

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ ए”, चण्डीगढ़**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH ‘A’, CHANDIGARH  
BEFORE: SHRI N.K. SAINI, VICE PRESIDENT  
AND SHRI R.L. NEGI, JUDICIAL MEMBER**

आयकर अपील सं./ ITA Nos.1310 & 1311/Chd/2019

निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

The D.C.I.T., Circle 1(1), Chandigarh.	बनाम	M/s Chandigarh Housing Board, Sector 9, Chandigarh.
स्थायी लेखा सं./PAN NO: AAALC0132H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri A.K. Jindal, CA  
राजस्व की ओर से/ Revenue by : Smt.C.Chandrakanta, CIT

सुनवाई की तारीख/Date of Hearing : 22.04.2021  
उदघोषणा की तारीख/Date of Pronouncement: 28.04.2021

**(Hearing through webex)**

**आदेश/Order**

**Per R.L. Negi, Judicial Member:**

The Revenue has filed the captioned appeals against the common order dated 30.07.2019 passed by the Learned Commissioner of Income Tax (Appeals)-1, [in short the ‘Ld.CIT(A)], Chandigarh, whereby the Ld.CIT(A) has set aside

the two orders dated 31.10.2018 passed by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') pertaining to the assessment years 2010-11 and 2011-12 and deleted the penalty of Rs.5,20,62,232/-, Rs.2,93,84,685/-respectively. Since both the appeals pertain to the same assessee for two assessment years, these appeals were clubbed, heard together and are being disposed of by this common and consolidated order for the sake of convenience.

**ITA No.1311/Chd/2019, AY 2010-11.**

Brief facts of the case pertaining to the assessment year 2010-11 are that the assessee filed its return of income for the year under consideration declaring total income of Rs.81,53,37,960/-. The AO passed assessment order u/s 143(3) of the Act after making addition of Rs.16,84,86,188/- on account of interest income from FDRs on RGCTP and JNNURM projects. The said addition was confirmed by the Ld.CIT(A) and the ITAT in the appeals preferred by the assessee. Accordingly, the AO initiated penalty proceedings u/s 271(1)(c) of the Act for concealment of income by the assessee. However, after hearing the assessee, the AO dropped the penalty proceedings by following the order of

the ITAT rendered in the assessee's own case for the assessment year 2007-08.

2. The Ld. Pr.CIT, Chandigarh, by exercising jurisdiction u/s 263 of the Act, revised the order passed by the AO u/s 271(1)(c) of the Act and directed the AO to initiate penalty proceedings against the assessee to impose penalty u/s 271(1)(c) of the Act for concealment of income. The assessee challenged the order passed by the Ld. Pr.CIT before the ITAT. The ITAT, vide common order dated 22.05.2019 set aside the order passed by the Pr. CIT u/s 263 of the Act, affirming the action of AO in dropping proceedings-initiated u/s 271(1)(c) of the Act holding that the order passed by the AO was not erroneous. In the meantime, the AO had passed the order u/s 271(1)(c) of the Act in compliance of the order of the Ld. Pr. CIT u/s 263 of the Act and imposed the penalty of Rs.5,20,62,232/-, which is @ 100% of the tax sought to be evaded by the assessee. The assessee challenged the said order before the CIT(A). The Ld. CIT(A) after hearing the assessee, set aside the penalty order passed by the AO and directed the AO to delete the penalty levied u/s 271(1)(c) of the Act. Against the said findings of the Ld.CIT(A) the Revenue has preferred the present appeal before this Tribunal.

3. The Revenue has challenged the order passed by the Ld.CIT(A) on the following effective grounds of appeal:

- “1. *On the facts and in the circumstances of the case, the Ld, CIT(A) has erred in allowing appeal of the assessee without appreciating the facts of the case.*
2. *On the Facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the appeal of the assessee by holding the penalty order u/s 271(l)(c) dated 14.12.2018 infructuous without deciding the appeal on merits and by simply holding that the Hon'ble ITAT Chandigarh Bench in ITA No. 736/Chd/2018 for A.Y, 2010-11 & ITA No.737/Chd/2018 for A.Y. 2011-12 vide order dated 22.05.2019 has set aside the orders of the PCIT-1, Chandigarh passed u/s 263 of the Act on 30.03.2018.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the facts that the AO imposed penalty under section 271(l)(c) of the Income Tax Act as the assessee had furnished inaccurate particulars of its income in filing its Income Tax Return for the year under consideration.*
4. *The appellant craves to leave to add or amend any grounds of appeal before the appeal is heard or disposed off.”*

4. At the outset, the Ld. Counsel for the assessee submitted that in this case penalty proceedings were initiated by the AO in compliance of directions given by the Ld. Pr. CIT vide order dated 30.03.2018, to initiate proceedings u/s 271(1)(c) of the Act on the basis of addition of Rs.16,84,86,188/- made on account of interest income from FDRS, on RGCTP and JNNURM projects. The Ld. Counsel further submitted that since the Tribunal has set aside the order passed by the Ld. Pr.CIT passed u/s 263 of

the Act affirming the action of the AO in dropping the penalty proceedings u/s 271(1)(c) of the Act, the present appeal filed by the Revenue has become infructuous.

5. On the other hand, the Ld. Departmental Representative (Ld. DR) did not deny the facts stated by the Ld. Counsel for the assessee. The Ld. DR further admitted that the AO had dropped the proceedings u/s 271(1)(c) of the Act against the assessee by following the order of the ITAT Chandigarh Bench in assessee's own case for assessment year 2007-08.

6. We have perused the material available on record in the light of the submissions made by the Ld. Counsel for the assessee. We have also perused the order dated 22.05.2019 passed by the Co-ordinate Bench of the Tribunal, whereby the Coordinate Bench has set aside the order passed by the Pr. CIT u/s 263 of the Act and affirmed the action of the AO in dropping penalty proceedings against the assessee. As pointed out by the Ld. Counsel for the assessee, since the Tribunal has set aside the order passed u/s 263 of the Act, directing the AO to initiate penalty proceedings, the order passed by the AO has become *void ab initio*. Hence, in view of the submissions made by the Ld. Counsel for the assessee in the light of the facts and the circumstances of the case,

we dismiss the present appeal holding that the same has become infructuous.

**ITA No.1311/Chd/2019, AY 2011-12.**

7. The facts of the present appeal are identical to the facts of the assessee's appeal for the assessment year 2010-11 discussed above, except the amount of addition made by the AO and the penalty-imposed u/s 271(1)(c) of the Act. Since the Coordinate Bench of this Tribunal has set aside the order passed by the Ld. Pr.CIT u/s 263 of the Act, directing the AO to initiate penalty proceedings u/s 271(1)(c) of the Act, this appeal of the Revenue has also become infructuous. Hence, we dismiss this appeal also for the reasons mentioned in the assessee's appeal for the assessment year 2010-11.

In the result, the appeals filed by the revenue for assessment year 2010-11 and 2011-12 are dismissed.

Order pronounced on 28.04.2021.

**Sd/-**  
**N. K. SAINI)**  
**VICE PRESIDENT**

**Sd/-**  
**(R.L. NEGI)**  
**JUDICIAL MEMBER**

**Dated: 28<sup>th</sup> April, 2021**

**\*रती\***

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

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar