

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ " बी " , चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नापूर्णा गुप्ता, लेखा सदस्य  
BEFORE: Sh. SANJAY GARG, Judicial Member & SMT. ANNAPURNA GUPTA, Accountant Member

आयकर अपील सं./ ITA NO. 58/ASR/2018  
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Punjab Institute of Medical Sciences Garha Road, Jalandhar	बनाम	The DCIT (E) Circle-1, Chandigarh
स्थायी लेखा सं./PAN NO: AAABP0193P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 283/CHD/2018  
निर्धारण वर्ष / Assessment Year : 2013-14

The DCIT (E) Circle-1, Chandigarh	बनाम	M/s Punjab Institute of Medical Sciences Garha Road, Jalandhar
स्थायी लेखा सं./PAN NO: AAABP0193P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vipul Arora, CA  
राजस्व की ओर से/ Revenue by : Smt. C. Chandrakanta, CIT(DR)  
सुनवाई की तारीख/Date of Hearing : 05/03/2020  
उद्घोषणा की तारीख/Date of Pronouncement : 30/06/2020

### आदेश/Order

#### PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

The present cross appeals filed by the Assessee and the Revenue are against the order of the Ld. Commissioner of Income Tax-2, Jalandhar (in short referred to as CIT(A)), dated 28-04-2016, passed u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act").

2. The solitary issue involved in the cross appeals relates to addition made of capital gain earned on alleged sale of land by the assessee, as per section 45 r.w.s 2(47) of the Act, to the extent remaining unutilized for charitable purposes u/s 11(1A) of the Act. The Assessing Officer had computed the same at Rs. 2,32,52,21,675/- ,which

was reduced in appeal by the Ld. CIT(A), by allowing further benefit of utilization for charitable purposes of Rs. 130 Crores, to Rs. 102,52,21,675/-.

3. Brief facts relating to the case are that the assessee society was established by the Punjab Government on 07/07/1994 and registered under the Registration of Societies Act, XXI of 1860 by the Registrar of Firm and Societies, Punjab, Chandigarh vide No. 916 dt. 10/10/1994. The assessee society was also registered as charitable society under section 12A of the Income Tax Act, having been granted registration on 01/11/2000. The CIT withdrew the registration granted under section 12A of the Act, with effect from 2004-05, but it was subsequently restored back by the Tribunal vide its order dt. 29/09/2015.

4. During the assessment proceedings for the impugned year the A.O. noted that the assessee had shown Rs. 156 Crores as current liability, against receipt from Punjab Urban Development Authority (PUDA) against land. Enquiries were made relating to the same and the A.O. noticed that the impugned amount had been received on account of and by virtue of a Tripartite Agreement entered into by the assessee with Punjab Urban Development Authority and the Director Research and Medical Education, Punjab, on 30/04/2002. The A.O. noted that under the terms of the agreement, 109.49 acres of land, purchased by the assessee from Punjab Agricultural University (PAU), Ludhiana at the cost of Rs. 15 Crores vide agreement dated 30-05-2000, had been transferred to PUDA for the sale of development right and this agreement had been extended on 01/07/2011 and final agreement made on 07/08/2012 in which the total sale proceeds was fixed at Rs. 420 Crores. The A.O. noted that against these agreements, PUDA had transferred sum of Rs. 286 Crores, being Rs. 156 Crores to the assessee upto 31/03/2013 and Rs. 130 Crores directly to Punjab State Government. Accordingly, the A.O. held that the assessee had sold land to PUDA against sale consideration of Rs. 420 crores out of which it had received the amount of Rs. 286 Crores and that the transaction was covered under the provisions of Section 11(1) A, r.w.s2(47), & 45 of the Income Tax Act. The AO, thereafter, computed the taxable capital gain at Rs. 232,52,21,675/-, treating Rs. 420 Crores as the sale consideration, reducing therefrom the indexed cost of acquisition and out of the balance remaining, allowing

benefit of utilization for charitable purposes , u/s 11(1A) of the Act, to the extent of amount received in earlier years by the assessee of Rs. 156 Crores. The computation of the same at page no. 37 of the assesment order is as under:

Computation of Capital Gain

Total sale consideration-	Rs. 4,20,00,00,000/-
Less- Cost of Acquisition including Indexation cost-	(-) Rs. 31,47,78,325/-
Less- Allowable deduction u/s 11(1)(a)-	(-) Rs. 1,56,00,00,000/-
Taxable Long Term Capital Gain-	Rs. 2,32,52,21,675/-
Computation of Taxable Income-	
Returned Income-	NIL
Addition as per above discussion -	Rs. 2,32,52,21,675/-
Total Taxable Long Term Capital Gain Income-	Rs. 2,32,52,21,675/-

5. Aggrieved by the same the assessee carried the matter in appeal before the Ld. CIT(A) who upheld the order of the A.O. to the extent that the assessee had transferred land to PUDA and earned capital gain thereon. But at the same time the Ld. CIT(A) held that the benefit of utilization be also granted on the amount directly transferred by PUDA to the Government out of the sale proceeds, amounting to Rs.130 Crores, and accordingly directed the A.O. to reduce the taxable capital gain computed by the aforesaid amount.

6. Aggrieved by the order of the Ld. CIT(A) both the Assessee and the Revenue have now come up in appeal before us raising the following grounds:

Grounds raised by the Assessee are as under:

1. That the worthy CIT(A) erred in facts and in law in confirming the action of the learned Assessing Officer in computing Long Term Capital gains on alleged sale of Land amounting to Rs.420 crores by the appellant to PUDA by invoking the provisions of Section 2(47) of the Income Tax Act,1961 read with Section 53A of the Transfer of property act based on Tripartite Agreements made on 30.04.2002, as amended by agreements dated 01.07.2011 and 07.08.2012 and sustaining the addition of Rs. 102,5,22,1675/=

2. That the worthy CIT(A) failed to appreciate that the appellant society was not the owner of land in question on which the worthy CIT(A) has made additions invoking the provisions of section 2(47) r.w.s. 53A of the transfer of property act.
3. That the worthy CIT(A) erred in confirming application of section 2(47) r.w.s 53A of the Transfer of Property Act and confirming addition of Rs. 1.02,52,21,675/- in the case failing to appreciate that the Tripartite Development agreement was not registered agreement.
4. That the CIT(A) erred in not following the decisions of Hon'ble Supreme Court in the case of CIT Vs. Balbir Singh Maini & Others, Civil appeal No. 15619/2017 and OS. Atwal vs. CIT Ludhiana ITA no. 200 of 2013 of Punjab and Haryana High Court.
5. That the worthy CIT(A) erred in ignoring that the addition of Rs. 1025221675/- was made on the basis of deemed transfer u/s 2(47) whereas the transfer of land, if at all it happened, it happened in the year 2002. The addition of Rs. 1025221675/- is without jurisdiction, illegal and time barred.
6. Without prejudice to above grounds, the worthy CIT(A) failed to appreciate that A.O. has not given deduction of Rs. 30 crores on PUDA fees.
7. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

The Grounds raised by the Revenue are as under:

- i. That on the facts and circumstances of the case, the Ld.CIT(A) has erred in law as the findings recorded are perverse and contrary to the evidence/material available on record and facts of the case and duly considered by the Assessing Officer.
- ii. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in not considering the fact that the PUDA had directly transferred the capital gain of Rs.130 crores to Punjab Government & has shown the same in the name of assessee in its books of accounts whereas the assessee has neither shown it as income in the books of accounts nor utilized the same as per provisions of section 11(1)(A) of the I.T. Act, 1961.
- iii. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in not considering the fact that there is no corresponding increase in assets in balance sheet of the assessee till March 2016 for which utilization certificate has been produced.
- iv. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in admitting the additional evidences produced under Rule 46A of the Income Tax Act, 1961 when there was no reasonable cause for non-production of the same during the assessment proceedings.

*v. That the appellant craves to leave, add or amend the grounds of appeal on or before the appeal heard and disposed off.*

7. Before us the assessee has challenged the addition of capital gains upheld by the Ld.CIT(A), while the Revenue has challenged the benefit of utilization for charitable purposes of Rs.130 Crs allowed by the Ld.CIT(A) u/s 11 of the Act, being amount paid to the Government under the agreement.

8. The assessee has raised the following arguments while contesting the addition made of unutilized capital gains in its hands :

- 1) That the land on which the assessee allegedly earned capital gain did not belong to it but to the government and therefore there arose no question of the assessee earning any capital gain.
- 2) That the amount received in fact represented grants from the government.
- 3) That in any case capital gain if any accrued in earlier year when the agreement transferring possession of land to PUDA for further development and sale was entered in 2002 .
- 4) That addition on account of non application/utilization of capital gain for charitable purposes could not be made u/s 11(1A) of the Act, on account of impossibility of utilization since the impugned amount had not been received by the assessee at all.

9. The Revenue on the other hand, represented through Ld.DR, has referred to the agreement for purchase of land from Punjab Agricultural University dt 30-05-2000 pointing to the fact that the assessee was required to pay half of the price of the land, to buttress its argument that the land belonged to the assessee only . Ld.DR also referred to the Tripartite agreement which stated that all earnings from the sale of land shall be collected by PUDA on behalf of the assessee and remitted to it promptly ,to support its contention that the land belonged to the assessee. Ld.DR further contended that the amount of Rs.130 Crs had been directly transferred by PUDA to the Punjab Government and the assessee had neither reflected receipt of the same nor consequent utilization in its Books of accounts and therefore the allowance of benefit of utilization of the said amount by the Ld.CIT(A) was against the facts of the case.

10. Ld. Counsel for the assessee countered by stating that utilization certificate had been filed during appellate proceedings from the Punjab Government mentioning utilization of the amount in health projects in the state.

11. We have heard both the parties ,gone through the orders of the authorities below and also the documents referred to before us. After hearing both the parties we find that the issue to be adjudicated by us in the present case can be summarized as under:

- i. *Whether the assessee had earned any capital gain from transfer of land under tripartite agreements entered into with the State Government and PUDA, or was it in the nature of grants received from the government.*
- ii. *Did the gain/grant accrue during the impugned year,*
- iii. *Whether the amount paid to the State Government of Punjab under the Tripartite agreement could be treated as utilized for charitable purposes.*
- iv. *Could any portion of the income by way of capital gains which was not received during the year , be subjected to tax for not having been utilized for charitable purposes u/s 11 of the Act.*

12. The undisputed facts relevant to the issue are that under a tripartite agreement between the assessee society ,the Government of Punjab and PUDA dt. 30/04/2002 , land measuring 104 acres 5 Kanals and 1 Marla ,situated at Garha Road ,Jalandhar was given possession of to PUDA for sale after development of the land and PUDA was to remit the entire net proceeds received therefrom, to the assessee society .The said land had been purchased from PAU vide agreement dated 30-05-2000,under which the assessee had paid half of Rs.15 Crores. Under the tripartite agreement the assessee received Rs.156 Crs upto 31-03-2013. The Tripartite agreement was revised on 01-07-11 and the expected sale proceeds of the land revised to Rs.420 Crs. Further an amount of Rs.100 cr was paid to the State Government out of the proceeds of sale under this revised agreement. Another revision of the agreement was done on 07-08-12 and further payment of Rs.30 Crs was made to the State Govt. under it.

13. Taking up first and dealing with the primary issue whether any capital gain arose to the assessee under the tripartite agreements,the contention of the Ld.Counsel for the assessee is that no capital gain arose to the assessee since it was not the owner of the land.We find that this contention relates to a matter of fact and for which purposes both the parties have referred to the tripartite agreement dt.30-04-2002 and

the agreement under which land was originally purchased dt .30-05-2000 .It would be relevant to go through these agreements ,copies of which were placed before us.

The contents of the initial Tripartite agreement dt. 30/04/2002 are as under:

### AGREEMENT

*This Tripartite Agreement is executed at Chandigarh on this 30<sup>th</sup> day of April Two Thousand Two between the State of Punjab through the Principal Secretary to Government of Punjab, Department of Medical Education and Research, Chandigarh (hereinafter referred to as the State Government) of the FIRST part. The Punjab Institute of Medical Sciences, Jalandhar- a society registered under the Societies Registration Act through its Member Secretary (Director-Principal) (hereinafter referred to as the Society, which expression shall, unless repugnant to the context, include its successors and assignees) of the SECOND part, and the Punjab Urban Planning and Development Authority, a statutory body constituted under the Act of Legislature, through its Chief Administrator, hereinafter referred to as PUDA, which expression shall, unless repugnant to the context, include its successors and assignees, of the THIRD part.*

*Whereas the Government of Punjab has decided to set up a Medical College and Hospital at Jalandhar for the improvement of health services and augmenting medical education in the State of Punjab.*

*Whereas in order to implement the decision taken by the State Government to start a Medical College and Hospital at Jaiandhar a Society under tlx name and style of Punjab Institute of Medical Sciences, Jalandhar (hereinafter referred to as the Institute) has been incorporated.*

*Whereas in order to augment the resources for the afore-mentioned Institute, the State Government has purchased land measuring 104 Acres 5 Kanals and 1 Marla from Punjab Agriculture University, Ludhiana situated at Garha Road, Jalandhar (Sugarcane Research Station) and the physical possession of the above said lad had been handed over to PUDA familiar with the market trends and is fully equipped to commercially exploit the said land and remit the proceeds to the Institute, The PUDA is expected to generate Rs. 209 Crores by means of sale of land, interest etc. and is likely to charge Rs. 26 Crores for development and sale of land and rendering other related services. Therefore, the Institute is likely to get the remaining Rs. 183 Crores for its project of starting Medical College and Hospital at Jalandhar.*

*Therefore, for the smooth execution of work by PUDA and remittance of proceeds to the Institute, it is hereby, agreed and deal over between the parties as under:*

- 1. That all the earnings from the sale of above referred land including sale proceeds and interest received from buyers, if any, shall be collected by PUDA on behalf of the Institute and the same shall be remitted to the Institute promptly, after deducting the expenses incurred by PUDA on the development of land regarding which duly audited proper accounts will be furnished to the Institute every six months.*
- 2. That while remitting the above sums, PUDA will ensure a minimum monthly remittance of Rs.2.5 Crores or more, if the revenues from sale of plots exceed the amount in any given month, subject to a minimum of Rs.70 Crores for a period of 28 months*

commencing January 1, 2002, whichever is earlier, so as to enable the Institute to meet its financial obligations including those connected with the construction of the buildings of Hospital and Medical College. The amount of Rs. 10.50 Crores already paid shall be adjusted in the minimum guaranteed amount of Rs.70 Crores. For removal of doubt, the remittances for the months from January to April, 2002 deemed to have been paid.

3. PUDA shall transfer all receipts from the sale of Land, whichever may be in excess of the amounts to be remitted in terms of foregoing covenants, as expeditiously as possible and in any case within 30 days from the receipt thereof.

4. That the development and sale of land will be exclusive responsibility of PUDA and all expenses in this behalf will be borne by it. The expenses of PUDA will be deducted from the total earnings from the sale of land and will include development cost at actuals, departmental charges in no event will exceed 15%. The expenses for hiring of consultants, if required, shall be extra.

5. All the receipts on account of transfer fee / extension fee etc. will be recovered by PUDA towards the maintenance / establishment (recovery) expenditure for maintaining the Urban Estate after its development.

6. All disputes or differences arising between the parties named above in connection with this agreement or any matter connected therewith or any other reason shall be referred to the sole adjudication to the Chief Secretary, Government of Punjab, whose decision shall be final' and binding on the parties.

IN WITNESS WHEREOF the parties have signed this agreement on the day, month and year first above written in presence of the witnesses.

The land purchase agreement Dt 30-05-2000 as translated in English, copy of which was placed before us, is as under

TRANSLATED FROM PUNJABI TO ENGLISH  
"SALE DEED"

Sale amount  
15 Crore

Stamp Papers  
Rs. Nil

Punjab Agriculture University, Ludhiana is owner of 104 Acre 5 Kanal 1 Maria land and have possession on it. The Khewat/ Khatoni Nos 296/390, 412/559, 515/700 of this land and Khasra Nos. are 12//20(8-0), 21(8-0), 22(8-0), 23(8-0), 24(8-0), 25(6-13), 27(0-15), 28(1-13), 29(1-7), 13//11(0-13), 20(2-18), 21(5-13), 11//6/2(3-16), 7/2(1-7), 11/2/1(0-7), 12/2(3-16), 13/2(6-9), 14(8-0), 15(8-0), 16(8-0), 17(8-0), 18(8-0), 19/1(5-18), 22/2(0-17), 23(7-12), 24(7-3), 25(6-18), 26(0-10), 12//2/2(1-7), 3/1(3-7), 4(8-0), 5(4-10), 6(6-8), 7(8-0), 8(8-0), 9(8-0), 10/2(6-9), 11(8-0), 12(8-0), 13(8-0), 14(8-0), 15(7-18), 16(8-0), 17(8-0), 18(8-0), 19(6-7), 14//1(5-4), 10(4-16), 15//1(8-0), 2(8-), 3(8-0), 4(8-0), 5(7-10), 6(8-0), 7(8-0), 8(8-0), 9(7-8), 10(8-0), 26(0-10), 27(0-12), 16//3/2(5-10), 4(8-0), 5(5-9), 6(8-0), 7(8-0), 8/1(3-14), 5//17/2(5-15), 18/1(4-9), 19/2(1-6), 21/2(4-4), 25/1(1-13), 5//22(6-4), 23(6-4), 6//25/2(1-8), 9//5/1(1-6), 5/2(5-11), 6/1(1-10), 6/2(5-16), 7/1(2-4), 14(4-14), 9//15(8-0), 16(8-0), 17(6-18), 23/2(1-1), 24(8-0), 25(8-0), 10//1(8-0), 2(8-0), 3(8-0), 4(7-0), 5/1(5-2), 6(7-7), 7(8-0), 8(8-0), 9(8-0), 10(7-18), 11/1(2-0), 11/2(5-4),

12(8-0), 11/10/2(0-2), 11/1(1-18), 19/2(0-14), 20(7-7), 21(6-18), 22/1(5-2), 5/24(6-4), 11/27(1-2), 16/1(8-0), 2(7-18), 3/1(1-7), 8/2(1-12), 9(8-0), 10(8-0), 26(0-13); 10/13(8-0), 14(8-0), 15(6-2), 16(8-0), 17(8-0), 18(8-0), 19(7-16), 20/1(1^2), 20/2(6-6), 21(8-0), 22/1(2-12), 22/2(4-12), 23(8-0), 24(8-0), 25(8-0), 26(1-0); 27(0-18), 28(1-16), 17/1(7-0), 2/1(6-18), 2/2(0-16), 3/(7-12), 4(8-0), 5(8-0), 6(8-0), 7/1(7-7), 8/1(3-17), 8/3(0-11), 9/1(2-9), 10/1(2-9), 26(1-0), 27/1(0-1), 18/3/2(2-6), 4(8-0), 5(8-0), 6/1(2-9), 7/1(2-9), 8/1(0-18) according to Jamabandi year 1996-97 Page Garah Vehinda Hadbast No. 304 and area situated at Tehsil & District Jalandhar.

The above said whole land has been give to Medical Education & Research Department of Punjab Government by Dr. H.S. Saikho, Milak Officer Punjab Agriculture University Ludhiana with buildings, constructions, well, tubewell, pumping set and wires and doors etc. for 15 Crore half of which is seven and half crore has been given to Medical Education & Research Department of Punjab Government through Director Research & Medical Education Punjab. The mode of payment of this and possession will be according to the conditions mentioned below:-

The above said whole land has been give to Medical Education & Research Department of Punjab Government by Dr. H.S. Saikho, Milak Officer Punjab Agriculture University Ludhiana with buildings, constructions, well, tubewell, pumping set and wires and doors etc. for 15 Crore half of which is seven and half crore has been given to Medical Education & Research Department of Punjab Government through Director Research & Medical Education Punjab. The mode of payment of this and possession will be according to the conditions mentioned below:-

The possession of 472 Kanal 5 Marias have been given to Punjab Government on the spot whose Khasra No are 12//20(8-0), 21(8-0), 22(8-0), 23(8-0), 24(8-0), 25(6-13), 27(0-15), 28(1-13), 29(1-7), 13//11(0-13), 20(2-18), 21(5-13), 11//6/2(3-16), 7/2(1-7), 11/2/1(0-7), 12/2/(3-16), 13/2(6-9), 14(8-0), 15(8-0), 16(8-0), 17(8-0), 18(8-0), 19/1(5-18), 22/2(0-17), 23(7-12), 24(7-3), 25(6-18), 26(0-10), 12//2/2(1-7), 3/1(3-7), 4(8-0), 5(4-10), 6(6-8), 7(8-0), 8(8-0), 10/2(6-9), 11(8-0), 12(8-0), 13(8-0), 14(8-0), 15(7-18), 16(8-), 17(8-0), 18(8-0), 19(6-7), 14//1(5-4), 10(4-16), 15//1(8-0), 2(8-0), 3(8-0), 4(8-0), 5(7-10), 6(8-0), 7(8-0), 8(8-0), 9(7-8), 10(8-0), 26(0-10), 27(0-12), 16//3/2(5-10), 4(8-0), 5(5-9), 6(8-0), 7(8-0), 8/1(3-14), 11//21/2Min(6-0), 22Min(4-14), 16//1(8-0), 2(7-18), 3/1(1-0), 8/1(3-14), 11//21/2Min(6-0), 22Min(4-14), 16//1(8-0), 2(7-18), 3/1(1-7), 8/2(1-12), 26(1-13), 9(8-0), 10(8-0), 17//4Min(2-11), 5Min(7-0), 6(8-0), 7/1(7-7), 8/1Min(2-19) the land whose possession has been given today dated 30 May 2000. Out of this area § the purchaser can sell/use/ construct according to his style and need. Rest land out of which has been showed in red color in map ̳ the area of which is approximately 29 Acre, the possession of it will be given upto 31 March 2001 and remaining rest total approximately 17 Acre land which has been shown in map in green color in means ̳'s possession will be given before 31/05/2002.

Possession giving University have right that can take with it its display boards, fans, tubes, laboratory equipments, air conditions, cooler, tubewell pump's motors but have to assure that will not cause any damage to super structure, electricity fitting, water supplying pipes etc. and cannot take immoveable property.

From Medical research and education department, Punjab Government to P.I.M.S. Jalandhar out of Rupees 15 Crore Rs. 10 Crore half of which is Rupees Five Crore today on spot has given to the Milak Officer of University through Cheque No. 432324 dated 24/5/2000 State Bank of India Chandigarh. The Punjab Government is bound to pay the rest amount Rupees Five Crore after executing of this sale deed within one year to Punjab Agriculture University, Ludhiana. The whole expenses etc. of his sale deed will be borne by the purchaser of this land. The seller of land will have not any objection if the purchaser get the mutation entered in its name in the revenue record. As a witness both the seller and purchaser have signed on this sale deed at Jalandhar today dated

30/5/2000 in the presence of written below witnesses. Reg. No. 201 Dt. 30/5/2000 Krishan  
Lai Deed writer Jalandhar.

Witness.....	Signature.....	Signature
Gurdian Singh Sidhu S.R.S. Jalandhar. Sd/- in Eng.	Dr. Harjinder Singh Saikhon Milk Officer P.A.U Ludhiana Seller:- Sd/- in Eng.	Piara Lal Garg Spl. Executive Officer Research & Medical Edu. Department. Pb. Govt. (On behalf of Purchaser): Sd/- in Eng.

14. On going through the tripartite agreement dt 30-04-2002, we find that it clearly mentions the fact that the government had purchased land measuring 104 acres 5 Canals and 1 Marla, situated at Garha Road, Jalandhar, from Punjab Agricultural University, Ludhiana, and handed over physical possession of the same to PUDA for developing and selling the same and remitting the proceeds therefrom directly to the assessee society. The purchase agreement dt 30-05-2000 corroborates this fact mentioning the Government as the party purchasing the land. Undoubtedly therefore the fact is that the land transferred to PUDA under the Tripartite agreement belonged to the Government and not the assessee. The mere fact that assessee made payment of half price of Rs.15 Crs, or that it was entitled to proceeds from sale of land would in our view not alter the position. There arises therefore no occasion for treating the amounts due to the assessee under the tripartite agreement as being sale consideration for land belonging to it and therefore, we hold that no capital gain was earned by the assessee.

15. In fact, we agree with the Ld. Counsel for the assessee that the nature of the remittance of sale proceeds to the assessee was only by way of grants by the government. This is evident from the tripartite agreement. The initial part of the agreement, which gives a background of the facts leading to the entering into of agreement between the three parties, mentions that the State Government intended setting up a hospital and medical college in Jalandhar, for which purpose it created the assessee society PIMS. That further to augment the resources of the assessee society, the Government made an arrangement for mobilizing funds to be made available directly to the assessee society, by selling land, which it had purchased from

Punjab Agricultural University, through PUDA ,directing PUDA to remit the sale proceeds directly to the assessee society. As per the arrangement,the proceeds expected from the sale of land was Rs.209 Crs and the expected expenditure of PUDA for developing and selling it was Rs.26 Crs. The government expected Revenue generation of Rs.183 Crs net from the said arrangement. Clearly The only role of the assessee society under the agreement was to receive the expected net sale proceeds of land .The tripartite agreement only outlined the modalities and manner in which funds were to be arranged by the government for granting to the assessee society to enable it to meet its objective of building a hospital and medical college at Jalandhar. Thus it was nothing but grants received by the assessee from the government under the tripartite agreement.

Even the supplementary /revised agreements only are in relation to the manner of disbursement to the assessee society, of the additional revenue expected to be generated from the increased value of the land.This is evident from a bare reading of the contents of the supplementary agreements which are reproduced hereunder:

The supplementary agreement dated 01-07-11 is as under:

### AGREEMENT

*The Tripartite Agreement is executed at Chandigarh on this 1<sup>st</sup> day of Jul, 2011 (01/07/2011) between the State of Punjab through "Secretary to Government to Punjab, Department of Medical Education & Research, Chandigarh (herein after referred to as the State Government) of the FIRST party, The Punjab Institute of Medical Sciences, Jalandhar - a society registered under the Societies Registration Act through its Member Secretary (Director PIMS Society) hereinafter referred to as the Society, which expression shall, unless repugnant to the context, include its successors and assignees) of the SECOND party, and Punjab Urban Planning and Development Authority, a statutory body constituted under the Act of Legislature, through its Chief Administrator, hereinafter referred to as PUDA, which expression shall, unless repugnant to the context, include its successors and assignees, of the THIRD party.*

*Whereas the Government had decided to setup a Medical College and Hospital at Jalandhar for the improvement of health services and augmenting medical education in the State of Punjab*

*Whereas in order to implement the decision taken by the State Government to start a Medical College and Hospital at Jalandhar, a Society under the name and style of Punjab Institute of Medical Sciences Jalandhar (hereinafter referred to as the Institute) has been incorporated.*

Whereas the amended objects of the Society is "To set up, establish, promote, manage or associate with, any other Institution or Centre in the State of Punjab devoted to education, training, research and related infrastructure in various branches of health sciences and working for the advancement of scientific knowledge aimed at enhancing the quality of patient care."

Whereas PIMS Medical College & Hospital is now being managed and operated under Private Public Partnership by the concessionaire i.e. RIMS Medical & Education Charitable Society, on 99 years lease. Whereas PIMS Society has to develop and upgrade health related infrastructure and promote education/training and research by managing/associating with other institutions and centres in the State of Punjab.

Whereas PUDA has already released Rs. 156 crore to PIMS Society. PIMS Society also requires additional funds to the tune of Rs.100 crores besides funds available with PIMS Society. PIMS Society also, requires funds to meet out its obligations under Concession Agreement with concessionaire.

Whereas the land measuring 104 Acres 5 Kanals and 1 Maria transferred from Punjab Agriculture University, Ludhiana situated at Garha Road, Jalandhar (Sugarcane Research Station) is already in the physical possession of the PUDA.

Whereas the PUDA is expected to generate Rs. 420.00 Crore by means of sale of land, interest etc. and is likely to charge Rs.30 Crores for development and sale of land and rendering other related services.

Therefore for the smooth execution of work by PUDA and undertake the projects within the objects of PIMS Society remittances of sale proceeds to the Govt, of Punjab / PIMS Society, is hereby, agreed and deal among the parties as under:

1. That PUDA shall remit to the PIMS Society Rs.10.00 crores per year towards the recurring expenditure of Society subject to actual on annual basis for seven years, until the concessionaire starts paying the annual concession fees' as per the concession agreement. The flow of funds is to be organized in such a manner that the liabilities and obligations made by the PIMS Society are fulfilled after that the annual payment will be reconsidered depending upon the need and availability of funds.
2. Government will continue monitoring the requirement of funds by PIMS and the availability of funds with PUDA from sale of the balance land.
3. That after taking into account present and future needs of PIMS Society, Rs. 100.00 crore tying with PUDA would be surplus & this amount be deposited in Government treasury by PUDA directly during the financial year 2011-2012 for funding health projects.
4. That the development and sale of land will be exclusive responsibility of PUDA and all expenses in this behalf will be borne by it. The expenses of PUDA will be deducted from the total earnings from the sale of land and will include development cost at actual.

IN WITNESS WHEREOF the parties have signed this agreement on the day, month and year first above written in presence of the witnesses.

The supplementary agreement dated 07-08-12 is as under

## AGREEMENT

*The Tripartite Agreement is executed at Chandigarh on this 7<sup>th</sup> day of August 2012 (07.08.2012) between the State of Punjab through 'Secretary to Government to Punjab, Department of Medical Education & Research, Chandigarh (herein after referred to as the State Government) of the FIRST party, The Punjab Institute of Medical Sciences, Jalandhar - a society registered under the Societies Registration Act through its Member Secretary (Director PIMS Society) (hereinafter referred to as the Society, which expression shall, unless repugnant to the context, include its successors and assignees) of the SECOND party, and Punjab Urban Planning and Development Authority, a statutory body constituted under the Act of Legislature, through its Chief Administrator, hereinafter referred to as PUDA, which expression shall, unless repugnant to the context, include its successors and assignees, of the THIRD party.*

Whereas the Government had decided to setup a Medical College and Hospital at Jalandhar for the improvement of health services and augmenting medical education in the State of Punjab

Whereas in order to implement the decision taken by the State Government to start a Medical College and Hospital at Jalandhar, a -Society under the name and style of Punjab Institute of Medical Sciences Jalandhar (hereinafter referred to as the Institute) has been incorporated.

Whereas the amended objects of the Society is "*To set up, establish, promote, manage or associate with, any other Institution or Centre in the State of Punjab devoted to education, training, research and related infrastructure in various branches of health sciences and working for the advancement of scientific knowledge aimed at -enhancing the quality of patient care.*"

Whereas PIMS Medical College & Hospital is now being managed and 3 operated under Private Public Partnership by the concessionaire i.e. PIMS Medical & Education Charitable Society, on 99 years lease.

Whereas PIMS Society has to develop and upgrade health related infrastructure and promote education/training and research by managing/associating with other institutions and centres in the State of Punjab.

Whereas PUDA has already released Rs. 156 crore to PIMS Society. PIMS Society also requires additional funds to the tune of Rs.100 crores besides funds available with PIMS Society. PIMS Society also requires funds to meet out its obligations under Concession Agreement with concessionaire.

Whereas the land measuring 104 Acres 5 Kanals and 1 Maria transferred from Punjab Agriculture University, Ludhiana situated at Garha Road, Jalandhar (Sugarcane Research Station) is already in the physical possession of the PUDA.

*Whereas the PUDA is expected to generate Rs. 420.00 Crore by means of sale of land, interest etc. and is likely to charge Rs.30 Crores for development and sale of land and rendering other related services.*

*Therefore for the smooth execution of work by PUDA and undertake the projects within the objects of PIMS Society remittances of sale proceeds to the Govt, of Punjab / PIMS Society, is hereby, agreed and deal among the parties as under:-*

1. That PUDA shall remit to the PIMS Society Rs. 10.00 crores per year towards the recurring expenditure of Society subject to actual on annual basis for seven years, until the concessionaire starts paying the annual concession fees as per the concession agreement. The flow of funds is to be organized in such a manner that the liabilities and obligations made by the PIMS Society are fulfilled after that the annual payment will be reconsidered depending upon the need and availability of funds.

2. Government will continue monitoring the requirement of funds by PIMS and the availability of funds with PUDA from sale of the balance land.

3. That after taking into, account present and future needs of PIMS Society, Rs. 130,00 crore lying with PUDA, (out of which Rs. 100 crore has already been released during, the financial year 2011-12) now, Rs. 30 crore lying with PUDA would be surplus & this amount be deposited in Government treasury by PUDA directly during the financial year 2012-2013 for funding health projects.

16. As is evident from the above, the supplementary agreements outline the manner in which the increased amount collected by sale of the land was to be remitted to the assessee society, taking note of further requirement of resources by the assessee society and also the fact that the value of the land acquired by the Government and transferred to PUDA for sale had increased to an estimated value of Rs. 420 Crores. The supplementary agreement outline that a minimum amount is to be transferred to the assessee on yearly basis to meet its recurring expenditure. Further taking note of the expanded amended objective of the assessee society to provide helath care facility and medical education alongwith other institutions/centres, it notes that after meeting the requirement of the assessee society there was a surplus of Rs. 100 Crores remaining from the expected proceeds from the sale of land which the supplementary agreement stipulated was to be transferred to the Punjab Government immediately for the purpose of providing healthcare facilities in the state, in consonance with the amended objectives of the assessee society. The second supplementary agreement takes note of the fact that the surplus generated would be not Rs. 100 Crores but 130 Crores and directs the balance Rs. 30 crores to be paid to the Punjab Government promptly.

17. It is abundantly clear that the role of the assessee in the Tripartite agreement, and the supplementary agreements, was receiving funds arranged for by the State government by getting its land sold through PUDA. The amount remitted to the

assessee under the agreement, we have no doubt in holding therefore, was in the nature of grant received from the government

18. Having held so, we find that ,without dealing with the manner of taxation of the grants i.e on accrual or receipt basis, either ways nothing was taxable in the impugned year. As is evident from the facts narrated above, the initial agreement transferring possession of land to PUDA for development and sale and estimating revenue generation of Rs.183 Crs ,was entered on 30-04-2002.The supplementary agreement, increasing the expected Revenue to be generated from the sale of land and remitted to the assessee, to Rs.420 Crs was dt 01-07-2011 .The second supplementary agreement did not effect any increase in the expected Revenue from sale of land. Therefore, even by the concept of taxability on accrual basis the grants did not accrue to the assessee in the impugned year. Further the facts demonstrate that except for an amount of Rs. 30 Crs .which was settled under the second supplementary tripartite agreement during the impugned year Dt.07-08-12,to be paid to the state government, all other amounts were received by the assessee in the preceding years. Therefore even by the concept of taxability on receipt of funds ,no amount was taxable in the impugned year except for Rs.30 Crs. This amount ,we have noted from the agreement ,was stated to be paid to the state government in compliance with the amended and enlarged objectives of the assessee society for engaging with other institutions in the state for providing health care education and or facilities..The assessee had also provided a utilization certificate to this effect before the Ld.CIT(A),considering which he had treated the amount as applied for purposes of charity as per section 11 of the Act. The Ld. DR has neither been able to controvert the aforestated facts nor has pointed any infirmity in the findings of the Ld.CIT(A).Therefore by any concept of taxation of income also, i.e accrual or receipt ,none of the amounts of funds due to or received by the assessee under the Tripartite agreement was taxable in the impugned year.

19. Since we have held the amounts received under the tripartite agreement as being in the nature of grants from the government which did not accrue during the impugned year and not capital gain earned by the assessee,we do not find it relevant

to adjudicate the issue raised in point no.(iv) of para 11 above relating to taxability of unutilized capital gains u/s 11 of the Act, which capital gain was not received by the assessee at all.

20. In view of the above, we hold that no capital gain was earned by the assessee under the tripartite agreement dt.30-04-2002, that in fact the assessee had received grants from the government under it, no portion of which was taxable in the impugned year either on receipt or accrual basis.

21. The appeal of the assessee is accordingly allowed while that of the Revenue dismissed.

22. Order could not be pronounced earlier due to non functioning of the Bench on account of lockdown in the wake of Covid-19 Pandemic.

Order pronounced on 30<sup>th</sup> June 2020.

**Sd/-**

**संजय गर्ग**

**(SANJAY GARG)**

**न्यायिक सदस्य/ Judicial Member**

**AG**

**Date: 30/06/2020**

**Sd/-**

**अन्नापूर्णा गुप्ता,**

**( ANNAPURNA GUPTA)**

**लेखा सदस्य/ Accountant Member**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File