

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "ए" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकरअपीलसं./ITA No. 890/CHD/2019

निर्धारणवर्ष / Assessment Year : 2015-16

The DCIT, Panchkula Circle, Panchkula	Vs. बनाम	M/s Haryana Urban Development Authority, C-3, Sector 6, Panchkula
स्थायीलेखासं./PAN NO: AAAAH0087M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारितकीओरसे/Assessee by : Shri A.K. Jindal, CA
राजस्वकीओरसे/ Revenue by : Smt. C. Chandrakanta, CA

सुनवाईकीतारीख/Date of Hearing : 20.10. 2020
उद्घोषणाकीतारीख/Date of Pronouncement : 21.10.2020

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 18.03.2019 of the Commissioner of Income Tax(Appeals), Panchkula [hereinafter referred to as 'CIT(A)'].

2. The Department in this appeal has taken following grounds of appeal:-

1. *Whether on the facts and in the circumstance of the case, the Ld. CIT(A) is right in law in holding the demarcation/survey expenses are revenue expenditure ignoring the material aspect that the plots are handed over immediately after*

allotment itself and the expenditure thus cannot be said to be relatable to completed projects?"

2. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) are right in law in holding that the salaries paid to the employees of the Department of Urban Estates on account of transfer of functions overtaken by the HUDA is allowable business expenditure ignoring the aspect that Department of Urban Estate is a separate Department of State Government under Administrative control of Director General, Town & Country Planning?"*

3. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is right in law in holding that the contribution to Delhi Metro is an allowable expenditure made wholly and exclusively for the business purpose ignoring the main object of the assessee for which it has been constituted and transport service is not akin to construction of road to be utilized by the residents?*

4. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is right in law in holding that the sale tax paid is allowable as per section 43B of the Income Tax Act, 1961 on actual payment basis ignoring the aspect that the sale tax was imposed on cost of supply of materials against cost to the contractor relating to both the completed and the uncompleted sectors coupled with the facts that the assessee did not furnish details of sale tax paid on account of supply of material to contractors?*

5. *It is prayed that the order of the Ld. CIT(A) be set-aside and that of Assessing Officer be restored.*

6. The appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.

3. At the outset, the Ld. Counsel for the assessee has submitted that all the grounds / issues raised by the Department are duly covered by the decision of the Tribunal in the own case of the assessee for earlier assessment years 2004-05 and 2006-07 to 2014-15 vide common order dated 6.2.2018 in ITA Nos.623 to 625/Chd/2011 & Others.

4. The Ld. DR has also fairly admitted that all the issues raised in this appeal are squarely covered by the decision arrived at vide common order dated 6.2.2018 of the Tribunal in the own case of the assessee for assessment years 2004-05 and 2006-07 to 2014-15 in ITA Nos.623 to 625/Chd/2011 & Others.

However, for the sake of completeness all the grounds are discussed as under:-

5. **Ground No.1**: Ground No.1 is in relation to the disallowance of expenditure made by the Assessing Officer under the head “demarcation / survey expenses” holding that the same was capital in nature. The Ld. CIT(A), however, has deleted the disallowance made by the Assessing Officer while relying upon the decision of the Tribunal vide common order dated 6.2.2018 (supra). The relevant part of the order of the Tribunal is reproduced as under:-

“para 90. We have heard the rival contention and perused the material available on record. The survey and demarcation is an ongoing, continuous exercise being undertaken by the assessee. The plots have to be physically marked before handing over to the allottees which requires proper survey and lining of contours. Since the allotment of plots is a regular and recurring activity so as the expenses incurred hence the expenses are to be allowed as revenue expenditure.”

6. The Ld. DR has not brought to our knowledge any distinguishing facts or case laws in this respect.

This issue is, thus, squarely covered by the decision of the Tribunal vide common order dated 6.2.2018 (supra). This ground of the Revenue, therefore, stands dismissed.

7. **Ground No.2:** Ground No.2 is regarding the addition made by the Assessing Officer on account of administrative expenses paid as salary etc. to the employees of Department of Urban Estates. The Assessing Officer disallowed the said expenditure holding that the employees to whom the salary was paid were not employees of the assessee, rather, those were the employees of the Department of Urban Estates. The Assessing Officer held that since the Department of Urban Estates was a separate department of the State Government, therefore, there was no justification for claiming of such expenditure by the assessee.

8. During appellate proceedings before the Ld. CIT(A), the assessee explained that the employee of the Department of the Urban Estates had actually worked for the assessee only. In fact, various functions of the

department of the Urban Estates were taken over by the assessee and accordingly the salary was paid by the assessee to those employees.

9. Both the Ld. representatives of the parties have submitted that this issue is squarely covered by the decision of the Tribunal in earlier years vide common order dated 6.2.2018 (supra), wherein, the Tribunal has observed as under;-

“Para 123. We have gone through the facts of the case and material on the record. The employees of the Department of Estates have been working owing to the reasons of transfer of functions overtaken by the HUDA. Since these employees are certainly working for HUDA fully and wholly it cannot be said that the salaries paid to the employees is not for business purpose. In the absence of diversion of employees from Department of Estates, HUDA would have to hire outside manpower and also require to pay them accordingly. Keeping in view the functions performed by the employees for HUDA the expenses out of salary cannot be treated as non business expenditure. The principle whether to allow these expenditure are not when the profits are estimated and the arguments taken by both the parties on this aspect are found to be not applicable in the peculiarities of the facts emerging out of the issue of drafting of employees of Department of Estates to work for HUDA. The addition confirmed by the Ld. CIT(A) is hereby directed to be deleted.”

10. The Ld. DR has not brought to our knowledge any distinguishing facts or case laws in this respect.

11. The issue, thus, is squarely covered by the aforesaid decision of the Tribunal dated 6.2.2018 (supra). This ground of the Revenue, is accordingly dismissed.

12. **Ground No.3:** The issue involved in ground No.3 is as to whether the expenditure on account of payment to Delhi Metro Corporation on account of expansion of metro services from Delhi to Gurgaon was an allowable expenditure made wholly and exclusively for the business purposes of the assessee.

13. The plea of the assessee in this respect has been that expenditure was incurred for the purpose of providing better infrastructure facilities, approach to sectors developed by HUDA i.e. for facilitating the transport for the people living in the area developed by HUDA, therefore, the expenditure incurred by the assessee on account of payment made to Delhi Metro Corporation was directly related to the business of the assessee. The Ld. CIT(A) while deleting the disallowance has relied upon the decision of the Tribunal in the case of the assessee dated 6.2.2.018 (supra), wherein, the Tribunal has given following findings in this respect.

“Para 99. The facts of the case have been perused. The contribution to Delhi Metro can be treated as step in furtherance of the business of the assessee as it improves the accessibility and facilities for the public at large and increases the demand of the land and plots of the assessee. Certainly the connectivity by the metro line will certainly enhanced the business of the assessee and increases the marketability of the plots. The contribution to the metro is akin to construction of the road which will be used by the residents approaching through the road hence the expenditure can be treated as an allowable expenditure laid down for wholly and exclusively for the business purpose.”

14. The Ld. DR has not brought to our knowledge any distinguishing facts or case laws in this respect.

15. The issue thus is squarely covered by the aforesaid decision of the Tribunal dated 6.2.2018 (supra). The ground of appeal raised by the Revenue, thus, stands dismissed.

16. **Ground No.4** : The issue raised vide ground No.4 is regarding disallowance of expenditure on account of payment of sale tax.

17. Both the Ld. representatives of the parties have submitted that this issue is also covered by the aforesaid decision of the Tribunal vide common order dated 6.2.2018 (supra), wherein, the Tribunal in the identical issue raised in earlier years has given following findings:-

“Para 161. Having gone through the facts we are really surprised by the action of the Assessing Officer and also by the decision of the authorities referring this issue for further appeal. Irrespective of the reasons the amount paid as taxes (in this particular instance sales tax) is undisputedly eligible for deduction. There is neither any factual nor legal in congruency. By no stretch of imagination the sales tax paid can be treated as capital expenditure in the facts of this case. Hence we decline to interfere in the well reasoned order of the Ld. CIT(A) in deleting the addition.”

18. The issue, thus, is squarely covered by the aforesaid decision of the Tribunal dated 6.2.2018 (supra). The ground of appeal raised by the Revenue, thus, stands dismissed.

19. **Ground Nos. 5 & 6** : These grounds are general in nature and do not require any specific adjudication.

In view of this, we do not find any merit in the appeal of the Revenue and the same is accordingly dismissed

Order pronounced in the Open Court on 21.10.2020.

Sd/-
(एन. के. सैनी / N.K. SAINI)
उपाध्यक्ष /Vice President
Dated : 21.10.2020
“आर.के.”

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ 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