag Bhawan, Sector 17. Chandigarh (hereinafter referred to as 'State Government') of the other part.

1. Whereas the State Government with a view to attract new investment in Punjab has under Industrial Policy 2003 provided for consideration and determination of a special package of incentives for new as well as existing industrial units undertaking expansion through an Empowered Committee duly notified under the said policy for this purpose, provided fixed capital investment in the new unit or expansion is Rs. 100 crore and above.
2. Whereas the company proposes to set up Information Technology / Industrial Park in an area of 125 acres of land each at Mohali with an investment of about Rs. 952 crores over a period of 3 years w.e.f. 29.03.2006.
3. Whereas the company for implementation of the aforesaid project, requested the State Government for grant of special package of concessions enabling them to implement this project. Request of the company was duly discussed and considered by the Empowered Committee constituted under Industrial Policy, 2003 in its meeting held on 29.03.2006.
4. Whereas on the basis of decision of the Empowered

Committee, 'Letter of Intent' indicating the concessions proposed to be granted to the company by State Government has been issued to the company vide No.CC/JDP/Mega/Sukhm/3058 dated 5.5-2006.

5. Whereas the Government of Punjab has required the Company to enter into the Agreement with the Governor of Punjab hereinafter contained. Now this indenture witnessed that it hereby agreed and declared as follows: -

(i) The Company shall make an investment of Rs. 952 crore including fixed capital investment of at least Rs. 100 crore at one location, as defined by the Department of Industries under Industrial Policy 2003, by setting up of information Technology Parks projects in 125 acre of land at Mohali with an investment of about Rs. 952 crore within a period of 3 years, effective from 29.03.2006.

(ii) The said project shall have to be fully implemented and brought into commercial production within the said stipulated period

(iii) The company shall develop the Industrial Estate first and housing and commercial projects subsequently. Before developing or disposing off the residential and commercial pockets in any manner, the company shall not only first develop industrial pockets but also dispose off atleast 50% of the industrial plots to industrial units which will be set up in the industrial pocket and the entire project shall come up with proposed investment level in stipulated period.

(iv) The project of Information Technology Park shall be further subject to the provision of the guidelines notified by Department of Industries & Commerce. Some of relevant provision shall be:-

a. A minimum of 60% of area will have to be

developed as an Industrial Pocket, a maximum of 30% of area may be developed as residential pocket and 10% of area can be developed as commercial pocket Government, in the Department of Industries may however, reduce the permissible limits for non-industrial use in particular cases.

- b. Permissible saleable area in the industrial pocket shall be 65%, in the residential pocket 60% and for the commercial pocket 40% . Balance of area shall be used for common facilities, open spaces, green belt . as per approved zoning plan and as per applicable byelaws.*
- c. Zoning and Layout plan will be cleared by a competent authority declared by Director of Industries & Commerce, Punjab.*
- d. Common facilities would include the facilities for air conditioning, roads (including approach roads water supply, sewerage facilities, common effluent treatment facilities, telecom networks, generation and distributor of power, provided that the facilities are used for more than 2 industrial units in the industrial Park*
- e. Infrastructure development would include roads (including approach roads) water supply and sewerage facilities, common effluent treatment facilities, telecom networks, generation and distribution of power, parking facilities parks, street lights and such other facilities as are of common use for industrial activities which are identifiable and are to be commonly used.*
- f. Industrial Parks with a residential component shall have only non- polluting units and distance between industrial area and other areas will be in accordance with guidelines issued by Punjab Pollution Control Board from time to time.*
- g. Necessary clearances from various central/state agencies will have to be obtained by the developers as per statutory requirements and on*

payment of such prescribed fees as required under the law. The Department of Industries & Commerce, Government of Punjab will be the single nodal agency for approving and facilitating the projects for getting clearances etc. and will also facilitate in getting resolved various issues which will relate to Government Departments/ Agencies.

- h. An Industrial Park shall come up as one unit at single geographical location and shall be developed in contiguity. However, public service which already exists such as road, canal, park etc. shall not be construed to break the unity & contiguity of the park.*
- i. Benefits to industrial parks under industrial policy, if provided by the Government shall be withdrawn by State Government in case the park is not put up / developed in accordance with the sanctioned plan within the prescribed time period.*

(iv) The Government of Punjab has agreed to provide following reliefs and concessions to the company for implementation of aforesaid project:-

- a) As per the Industrial Policy 2003 exemption will be granted on 100% stamp duty and registration lee on sale / transfer of built up space of the units or land inside the project area. Such exemption shall extend to the project area upto first sale of developed area / plot / built up space to any party by them or to any of its affiliate. There shall be no stamp duly on lease instrument of units located in the project area. Such exemption shall remain operative till the completion of the entire project as per the agreement.*
- b) State Government shall acquire land as per provision of the Land Acquisition Act to the extent of 10% of the total area of the project, if requested by the company.*

- c) *The land use change in the area falling under the control of the Punjab Periphery Control Act shall be allowed without any charges levied by the Housing and Urban Development Department in accordance with the draft master layout plan of the periphery and periphery policy of the Government of Punjab. However, if any or whole part of land of the project area is not covered in any master plan or planning zone under PUDA Act, the land use thereof shall not be changed or amended later on and shall be incorporated as such and included in any future master plan or zoning which shall be prepared under the PUDA Act. The project shall not be advertised / launched and no money will be collected from general public for allotment of land / plot / flat / any space till such time the layout / zoning plans are cleared from the competent authority.*
- d) *Permission under Punjab State Tubewell Act, 1954 to dig Tubewell in project area for requirement of the project was allowed.*
- e) *Permission under the provisions of Punjab Mines & Mineral Act shall be allowed within the project area for works relating to development of the project. However, due charges will be payable.*
- f) *High-rise buildings upto 45 mtrs, shall be allowed subject to Air Safety Regulations, Traffic Circulation and Fire Safety Norms.*
- g) *Work contract tax on construction material required for the project shall be charged at minimum floor rate.*
- h) *FAR of 2 shall be allowed for industrial and commercial purpose. However, the relevant building Bye-laws / regulations shall be applicable to the area. The Guidelines issued by the Department of Industries & Commerce for Industrial Parks shall also be applicable.*

- i) The State Government will try to ensure that connectivity to power, roads, accessibility, communication, civic and other infrastructure up to project is provided within 240 days from the date the same is applied for to the concerned department / agency / authority / local body on fulfillment of various terms and conditions required in this regard at such rates / fee etc. which shall not be less favorable to them compared to similarly placed projects / customers.*
- j) The project of industrial part shall be exempted from PAPR Act.*
- k) 50% exemption from electricity duty at current rate for 5 years shall be allowed from the date of release of connection by PSEB. This concession shall, however, be admissible only to such Industrial units which are set up within the area earmarked for industry and start production within 5 years from the date of approval of Industrial Park i.e. 27.1.2006.*
- l) The State Government shall allow the company to connect the project area to the State Transport Network. The State Government shall also allow them to operate their own public transport system within the project area and also for connecting the project area to the main urban center nearest to the project area subject to the fulfillment of required terms and conditions in this regard.*
- m) The State Government shall not allow hazardous industry as defined under Factories Act within 500 metres of the project area and industrial plots within the industrial part shall also not have any hazardous industry.*
- n) Pollution Control Board shall grant NOC and consent to operate to the Green Category Industry to be located in the Industrial Park in 30 days on fulfillment of all the required terms and conditions.*

- o) No State Agency shall erect any barrier or create hindrance in various connectivities which shall be allowed to the project except on the ground of major law and order problem or National Security considerations.*
- p) The Department of Industries shall be the single Nodal Agency for facilitating the project and getting clearance etc. required for the unit for the project and the project area and will also get resolved various issues which will relate to the Government Departments or Punjab Government Public Sector Undertakings/Authority/Local Body.*
- q) Proportionate cost of infrastructure development which will be carried out by the State Government in the area where project is located, shall be borne by all the developers of Information Technology Park/Industrial Park proportionately.*
- 6. In case the above company fails to comply with provisions of para- 5 (i), 5(ii) & (iii) above, within the stipulated period mentioned therein, the concession enumerated in para-5 (iv) above shall stand automatically withdrawn and the company shall have no claim or liability whatsoever on the State Government in this regard. The Government of Punjab shall be entitled to recover the cost of the aforesaid relief / concession availed by the Company (as dues recoverable by the Government as arrears of land revenue) under Para 5 (iv) above in the event of failure on the part of the Company to fulfill its obligations under Para 5(i), 5(ii) & 5(iii) above.*

In witness whereof the company has cause its common seal to be affixed and the Government of Punjab both hereunto set their hand and seal on the day and year first above written

Sd/-
Signed on behalf of
The state Government.

Sd/-
the company

11. A perusal of the above reproduced agreement reveals that the agreement in question was executed between the assessee and the Governor of Punjab through the Secretary, Department of Industries and Commerce, State Government of Punjab and not with GMADA. However, latter on, the work of regulating / development of the area falling in Sahibzada Ajit Singh Nagar (Mohali) and some adjoining areas was entrusted to the GMADA by the Government of Punjab. However, no separate agreement was executed between the assessee and GMADA. A specific query was raised by this Tribunal vide order dated 4.1.2018 not only from the assessee but also the GMADA officials were summoned with record to reply as to whether any agreement was executed between the assessee and GMADA; whereupon, it was confirmed by them to the Tribunal that no such separate agreement was executed between the GMADA and the assessee. Under the circumstances, it cannot be said that the assessee paid the EDC charges to GMADA out of any contractual liability with the GMADA. GMADA has been authorized to collect the EDC charges as per the policy decision of the Govt. and not out of the free consent of the parties to the contract. Under such circumstances, the GMADA being not a party to the contract, the aforesaid contract can not be enforced against the assessee by the GMADA in its own rights.

12. We have come across a decision of the Hon'ble Punjab & Haryana High Court dated 16 December, 2016 in the own cases of the assessee bearing CWP No.5213 of 2015 (O&M) & CWP No.5620 of 2015 (O&M) styled as M/s Sukhm Infrastructures Pvt. Ltd. vs. State of Punjab & Ors. wherein the assessee had challenged the very action of the Govt. in levying the EDC charges on the ground that as per clause (iv) (j) of the agreement, the assessee's project was exempt from Punjab Apartment & Property Regulation Act, 1996 (PAPR Act). The Hon'ble High Court though held that the assessee was exempt from PAPR Act, yet, the assessee was liable to pay proportionate cost of infrastructure development which included EDC charges out of its contractual liability with the State Govt. However, it was established that the GMADA has no authority to assume the role of State Govt. to deny the concessions to the assessee by invoking Para 6 of the agreement. The relevant part of the order of the Hon'ble High Court is reproduced as under:

“The State Government thereafter at its own has extended the time limit repeatedly and its latest policy dated 06.02.2015 (R3) conclusively establishes its inclination towards the completion of projects by granting concession/relief in the agreed time schedules, for which an offer has been made even to the petitioner also. Since the respondents themselves are not keen to adhere to the time schedule, we hold that GMADA has no authority to assume the role of State Government or to invoke Para 6 of the Agreement to say that the petitioner has lost its right to claim concessions due to the 'expiry' of time period, within which the project was required to be completed.”

13. In view of this, so far as the EDC charges paid by the assessee to the GMADA are concerned, in our view, provisions of section 194C are not attracted to the agreement/ contract in question executed by the assessee with the Governor/Govt. of Punjab.

14. Even if, we assume it otherwise, let us see whether the agreement executed by the assessee with the Governor of Punjab constitute a work / service contract, the contents of which have been reproduced above. A perusal of the above agreement reveals that the same was executed as per the policy of the State Government with a view to direct new investments in Punjab and for that purpose to give special packages or incentives for new as well as existing industrial units undertaking expansion providing fixed capital investment in the new units or expansion is Rs. 100 crores or above. As per the above incentive policy, the assessee proposed to set up new Technology Park in an area of 125 acres of land at Mohali with an investment of Rs. 952 cores to avail the benefits/ special package of concessions. The aforesaid agreement was executed between the assessee and the Governor of Punjab on behalf of the State Government. A perusal of the whole agreement, as reproduced above, shows that the clauses (i) to (iii) along with their sub clauses relate to the obligation of the assessee to invest and develop the stipulated amount and develop the project as per policy and guidelines of the state Government. Clause (iv) further provides for the relief and concessions for which the government of Punjab agreed to provide to the assessee as per its policy of development which included exemption of 100% of stamp

duty and registration fee etc., acquisition of land to the extent of 10% of the total area of project by the state government if requested by the assessee, change of land user free of cost, permission to dig tube wells, permission to construct high rise buildings up to to 45 meters etc., concession in work contract tax on construction material, FAR allowability of 2 for industrial and commercial purposes, exemption of the industrial park from PAPR Act, 50% exemption form electricity duty for five years, permission to the company / assessee to connect the project area to the state transport network and to operate its own public transport system within the project area and further commitment of the state government not to allow hazardous industry with 500 meters of the project area, NOC from the Pollution Control Board and consent to operate to the Green Category Industry within the period of 30 days and the state government's commitment not to erect any barrier or create hindrance in various connectivities. However thee clauses (i) and (q) are seemed to be relevant for the adjudication of the issue. Clause (i) provides that the State Government will try to ensure that connectivity to power, roads, accessibility, communication, civic and other infrastructure up to project is provided within 240 days from the date the same is applied for to the concerned department / agency / authority / local body on fulfillment of various terms and conditions required in this regard at such rates / fee etc. which shall not be less favorable to them compared to similarly placed projects / customers, whereas Clause (q) provides that Proportionate cost of infrastructure development which will be carried out by the State Government in

the area where project is located shall be borne by all the developers of Information Technology Park / Industrial Park proportionately.

15. A perusal of all the clauses of the agreement, as discussed above, reveals that it is not a work or service contract between the parties. The various clauses of the agreement just show that if the assessee agrees to develop the infrastructure as per the policy of the Govt., then the assessee would be entitled to various concession and incentives. However, the assessee is required to deposit proportionate cost of infrastructure development which will be carried out by the State Government in the area where project is located but it does not mean that the External Development is carried out by the government on behalf of the developer / assessee on account of its contractual liability. The Development of the external area is carried out by the Govt. so as to provide road connectivity, water supply connectivity, sewerage connectivity etc. to the project which also includes the acquisition of land by the Govt. as may be required for such purpose. In our view, it will be illogical to say that the land is acquired/agreed to be acquired by the Govt. in lieu of any work/service contract with the assessee, external work is carried out by the Govt./local authority out of its own responsibility. Merely because the developers are required to deposit EDC on account of proportionate cost of infrastructure development, would not constitute the agreement a work contract. The External Development so as to connect the residential areas or industrial project with the main roads, system, water supply, sewerage / drainage, electricity supply or any other works, so required are to be carried out by the

Govt./local authority out of its own responsibility and even if the contactor does not pay the EDC charges that does not absolve the government from carrying out the development works relating to the connectivity of the project. The government has also issued notifications from time to time so as to give concessions to the developer / promoters regarding External Development charges and also to formulate a policy regarding utilization of the EDC charges not only to provide infrastructure along with the approved project but also for the overall development of the area in general.

16. The State government vide its notification No. 17/17/2001-5HG2/P.F/1817 dated 22.6.2010, has prescribed the rates, time and manner of deposit of EDC charges wherein the EDC charges have been explained as under:-

“3) *External Development Charges (EDC) are the charges for utilization and repair/ maintenance/ strengthening of existing infrastructure proposed infrastructure and License/ Permission fee is the fee for granting permission for the projects.*

The External Development Charges and Licence fee shall be utilized by the concerned Local Planning and Urban Development Authorities for providing infrastructure. In case the concerned Authority feels that connectivity is required from any local body or any work is to be got executed from a local body, the proportionate amount may be deposited by the authority with the Local Body on case to case basis.”

17. Apart from that, the state government has also made a policy for utilization of EDC charges in the State of Punjab, which reads as under:-

“Policy for utilization of External Development Charges in the State of Punjab.

In pursuance of the provisions contained in the Punjab Regional and Town Planning and Development Act, 1995 and Punjab Apartment and Property Regulation Act, 1995, the State Government issued Notification No. 17/17/2001- 5Hg2/53077/11 dated 17th May, 2013 and No. 17/17/2001-5Hg2/P.F/47962/1 dated 6 th May, 2013 to recover External Development Charges (EDC) in the State of Punjab. Various special development authorities are authorized to collect EDC from the promoters of various residential, commercial, industrial or any other project in their respective jurisdiction in accordance with the provisions of the Act.

It is felt that at the State level there is an urgent need to formulate a policy regarding utilization of EDC not only to provide infrastructure around the approved project but also for the overall development of the area is general. This policy shall detail the works on which EDC charges so collected are to be utilized.

A. EXTERNAL DEVELOPMENT WORKS WHERE EDC IS TO BE USED:

1. External development works may include the provision of road connectivity to the project including cost of acquisition of land for such connectivity and construction of the roads. These roads shall be only Master plan roads.
 2. It can be utilized for augmentation of water supply scheme in case the water supply is provided by the authority / Local bodies and provision to upgrade the water supply system for providing connectivity to project. No connection charges if any will be charged from the developer for providing water connectivity, however, the user charges to supply water are not included in EDC and will be charged by the authority according to the policy applicable.
 3. It may also include augmentation of major sewer, if required to provide sewerage connectivity to the project, grid sewer or sewer lines for out flow of treated water from the project to the main STP of the area if required.
1. Where outfall sewer is laid by the development authority within sector grid, provision shall be made for the treated sewer to shall fall into that sewer, However for stand alone projects where no major sewer lines are laid or there is no provision to lay such lines in near future by the Local Government /special Development Authority. The promoter shall construct STP on its own cost. The licensee will also provide for the cost of outfall of the treated water into a proper

outflow drain etc., as the case may be at its own cost. This condition should be mentioned in the license or exemption to Mega Projects by the Competent Authority. No connection charges if any will be charged for the developer for the main sewer, however the user charges for flow of treated or untreated water from the project to the STP or disposal are not included in the EDC.

2. The EDC can be utilized for up gradation of Electric grid Station of 66kv and above if required for providing adequate power supply to the project. However, where the provision of electricity is made through Partial load, its expenditure shall be covered under EDC. Where any installation below 66kv or part of the project which caters to the needs of the project only will be the responsibility of the project owner and is not included in EDC.

B. OTHER DEVELOPMENT WORKS FOR THE OVERALL DEVERLOPMENT OF AREA:

These works may include the up gradation and construction of major roads/ Master Plan Roads, construction of bye-passes, provision and up gradation of educational, health and sports facilities, or any other infrastructure in the area for the benefit of area and public at large as decided by the authority.

- (i) Major Road Network/Bye Pass
- (ii) Water Supply Network
- (iii) Sewerage Network and disposal sites.
- (iv) Power Stations
- (v) Social Infrastructure such as education, health, public buildings.

The committee constituted to prepare & scrutinize the Action Plan for the utilization of EDC should finalize the priorities of works to be done out of EDC. However, the share for any component will not be fixed.

Note: Area means the area included within the limits of local planning area of any Master Plan for special Planning & Development Authority and Area within Municipal limits for the Urban Local Bodies.

C. Utilization of EDC

These funds may also be utilized for any specific purpose/ work on the special instructions of the state government.

D. WHAT IS NOT INCLUDED IN EXTERNAL DEVELOPMENT WORKS: The provision of internal roads, water supply, sewer, storm water drainage, street lighting, development of parks, landscaping, electric supply, any electric installation (other than 66 KV electric grid station) within colony. The obligations of promoter under PAPRA will not be a liability of EDC.

Manner of Utilization.

1. At the time of approval of the project/approval of the layout plan/grant of licence the competent authority may specify the provisions which would be made or for the external development of the infrastructure according to this policy for the project. However, in case the exact detail of all the development work is not possible to be mentioned at the time of license, it may be decided as per the requirements of the project & future needs. So that the applicant/project owner is clear on what kind of infrastructure will be provided by the Authority.

2. For the fair and optimum utilization of EDC , every local Planning and Development Authority or Local Authority should prepare an Action plan for up gradation of existing infrastructure, provision of new infrastructure and city level facilities in the periphery of approved projects and within the local planning area limits.

3. EDC collected from all the projects will not only be used for up gradation of infrastructure as explained above but for the overall development of the local planning area as per the policy. Such action program should be prepared in such a manner that the first priority should be given for the provision of infrastructure around approved projects and other city level infrastructure should be considered as second priority. The action program should be approved by the concerned development authority.

“Promoter may submit suggestions regarding the works to be undertaken out of EDC around his project; However the committee constituted to prepare & scrutinize the Action Plan for the utilization of EDC should finalize the priorities after considering the suggestions of promoter.”

3. In case of areas falling within municipal limits, where Local government has already prepared any Action Plan for the

provision and upgradation of existing infrastructure, there should be no need to prepare a fresh Action Plan for the utilization of EDC Local Government may constitute its own advisory committee if required for the preparation of action plan.

Preparation of Action Plan.

Annual Action Plan for up gradation of existing infrastructure and provision of proposed infrastructure in view of the proposals of Master Plan in general and for its provision to the approved projects in particular be prepared by every local Planning and development Authority. An advisory committee may be constituted in each local planning and development authority to prepare and scrutinize the Annual Action Plan. The committee shall be as follows for the Planning & Development Authority.

1. Chief Administrator Chairman
2. Additional Chief Administrator Member Secretary
3. Representative of Deputy Commissioner Member
4. Superintendent Engineer Member (concerned dev. Authority)
5. District Town Planner (concerned) Member
6. XEN PWD (B&R) Member
7. XEN (PH) W/S & Sanitation Deptt., Pb. Member
8. SE, PWSS. Board Member (Where ever required)
9. Superintendent Engineer (PSPCL) Member
10. Any other special invitee.

The committee for Corporation Cities will be as follow:-

- | | |
|------------------------------------------|------------------|
| 1. Commissioner M. Corpn. | Chairman |
| 2. Addl./Joint Commissioner | Member Secretary |
| 3. . Rep. of Deputy Commissioner | Member |
| 4. S.E.M. Corpn. | Member |
| 5. XEN (PH) W/S & Sanitation Deptt., Pb. | Member |
| 6. SE, PWSS. Board | Member |
| 7. Municipal Town Planner | Member |
| 8. District Town Planner(Concerned) | Member |
| 9. Chief Engineer/SE(PSPCL) | Member |

The committee for the other Towns will be as follow:-

- | | |
|------------------------------------------|----------|
| 1. Regional Deputy Director(LG) | Chairman |
| 2. E.O.M.C.(Concerned) | Convener |
| 3. Rep. of C.T.P. Local Government | Member |
| 4. XEN (PH) W/S & Sanitation Deptt., Pb. | Member |

5. XEN, PWSS. Board	Member
6. District Town Planner (concerned)	Member
7. Superintendent Engineer(PSPCL)	Member
8. Any other Special Invitee	Member

Maintenance of Separate Account.

The separate account of amount received under the head of EDC should be maintained by every local planning and development authority or local authority. The expenditure incurred on various development works executed out of this account should also be maintained separately. The local authority should get this account audited every year and put up the report to the authority for its rectification.”

18 A perusal of the above reproduced notifications and policies of the Govt. also clearly reveal that though, in lieu of the benefits, concessions, incentives given by the government to the promoter for the purpose of development of infrastructure, the proportionate cost at fixed rates is got deposited by the government from the promoter for external development work, yet, the development is carried out by the local authority out of its own obligations/duties. The entire discussion can be summed up in the manner that though the promoter contributes towards the proportionate cost of infrastructure development, however, the works are not carried out by the local authority in consequence of specific performance of the agreement/contract but out of its own obligations and duties towards the public. In view of this, since the agreement cannot be said to be a work / service contract, hence, the provisions of section 194C will not be attracted in this case.

19. Now coming to the interest paid on account of delayed payment of EDC charges, the assessee, in our view, is exempt from the applicability of section 194A of the Act in view of sub clause (iii) (f) of clause (1), which reads as under:-

94A. "Interest other than "Interest on securities"

(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities], shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income- tax thereon at the rates in force:

.....

3) The provisions of sub- section (1) shall not apply-

(i)

(iii) to such income credited or paid to:-

....

(f) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette"

20. It is under this provision that the notification dated 22 October 1970 was issued by the Central Government which reads as follows :

"In pursuance of sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notify the following for the purposes of the said sub-clause:—

(i) any corporation established by a Central, State or Provincial Act;

(ii) any company in which all the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a Corporation owned by that Bank; and

(iii) any undertaking or body, including a society registered under the Societies Registration Act, 1860 (21 of 1860), financed wholly by the Government."

21. The GMADA, in our view, falls under the definition of Sub clause (i) of the notification i.e any Corporation established by the Central, State or Provincial Act.

In this respect, we would like to reproduce the relevant provisions of **‘Punjab Regional and Town Planning and Development Act, 1995**, which reads as under:-

“29 (1) Where the State Government is of opinion that the object of proper development of any area or group of areas together with such adjacent areas as may be considered necessary will be best served by entrusting the work of development or redevelopment thereof to a Special Authority, instead to the Punjab Urban Planning and Development Authority for that area and thereupon, all the powers and functions of the Punjab Urban Planning and Development Authority relating to development and redevelopment of that area under this Act, shall be exercised and performed by the Special Urban Planning and Development Authority so constituted.

(2) Every notification issued under sub-section (1) shall define the limits of the area to which it relates.

(3) The Special Urban Planning and Development Authority constituted under sub-section (1) shall consist of the following members to be appointed by the State Government, namely :-

- (i) a Chairman ;
- (ii) a Chief Administrator who shall be appointed from amongst the officers of the Government of Punjab having such qualifications and experience as may be prescribed ; and
- (iii) other members not exceeding ten to be appointed by the State Government : *[Provided that out of the aforesaid members, the State Government may appoint a co- Chairman and Vice- Chairman:

[Provided that out of the said members, the State Government may appoint a Co-Chairman and Vice-Chairman.

Provided further that out of the said members at least three member will be the members of the local authority or authorities functioning in the area of jurisdiction of the Special Urban Planning and Development Authority.]

(4) Every Special Urban Planning and Development Authority constituted under subsection

(1) shall be a body corporate as well as a local authority, by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property both movable and immovable, and, to contract and by the said name sue and be sued.

(5) The provisions of this Act shall **mutatis mutandis** apply to Special Urban Planning and Development Authority constituted under sub-section (1) as they apply in relation to the Punjab Urban Planning and Development Authority with the modification that references to the Punjab Urban Planning and Development Authority, shall be construed as references to the Special Urban Planning and Development Authority.”

21. In the above section 29 of the Act, the GMADA was established vide notification dated 14.8.2006, which reads as under:-

“NOTIFICATION

Dated, Chandigarh, the August 14, 2006

No. 13/52/2006-1HG2/7443. Whereas the Governor of Punjab is of the opinion that the object of proper development of the area falling in Sahibzada Ajit Singh Nagar District and some adjoining areas falling in other districts will be best served by entrusting the work of development and redevelopment thereof to a Special Authority.

Therefore, in exercise of the powers conferred by Section 29(1) of the Punjab Regional and Town Planning and Development Act, 1995 (Punjab Act No. 11 of 1995). The Governor of Punjab is pleased to constitute & establish the Greater Mohali Area Development

Authority (GMADA) for areas falling in Sahibzada Ajit Singh Nagar District and adjoining areas falling in other Districts as defined in the annexed Drawing No. DTP (SAS Nagar) 1832/2006 dated 07.08.2006.

The Authority shall comprise of the following :-

OFFICIAL MEMBERS

1 Chief Minister, Punjab	Chairman.
2 Housing & Urban Development Minister	Member.
3 Chief Secretary	Member.
4 Principal Secretary to Chief Minister.	Member.
5 Principal Secretary Finance	Member.
6 Secretary, Housing & Urban Development	Member.
7 Secretary, Local Government.	Member.
8 Chief Town Planner, Punjab.	Member.
9 Chief Administrator, GMADA.	Member.

10 Three non-official members to be nominated by the Chief Minister.

1. Chief Administrator of the Authority shall be appointed by the Government. Deputy Commissioner, Sahibzada Ajit Singh Nagar District will function as Chief Administrator of the Greater Mohali Area Development Authority (GMADA) till an officer is appointed as such by the Government.

2. The Headquarters of the Authority shall be at Sahibzada Ajit Singh Nagar.

3. All the powers and functions of the Punjab Urban Planning and Development Authority relating to development and redeployment of Sahibzada Ajit Singh Nagar District and adjoining areas falling in other districts, forming part of Greater Mohali Area shall be exercised by the Greater Mohali Area Development Authority as constituted.”

22. The perusal of the above statutory provisions of section 29 of the Punjab Regional and Town Planning and Development Act, 1995, read with notification dated August 14,2006 reveals that the GMADA has been established by the State Act. As per the sub section (4)(1) of section 29, ‘GMADA’ is a body corporate as

well as local body. The Hon'ble Allahabad High Court in the case of '**CIT (TDS) Vs. Canara Bank**' **386 ITR 504 (All.)** has elaborately discussed the distinction between a corporation established under an Act and body incorporated under an Act. The Hon'ble High Court while replying upon the decision of the Hon'ble Supreme Court in the case of **Dalco Engineering (P.) Ltd. v. Satish Prabhakar Padhye [2010] 4 SCC 378** has observed that a company incorporated under the Companies Act is not created by the Company Act but comes into existence in accordance with the provisions of the said Act and that there was a well-marked distinction between body created by a statute and a body which after coming into existence is governed in accordance with the provisions of a statute. The Hon'ble High Court while discussing about the status of '**New Okhla Industrial Development Authority, Noida**' which was established under the **Uttar Pradesh Industrial Area Development Act, 1976** has held that the said corporation (Noida) was established by the State Act and, therefore, was entitled to exemption payment of tax u/s 194A of the Act. The above decision of the Hon'ble Allahabad High Court is squarely applicable to the facts and circumstances of the case as the GMADA has been constituted by the State Government Act and it has been specifically provided that it is a body corporate and in view of the notification dated October 22, 1977 of the Central Government, the GMADA falls under the definition of any Corporation established by the Central, State or Provincial Act and thus the provisions of section 194A are not

applicable. In view of this, the assessee was not liable to deduct TDS while remitting interest on delayed EDC charges to the GMADA.

23. In view of this, and our observation above, we uphold the order of the CIT(A) in setting aside the impugned demand but on different grounds as discussed above. It is clarified that any observation made in this order will not be construed to or subscribing to or approving of the view in any manner of the CIT(A) that the EDC charges or interest thereupon by GMADA was not the taxable income of the GMADA. The above question is left open to be decided in an appropriate case.

This appeal of the revenue is dismissed

Since the facts and issue involved in all the appeals are identical, in view of our findings given above for assessment year 2012-13 (ITA no. 638/Chd/2015), the other appeals of the Revenue for assessment year 2010-11 & 2011-12 are also dismissed.

Order pronounced in the Open Court on 07.06.2018.

Sd/-
(B.R.R.KUMAR)
ACCOUNTANT MEMBER

Dated : 07.06.2018

Rkk

Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER