

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘A’, CHANDIGARH**

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

**BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.1177/Chd/2019

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Greater Mohali Area Development Authority, PUDA Bhawan, Sector 62, Mohali.	बनाम	The D.C.I.T., Circle 6 (1), Mohali.
स्थायी लेखा सं./PAN NO: AAALG0872G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA No.1237/Chd/2019

निर्धारण वर्ष / Assessment Year : 2010-11

The D.C.I.T., Circle 6 (1), Mohali.	बनाम	M/s Greater Mohali Area Development Authority, PUDA Bhawan, Sector 62, Mohali.
स्थायी लेखा सं./PAN NO: AAALG0872G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

आयकर अपील सं./ ITA No.1202/Chd/2019

निर्धारण वर्ष / Assessment Year : 2011-12

M/s Greater Mohali Area Development Authority, PUDA Bhawan, Sector 62, Mohali.	बनाम	The D.C.I.T., Circle 6 (1), Mohali.
स्थायी लेखा सं./PAN NO: AAALG0872G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Sudhir Sehgal, Adv.
& Shri Ramesh Trehan, CA
राजस्व की ओर से/ Revenue by : Smt.C.Chandrakanta, CIT

सुनवाई की तारीख/Date of Hearing : 16.08.2021

उद्घोषणा की तारीख/Date of Pronouncement: 12.11.2021

(Hearing through Webex)

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

The above cross appeals in ITA No.1177/Chd/2019 & ITA No.1237/Chd/2019 have been preferred by the assessee and the Revenue respectively against the order of the Commissioner of Income Tax (Appeal)-2, Chandigarh (in short CIT(A) dated 05.06.2019 relating to assessment year 2010-11 passed u/s 250(6)) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). The appeal in ITA No.1202/Chd/2019 has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeal)-2, Chandigarh dated 07.08.2019 relating to assessment year 2011-12.

2. At the outset itself it was pointed out that the issue involved in the appeals is identical, hence all the appeals were heard together and are being disposed off by this consolidated order for the sake of convenience.

3. First we shall be taking the appeal of the assessee relating to assessment year 2010-11 since the facts admittedly are identical in the appeal of the assessee for assessment year

2011-12 also, our decision rendered therein will apply mutatis mutandis to the said appeal also.

4. The Ld.Counsel for the assessee at the outset stated that he would first argue on the legal grounds raised vis-à-vis validity of the assessment framed u/s 147 of the Act raised in ground No.2(a), 2(b) & 2(c) as under:

“2(a) That the Ld. CIT (Appeals) has erred in law and on facts in not quashing order u/s 143(3) r.w.s. 147 of Income Tax as all the facts relating to "External Development Charges" and "EDC" under Papra Act amounting to Rs. 127,70,37,351/- and Rs. 36,89,350/- respectively, were fully and truly disclosed and discussed at the time of Scrutiny Assessment u/s 143(3) of Income Tax.

2(b) That the CIT(A) has failed to appreciate that the Assessing Officer had duly applied his mind on these issues at the time of framing original assessment and, as such, this was merely a charge of opinion, which is not permitted by law.

2(c) That the CIT(A) has erred in not following the Judgment of the Hon'ble ITAT, Chandigarh Bench for the earlier years in the case of the Appellant for the AYs 2008-2009 and 2009-2010, where such re-assessment proceedings have been quashed.”

5. Taking us through the facts of the case the Ld.Counsel for the assessee drew our attention to para 6 of CIT(A)'s order wherein a brief history of the activities undertaken by the assessee alongwith objects clause was stated as under:

“6. Before adjudicating the issues raised by the assessee, it would be pertinent to mention brief history of activities undertaken by the assessee alongwith its object clause. The Greater Mohali Area Development Authority (GMADA) was constituted

under section 29(1) of PUNJAB REGIONAL AND TOWN PLANNING AND DEVELOPMENT ACT, 1995 covering the area of S.A.S. Nagar and the adjoining areas by Punjab Government Notification no.13/52/2006-lHG2/#7443 dated 14-08-2006. The Punjab Urban And Development Authority was demerged and GMADA was constituted through the above mentioned gazette notification as a Special Authority for the planning and development of S.A.S- Nagar and its adjoining areas. The objects of the authority are as follows-

- (1) To promote and secure better planning and development of any area of the State and for that purpose the Authority shall have the powers to acquire by way of purchase transfer, exchange or gift or to hold, manage, plan, develop and mortgage or otherwise dispose of land or other property or to carry out itself or in collaboration with any other agency or through any other agency on its behalf, building, engineering, mining and other operations to execute works in connection with supply of-water, disposal of sewerage, control of pollution and other services and amenities and generally to do anything with the prior approval or on direction of the State Government, for carrying out the purposes of this Act.*
- (2) The Authority itself or in collaboration with any other agency or through any other agency on its behalf,-*
 - (i) if' so required by the State Government or the Board, take up the works in connection with the preparation and implementation of Regional Plans, Master Plans and New Township Plans and town improvement schemes;*
 - (ii) undertake the work, relating to the amenities and services to be provided in the urban areas, urban estates, promotion of urban development as well as construction of houses ;*
 - (iii) promote research, development of new techniques of planning, land development and*

house construction and manufacture of building material;

(iv) promote companies, association and other bodies for carrying out the purposes of the Act; and

(v) perform any other function which are supplemental, incidental or consequential to any of the functions referred to in this sub-section or which may be prescribed.

6. Thereafter he drew our attention to para 6.1 of CIT(A)'s order and pointed out therefrom that the case of the assessee for the impugned year was reopened recording reasons leading to belief of escapement of income by the AO as reproduced therein and thereafter the assessment was framed making various additions to the income of the assessee. He pointed out that reopening was resorted to on account of the belief of the AO that External Development Charges (EDC) received by the assessee were in the nature of its income while the assessee had reflected the same merely as a liability in its Balance Sheet. The AO, the Ld.Counsel for the assessee stated, was of the view that the income on account of EDC received during the year had accordingly escaped assessment and, therefore, proceedings for reopening the case of the assessee were resorted to. Before proceeding further the Ld.Counsel for the assessee stated that certain further facts relating to the case needed to be brought to our notice which were to the effect that the assessee had filed a Civil Writ

Petition(CWP) in Hon'ble Punjab & Haryana High Court against the reopening of assessment u/s 147 of the Act in the impugned case which had been dismissed by the Hon'ble High Court vide its order dated 27-04-2018 in CWP No.26125 of 2017 (O&M). That thereafter the assessee had filed SLP before the Hon'ble Supreme Court against the judgment of the Hon'ble Punjab & Haryana High Court and the Hon'ble Supreme Court had dismissed the same noting that since re-assessment had been completed and the AO had passed the assessment order, there was no reason to interfere in the order of the Hon'ble High Court. He further pointed out that the Hon'ble Supreme Court further clarified that the assessee was open to challenge the order of the AO in regular appeal and would also be permitted to challenge the correctness of the notice u/s 147 of the Act. That the Hon'ble Apex court directed that the appellate authority would adjudicate the issue uninfluenced by the observation made by the Hon'ble High Court. Our attention was drawn to the order of the Hon'ble Supreme Court in SLP(C) No.15102/2018 dated 20-07-2018, holding so as under:

*"Since the reassessment is already complete and the assessing officer has passed the assessment order, **we do not find any reason to interfere with the impugned order passed tni the High Court** in exercise of our power under Article 136 of the Constitution of India.*

The special leave petitions are accordingly dismissed.
However, we make it clear that it will be open to the petitioner-Authority to challenge the order of the assessing officer by fling

*statutory appeal and in the said appeal the petitioner would also be permitted to challenge the correctness of notice under Section 147/148 of the Income Tax Act, 1961. The appellate authority may go into the said question **uninfluenced by the observations** which are made in the impugned order. Pending applications, if any, shall also stand disposed of."*

7. The Ld.Counsel for the assessee further pointed out that a review petition filed by the Revenue in the order passed by the Hon'ble Supreme Court was also dismissed vide order dated 24-07-2019 in RPC No.1026/2019, finding no error in the judgement. He also pointed out that identical issue had arisen in the case of the assessee in assessment years 2008-09 and 2009-10, wherein reopening u/s 147 of the Act was resorted to by the AO for identical reasons of escapement of income being EDC charges and wherein the ITAT had allowed the appeal of the assessee holding the assessment framed u/s 147 of the act to be not in accordance with law and invalid. Having stated so the Ld.Counsel for the assessee contended that considering the direction of the Hon'ble Supreme Court that the appellate authority adjudicate the issue of reopening uninfluenced by the order of the Hon'ble High Court in Writ Petition, the issue stood covered by the order of the ITAT in the preceding years. Copies of all the orders were placed before us during the course of hearing.

8. Besides stating so, Ld.Counsel for the assessee also pointed out that the facts for the impugned year demonstrated

that the reopening was not in accordance with law. He pointed out that reopening of the case in the impugned year was done beyond four years from the assessment year and the AO had failed to comply with the statutory requirement of pointing out the material fact not disclosed by the assessee. He contended that the fact of EDC received by the assessee during the year was admittedly, as per the AO himself in his reasons recorded, disclosed in the financial statement of the assessee, that no new material had come in the knowledge of the AO. Therefore, the assessee could not be said to have concealed any material fact so as to empower the AO to invoke his powers of re-assessment u/s 147 of the Act. Reliance was placed on various case laws.

9. The Ld. DR, on the other hand, heavily relied upon the order of the Hon'ble High Court stating that the Hon'ble Supreme Court had not quashed the order of the Hon'ble High Court and the findings of the Hon'ble High Court could not be ignored or wished away.

10. We have heard the contentions of both the parties and have taken note of the fact that the reopening had been challenged in a Writ Petition filed by the assessee to Hon'ble Punjab & Haryana High Court which was decided against it have also taken note of the SLP filed by the assessee to the

Hon'ble Supreme Court against the decision of the Hon'ble Punjab & Haryana High Court. In compliance with the direction of the Hon'ble Supreme Court, in its order dismissing the SLP, that the appellate authority are to decide the issue of reopening uninfluenced by the order of the High Court, we proceed to adjudicate the issue. Since the contention of the assessee is that the condition necessary and statutorily required to be fulfilled to reopen the case, were not complied with, the assessment order framed was invalid, it is necessary to first state the facts hereunder:

The impugned assessment year is assessment year 2010-11. Notice for reopening the case of the assessee u/s 147/148 of the Act was issued to the assessee on 07.02.2017 and reasons recorded by the AO for reopening are as under:

“6.1 Brief facts of the issue are that the case of assessee was reopened on the basis of following recorded reasons:

"During perusal of records in this case, it was seen that the assessee had received External Development Charges (EDC) from Land Developers/ Colonizers /Real Estate Builders/Promoters during the F. Y. 2008-09. The said External Development Charges were not brought to the ambit of tax by the assessee but were instead shown as a liability in its Balance Sheet under the head "Other Liabilities". It is pertinent to mention here that External Development Charges are received from the Land Developers/Colonizers/Real Estate Builders/Promoters who seek approval from the assessee (i.e. Greater Mohali Area Development Authority) or other Competent Authority to develop a Residential or Commercial or Institutional Zone on their piece/ chunk of land. The said

amount received under the nomenclature "External Development Charges" is supposed be used by the assessee for carrying on of External Development Works and other related jobs outside the land of the Land Developer/Colonizer/Real Estate Builder/Promoter who has paid the External Development Charges (EDC).

Thus, it is seen that the receipt of External Development Charges by the assessee is attributable to its regular business. Further, the receipt and expenditure of the said amount is a regular, routine and re-occurring phenomenon as External Development Charges are being regularly received by the assessee from Land Developers/Colonizers/ Real Estate Builders/Promoters in every year and similarly these are being regularly expended/utilized/spent for the purpose of carrying out External Development Works and other related jobs. In light of the above, it is observed that both the receipts as well as the expenditure related to External Development Charges (EDC) are clearly revenue in nature as they are attributable to the regular business of the assessee and are also a routine, regular and re-occurring phenomenon. **Accordingly, the assessee was required to credit the receipts of External Development Charges to its P&L Account and debit the expenses incurred on account of the same.** Since, the assessee is following Cash System of accounting, therefore, the net amount received by the assessee during the year as External Development Charges was required to be brought to the ambit of tax by crediting the receipts earned during the year and debiting the expenses incurred on account of external development work and other related jobs. However, the assessee had failed to do so and has rather shown the External Development Charges (EDC) received as a liability in its Balance Sheet. The said failure on the part of the assessee has led to escapement of taxable income as the net income earned on account of the External Development Charges has escaped the ambit of taxation. Thus, after independent verification of records with respect to the above mentioned facts, I have reasons to believe that an income of Rs.1,27,70,37,351 /- has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

A calculation of the same is as under:-

i	Opening Balance of External Development Charges (EDC) as on 01. 04.2009.	Rs.327,96,93,897/-
ii	EDC Received during the year	Rs.136,41,70,883/-
iii	Utilization during the year	Rs.8,71,33,532/-
iv	Closing Balance of External Development Charges (EDC) as on 31.03.2010.	Rs.455,67,31,248/-
v	Net amount received during the year on account of EDC	Rs. 127,70,37,351/-

This escapement of income is due to failure of the assessee to fully and truly disclose all the material facts relating to its income and due to default on its part by not treating the amount received on account of External Development Charges (EDC) as Revenue receipt.”

11. Clearly the reopening was resorted to beyond four years from the relevant assessment year and law stipulates that reopening can be resorted to beyond four years only if any income chargeable to tax has escaped assessment by reason of failure of the assessee, amongst other things, to disclose fully and truly all material facts necessary for his assessment for that year. There is no dispute vis-à-vis this requirement of law.

12. Going forward from here & examining and perusing the contents of the reasons recorded we find that there is no material fact, relating to the escapement of income, which the assessee could be said to have not disclosed truly and fully. The reasons recorded escapement of income on account of EDC,

not being taxed. The assessee ought to have been found by the AO to have concealed some material fact relating to the same for him to validly assume jurisdiction to reopen the case of the assessee u/s 147 of the Act, and the reasons recorded should have mentioned this act of concealment. But on the contrary we find, the reasons note that the EDC charges were shown by the assessee as a liability in its Balance Sheet under the head "other liabilities" (1st para of the reasons). The rest of the reasons is only the interpretation of the AO regarding the nature of the receipts of EDC being revenue in nature. In the last para of the reasons the AO again reiterates the disclosure of the EDC received by the assessee as a liability in its Balance Sheet. Except for the fact that the assessee received EDC during the year, no other fact has come to the knowledge of the AO and this fact as per his own admission, was disclosed by the assessee in his Balance Sheet as liability. Further it is a fact on record, which was brought to the notice of the CIT(A) also and has remained uncontroverted before us, that during assessment proceedings the assessee was asked to submit details of other liabilities, in response to which the assessee submitted the said details disclosing therein the fact of EDC received from land developers. Therefore, to say that the assessee had concealed any material fact relating to EDC, is not correct. That he had reflected it as a liability in the

Balance Sheet and not shown it as revenue receipt in its Profit & Loss Account, is not a matter of fact but on the contrary it is an interpretation of the fact of receipt of EDC regarding its nature and the reasons do not bring out any material /information with the AO leading him to form this opinion of the EDC charges being Revenue in nature. The Ld. DR has been unable to enlighten us as to what material fact relating to EDC was concealed by the assessee so as to empower the AO to assume jurisdiction to reopen the case of the assessee beyond four years from the relevant assessment year.

13. In view of the above, we have no hesitation in holding that since the AO has failed to point out concealment of any material fact relating to income escaping assessment, being EDC, the reopening of the case of the assessee resorted to beyond four years from the assessment years, is against the provisions of law. The jurisdiction assumed by the AO therefore, to frame the assessment u/s 147 of the Act is, therefore, not as per law. The order passed, by the AO as a consequential is not sustainable in law and is, therefore, set aside.

14. Since we have set aside the assessment order the grounds raised on the merits of the case are merely academic in nature

and the appeal filed by the Department raising grounds on the merits of the case also become infructuous.

15. In the result; the appeals filed by the assessee in ITA No.1177/Chd/2019 & ITA No.1202/Chd/2019 are allowed and the appeal of the Revenue in ITA No.1237/Chd/2019 is dismissed.

Sd/-

(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

Sd/-

(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

Dated: 12th November, 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

