

**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A",
CHANDIGARH**

BEFORE: Sh. SANJAY GARG, JM & DR. B.R.R. KUMAR, AM

**ITA Nos. 971 & 482/Chd/2012
Assessment Years: 2006-07 & 2008-09**

HIMUDA Nigam Vihar Shimla	Vs.	The ACIT Circle, Shimla
PAN NO: AAALH0034K		
Appellant		Respondent

Assessee by : Shri. Sudhir Sehgal
Revenue by : Smt. Anita Sinha

Date of Hearing : 10/12/2018
Date of Pronouncement : 18/12/2018

Order

PER BENCH:

Both the above appeals have been filed by the Assessee against the order of the Ld. CIT(A), Shimla.

2. Appeal wise grounds reproduced hereunder:

Grounds of ITA No. 971/CHD/2012 for A.Y. 2006-07

Ground No 1)

That the provisions of Section 263 could not have been invoked as the original Order was not prejudicial to the interest of the revenue, and was framed after due application of mind.

Ground No 2)

That no fresh facts have come to the notice of the Assessing Officer to recommend the case to be adjudicated u/s 263.

Ground No 3)

That mere change of opinion on the basis of an audit objection cannot be made the basis for invoking provisions of Section 263.

Ground No 4)

That the Ld CIT has erred in fact and law by ignoring the statutory powers of approval and regulating of buildings and development activities through legislative intent by the assessee.

Ground No 5)

That Ld CIT has misconstrued the provisions of Section 10(20A) and ratio of the case of Agricultural Produce Market Committee Narela vs CIT 305 ITR 1 is not applicable in this case.

Ground No 6)

That the Ld CIT has misconstrued the provisions of Section 3(31) of the General Clauses Act 1981 as laid down in the judgment of Union of India vs RC Jain 1981 (2) SCC 308. The assessee has power to raise funds and is statutory provided to levy fees and charges and are also providing water services and public utilities.

Ground No 7)

That the CIT has erred in fact and law by ignoring the fact that the assessee was being assessed as a local authority by the department since A.Y. 2003-04.

Ground No 8)

That adequate opportunity was not afforded to the appellant to represent his case before the Ld CIT(A)

Grounds of ITA No. 482/CHD/2012 for. A.Y. 2008-09

Ground No 1)**Transfer Charges of Rs 12731896/- Lacs**

- a) The Ld AO has not appreciated the facts and has treated the same a revenue receipts, whereas these are akin to compensation received to cover development costs etc after completion of the project. The quantum is dependant on contingent happenings of an event on which the assessee does not have any control. These are unforeseen capital receipts which are non recurring in nature and the colony occupiers have a direct interest in the same and the receipts are to be used for their benefit itself.
- b) The case of Bombay Burmah Trading Corp. 161 ITR 386 which has been cited has wrongly been interpreted and the ratio of the other case cited i.e. 216 ITR 321 is not squarely applicable to the Housing Board/Authority.

3. These appeals have been filed on 09/08/2017 and dismissed due to non representation on the date of the hearing. The same have been recalled on 29/10/2018 and hence the present hearing.

4. During the hearing the assessee has sought permission to withdraw both the above appeals.

5. Ld. DR has also not objected to the withdrawal of the appeals.

6. Hence the appeals are hereby dismissed as withdrawn.

Order pronounced in the open Court.

Sd/-
(SANJAY GARG)
Judicial Member

Sd/-
(DR. B.R.R. KUMAR)
Accountant Member

AG

Date: 18/12/2018

Copy of the order forwarded to :

1. The Appellant ,2. The Respondent , 3. CIT, 4.The CIT(A), 5.DR, ITAT, CHANDIGARH 6. Guard File