

THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 2326/Mum/2019 (Assessment Year 2007-08)
I.T.A. No. 2327/Mum/2019 (Assessment Year 2008-09)
I.T.A. No. 2328/Mum/2019 (Assessment Year 2009-10)
I.T.A. No. 2329/Mum/2019 (Assessment Year 2010-11)
I.T.A. No. 2330/Mum/2019 (Assessment Year 2012-13)
I.T.A. No. 2331/Mum/2019 (Assessment Year 2013-14)
I.T.A. No. 2332/Mum/2019 (Assessment Year 2014-15)

Dy. Commissioner of Income Tax(Exemption)-2(1) Room No. 519 5 th Floor Piramal Chambers Lalbaug, Lower Parel Mumbai-400 012.	Vs.	Maharashtra Industrial Development Corporation Udyog Sharathi Mahakali Caves Road Andheri East Mumbai-400 093. PAN : AAACM3560C
(Appellant)		(Respondent)

Assessee by	Shri S.R. Sriram
Department by	Shri A.K. Srivastava
Date of Hearing	06.04.2021
Date of Pronouncement	21.05.2021

O R D E R

Per Shamim Yahya (AM) :-

These are appeals by the Revenue against respective orders of learned CIT(A) for respective assessment years. Since the issues are common and connected these are consolidated and disposed off together.

2. Since the common grounds are raised we are referring to the grounds of appeal for A.Y. 2008-09, which read as under :

1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CTT(A) is right in holding that ownership of land vested with the state government and also that the income arising from viz. lease premiums, rent, development activities, interest income on funds parked as deposits with the bank etc cannot be assessed as the income of the assessee corporation following the decision of Hon'ble ITAT in the assessee's own case"?

2. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is right in merely following the decision of Hon'ble ITAT in the assessee's own case for A.Y. 2011-12 where it was held that the land belongs to the state government and merely its possession was given to the assessee ignoring the facts that the land was leased by assessee as lessor that too for long periods such as 30/60/90 years and too without any references of Government or Governor as also required under Article 299 of Constitution, at prices determined by it, ignoring the principle of *memo dat quod dat quod non habit*, such transfer was accepted by the registrar office and other facts, legal position facts and arguments brought out by the AO, CIT(A) and CIT DR in oral arguments and in written synopsis.

3. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is right in holding that the land belongs to the state government and merely its possession was given to the assessee merely following the decision of Hon'ble ITAT in the assessee's own case for A.Y.2011-12 ignoring the provisions of section 3(2) of MIDC Act under which assessee is an independent body incorporated under section 32(7) of MIDC Act which envisage compulsory transfer of land acquired by the Government to assessee for its objects and section 39 of MIDC Act under which the assessee can dispose of the land only after Government acquire and transfer such land to the assessee.

4. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is right in following the decision of Hon'ble ITAT in the assessee's own case for A.Y.2011-12 where it was held that the land belongs to the state government and merely its possession was given to the assessee ignoring the decision of the Hon'ble Supreme Court in the case of *Digamber & Ors. Vs. State of Maharashtra & Ors.* [Civil Appeal No. 5346 of 2013, dated 01.08.2013] which at Page 3-para 9 it is clearly stated that the land was acquired by the government 'in favour of the corporation ' and ordered that the enhanced compensation was to be paid by MIDC and not by the State Government also proving that the land belonged to MIDC.

5. Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was correct in following the decision of Hon'ble ITAT in the assessee's own case for A.Y.2011-12 where it was held that the money generated from sale/lease of plots, providing development activities as well as earning on interest on funds parked as deposits with the bank belonged to the State Govt, though as per section 20 of the MDC Act the money received from the sale of plots became the assessee's own money by operation of law and as per section 25 of the MIDC Act, the assessee has authority to spend any sum out of such fund and otherwise also this income claimed to be belonging to the State Government or expenditure out of the same is not part of the budget of the State Government.

6. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in following the decision of Hon'ble ITAT in the assessee's own case for A.Y.2011-12 where relying on Govt. Resolution, it was held that the land belong to the Govt. despite having held in first round

of appeal that the MIDC Act shall have supremacy over the resolutions passed by the State Government, hence the resolutions passed by the State Government can not to be considered for determining the status of the agency.

7. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in following the decision of Hon'ble ITAT in the assessee's own case for A.Y.2011-12 where it was held that ownership of land vest with the state government and the income arising there from viz. lease premiums, rent, interest income on funds parked as deposits with the bank etc. belong to State and cannot be assessed as the income of the assessee corporation despite the fact that the Hon'ble ITAT also held in their earlier order dated 27.03.2015 in the same case for A.Y.2011-12 that the assessee is not an 'agent' of the state government which had been upheld by the Hon'ble High Court in appeal No. 10 of 2016 in order dated 14.08.2018?"

8. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is right in following the decision of Hon'ble ITAT in the assessee's own case for A.Y.2011-12 where it was held that ownership of land vested with the state government and income arising there from viz. lease premium, rent, interest income on funds parked as deposits with the bank etc. cannot be assessed as the income of the assessee corporation without considering each item separately in view of their own directions in first round of appeal to AO in the assessee's own case for A.Y.2011-12 to examine the claim of assessee that some activities were done by it on its own account and some on behalf of the Government and assessee's failure to comply with these direction to provide such bifurcations.

9. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is correct in following the decision of Hon'ble ITAT in the assessee's own case for A.Y.2011-12 where it was concluded that the transfer of land by the State Government to assessee was a "revocable transfer" within the meaning of Section 61 to 63 of IT. Act, based on Section 43IA(3) r.w.s. 32(7) and Section 56 of MIDC Act ignoring the fact that provision of Section 56 of MIDC Act when comes into operation after substantial development of estate, when the plots are already leased to industry and revocation of land from assessee to Gout, is not possible.

10. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was correct in following the decision of the Hon'ble ITAT in the assessee's own case for A.Y.2011-12 while deciding the above issue.

11. "The appellant prays that the order of the Commissioner of Income Tax (Appeals)-4, Mumbai be set aside and that of the Assessing Officer be restored."

12. "The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary".

3. Brief facts are that the assessee filed its return for the AY 2008-09 on 24.09.2008 and subsequently, filed its revised return on 21.07.2009. The return was selected for scrutiny and was concluded vide an order dated 19.12.2011 passed u/s 143(3) of the Income-tax Act, 1961. Thereafter, the Ld. Assessing Officer reopened the assessment of AY 2008-09 on the ground that the sums collected by the assessee from the leases entered into by it would have to be treated as its income. The assessee had treated the receipts as its liability in its balance sheet, on the ground that the sums were received by it and held by it on behalf of the Government of Maharashtra. The Assessing Officer concluded the reassessment proceeding vide an order dated 18.03.2015 passed u/s 143(3) r.w.s. 147 of the Act and added thereby the lease premium amount and other receipts which were received by the assessee for and on behalf of the Government of Maharashtra.

4. Upon assessee's appeal learned CIT(A) referred and followed ITAT order in assessee's own case for A.Y. 2011-12 where identical issue was decided in favour of the assessee. Accordingly learned CIT(A) allowed the assessee's appeal. The order of learned CIT(A) reads as under :

"Against the order of the CIT(A), the Appellant once again filed an appeal to the Hon'ble ITAT, and the Tribunal vide order dated 07.09.2018 allowed the appeal of the Appellant with the following observations:

"13. We shall now advert to the core issue involved in the present appeal i.e as to whether the CIT(A) was right in law and the facts of the case in concurring with the A.O that as the lands under consideration were not owned by the Government of Maharashtra, hence the income arising therefrom viz. lease premiums, rent, interest income earned on the funds parked as deposits with the banks etc. were liable to be assessed as the income of the assessee corporation. We are of the considered view that as held by the Hon'ble Supreme Court in the case of /TO vs. Ch. Attchaiah (1996) 218 ITR 239 (SC), it is obligatory on the part of the revenue authorities to assess the income in the hands of the right person and the right person alone. We have deliberated at length on the issue under consideration in the backdrop of the contentions advanced by the ^representatives for both the parties and perused the exhaustive material placed on record and the judicial pronouncements relied upon by both the parties to drive home their respective claims. It is the contention of the assessee

before us that all the industrial lands are held by the assessee corporation on behalf of the State Government of Maharashtra. It is further claimed that the assets which are owned by the assessee in its own name viz. buildings and other assets are separately shown in its own name in its "balance sheet". We are of the considered view that the issue as to in what status the lands under consideration were held by the assessee corporation can be appreciated in the backdrop of the scheme of the "Maharashtra Industrial Development Corporation Act, 1961" [for short "MIDC Act"]. We find from a perusal of the MIDC Act that the assessee corporation viz. MIDC had been established for securing and assisting rapid and orderly establishment and organisation of industries in industrial areas and industrial estates in the State of Maharashtra. On a perusal of Sec. 3(2) of the MIDC Act, it emerges that the assessee corporation viz. MIDC is competent to acquire, hold and dispose off property, both moveable and immovable, and to contract and do all things necessary for the purposes of the Act. Still further, a perusal of the functions of the assessee corporation as contemplated in 'Sec. 14(ii) of the MIDC Act reveals that the same particularly includes viz. (i). establishing and managing industrial estates at places selected by the state government; (ii). Developing industrial areas selected by the State Government for the purpose and make them available for undertakings to establish themselves; and (Hi). Undertaking schemes or works, either jointly with other corporate bodies or institutions, or with Government or local authorities, or on an agency basis, in furtherance of the purpose for which the assessee corporation is established and all matters connected therewith. Still further, the assessee corporation as provided in Sec. 15 of the MIDC Act inter alia stands vested with the powers viz. (i). to acquire and hold such property, both movable and immovable as the assessee corporation may deem necessary for the performance of any of its activities and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by it; (ii). to purchase by agreement or to take on lease or under any form of tenancy any land, to erect such buildings and to execute such other works as may be necessary for the purpose of carrying out its duties and functions; (iii), to provide or cause to be provided amenities and common facilities in industrial estates and industrial areas and construct and maintain or cause to be maintained works and buildings thereof; (iv) to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings; (v). to construct buildings for the housing of the employees of such industries; (vi). to allot factory sheds or such buildings or parts of buildings, including residential tenements to suitable persons in the industrial estates established or developed by the assessee corporation; and (vii). to modify or rescind such allotments, including the right and power to evict the allottees concerned on breach of any of the terms or conditions of their allotment. We find from a perusal of the aforementioned functions and powers of the assessee corporation that in furtherance of its object of establishing and developing industrial estates and industrial areas selected by the State

Government for the said purpose, the assessee corporation subject to the provisions of the MIDC Act is vested with the powers of acquiring and holding property and leasing, selling, exchanging or transferring the same on such conditions as it may deem fit, as well as purchasing or taking on lease or under any form of tenancy any land, erect buildings on the same and make the same available on hire or sale to industrialists or persons intending to start industrial undertakings. Still further, the assessee corporation as per Sec. 17 of the MIDC Act also stands vested with the power to levy fees or service charges for providing amenities or common facilities viz. maintenance of roads, drainage, water supply, providing of street lighting etc in such industrial estates and industrial areas on the plot holders or other persons receiving benefit of said services or amenities. Further, perusal of Sec. 19 of the MIDC Act reveals that the property, fund and other assets vesting in the assessee corporation shall be held and applied by it, subject to the provisions and the purposes of the said Act.

14. We further find from a perusal of Sec. 32 of the MIDC Act that in case the State Government is of the opinion that any land is required for the purpose of development by the assessee corporation, or for any other purpose in furtherance of the objects of the said Act, then after putting the owner of the land or any other person interested therein to notice as regards its decision of acquiring such land, calling for his objections and disposing off the same after affording an opportunity of being heard to such person, the State Government shall acquire such land by publishing a notice in the official gazette. On a perusal of sub-section (4) of Sec. 32 of the MIDC Act, it emerges that when a notice under Sec. 32(1) of the Act is published in the official gazette, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances. Still further, as per sub-section (5) of Sec. 32 of the MIDC Act, where any land is vested with the State Government under sub-section (4) of Sec. 32 of the MIDC Act, then the State Government may by notice in writing order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the service of the notice. As per sub-section (7) of Sec. 32 of the MIDC Act, after the land had been acquired for the assessee corporation or any local authority, the State Government shall, after it has taken possession thereof, by notification in the official gazette transfer the land to the assessee corporation or that local authority, as the case may be, for the purpose for which it was acquired and the provisions of Sec. 43-1A of the MIDC Act shall thereafter be applicable. As per Sec. 43-1A of the MIDC Act, for the furtherance of the Act, the State Government may by notification in the official gazette, upon such conditions as may be agreed between it and the assessee corporation, place at the disposal the lands vested in the State Government. That after such land is developed by, or under the control and supervision of the assessee corporation, it shall be dealt with by the corporation in

accordance with the regulations made, and directions given by the State Government in this behalf. On a perusal of sub-section (3) of Sec. 43-1A, it emerges that if any land placed at the disposal of the assessee corporation under sub-section (1) of Sec. 43-1A is required at any time thereafter by the State Government, the assessee corporation shall replace it at the disposal of the State Government upon such terms and conditions as may be mutually agreed upon. We further find that as per Sec. 33 and Sec. 36 of the MIDC Act, where any land is acquired by the State Government under Chapter VI of the Act, the compensation for acquisition of the same shall be paid by the State Government under the said statutory provision. Still further, in case the compensation is not paid or deposited on or before taking the possession of the land, then as per Sec. 38 of the MIDC Act the State Government shall be liable to pay the said amount alongwith interest determined at the rate of four percent per annum from the date of taking of possession of the same till the said amount is paid or deposited.

15. We are of the considered view that a bare perusal of the scheme of the MIDC Act, and the absence of any instrument of transfer evidencing vesting of the ownership of the land in favour of the assessee corporation, both militates against the observations of the lower authorities that the ownership of the land had been transferred to assessee corporation. We thus, in the backdrop of our aforesaid observations are of the considered view that as neither there is any material borne from record, nor any documentary evidence had been furnished before us by the revenue which could irrefutably dislodge the claim of the assessee and therein persuade us to conclude that either the ownership of the land under consideration had been transferred to the assessee corporation, or the latter could justifiably be held as a "deemed owner" of the same for the purpose of justifying assessing of the income arising therefrom viz. lease premiums, rent, interest income on funds parked as deposits with the bank etc., as the income of the assessee corporation, hence the said claim of the revenue fails and is thus rejected. The Grounds of appeal Nos. 1,4,5,7,8 and 14 are allowed in terms of our aforesaid observations.

10. In the present appeal, the Appellant relied upon the above observations of the Hon'ble ITAT in the order in its own case for A.Y. 2011-12 and contended that the assessee is acting as an agent of the Government of Maharashtra and thus, the income in question in the form of lease premium, rent, interest on bank deposits, etc. does not belong to the assessee but to the Government of Maharashtra. I find that the above judgment of the ITAT for A.Y. 2011-12 would equally apply to the facts of the subject year. There is no change in facts considered by the Hon'ble ITAT for A.Y. 2011-12 and facts for the year in appeal."

5. Against the above order the Revenue is in appeal before us. We have heard both the parties and perused the record. Both the parties fairly agreed

that the grounds raised are covered in favour of the assessee by the order of the Tribunal in ITA No. 4474/Mum/2017 for A.Y. 2011-12 vide order dated 7.9.2018. We further note that Hon'ble Jurisdictional High Court has not yet reversed the aforesaid order of the ITAT. Hence, we uphold the order of learned CIT(A).

6. In the result, these appeals are dismissed.

Pronounced in the open court on 21.5.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated :21/05/2021

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS