आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ, "A", "चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A' CHANDIGARH

श्री संजय गर्ग, न्यायिकसदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकरअपीलसं./**ITA No. 644 & 645/CHD/2018**

निर्धारणवर्ष / Assessment Year: 2009-10 & 2014-15

Infrastructure Development Fund SCO-71-17 Sector-17C Chandigarh	बनाम	Deputy Commissioner of Income Tax (Exemptions) Circle-2, Chandigarh
स्थायीलेखासं./PAN NO: AAAL10136K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकरअपीलसं./**ITA No. 528 /CHD/2017**

निर्धारणवर्ष / Assessment Year: 2013-14

Infrastructure Development Fund SCO-71-17 Sector-17C Chandigarh	बनाम	ACIT, Circle-2 (Exemptions), Chandigarh
स्थायीलेखासं./PAN NO: AAAL10136K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by	:	Shri A. K. Jindal, CA, Smt. Ratan Kaur &
		Shri Parikshit Aggarwal, CA
राजस्व की ओर से/ Revenue by	:	Shri Chandrajeet Singh, CIT(DR) Smt. C. Chandrakanta, CIT-DR
सुनवाई की तारीख/Date of Hearing	:	05.03.2020
उदघोषणा की तारीख/Date of Pronouncement	:	31/07/2020

आदेश/Order

PerAnnapurna Gupta, Accountant Member, :

All the above captioned appeals have been preferred by the same assessee against separate orders passed by CIT(A)-II, Chandigarh (in short 'CIT(A)']dated 28/02/2018,31/01/17 & 28/02/2018 for A.Ys 2009-10, 2013-14 & 2014-15 respectively.

At the outset itself both the parties stated that the issue involved in all the appeals was identical. They were therefore taken up together for hearing.

2. Drawing our attention to the facts of the case it was pointed out that the assessee, i.e Infrastructure Development Fund had been created under the Haryana Development & Regulation of Urban Areas Act, 1975, as amended by the Haryana Development & Regulation of Urban Areas Ordinances 2006 ,and had been set up by the Govt. of Haryana through a notification dated 23.11.2006. To this fund was credited Infrastructure Development Charges(in short referred to as IDC charges),paid by various colonizers while setting up Housing Project in the State of Haryana , and which contribution was for the purpose of carrying out development of capital expenditure on infrastructure projects such as National/State Highways etc. The assessee fund had been granted registration u/s 12AA by the Commissioner of Income Tax,(CIT), Panchkula vide order dated 31.08.2010.

3. During assessment proceedings for A.Ys 2013-14 and 2014-15, the AO noted that the IDC charges received were not being shown/reflected in the profit and loss account nor the capital expenditure incurred from the same but were taken directly to the Balance Sheet. He further noted that the IDC charges received had been parked in Fixed Deposits in bank. It was the interest earned from the same only which was being reflected in the profit and loss account. The AO further noted that though the assessee fund was registered as charitable entity for the impugned years ,yet it had failed to comply with the conditions prescribed u/s 11(2) regarding intimation of

income not utilized for charitable purposes during the year but accumulated for use in later years, read with rule 17 of the Income Tax Rule, 1961 ,of filing the statutorily prescribed Form 10 electronically, so as to be eligible to claim exemption u/s 11 of the Act.He also noted that the figures mentioned in the Form 10, of the Income applied for charitable purposes and that actually claimed by the assessee, did not tally. He also noted that the figures of the amount accumulated for use in later years did not tally with the details submitted and further no specific objects were mentioned for the purpose of accumulating the income. The AO therefore declined the application of income claimed by the assessee fund. Thereafter,he treated the entire interest income and IDC receipts of the year as income of the assessee , allowed the Revenue and capital expenditure incurred against the same during the year, and noted that there was short fall in the application of statutorily prescribed 85% of the income, amounting to Rs. 245.31 crores in A.Y 2013-14 and 382.08 cores in A.Y 2014-15. Accordingly the said amounts were subjected to tax in the respective assessment years.

In A.Y 2009-10, the case of the assessee was reopened noting that neither did the assessee have registration u/s 12AA for the impugned year, nor had it filed return of income ,though it had received income of Rs.357.73 crores during the year. The AO after giving due opportunity of hearing to the assessee calculated income liable to tax during the year by treating the interest income earned and the IDC receipts as its income and deducting therefrom the expenses as per the Income & Expenditure account of the assessee. The AO did not allow the assessee the benefit of expenditure

incurred on capital account in various projects ,holding that they were capital in nature and since the assessee was not eligible for exemption u/s 11 of the Act, held the same not allowable .Accordingly, the AO calculated the taxable income of the assessee for A.Y 2009-10 at Rs. 410.11 crores.

4. The matter was carried in appeal in all the years before the ld. CIT(A) where in A.Y 2009-10 & 2014-15,besides challenging the order of the AO on other grounds, the assessee raised a ground claiming that the money received on account of IDC belonged to the State Government and that the assessee was only Nodal Agency of the Government with regard to the same, having no control over expending the same also and therefore, the same was not in the character of income of the assessee. The ld. CIT(A) after considering the submissions of the assessee at length, rejected all the grounds raised and upheld the order of the AO in all the years. On the issue of the fund/IDC receipts belonging to the state government, Ld.CIT(A) held that the background leading to the formation of the fund, the provisions of the HUDR Act,1975 by which it was formed , coupled with the conduct of the assessee while seeking registration u/s 12A of the Act wherein it claimed itself to be a separate entity, belied assesses claim that it was not distinct and separate from the State.

Aggrieved by the same the assessee has now come in appeal before us. The Ld. Counsel for the assessee contended that the primary and foremost issue raised for adjudication in all the appeals, is regarding the taxability of IDC receipts in the hands of the assessee fund.Ld.Counsel for the assessee stated that while the facts relevant for the issue were identical in

A.Y 2009-10 & 2013-14, with the Fund being administered by a High Powered committee,in A.Y 2014-15 the facts were different with a Board being created for the administration of the Fund.

We shall therefore deal first with the appeal pertaining to A.Y 2009-10 & 2013 -14 .

5. The Grounds raised by the assessee in A.Y 2009-10 & 2013-14 are as under:

ITA No.644/Chd/18 A.Y 2009-10

1. That the Ld. CIT(A) has erred in upholding the validity of the notice dated 29.03.2016 issued u/s 148 and consequently the assessment order passed u/s 147 r.w.s 143(3) which is void authorities below-initio and needs to be quashed.

2. That the Ld. CIT(A) has erred in law and facts of the case in upholding IDC receipts as normal trading receipts ignoring that the money belongs to state government and thus upholding addition of Rs. 357.72 Crores which is highly unjustified and uncalled for.

3. That the Ld. CIT(A) has erred in law and facts of the case in not allowing expenditure of Rs. 75.30 Crores incurred during the year on Infrastructure Development Projects which is highly unjustified and uncalled for.

4. That the Ld. CIT(A) has erred in law and facts of the case in upholding addition of Rs. 52.38 Crores on account of interest income from FDR's which is highly unjustified and uncalled for.

5. That the appellant craves the leave to add, amend or modify any ground of appeal on or before the disposal of the same."

ITA No.528/Chd/17 A.Y 2013-14

"1. That the Ld. CIT(A) has erred in law and facts of the case in upholding the disallowance of accumulation of income claimed under section 11(2) of the I.T. Act which is highly unjustified and uncalled for.

2. A) That the ld. CIT(A) has erred in law and facts of the case in upholding the non acceptance of Form No. 10 submitted during the course

of assessment proceedings and thereby upholding addition of Rs. 245,31,77,050/- which is highly unjustified and uncalled for.

B) That the appellant disputes the quantum of addition made.

3. That the appellant craves leave to add, amend or modify and ground of appeal on or before the disposal of the appeal."

The assessee has further raised additional ground in A.Y 2013-14 as under:-

"1. That the Ld. AO has erred in not correctly appreciating the facts and wrongly treating IDC receipts amounting to Rs. 482.61 crores as income of the appellant ignoring that the money belongs to state government which is highly unjustified and uncalled for.

2. That the Ld. AO has erred in not correctly appreciating the facts and wrongly treating Rs. 146.61 Crores on account of interest income from FDR's income of the assessee which is highly unjustified and uncalled for."

6. Ld. Counsel for the assessee first took up the issue of addition made of IDC receipts raised in Ground No.2 of ITA No.644/Chd/18 for A.Y 2009-10 and in Ground No.1 of the additional Grounds raised in ITA No.528/Chd/17 for A.Y 2013-14.The primary thrust of the argument made by the Ld.Counsel for the assessee against the said addition was that since the Fund belonged to the State, the IDC receipts were not taxable. Ld. Counsel, in this regard, referred to the background leading to the creation of the fund ,the levy of IDC charges, and the constitution of a high powered committee for its administration ,all effected by way of amendments to the Haryana Development & Regulation of Urban Areas Act,1975(HDRUA Act). Referring to the same, the Ld. Counsel emphasized that all the above pointed to the fact that the fund belonged to the State. He contended that it

was evident from the same that the IDC was charged by the State Government, pooled in a dedicated Fund and administered by a High Powered Committee comprising of the Chief Minister and Secretaries of various departments relevant for infrastructure development including the Finance Secretary, so as to enable efficient utilization of the amount for the stated purpose of infrastructure development in the State, which otherwise was difficult to be done out of State Budget. He contended that the Fund vested in the State Government. The brief synopsis of the arguments of the Ld.Counsel for the assessee ,made in writing before us is as under:

" **Issue:-**

Whether the Fund belongs to the State Government or not.

Submissions;-

Levy and Deposition of IDC

- In the year 1997, it was first proposed to recover a part of the cost i.e. charges incurred by the State Government directly & indirectly on the infrastructural development of the Urban estates in respect of areas under jurisdiction of HUDA
- Since the colonizers were not paying theses IDC, the proposal was submitted to charge theses IDC from colonizers also at par with HUDA.
- Prior to the proposal to recover IDC Charges, Section 3A(1) of the Haryana Development & Regulation of Urban Areas Act, 1975 provided for levy of service charges from the colonizers to whom the license has been granted under the Act No. 8 of 1975. Section 3A(6) of the Act, ibid provided for creation of Haryana Urban Development Fund for its utilization by the State Government for the benefit of the Urban Development and for creation & improvement of infrastructure in the State of Haryana. The service charges collected were to be deposited in this fund. However no separate head for this fund was created. The Government vide order dated 14.10.2004 appointed the Director, Town & Country Planning Department to administer the fund. Thus in the absence of the separate head for this fund, the entire amount was being deposited in State Exchequer (State Treasury) by the Director, Town & Country Planning Department.
- On 27th March 2006, the Government approved the levy of these IDC on the colonizers at par with the rates being paid by HUDA to the State Government.

- During the deliberations of creation of IDF, the department submitted the proposal for amendment in the statutory Act i.e. Act No. 8 of 1975 and following proposal in Section 3A was submitted to the Government for its concurrence:- (PB Page 28-30)

Existing Provisions	*Proposed Provisions*
(6) The amount of service charges so deposited by the colonizer shall constitute a fund called the Haryana Urban Development Fund (hereinafter referred as the Fund) which shall vest in the State Government.	*The amount of service charges and Infrastructure Development Charges so deposited by the colonizers shall constitute a fund called the Haryana Infrastructure Development Fund (hereinafter referred to as the Fund) which shall vest in the State Government.*

- It was proposed to amend the Act through Ordinance. It was also proposed that the fund will continue to be administered through the Department of Town and Country Planning, Haryana. For this reference be made PB Page 38. Kind attention is invited towards recommendations of the Committee which are placed at Paper Book Page 41. On perusal of the same it can be seen that the dedicated fund was to be created by the Government for carrying out major infrastructural developments. The important aspect to be noted is that the Fund to be created is to vest in the State Government.
- The aforesaid proposal was approved by the Government on 05.10.2006 to be placed before the Council of Ministers Meeting. The recommendations of the Finance Department, Haryana was sought for creation of Fund. The Finance Department approved the proposal as such with an advice that the model of HRDF (Haryana Rural Development Fund) should be followed for the proposed fund after incorporating the necessary Legislation in respect of creation and administration of the fund in consultation with LR Haryana (Legislative Remembrancer) and A. G's Office (Advocate General, Haryana). The approval from Finance Department is placed at Paper Book Page 51-52.
- After the approval from Finance Department, the matter was placed before the Council of Ministers. The Council of Ministers directed for constitution of High Powered Committee by the State Government to monitor the fund. The Council of Ministers further stated that the Legal Remembrancer may also advice for requirement of any other further provision in Act to follow the HRDF (Haryana Rural Development Fund) model.
- The advice note from the Legal Remembrancer is placed at Paper Book Page 57. On perusal of the same it can be seen that the draft Ordinance has been prepared in accordance with the decision of the Council of Ministers taken in the meeting dated 30.10.2006. In the note no further requirement or amendment with regard to HRDF (Haryana Rural Development Fund) model has been suggested by Legal Remembrancer, Haryana.
- Thereafter Governor of Haryana promulgated an Ordinance for amending the Haryana Development & Regulation of Urban Areas Act, 1975 on

23.11.2006 to create a Fund to be called as "the Fund for Development of Major Infrastructure Projects" in the State of Haryana as a result of which the assessee fund i.e. Infrastructure Development Fund was created.

- On perusal of the notification it can be seen that the fund has been created by the State Government and the amounts credited therein are to be utilized only for the development of major infrastructure projects.
- As per Section 3A (7) of Act No. 8 of 1975, all the monies credited/to be utilized are to be administered by the High Powered Committee constituted by the State Government.
- After Governor of Haryana promulgated an Ordinance, a bank account was required to be opened in the name of the fund to enable the deposit of infrastructural development charges. A proposal was made requesting grant of concurrence from Finance Department for opening a separate account. The copy of said note is placed at Paper Book Page 61-62.
- The said proposal for opening the bank account was approved by the Finance Department on 21.12.2006. The copy is placed at Paper Book Page 63.
- Thereafter on 26.04.2007, the Finance Department advised to Administrative Department i.e. Town and Country Planning Department to create a statutory Board for administration of fund. The copy of the letter of Finance Deptt. is at placed at Paper Book Page 64.
- The High Powered Committee was constituted vide notification dated 12.07.2007 in pursuance to sub section (7) of Section 3A(Paper Book Page No. 82.)

The above facts clearly show that the no separate Board/Authority was created but a separate fund was created which was to vest in State Government and was to be monitored by High Powered Committee.

COMPARISON WITH PROVISIONS OF HARYANA RURAL DEVELOPMENT ACT

- The provisions of Haryana Rural Development Act 1986 are placed at Paper Book Page No. 73-81). Please refer to Section 2(b), 2(d), 3(3), 3(4) & 6(1).
- On perusal of the above it can be seen that as per Section 3(1) the HRDA , the State Govt. for exercising powers conferred on and performing the functions and duties assigned has established and constituted the Haryana Rural Development Fund Administration Board. The Board has been constituted as a body corporate having perpetual succession and a common seal and as per Section 6(1) the fund so constituted is vesting with the Board.
- However, in the present case, no Board was constituted. The Board was constituted only on 05.04.2013 by amending the Haryana Development and Regulation of Urban Areas Act, 1975. However the fund continued to be monitored by High Powered Committee of the State Government and the fund vests with the State Government. There is no provision in the Act

with regards to the identity of the fund & the fund is not having perpetual succession or common seal. The fund is only a separate bank account of the State Government.

- From the above, it becomes clear that the amount has been charged by the State Govt. and it is always remained vested in the State Govt. Fund has been created solely with the object of having separate and dedicated account to meet the expenditure on Infrastructure Development to remove the problems being faced by the State Govt. for making provisions out of the normal State Budget. There is statutory provision in the Act. That is why the fund was being monitored by High power Committee instead of Finance Department wherein Finance Secretary is a member. Thus the fund is not out of control of Finance Department but was put under control of High Powered Committee by the State Govt. Earlier the amount was being deposited in the State Treasury. Though amendment has been made in Section 3A (6) in the year 2010 but it has clearly been written that the amount of Infrastructure fund charges shall vest in the State Govt. which clearly proves that the amount always remained the property of the State Govt. of Haryana. This fact is further proved from the notification dated 01.03.2013 wherein Section 3(A)(7) has been amended. The relevant extract is as under:-

> *"The Fund shall be collected and managed by the Director and passed on for the purpose of its' further utilization to the Board to be constituted by the Government for this purpose".*

- Till 05.04.2013, there was no provision in the Act to constitute Board. The State Government vide notification dated 05th April 2013 had amended Section 3AA of Haryana Development & Regulation of Urban Areas Act 1975 and by virtue of which the High Powered Committee was replaced by Haryana Infrastructure Development Board to monitor only the utilization of fund but has no control on the receipts of IDC. The copies of relevant amendment in the Act No. 8 of 1975 and its objects are enclosed at Paper Book Page 65-72
- From the amendment in Section 3A(7) made in 2013, it becomes clear that prior to the amendment, the said Fund vested with the State Govt. and was administered by a High Powered Committee constituted by the State Government for the purpose.
- Even after the amendment in 2013, the collection of the amount is still with the Director Town & Country Planning and the fund has to be passed on for the purpose of utilization to the Board which has been created in 2013. The above fact clearly proves that the fund is nothing but a separate bank account of the State Govt.

The above facts make it clear that the entire money received by IDC belongs to the Govt. and as such cannot be treated as income of "Infrastructure Development Fund". For this, reliance is being placed on the following judgments:-

- CIT Vs. Karnataka Urban infrastructure Development & Finance Corp. 284 ITR 582 (Ker.) (P. B. Page 7 of Ist Paper Book.
- Saharanpur Development Authority Vs. ACIT 8 TR (Trib.) 263 Del.(Ist PB Page 12)
- CIT Vs. DTTDC 119 Taxman 26 (Del. H.C.) and other judgments on Ist PB Page 7-9

The aforesaid submissions prove that the amount received belongs to the government. To substantiate further reference is drawn to the following fact:- (Refer Page 15of CIT(A)'s order)

"The assessee had applied for grant of registration u/s. 12-A in Form 10-A on 30.03.2007. After considering the details given in the application and the statement made before CIT (A), the grant of registration was denied to the assessee vide order dt. 11.10.2007. The main reason for denying was that the Commissioner was of the opinion that the "assessee fund is not Artificial Judiciary Person".

In view of the above we request the Honorable bench to adjudicate that whether the fund belongs to government or not and whether the assessee is an artificial judicial person or not.

ISSUE

Interest on FDR's

SUBMISSIONS

- The amounts lying in the fund which remained unutilized were deposited in the bank in the form of FDR's on which interest was earned during the year. The interest amount earned also has to be utilized for the purpose of major development projects to be undertaken in the State of Haryana.
- The interest of FDR's is not income taxable in the hands of the assessee as the interest also belongs to the state government and has to be utilized only as per the directions of the high powered committee of state government on the major infrastructure development projects in the state of Haryana.
- Since the assessee has no control over the funds and is maintaining the amounts only as trustee of the state government, the AO has erred in treating the interest as income of the assessee.
- Reliance is placed in the case of
    - Saharanpur Development Authority vs. Assistant Commissioner of Income Tax 8 ITR 0263 (Del) Tri.
    - CIT(A) vs Delhi State Industrial Development 295 ITR 0419 Del HC
    - Commissioner of Income Tax & Anr. Vs. Karnataka Urban Infrastructure Development & Finance Corporation 284 ITR 0582

ISSUE (in AY 2009-10 only)

Not allowing expenditure of Rs. 75.30 crores

SUBMISSION

- The assessee fund has been created by the state government under the Haryana Development & Regulations of Urban Area Act, 1975 for development of major infrastructure projects for the benefit of the State of Haryana.
- During the year Rs. 75.30 crores has been incurred on the directions & approval of the state government. The amount of Rs. 71 crores has been incurred for Delhi Metro & Rs. 2.5 crores for construction of bridge over Tanguri Nadi.
- The expenditure has been incurred for the purpose for which the fund has been created. The genuineness of the expenditure is not in doubt and the same has been expressly accepted by the AO in the assessment order itself.
- The expenditure incurred has not been allowed only because of the fact that the receipt from IDC have not been taken in income & expenditure account. Once the AO has held that the receipts are taxable, in that case the expenditure incurred should have been allowed.
- In view of the above we submit that the AO has erred in not allowing the expenditure incurred during the year of Rs. 75.30 crores irrespective of the fact that whether the same has been incurred out of the accumulated funds/ funds received during the year or interest income earned during the year.
- The expenditure incurred has to be allowed as the same has been incurred for the purposes for which the fund has been created irrespective of the fact that whether the receipts from IDC are taken as capital receipts or revenue receipts."

7. The Ld.DR on the other hand contended that the inference that was drawn from the facts leading to the creation of the fund above was that the fund was a separate entity from the state. The Ld.DR ,pointed out that the conduct of the assessee fund while applying for registration u/s 12A of the Act as a charitable society, stating that the members of the High powered Committee were the Founders/Authors of the Trust and had complete control over its functioning, cemented the Revenues version. He further pointed out that as per the assesses own admission it was a separate entity having filed Income tax returns since 2009-10 and complied with other provisions of the Act also of getting its accounts audited and filing audited

accounts to the department. He heavily relied on the findings of the Ld.CIT(A) in this regard.

Brief synopsis of the arguments of the Revenue before us submitted in writing are as under:-

> "SYNOPSIS OF DEPARTMENT'S ARGUMENTS IN THE CASE OF M/S INFRASTRUCTURE DEVELOPMENT FUND CHANDIGARH ITA NO 528/Chandi/2017 & 644,645/Chandi/2018 for A.Y.s 2009-10. 2013-14 & 2014-15.
>
> REF: DEPARTMENT PAPER BOOK OF 23 PAGES SUBMITTED TO HON'BLE BENCH ON 27/8/2019 (DPB)
>
> : CASE LAW COMPILATION SUBMITTED TO HOIM'BLE BENCH ON 24/4/2019 (CLC)
>
> : ORAL AGUMENTS IN THE COURSE OF HEARING.
>
> Issue 1: Validity of Notice u/s 148 of I.T Act dtd 29.3.2016 (Ground Nol of ITA 644 for A.Y 2009-10)
>
> This ground was not taken before the A.O. The CIT(A) has discussed this issue at para 8 page 5-6 of order and his finding is at para 8.4 on pg 6. Further the copies of the approval granted by CIT(E) and proof of receipt of approval by the A.O on 29.3.2016 (stamp of receipt in A.O's office) are at pages 1-4 of DPB showing that there was no irregularity in issuance of notice u/s 148 on 29.3.2016.
>
> Issue 2: The Infrastructure Development Charges(IDR) claimed by the assessee as Capital receipts have been held by A.O and confirmed by CIT(A) to be revenue receipts to be added to income of assessee. (Ground 2 of AY 2009-10 and Ground 1 of A.Y 2014-15)
>
> The basic argument of the assessee is twofold. Firstly , that it is not a trust but instead a nodal agency and hence not liable to be assessed to income-tax. Secondly, that IDC is not income of the assessee and is held on behalf of the state govt and hence is shown as a capital receipt in the balance sheet and not in Income and expenditure account.
>
> The arguments of the Department are outlined as under:
>
> 1. Reliance is placed on the order of CIT(A) A.Y 2009-10 dt 28.2.2018 para 9 from pages 6 to 25 where the issue is discussed in detail. Following aspects are highlighted.

a.) Background leading up to the creation of the fund (para 9.4.1 pg 12-14 of CIT(A) order), which shows that the fund was created under Haryana Development and Regulation of Urban Act 1957 for purpose of carrying out development and infrastructure projects in Haryana. It was especially created to be a distinct entity administered and controlled by High Powered Committee who by the assessee's own admission (Form 10A of assessee application for 12A) were the founders/ authors of the Trust. Reliance is placed on the Notification dated 24.11.2006 for creation of Infrastructure Development Fund (IDF) (page 14-15 of DPB). Thus IDF was by no means just a bank account for receipt of IDC's but a specific and separate entity with a definite purpose.

b) The conduct of the assessee and facts leading to Registration u/s 12A on 2.9.2010. (para 9.4.2, to 9.4.5 pages 14-17 of CIT(A) order)

First it applied for registration u/s 12A vide application 30.3.2007 which was rejected by the CIT(E) vide order dt 11.10.2007 (DPB pages 18-23) for the reason that the assessee fund was not an artificial juridical person. Then it applied again for 12A registration on 19.2.2010 and argued vehemently before the CIT Panchkula that it was a distinct, separate and autonomous body managed by its Chairman, Vice Chairman, Member secretary and Members who had complete power and control over its functioning and hence eligible for 12A registration. Utmost reliance is placed on the Note Sheet signed by Jaswant Singh DTP(HQ) dt. 29.11.2006 (pg 16-17 of DPB) where it is stated that *"Since this fund is to be created on the lines of HRDF, hence will operate outside the normal financial procedures i.e no concurrence of the Finance Department as such will be required for incurring the expenditure from this Fund".* Also 1% of IDC were allowed to be used for purpose of administration of the IDF which further goes to show that it was created as an autonomous body and not as a nodal agency or extension of the State Government.

c) compliance by assessee with provisions of the I.T Act i.e getting accounts audited and submission of audit report, filing of ITR's for AY 2009-10 onwards, etc which shows its own belief that it was liable to tax under the I.T Act as separate legal entity. (Para 9.4.6 page 18 of CIT(A).

d) With regard to the nature of IDC, the department's stand is that it is a revenue receipt and is part of the total income of the assessee. This is supported by the fact that the assessee in its audited accounts for year ending 31.3.2008 and year ending 31.3.2009 submitted for purposes of 12A application before CIT Panchkula has also shown the "service charges"(nomenclature later changed to IDC) as income in the Income and Expenditure Account (DPB pages 6-13). The underlying argument of the assessee before the I.T authorities is that since it is a nodal agency, there is diversion of income at the source since the money is being held on behalf of the state govt. The assessee in its has cited a

number of judgements which have been discussed and countered by the CIT(A) at para 9.4.7 pg 18 to para 9.4.8 page 25 of his order for A.Y 2009-10 and has finally held at para 9.4.9 pg 25 that the IDC are the income of the assessee. The CIT(A) has also countered the claim of the assessee that it is only in receipt of 1% of the IDC and not the balance, at para 9.4.5 page 17 of his order.

e) In addition to the discussion in order of CIT(A), a compilation of cases laws relied upon by the department has also been submitted on 24/4/2019 which support the department's stand on this issue. Judgements at Sr No 1,2,3,4,13,and 14 of the compilation discuss the Doctrine of Diversion of Income at source and are clearly applicable to the facts of the present case. The relevant portions of the judgements have been highlighted and flagged for ready reference.

Issue 3: Non allowance of expenditure incurred on the Infrastructure Development projects((Ground 3 of AY 2009-10)

Reliance is place on the discussion and findings at para 10 pages 25 to 27 of CIT(A) order for AY 2009-10.

Issue 4: Interest income from FDR's made out of the IDC receipts treated as income by A.O and upheld by CIT(A) (Ground 4 of AY 2009-10 and Ground 2 of A.Y 2014-15)

This is consequential to the main Issue 2 discussed in detail above and the stand of the department is that since the IDC is the income of the assessee, it follows that the interest on FD's made out of IDC receipts is also a revenue receipt and hence income of the assessee. Reliance is placed on the CIT(A) order for AY 2009-10 at para 11 pages 27 to 29. Furthermore, reliance is also placed on the the judgement at Sr No 12 of the Case law compilation which is applicable to the facts of the present case.."

8. We have heard the rival contentions carefully,gone through the orders of the authorities below and also the various documents and case laws referred before us.

9. The issue to be adjudicated is regarding taxability of Infrastructure Development Charges,(IDC)receipts in the hands of the assessee Fund. The contention of the Ld.Counsel for the assessee is that the Fund was just a bank account of the State Government and was not a separate legal entity. That the fund belonged entirely to the state government and therefore there

arose no question of taxing the IDC receipts in the hands of the Fund.That at best the Fund was a nodal agency of the State , the IDC receipts constituting the Fund, being collected and utilized on behalf of and on the direction of the State, and therefore the IDC receipts could not be treated as Revenue receipts in the hands of the assessee Fund by the concept of diversion of income by overriding title. Revenue on the other hand , has argued that the assessee Fund is a separate entity from the State and has, besides relying on the statutory provisions creating it, also relied heavily on the assesses admission of the said fact while seeking registration as a charitable trust u/s 12A of the Act,and complying with the provisions of the Income Tax Act by getting its accounts audited under it and filing income tax returns since A.Y 2009-10 projecting itself as a separate entity. The Revenue has also contended that there was no diversion of income by overriding title vis a vis IDC receipts as claimed by the assessee and relied on various case laws in support of its contention.

Both the parties have relied on the background facts and statutory provisions leading to the creation of the assessee fund, under the Haryana Development and Regulation of Urban Areas Act,1975,(HDRUA Act) to buttress their arguments and which in our view are determinative factors for adjudicating whether the assessee fund belonged to the state or not.

10. We have gone through the relevant statutory provisions creating the Fund and facts relating to its functioning and what emerges is that the Fund merely represents money, belonging to the State, pooled for specific

user purposes of infrastructure development in the state. The Fund belongs entirely to the State and has no distinct or separate identity of its own.

The relevant provision creating the Fund is section 3A of the Haryana Development and Regulation of Urban Areas Act,1975,which reads as under:

> 3A. Establishment of Fund— (1) Any colonizer to whom a license has been given under this Act shall deposit as {infrastructure development charges}a sum, {at such rate as may be prescribed by the Government from time to time, per square metres of the gross area and of the covered area of all the floors in case of flats proposed to be developed by him into a colony} in two equal installments. The first installment shall be deposited within 60 days from the date of grant of the license and the second installment to be deposited within six months from the date of grant of license.
>
> (2) The Haryana Urban Development Authority {local authorities, firms, undertakings of Government and other authorities involved in land development} shall also be liable to deposit the {infrastructure development charges} and shall be deemed to be {colonizers}for this purpose only. The date of first inviting applications for sale of plots in any colony by it shall be deemed to be the date of granting of license under this Act for the purpose of deposit of {infrastructure development charges}.
>
> (3) The {infrastructure development charges}shall be deposited by the colonizer with such officer or person as may be appointed by the government in this behalf.
>
> (4) The colonizer shall in turn be entitled to pass on the {infrastructure development charges} paid by him to the plot holder.
>
> (5) The amount of {infrastructure development charges} if not paid within the prescribed period shall be recoverable as arrears of land revenue.
>
> (6) The amount of infrastructure development charges so deposited by the colonizer shall constitute a fund called the Fund, for stimulating socio-economic growth and development of major infrastructure projects for the benefit of the State of Haryana (hereinafter referred to as the Fund)].
>
> (7) The Fund shall be administered by a High Powered Committee as may be constituted by the Government for this purpose.]
>
> (8) The amount of infrastructure development charges {and infrastructure augmentation charges} deposited by the colonizers, loans and grants from the Central/State Government or the local authority, or loans and grant from national/international financial institutions and any other money from such source as the state Government may decided, shall be credited to the fund.
>
> [(9) The Fund shall be utilized for stimulating socio-economic growth and development of major infrastructure projects for the benefit of the state of Haryana. The Fund may also be utilized to meet the cost of administering the Fund.]}

11. A bare reading of the section clearly shows that the Fund was constituted under the HDRUA Act,1975, of the State Government , from the Infrastructure Development charges [sub section (6)] , which were levied by the State [sub section (1)] and collected by the State [sub section(3)] , for development of major infrastructure projects for the benefit of the state [sub section (6)]. The administration of the Fund vested in a high powered committee, the notification relating to which is reproduced hereunder :

HARYANA GOVERNMENT
TOWN AND COUNTRY PLANNING DEPARTMENT
Notification
The 12th July 2007

No. DS.2007/17807 – In pursuance of the provisions of Sub-section (7) of Section 3A of the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), the Governor of Haryana hereby constitutes High Powered Committee consisting of following members for the administration of Fund for the development of major infrastructure projects in the State of Haryana namely :-

1.	*Chief Minister, Haryana*	*Chairman*
2.	*Chief Secretary, Haryana*	*Vice Chairman*
3.	*Financial Commissioner and Principle Secretary to Government Haryana, Finance Department*	*Member*
4.	*Financial Commissioner and Principal Secretary to Government Haryana, Irrigation Department*	*Member*
5.	*Financial Commissioner and Principal Secretary to Government Haryana, Power Department*	*Member*
6.	*Financial Commissioner and Principal Secretary to Government Haryana, Public works, Building Roads Department*	*Member*
7.	*Financial Commissioner and Principal Secretary to Government of Haryana, Transport Department*	*Member*
8.	*Commissioner and Secretary to Government Haryana, Town and Country Planning Department*	*Member*
9.	*Director, Town and Country Planning Department Haryana*	*Member Secretary*

D.S. DHESI
Commissioner and Secretary to,Government Haryana

Town and Country Planning Department

As is evident from the above, the high powered committee was headed by the Chief Minister and comprised of Secretaries of various departments relevant for infrastructure development including the Finance Secretary. The committee therefore was merely representative of the State,being constituted as a platform where all the concerned department heads of the State for infrastructure development, were brought together so as to speed up the implementation/execution of infrastructure projects, which was the objective for which the Fund was created (sub section 6),i.e stimulation of socio economic growth and development of major infrastructure projects in the state. The Ld.Counsel for the assessee has also filed before us copies of documents being inter government department communication and minutes of the meeting of the High powered committee at P.B 30-115.On going through the same we find that the documents bring out the fact that the assessee Fund merely contributed to infrastructure projects in the state approved by the government and on direction of the government. The documents filed before us relate to funds utilized for projects relating to construction of Bridge over Tangri Nadi Crossing Jagadhri Ambala Road, extension of Delhi metro to gurgaon,Renuka Dam project and development of international civil air terminal at Chandigarh ,to name a few.The decision for undertaking all these projects were taken by the Government which is evident from the minutes of the meeting held under the chairmanship of the Finance commissioner and Principal Secretary to Govt. of Haryana regarding cost(P.B 33) and his note seeking approval of the Chief Minister for release of funds from IDC for the Bridge

project,(P.B 30), the letter addressed to the Senior Town planner ,Chandigarh,by the Chief Cordinator Planner(NCR) requesting release of funds from IDC for Delhi Metro Gurgaon project as approved in the meeting held under the chairmanship of FC Finance Department (P.B 34) and such other documents relating to other projects. Thus the Fund had no role in the development of infrastructure projects except being a depository of IDC charges collected by the state for the said purpose ,to be utilized as determined by the State.

What emerges from the from the above therefore is that the assessee fund merely represented money set apart/pooled by the government so as to facilitate its user for a specific purpose of infrastructure development in the state, all control over its collection and user remaining with the state .We therefore hold that the fund entirely vested in the State and no separate entity,distinct from the state had been created by virtue of the creation of the fund.

12. The argument of the Revenue that the formation of a high powered committee for administration of the Fund sufficiently established that an entity distinct from the State has been created,in our view holds no ground. The constituents who make up the committee coupled with the fact of exercise of power by the committee whether in its own right and distinct from the State would be essential factors determining whether an entity distinct and separate from the State had been created on the formation of the committee. In the facts of the present case as stated above, the committee comprised of the Chief Minister of the state ,who headed it, and

heads of government departments concerned with implementation of infrastructure projects. The constituents of the committee represented the State. This committee was empowered to administer the Fund as per the HDRUA Act,1975. The documents filed before us show that the expenditure out of the Fund was incurred only with the directions and approval of State Government. Reading it all together,the committee represented the State carrying out the activities relating to utilization of the Fund. The contention of the Revenue therefore that the formation of a High Powered Committee to administer the Fund showed that the Fund was a separate entity from the State, is rejected

We also do not find any merit in the argument of the Revenue that the assessee itself having admitted being a distinct and separate entity from the state ,while applying for grant of registration u/s 12A of the Act and filing income tax returns,it cannot now take a contrary stand. Undoubtedly the aforesaid admission of the assessee related to an interpretation of facts and did not relate to admitting a fact . Merely because the assessee had interpreted the facts relating to its creation and administration as demonstrating itself to be an entity distinct and separate from the state, while seeking registration u/s 12A of the Act, does not estop the assessee from taking a contradictory stand , which is in accordance with law,in any other proceeding. After all the purpose of the entire exercise of assessment proceedings, including appellate proceedings, is to determine the taxable income as per correct interpretation of law applied to the facts of each case. We therefore do not find any merit in the contention of the Revenue

that the assessee having itself admitted to being an entity separate and distinct from the state in proceedings u/s 12A of the Act cannot now take a contradictory stand, and dismiss the same. At the same time we hold that considering our findings as above that the assessee Fund was not an artificial juridicial person ,the Revenue is free to take all necessary action as a consequence ,within the framework of law.

Also merely because the assessee fund no longer requires approval of the Finance Department of the state while utilizing the funds , does not in our view alter or impinge upon its character as held by us as being money of the state kept aside for specific purpose.The presence of the Revenue Secretary in the high powered committee takes care of the requirement of obtaining approval of the Finance Department for utilization of funds.

In view of the above we hold that Upto A.Y 2013-14,the Fund belonged to the State and was not liable to tax.The addition made of the IDC receipts and interest on FDRs in A.Y 2009-10 and A.Y 2013-14 are therefore directed to be deleted. Ground No 2 & 4 raised in ITA No. 644/chd/18 & the additional grounds No.1 & 2 in ITA No.528/Chd/17, are accordingly allowed.

Taking up the remaining grounds in ITA No. 644/chd/18,for A.Y 2009-10, Ground No .1 , challenging the validity of the assessment framed u/s 147 of the Act, has not been pressed before us and the same is therefore treated as dismissed.

Ground No.3 relating to allowance of expenditure against the IDC receipts is rendered infructuous in view of our findings treating the Fund as belonging to the State and the IDC receipts therefore not being taxable. In effect therefore the appeal of the assessee for A.Y 2009-10 in ITA No. 644/chd/18 is partly allowed.

Taking up now the remaining grounds of ITA No. 528/chd/17 ,pertaining to A.Y 2013-14,Ground No . 1 & 2 ,relating to disallowance of accumulation of income u/s 11(2) of the Act and non acceptance of Form 10 disclosing income accumulated for future use for charitable purposes, is rendered infructuous in view of our findings treating the Fund as belonging to the State. The additional grounds having been allowed as above,in effect therefore the appeal of the assessee for A.Y 2013-14 in ITA No. 528/chd/17 is partly allowed.

We shall now take up the appeal for A.Y 2014-15 wherein the grounds raised are as under:

ITA No. 645/Chd/18 A.Y 2014-15

"1. That the Ld. CIT(A) has erred in law and facts of the case in upholding IDC & IAC receipts amounting to Rs. 596.70 crores as income of the appellant ignoring that the appellant is entitled to only 1% of the receipts and the balance money belongs to state government which is highly unjustified and uncalled for.

2. That the ld. CIT(A) has erred in law and facts of the case in upholding interest income from FDR's amounting to Rs. 163.21 Crores as income of the appellant which is highly unjustified and uncalled for.

3. That under the facts and circumstances of the case, the CIT(A) has erred in not allowing the accumulation u/s 11(2) of the Income Tax Act which is highly unjustified & uncalled for.

4. That the appellant craves the leave to add, amend or modify any ground of appeal on or before the disposal of the same."

13. Taking up first the issue of taxability of IDC& IAC receipts and interest on FDR's created therefrom in the hands of the assessee raised in Ground No. 1 & 2 respectively,,the arguments ,it was common ground between both the parties was identical as in earlier years appeal dealt with us above, with the assessee contending that the fund belonged to the state while the Revenue contending that it was a distinct and separate entity.

In the impugned year,we find that the facts differ with the earlier years since, by virtue of a notification dated 05-04-13, amendments were made to the HDRUA Act,1975,vesting the Fund to a Board.This Board ,we have noted from the amendments made,was created as an entity distinct and separate from the State. This is evident from section 3AA of the HDRUA Act stating in clear terms the constitution of the Board on its incorporation as a body corporate having perpetual succession and common seal and power to acquire,hold and dispose off property and to contract and sue or be sued in its own name.Even the constitution of the Board, provided for in the said section, reflected that it was distinct from the State, by clearly showing that not all members were to be representative of the State and some members could be nominated by the State Government . The relevant provisions of the HDRUA Act stating so are reproduced hereunder for clarity:

Section 3A

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(7) The Fund shall be collected and managed by the Director and passed on for the purpose of its further utilisation to the Board to be constituted by the Government for this purpose.

.
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.

3AA. Establishment and constitution of Board.—(1) The State Government shall, by notification in the Official Gazette, establish a Board consisting of the following members, namely:-

(i) The Chief Minister of Haryana. Chairman
(ii) The Chief Secretary to Government of Haryana Vice-Chairman
(iii) The Principal Secretary to Government of Haryana, Member Finance Department
(iv) The Principal Secretary to Government of Haryana, Member Irrigation Department
(v) The Principal Secretary to Government of Haryana, Member Power Department
(vi) The Principal Secretary to Government of Haryana, Member PWD (B&R) Department
(vii) The Principal Secretary to Government of Haryana, Member Town & Country Planning Department
(viii) The Principal Secretary to Government of Haryana, Member Transport Department
(ix) The Director General, Town & Country Planning Member Department, Haryana.
(x) The Chief Administrator, Haryana Infrastructure Member Secretary Development Board
(xi) Any other person(s) to be nominated by the Government Special Invitee

(2) The Board shall have perpetual succession and a common seal with power to acquire, hold and dispose off property and to contract, and may by the said name sue or be sued.

The Board being separate and distinct from the State is further established by the provisions of section 4 of the HDRUA Act ,enabling and empowering the Board to possess its own property & assets , have its own fund augmented by borrowing money ,enter into contracts and undertake various activities on its own account. The relevant provision are as under:

(4) In order to carry out its functions consistent with the provisions of this Act, the Board shall have the powers to do all or any of the following, namely:-

(i) acquire, hold, develop or construct such property, both movable and immovable, as the Board may deem necessary for the performance of any of its activities related to the development of infrastructure sectors or infrastructure projects;

(ii) advise or recommend to the Government acquisition of land under the Land Acquisition Act, 1894 for the purposes of infrastructure projects;

(iii) lease, sell, exchange, or otherwise make allotments of the property referred to in clause (i) to concessionaire and to modify or rescind allotments, including the right and

power to evict the allottees concerned on breach of any of the terms or conditions of such allotment;

(iv) borrow and raise money in such manner as the Board may think fit and to secure the repayment of any money borrowed, raised or owing by mortgage, charge, standard security, lien or other security upon the whole or any part of the Board's property or assets (whether present or future), and also by a similar mortgage, charge, standard security, lien or security to secure and guarantee the performance by the Board of any obligation or liability, it may have undertaken or which may become binding on it;

(v) constitute a professional multi-disciplinary Project Management Team and one or more Advisory Committee or Committees or Sectoral Sub-Committee or Project Implementation Sub-Committee, or engage suitable service providers or advisors or consultants to advise the Board for the efficient discharge of its functions;

(vi) enter into and perform all such contracts as it may think necessary or expedient for performing any of its functions; and

(vii) do such other things and perform such other acts as it may think necessary or expedient for the proper conduct of its functions and for carrying into effect the purposes of creation of the Board, as contained in this Act.

What conclusively emerges from the above is that the Board was a distinct and separate entity from the State and its income and property could not be regarded as that of the State Government.

14. Having said so ,the question now arises whether the Board was merely a nodal agency of the State ,in which circumstance the receipts in the Fund of IDC charges would not be Revenue receipts of the Fund/Board.A nodal agency of the government ,as is common knowledge,is that which is deputed merely for execution/implementation or supervision or combination of all above, for a particular scheme or project initiated by the government. It only channelizes the Funds of the Government in pre determined projects/schemes of the Government.Neither the collection of funds nor its usage is within the control of the nodal agency which acts only on behalf of the government for the said purposes ,collecting funds levied by the government and using it as determined and directed by the government.

15. In the facts of the present case we find that the Board was not merely implementing/supervising and channelizing funds to specific schemes and projects of infrastructure developed by the government, but was in fact the apex body responsible for planning and development of the infrastructure projects including those involving private participation and funding, and their implementation. All aspects relating to developing and implementing infrastructure projects alongwith private sector, beginning with identifying such projects and thereafter ensuring its implementation by promoting private participation, identifying technology initiatives to be taken,formulating policies to identify risks ,identifying bottlenecks ,formulating policies for the sector, identifying and recommending concessions to be offered to the participants, determining the level and structuring of investments of the Government in the projects, creating an SUV for implementing a project , all were in the domain of the functions of the Board. The administration of the Fund was only one of the manifold functions of the Board.This is clearly brought out by subsection (2) of section 3AA of the HDRUA Act,1975 as under:

> *3AC. Functions and Powers of Board.—(1) The Board shall be the apex body for overall planning and development of infrastructure sector and infrastructure projects for the benefit of State of Haryana, subject to the limitations specified in sub-section (3).*
>
> *(2) The Board shall- (i) act as a nodal agency to co-ordinate all efforts of the Government regarding the development and implementation of infrastructure sectors and infrastructure projects for the benefit of State of Haryana, involving private participation and funding from sources other than those provided by State budget and shall,-*
>
> *(a) identify infrastructure projects for private participation;*
>
> *(b) promote competitiveness and progressively involve private participation while ensuring fair deal to the end-users;*

(c) identify and promote technology initiatives in urban development and infrastructure development sector for improving efficiency in the system;

(d) identify bottlenecks in the infrastructure sectors and recommend to the Government policy initiatives to rectify the same;

(e) select, prioritise and determine sequencing of infrastructure projects;

(f) formulate clear and transparent policies related to the infrastructure sectors so as to ensure that project risks are clearly identified and allocated between the stakeholders; and

(g) identify the sectoral concessions to be offered to concessionaires to attract private participation and secure availability of viable infrastructure facilities to the consumers;

Provided that where participation is sought by any person by participating in disinvestment process, the provisions of this Act shall not apply: Provided further that any authority or body, constituted to implement such disinvestment, may seek assistance from the Board;

(ii) prepare internally or through external consultants or service providers engaged for the purpose, all necessary documents including the bid or tender documents, draft contracts including the various contractual arrangements and incentives to be offered by the Government;

(iii) assist public infrastructure agencies and concessionaires in obtaining statutory and other approvals;

(iv) recommend the grant of concessions to a public infrastructure agency in accordance with the provisions of this Act, the rules and the bye-laws made there under;

(v) assist in determining the level and structuring of investments of the Government and public bodies into infrastructure projects with private participation including holding the investment or part thereof; (vi) create a special purpose vehicle for implementation of any infrastructure project in co-ordination with the Government or public infrastructure agencies; and

(vii) administer the Fund and projects under this Act.

(3) The Board shall not play any role in the infrastructure projects undertaken by the Government exclusively through its budgetary provisions.

The Statement of Objects and Reasons for the amendment made to section 3A and introduction of section3AA to the HDRUA Act,1975, also clearly bring out this fact of the Board being created as a dedicated agency for the development of infrastructure projects in the State alongwith private participation , in its own right and not merely as a nodal agency of the State,as under:

*NOTES Statement of Objects and Reasons-The Section 3A of the Act 8 of 1975 provides for creation of a Fund from the receipts on account of Infrastructure Development Charges (IDC) and Infrastructure Augmentation Charges (IAC). The said Fund vests with the Director General, Town and Country Planning Haryana, and is presently administered by a High Powered Committee constituted for the purpose for investment on major infrastructure projects and for the purpose of stimulating socio-economic growth for the benefit of State of Haryana. Owing to the increasing complexities involved in such infrastructure projects and in order to leverage the Fund available for structuring and implementation of larger infrastructure projects in PublicPrivate-Partnership, the Government has decided for setting up of Haryana Infrastructure Development Board (hereinafter referred as the Board) as a dedicated agency for encouraging private sector investment in infrastructure projects across all sectors through innovative development and financial structuring of infrastructure projects for implementation in PublicPrivate-Partnership mode, viz., Build-Operate-Transfer, Build-Own-Operate-Transfer, Joint Venture Agreement, concessionaire agreement, equity participation by State, subsidy support, incentivisation in form of tax exemptions, Viability Gap funding, Grant of Government guarantee, etc. The Section 3AA is accordingly proposed to be introduced for the constitution of Board. The sub-section 7 of section 3A is also proposed for amendment to enable transfer of amount collected under the Fund by the Director to the Board. The Preamble of the Act is also proposed for appropriate amendment to reflect the said intent and purpose. The Board is likely to evolve as a 'multi-disciplinary Techno-Legal-Financial Institution for Promotion of Infrastructure Development in the State' under the Haryana Development and Regulation of Urban Areas Act, 1975, with professionals drawn from Administration, Engineering, Town Planning, Legal and Finance cadres. Enabling provision for appointment of officers and employees for the Board has accordingly been made in Section 3AB. The Powers and Functions of the Board has been detailed under Section 3AC. Provision enabling the formulation of bye-laws by the Board for efficient administration of the Board has been provided under Section 3AD and the Government has been empowered under Section 3AE to issue directions to the Board for carrying out provisions of the Act. The Section 24 is also proposed for amendment to add enabling provisions for notification of Rules for prescribing various procedures to be adopted for efficient administration of the Board. Hence this BILL66 **

The Board thus, we hold, is not a mere nodal agency of the State.

16. The case laws relied on by the Ld.Counsel for the assessee supporting its contention that it was a mere nodal agency of the State are all distinguishable on facts where funds were found to have been created for specific projects to be executed on behalf of the government with the assessee having no control over of its utilization..In the case of Delhi State Industrial Development(supra) the Funds were found transferred to the

assessee by the Delhi administration for a specific project of development of Narela Industrial Complex . The Hon'ble court found that the assessee was only required to execute the project for the Delhi administration. Accordingly it was held that the fund belonged to the Delhi administration and not the assessee who was only a nodal agency of the Delhi administration for the project. Similarly in the case of Karnataka Urban Infrastructure Development & Finance Corporation (supra) the assessee was found to be have been created for a specific scheme for development of a megacity and a fund created for the purpose. In this backdrop of facts the Hon'ble Court held the assessee to be a mere nodal agency for executing a specific project and the Fund therefore not taxable in its hands.In the case of Saharanpur Development authority ,(supra) the Fund was found to have been received by the assessee from the Government of Uttar Pradesh to be utilized as per the directions of a High Powered Committee. The assessee was found to have no control over the utilization of the Funds and accordingly was held to be a mere nodal agency of the Government.

17. We therefore hold that the Fund vested in the Board which was an entity distinct and separate from the State and was also not a nodal agency of the State.In view of the same the receipts of IDC and interest on FDR's created from the IDC receipts are liable to tax under the Act. Ground No 1 & 2, agitating addition made on account of the same respectively ,are therefore dismissed.

19. Ground No 3 is against the non allowance of benefit of accumulation of income as per section 11(2) of the Act. Briefly put ,the AO, after holding the IDC and IAC (Infrastructure Augmentation Charges) receipts taxable as Revenue receipts of the assessee ,as opposed to capital receipts shown by

the assessee, and after allowing Revenue and capital application of the same ,found that there was shortfall in application of 85% of the income of the assessee ,as stipulated by law for the purpose of claiming exemption of income from taxation u/s 11 of the Act. The shortfall was found to be Rs.3,82,08,83,403/-.He further found the assessee ineligible for the benefit of excluding from the total income, the income accumulated for future utilization ,as provided by section 11(2) of the Act ,on finding that it had failed to fufil the conditions provided in the section and the relevant Rule 17 of the Income Tax Rules,1962, for availing the benefit, of filing notice of accumulation in prescribed Form No.10 electronically by the due date of filing return of income u/s 139(1) of the Act.Accordingly he denied the benefit of accumulation of the shortfall of Rs.382 Crs and subjected the same to tax. This was contested by the assessee before the Ld.CIT(A) who upheld the order of the AO in this regard.

20. The issue therefore is whether the denial of benefit of accumulation u/s 11(2) of the Act was justified in the facts and circumstances of the case.

21. The Ld.Counsel for the assessee has argued that the mandate for filing notice of accumulation in Form No.10 before the due date of filing return of income was brought on the statute only on 01-04-2016 and hence not applicable for the impugned year,i.e A.Y 2014-15 . That there were judicial decisions holding that filing the requisite form during assessment proceedings was sufficient compliance with section 11(2) of the Act. That the assessee having filed electronically form No.10 during assessment

proceedings on 29-12-2016 ,the denial of benefit of accumulation was not as per law .The written submissions in this regard filed before us are as under:

ISSUE (AY 2013-14 & 2014-15)
Accumulation of Income u/s 11(2)
SUBMISSION

- *It is an admitted fact that the assessee could not utilize 85% of the receipts during the year and amounts which were less utilized were accumulated by the assessee to be utilized in future years.*
- *However, the assessee could not file the Form 10 before the AO at the time of filing the return of income.*
- *As per proviso to the Rule 12(2), the form 10 has to be filed electronically on or after 01.04.2014.*
- *In this regard we submit that as per the provisions of the Act and the rules, for the AY 2014-15, only filing of Form 10 electronically was mandatory. However, the provisions that the Form 10 has to be filed before the due date for filing the return of income has been bought in Section 11(2) and Rule 17 w.e.f 01.04.2016 only. Thus are not applicable to the year in hand.*
- *The assessee for the year under reference has duly filed the Form 10 for accumulation of income before the AO during the course of assessment proceedings These facts have been admitted by AO in the assessment order.*
- *It is well settled that if the assessee has filed the Form 10 during the course of assessment proceedings, the assessee cannot be denied the benefit of accumulation u/s 11(2) of the Income Tax Act. For this reliance is placed on the following judicial pronouncements:-*
    - *ADDITIONAL DIRECTOR OF INCOME TAX (EXEMPTION) vs. MANAV (2008) 20 SOT 0517 (Del)*
    - *MOTI RAM GOPI CHAND CHARITABLE TRUST vs. ADDITIONAL COMMISSIONER OF INCOME TAX (2013) 59 SOT 0197 (Delhi)*
    - *JOINT COMMISSIONER OF INCOME TAX vs. SEWA EDUCATION TRUST 27 ITR (Trib) 0292 (Agra)*
    - *V. RAMAKRISHNA CHARITABLE TRUST vs. DEPUTY DIRECTOR OF INCOME TAX (EXEMPTIONS)-II (2015) 155 ITD 0727 (Chennai)*

In view of the aforesaid judgments, it is clear that where the assessee has furnished Form 10 before the completion of the assessment, the same has to be considered. The assessee has furnished the Form 10 manually as well as electronically before the completion of the assessment. Therefore we request that the same be considered.

22. The Revenue on the other hand has relied heavily on the findings of the Ld.CIT(A) pointing out therefrom that the Rules relating to filing of Form No.10,i.e Rule 17 of the Income Tax Rules,1962,provided for the filing of the form before the due date of filing of return of income. That this limitation was introduced in the statute in section 11(2) w.e.f 01-04-2016. Therefore

the contention of the assessee that for the impugned year there was no limitation for filing of form no.10 was incorrect. That in any case there were gross inconsistencies in the figures of amount accumulated reported in the audit report filed in form No.10B and that reported in Form No.10. Ld.DR pointed out that while the audit report reflected Rs.20,32,87,909/- as accumulated fund,form No.10 filed during assessment proceedings showed accumulation of Rs.382,08,83,404/- That no plausible explanation was given of the difference except for stating that the figure in the audit report was of the auditors while in form 10 it was that of the governing council of the assessee fund.That the figure in Form No.10 was therefore not reliable.It has also been contended that the assesee did not specify the purpose of accumulation of Rs.20 Crs reported in audit report filed in Form 10B,which is mandatory for claiming benefit of accumulation and therefore also the benefit has been rightly denied by the Ld.CIT(A) .Our attention was drawn to the findings of the Ld.CIT(A) at para 10.3.11 of the order as under:

> *"10.03.11 The details of accumulation shown in the Form 10 filed during assessment proceedings were not in conformity with the figures mentioned in Original Audit Report which clearly indicate that the details put forth by the appellant in the Form No 10 were reliable and the correct picture was not put up before the assessing officer as required for claiming exemption u/s 11 of the Act. More importantly the Audit Report in farm 10B filed electronically had mentioned accumulation u/s 11(2) of Rs. 20,32,87,909/-but no such details were furnished by the assessee during assessment proceeding. The cases relied upon by the appellant are distinguishable on facts from the facts in the case of the appellant. In the case of the appellant, it is not only not furnishing of form 10 within time but also that the information given in the audit report in Form 10B regarding accumulation etc. were not in conformity with the details in the balance sheet. In Form 10, the assessee is under obligation to put forth the details of accumulation, the purpose for accumulation etc. before the assessing officer which has not been done in this case. The appellant has failed to satisfy the conditions prescribed under section 11(2) read with rule 17 of the IT Rules , 1962 and no specific objects for which benefit of accumulation has been sought has been mentioned. And therefore, A.O has rightly disallowed the benefits claimed u/s 11(2) of the*

Act. Assessing Officer has given detailed findings in the assessment order, the same are upheld. Grounds of appeal no 3 is therefore dismissed.

Brief submissions in writing were also filed before us which are reproduced hereunder:

Issue 5: (a) Denial of benefits of exemption u/s 11 by disallowing the claim of accumulation of income u/s 11(2) of the Act. (Ground 3 of AY 2014-15 and Ground 1 of AY 13-14)

(b) Non acceptance of form No 10 submitted during asst. proceedings (Ground 2 of AY 2013-14)

Reliance is place on the CIT(A) order for A.Y 2014-15 at para 10 pages 26 to 36 and para 5 pages 3 to 7 of CIT(A) order for A.Y 2013-14 where the various discrepancies in the documents submitted by the assessee and the issue of non filing of Form 10 has been discussed in detail along with reliance on various judicial pronouncements. In addition, reliance is also placed on the judgments at Sr No 6,7,8,9 of the case law compilation which are applicable to the facts of the present case and in favour of the Revenue.

23. We have heard both the parties. One of the reason for denying benefit of accumulation of income to the assessee u/s 11(2) of the Act, we find, is the non-filing of notice of accumulation in prescribed Form No.10 ,before the due date of filing of return of income . Clearly the section does not mandate such a limitation but it is the Rules which prescribe so .That the assessee had filed the prescribed form during assessment proceedings is not denied. In identical facts and circumstances ,the coordinate Bench of the ITAT has held in a number of decisions that the assessee can file Form No.10 at any time during assessment proceedings and which has to be considered for granting benefit u/s 11(2) of the Act and the non filing of the same is a mere irregularity and technical lapse which needs to be condoned.The ITAT has categorically held so in the following case laws aptly relied upon by the Ld.Counsel for the assessee:

- *ADDITIONAL DIRECTOR OF INCOME TAX (EXEMPTION) vs. MANAV (2008) 20 SOT 0517 (Del)*
- *MOTI RAM GOPI CHAND CHARITABLE TRUST vs. ADDITIONAL COMMISSIONER OF INCOME TAX (2013) 59 SOT 0197 (Delhi)*
- *JOINT COMMISSIONER OF INCOME TAX vs. SEWA EDUCATION TRUST 27 ITR (Trib) 0292 (Agra)*
- *V. RAMAKRISHNA CHARITABLE TRUST vs. DEPUTY DIRECTOR OF INCOME TAX (EXEMPTIONS)-II (2015) 155 ITD 0727 (Chennai)*

In view of the same,we hold,that the denial of benefit of accumulation for delayed filing of Form No.10 is not as per law .

24. Another reason for denying the benefit is mismatch in the figure of accumulation as reported in the audit report filed in Form No.10B and that filed in the notice for accumulation in Form No.10. We are not in agreement with the same since the requirement of law is to intimate the amount of accumulation in Form No.10,therefore a different figure reported in any other form should be of no relevance or consequence.As rightly argued by the Ld.Counsel for the assessee the audit report is furnished by the auditor while the statement of accumulation is to be filed by the assessee. Therefore a figure reported by the auditor is of no consequence in the scheme of law for the purpose of claiming benefit of accumulation u/s 11(2) of the Act. Even otherwise we have noted that there was a plausible explanation for the different figure reported by the auditor, since the audited profit and loss account did not take into consideration the IDC and IAC receipts ,which were reflected as capital receipts in the audited Balance Sheet, as finds mention in the assessment order. In fact the audited Profit and Loss account only reflected income in the nature of interest earned on FDRs created from the IDC receipts and therefore accordingly the shortfall in application of 85% of the said income was reported as accumulated by the auditors u/s

11(2) of the Act . That it was only when the AO confronted the assessee with the proposed addition to be made of IDC and IAC receipts to the income,thus increasing the shortfall in 85% utilization of income to Rs.382 crores, that the assessee filed Form No.10 notifying accumulation of the said shortfall u/s 11(2) of the Act. Therefore there was a bonafide explanation for the difference in reporting of accumulation by the auditors in form No.10B and by the assessee in Form No.10 being based on different figures of income reflected in the audited profit and loss account and income assessed by the AO respectively. We therefore do not agree with the finding of the Ld.CIT(A) that the form No.10 was unreliable on account of the aforesaid discrepancy .

25. In view of the above ,we hold that the assessee was entitled to benefit of accumulation u/s 11(2) of the Act as per Form 10 filed during assessment proceedings. Ground of appeal No.3 is therefore allowed.

26. In effect the appeal of the assessee for A.Y 2014-15 is partly allowed.

27. All appeals of the assessee are therefore partly allowed. The pronouncement of the appeals is delayed on account of lockdown/curfew on account of pandemic/COVID-19.

Order pronounced in the Open Court on 31/07/2020.

Sd/-	Sd/-
संजय गर्ग	**अन्नपूर्णागुप्ता**
(SANJAY GARG)	**(ANNAPURNA GUPTA)**
न्यायकि सदस्य/ Judicial Member	**लेखा सदस्य/ Accountant Member**

Dated : 31/07/2020

Rati

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar