

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

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपीलसं./ITA Nos.236 to 238/CHD/2021

निर्धारण वर्ष / Assessment Years : 2011-12 and 2012-13

H.P. Singh and others, 39 West, Maloya, Village Bheloppur, Sector 122, Mohali	बनाम	The ITO (TDS-2), Chandigarh
स्थायीलेखासं./PAN NO: AAEFH8681G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे/Assessee by : Sh.Tarandeep Singh , Advocate and
Sh. A.S.Aneja, Advocate

राजस्वकीओरसे/ Revenue by : Smt. PriyankaDhar, Sr. DR

सुनवाईकीतारीख/Date of Hearing : 31.08.2022

उदघोषणाकीतारीख/Date of Pronouncement : 25.11.2022

आदेश/Order

Per Vikram Singh Yadav, Accountant Member:

These are three appeals filed by the assessee against the orders of the CIT(A) NFAC, for different assessment years as per following details:-

S.No.	ITA Number	CIT(A)/ NFAC order dated
1	236/Chd/2021	19.08.2021
2	237/Chd/2021	19.08.2021
3	238/Chd/2021	26.07.2021

2. Since common issues were involved in all these appeals, they were heard together and are being disposed off by this consolidated order. With the consent of both the parties, the appeal filed by the assessee in ITA No. 236/Chd/2021 was taken as a lead case, wherein the grounds of the appeal taken by the assessee read as under:-

“1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining the order passed by Assessing Officer u/s 201(1) & 201(1 A) for not deducting tax at source of Rs. 5,82,660/- on payment made as External Development Charges to Greater Mohali Development Authority (GMADA) and charging Interest u/s 201(1 A) of Rs. 5,59,353/- thereon.

2. That the learned Commissioner of Income Tax (Appeals) has erred in both law and on facts in sustaining the action of the Assessing Officer and ignored the fact that the EDC charges were collected by GMADA on behalf of the State Govt, and that the assessee was not liable to deduct tax at source.

3. That the learned Commissioner of Income-tax (Appeals) erred on both law and facts in sustaining the order of Assessing Officer that EDC paid to Greater Mohali Development Authority (GMADA) was a taxable entity and payment made without deduction of tax was in violation with the provisions of 194C.

3.1 That the learned Commissioner of Income-tax (Appeals) ought to have considered the fact that GMADA only collected EDC on behalf of the State Govt, and EDC collected

was to be utilized as per the directions of the State Govt.

3.2 That the learned Commissioner of Income-tax (Appeals) ought to have considered the fact that there was no agreement between the appellant and GMADA to carry out any civil work on behalf of the assessee or any work to be carried out as per assessee's requirements.

4 That on facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) has erred in upholding the action of the AO of charging interest u/s on 201(1 A).

5 That the appellant craves leave to add, amend, modify or alter the grounds of appeal.”

3. Briefly the facts of the case are that the assessee firm is in the business of land and real estate development for which it has sought and got approval from Punjab Urban Planning and Development Authority and for the purposes, the assessee has paid External Development Charges (EDC) of Rs. 2,91,33,000/- to Greater Mohali Area Development Authority (GMADA). During the course of TDS proceedings before the ITO(TDS), Chandigarh, a show cause was issued to the assessee to furnish the details of the payments made to GMADA and compliance with the TDS provisions u/s 194C of the Income Tax Act, 1961 (hereinafter called 'the Act').

4. In response to the show cause, the assessee submitted that it is not required to deduct tax at source u/s 194C of the Act on payment to GMADA and for the purposes, reference was drawn to the letter received from GMADA wherein it was stated that the provisions of section 194C of the Act are not applicable to EDC payments and, hence, keeping in view the contents of the said letter, TDS was not deducted on payment of EDC charges. The reply so filed by the assessee was considered but not found acceptable to the Assessing Officer (AO). As per the AO, the payment made by the assessee on account of EDC is an advance payment for a work which is in the nature of Civil Work that clearly covered under Service Contract, hence, the assessee was liable to deduct TDS on such payment under the provisions of section 194C of the Act and as the assessee has failed to deduct TDS, the assessee was held as assessee in default and tax liability u/s 201 read with section 201(1A) of the Act was raised amounting to Rs. 11,42,013/- vide order dated 29.3.2018.

5. Being aggrieved, the assessee moved an appeal before the Ld. CIT(A) who has confirmed the findings of the AO and against the said order and the findings of the Ld. CIT(A), NFAC, the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that the sole issue in dispute is whether the assessee was liable to deduct tax u/s 194 C of the Act on the payment of EDC charges to GMADA. Referring to the impugned order, it was submitted that the CIT(A) has held that the EDC charges were received by the GMADA from the assessee in pursuance of the work contract executed between the assessee and GMADA and for the purposes, the Ld. CIT(A) has relied on the notification No. 17.17.2001 dated 22.6.2010, and the policy framed by the State of Punjab for utilization of EDC, Section 29 of the Punjab Regional and Town Planning and Development Act and the copy of the CBDT office Memorandum no. 23.12.2017. Thereafter, the Ld. CIT(A) has concluded his findings at para 5.1 and 6.2 and the contents thereof reads as under:-

“5.1 On perusal of the above notifications and policies of the Govt, also clearly reveal that for the purpose of development of infrastructure, the proportionate cost at fixed rates is got deposited by the government from the promoter as External Development Charges and the development is carried out by the local authority. The entire discussion can be summed up in the manner that though the promoter contributes towards the proportionate cost of infrastructure development, however, the works are carried out by the local authority in consequence of specific performance of the overall development of the area as per the

policy formulated by the Govt., cost of which is on the developer of project. In view of this, it implies that it is nothing but constitutes oral agreement, it shall be work / service contract, hence, the provisions of section 194C will be attracted in this case.

6.2 Therefore as such the GMADA being a development authority is kin to the HUDA, which is a development authority of State Government of Haryana & taxable entity under the Income-tax Act, and TDS provisions are applicable on EDC payable by the developer to HUDA, therefore I hold that EDC charges paid to GMADA is also liable to deduction of Tax by the developer. Thus, the Assessing Officer (TDS) has rightly held as the appellant in assessee in default under the provision of section 201(1)/201 (1A) of the Act. Therefore, the grounds of appeal raised by the appellant is hereby dismissed.”

7. It was submitted that in the context of ground Nos. 1 and ground No. 3.2 taken in assessee's appeal, the provisions of section 194C of the Act are not applicable in the instant case since there is no contract executed by the assessee with GMADA for payment of EDC and secondly even otherwise there is no work / service contract. In this regard, our reference was drawn to the agreement executed by the assessee dated 1.6.2006 with the State Govt. It was submitted that the background of this agreement is that the State Govt with a view to attract investment in Punjab has provided special package of incentives for infrastructure

projects provided the fixed capital investment in this projects is more than 100 crores. Under the agreement, it is the responsibility of the State Govt. to provide necessary infrastructural support and under the said agreement, the assessee has undertaken to deposit EDC or other charges as fixed by State Govt. It was accordingly submitted that there is no contract executed by the assessee with GMADA for payment of EDC and without prejudice, even otherwise, the Government is not carrying out any work / service to the assessee.

8. It was further submitted that an identical issue came up for consideration before the Chandigarh Benches of the Tribunal in the case of Sukham infrastructure (*ITA No.638, 249 & 250/Chd/2015 dated 7.6.2018*). It was submitted that the agreement in Sukham's case is similar to that of the assessee's and therein the Tribunal has taken note of the notification No. 17/17/2001 dated 22.6.2010 and the policy framed by the State of Punjab for utilization of the External Development Charges and it was held that section 194C of the Act is not applicable as there is no contract between the assessee and the GMADA, rather, the agreement is between the assessee and the State Govt. and it was further held that even otherwise the agreement is not for work / services. It

was submitted that undisputedly the facts in assessee's case are identical to that of the case of Sukham Infrastructure (supra) as is also evident from the assessment order passed by the AO dated 3.8.2021 for assessment year 2014-15.

9. It was further submitted that similar view has been taken by the Coordinate Chandigarh Benches of the Tribunal in the case of Preet Land Promoters and Developers P Ltd in ITA No. 829/Chd/2017 dated 8.11.2017, Delhi Benches in the case of Santur infrastructure Pvt Ltd in ITA No. 6844/Delhi/2019, M/s perfect Constech Pvt Ltd in ITA no. 6907/Delhi/2019 dated 29.12.2020.

10. It was further submitted that where EDC constitutes income in the hands of the GMADA or not is not a relevant issue for an adjudication of whether the provisions of section 194C of the Act are applicable. It was submitted that realizing the same even in the case of Sukham infrastructure (supra) this issue was left open by Tribunal. It was further submitted that the provisions of section 194C are different and cannot be equated with the provisions of section 195 of the Act wherein the payer can examine whether the payments are chargeable to tax in the hands of the non-resident payee or not. It was submitted that no such examination can be done by the payer within the ambit of

section 194C and in support reliance was placed on the decision of Hon'ble Supreme Court in the case of PILCOM Vs. CIT reported in 425 ITR 312 (SC) and a copy of the CBDT Circular No.12 of 2022 dated 16.6.2022.

11. It was submitted that the arguments taken by the Ld. Senior DR are in the context of whether the EDC charges are in the nature of income in the hands of GMADA or not and the said issue has at all no relevance as to adjudication of whether the provisions of section 194C are applicable or not and as far as the issue of whether EDC charges is in the nature of income saying can be decided while adjudication of mater in the hands of GMADA. It was accordingly submitted that the orders so passed by the Ld. CIT(A) NFAC be set aside and the necesslay relief be provided to the assessee.

12. Per contra, the Ld. Sr.DR relied on the orders of the lower authorities and it was further submitted that where the EDC charges is in the nature of income has been under challenge in the case of GMADA before the Tribunal and a copy of the submissions made therein were submitted during the course of hearing.

13. We have heard the rival submissions and have also perused the material on record. We find that the limited issue under consideration is whether the provisions of

section 194C are attracted on payment of EDC Charges by the assessee to GMADA. The provisions of section 194C provides that-

“Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

- (i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;*
- (ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,*

of such sum as income-tax on income comprised therein.”

14. Therefore, what is relevant to examine is whether any sum is paid for carrying out any work in pursuance of a contract between the contractor and the specified person.

Whether said sum is chargeable to tax in the hands of the payee and to what extent, is not a subject matter of examination as far as the applicability of section 194C of the Act. In the instant case, therefore whether EDC charges are chargeable to tax in the hands of GMADA is not subject matter of examination before us and the scope of the present adjudication is therefore limited to applicability of provisions of section 194C of the Act and we find that an identical issue has been decided by the Coordinate Chandigarh Benches in the case of **M/s Sukham Infrastructure Pvt Ld. Chandigarh** (*supra*) wherein the relevant findings read as under:-

“9. We have considered the rival submissions and have gone through the records. So far as the plea that the collection of the EDC charges by the GMADA from the developer / assessee was on behalf of the state government and that it is not an income of the GMADA and that the GMADA has shown this amount as liability in its account, in our view, any finding on this issue at this stage cannot be conclusively arrived in the case of a third party (assessee before us) as the GMADA is not a party to the present litigation/appeals. Whether the EDC charges received by the GMADA would constitute income at the hands of the GMADA is an important issue which has been strongly contested by the GMADA and even by other such authorities in other appeals, but, no specific or conclusive findings, arrived at in any of such cases either by the Tribunal or any higher authority, has been brought into our knowledge. Hence, at this stage in this case of the assessee due to lack of the adequate facts and evidences and at the back of GMADA, neither it is appropriate nor possible to give any conclusive finding as to whether the receipts of the GMADA on account of EDC charges from various developers would constitute taxable income of GMADA or not? However, after hearing the Ld. representatives of the parties at length, we are of the view that these payments made by the

assessee would not attract the provisions of sections 194C and 194A of the Act on other grounds also. Hence, we proceed to discuss and adjudicate the issues in the following paras of this order.

10. *Firstly, to see the nature of EDC charges paid by the assessee to the GMADA, whether the said payments are made on account of work contract so as to attract the provisions of section 194 C of the Act, we deem it proper to go through the contents of the agreement, copy of which has been placed on the file, contents of which are reproduced as under:*

“AGREEMENT

Memorandum of Agreement made this 11" day of October 2006 between the M/s Sukhm Infrastructure Pvt. Ltd., a Company (Registered under the Companies Act. 1956) and having its Administration office at SCO No. 161-162. Sector-8 C, Chandigarh (hereinafter referred to as 'the company') of the one part and the Governor of Punjab, through the Secretary Industries & Commerce, Government of Punjab, UdyagBhawan, Sector 17. Chandigarh (hereinafter referred to as 'State Government') of the other part.

- 1. Whereas the State Government with a view to attract new investment in Punjab has under Industrial Policy 2003 provided for consideration and determination of a special package of incentives for new as well as existing industrial units undertaking expansion through an Empowered Committee duly notified under the said policy for this purpose, provided fixed capital investment in the new unit or expansion is Rs. 100 crore and above.*
- 2. Whereas the company proposes to set up Information Technology / Industrial Park in an area of 125 acres of land each at Mohali with an investment of about Rs. 952 crores over a period of 3 years w.e.f. 29.03.2006.*
- 3. Whereas the company for implementation of the aforesaid project, requested the State Government for grant of special package of concessions enabling them to implement this project. Request of the company was duly discussed and considered by the Empowered Committee constituted under Industrial Policy, 2003 in its meeting*

held on 29.03.2006.

4. *Whereas on the basis of decision of the Empowered Committee, 'Letter of Intent' indicating the concessions proposed to be granted to the company by State Government has been issued to the company vide No.CC/JDP/Mega/Sukhm/3058 dated 5.5-2006.*
5. *Whereas the Government of Punjab has required the Company to enter into the Agreement with the Governor of Punjab hereinafter contained. Now this indenture witnessed that it hereby agreed and declared as follows: -*
 - (i) *The Company shall make an investment of Rs. 952 crore including fixed capital investment of at least Rs. 100 crore at one location, as defined by the Department of Industries under Industrial Policy 2003, by setting up of information Technology Parks projects in 125 acre of land at Mohali with an investment of about Rs. 952 crore within a period of 3 years, effective from 29.03.2006.*
 - (ii) *The said project shall have to be fully implemented and brought into commercial production within the said stipulated period*
 - (iii) *The company shall develop the Industrial Estate first and housing and commercial projects subsequently. Before developing or disposing off the residential and commercial pockets in any manner, the company shall not only first develop industrial pockets but also dispose off at least 50% of the industrial plots to industrial units which will be set up in the industrial pocket and the entire project shall come up with proposed investment level in stipulated period.*
 - (iv) *The project of Information Technology Park shall be further subject to the provision of the*

guidelines notified by Department of Industries & Commerce. Some of relevant provision shall be:-

- a. A minimum of 60% of area will have to be developed as an Industrial Pocket, a maximum of 30% of area may be developed as residential pocket and 10% of area can be developed as commercial pocket Government, in the Department of Industries may however, reduce the permissible limits for non-industrial use in particular cases.*
- b. Permissible saleable area in the industrial pocket shall be 65%, in the residential pocket 60% and for the commercial pocket 40% . Balance of areashall be used for common facilities, open spaces, green bell . as per approved zoning plan and as per applicable byelaws.*
- c. Zoning and Layout plan will be cleared by a competent authority declared by Director of Industries & Commerce, Punjab.*
- d. Common facilities would include the facilities for air conditioning, roads (including approach roads water supply, sewerage facilities, common effluent treatment facilities, telecom networks, generation and distributor of power, provided that the facilities are used for more than 2 industrial units in the industrial Park*
- e. Infrastructure development would include roads (including approach roads) water supply and sewerage facilities, common effluent treatment facilities, telecom networks, generation and distribution of power, parking facilities parks, street lights and such other facilities as are of common use tor industrial activities which are identifiable and arc to be commonly used.*
- f. Industrial Parks with a residential component shall have only non- polluting units and distance between industrial area and other areas will be in.*

accordance with guidelines issued by Punjab Pollution Control Board from time to time.

- g. Necessary clearances from various central/state agencies will have to be obtained by the developers as per statutory requirements and on payment of such prescribed fees as required under the law. The Department of Industries & Commerce, Government of Punjab will be the single nodal agency for approving and facilitating the projects for getting clearances etc. and will also facilitate in getting resolved various issues which will relate to Government Departments/Agencies.*
- h. An Industrial Park shall come up as one unit at single geographical location and shall be developed in contiguity. However, public service which already exists such as road, canal, park etc. shall not be construed to break the unity & contiguity of the park.*
- i. Benefits to industrial parks under industrial policy, if provided by the Government shall be withdrawn by State Government in case the park is not put up / developed in accordance with the sanctioned plan within the prescribed time period.*

(iv) The Government of Punjab has agreed to provide following reliefs and concessions to the company for implementation of aforesaid project:-

- a) As per the Industrial Policy 2003 exemption will be granted on 100% stamp duty and registration lee on sale / transfer of built up space of the units or land inside the project area. Such exemption shall extend to the project area upto first sale of developed area / plot / built up space to any party by them or to any of its affiliate. There shall be no stamp duly on lease instrument of units located in the project area. Such exemption shall remain operative till the completion of the entire project*

as per the agreement.

- b) State Government shall acquire land as per provision of the Land Acquisition Act to the extent of 10% of the total area of the project, if requested by the company.*
- c) The land use change in the area falling under the control of the Punjab Periphery Control Act shall be allowed without any charges levied by the Housing and Urban Development Department in accordance with the draft master layout plan of the periphery and periphery policy of the Government of Punjab. However, if any or whole part of land of the project area is not covered in any master plan or planning zone under PUDA Act, the land use thereof shall not be changed or amended later on and shall be incorporated as such and included in any future master plan or zoning which shall be prepared under the PUDA Act. The project shall not be advertised / launched and no money will be collected from general public for allotment of land / plot / flat / any space till such time the layout / zoning plans are cleared from the competent authority.*
- d) Permission under Punjab State Tubewell Act, 1954 to dig Tubewell in project area for requirement of the project was allowed.*
- e) Permission under the provisions of Punjab Mines & Mineral Act shall be allowed within the project area for works relating to development of the project. However, due charges will be payable.*
- f) High-rise buildings upto 45 mtrs, shall be allowed subject to Air Safety Regulations, Traffic Circulation and Fire Safety Norms.*
- g) Work contract tax on construction material required for the project shall be charged at minimum floor rate.*

- h) FAR of 2 shall be allowed for industrial and commercial purpose. However, the relevant building Bye-laws / regulations shall be applicable to the area. The Guidelines issued by the Department of Industries & Commerce for Industrial Parks shall also be applicable.*
- i) The State Government will try to ensure that connectivity to power, roads, accessibility, communication, civic and other infrastructure up to project is provided within 240 days from the date the same is applied for to the concerned department / agency / authority / local body on fulfillment of various terms and conditions required in this regard at such rates / fee etc. which shall not be less favorable to them compared to similarly placed projects / customers.*
- j) The project of industrial part shall be exempted from PAPR Act.*
- k) 50% exemption from electricity duty at current rate for 5 years shall be allowed from the date of release of connection by PSEB. This concession shall, however, be admissible only to such Industrial units which are set up within the area earmarked for industry and start production within 5 years from the date of approval of Industrial Park i.e. 27.1.2006.*
- l) The State Government shall allow the company to connect the project area to the State Transport Network. The State Government shall also allow them to operate their own public transport system within the project area and also for connecting the project area to the main urban center nearest to the project area subject to the fulfillment of required terms and conditions in this regard.*
- m) The State Government shall not allow hazardous industry as defined under Factories Act within 500*

metres of the project area and industrial plots within the industrial part shall also not have any hazardous industry.

n) Pollution Control Board shall grant NOC and consent to operate to the Green Category Industry to be located in the Industrial Park in 30 days on fulfillment of all the required terms and conditions.

o) No State Agency shall erect any barrier or create hindrance in various connectivities which shall be allowed to the project except on the ground of major law and order problem or National Security considerations.

p) The Department of Industries shall be the single Nodal Agency for facilitating the project and getting clearance etc. required for the unit for the project and the project area and will also get resolved various issues which will relate to the Government Departments or Punjab Government Public Sector Undertakings/Authority/Local Body.

q) Proportionate cost of infrastructure development which will be carried out by the State Government in the area where project is located, shall be borne by all the developers of Information Technology Park/Industrial Park proportionately.

6. In case the above company fails to comply with provisions of para- 5 (i), 5(ii) & (iii) above, within the stipulated period mentioned therein, the concession enumerated in para-5 (iv) above shall stand automatically withdrawn and the company shall have no claim or liability whatsoever on the State Government in this regard. The Government of Punjab shall be entitled to recover the cost of the aforesaid relief / concession availed by the Company (as dues recoverable by the Government as arrears of land revenue) under Para 5 (iv) above in the event of failure on the part of the Company to fulfill its obligations under Para 5(i), 5(ii)

& 5(iii) above.

In witness whereof the company has cause its common seal to be affixed and the Government of Punjab both hereunto set their hand and seal on the day and year first above written

*Sd/-
Signed on behalf of
The state Government.*

*Sd/-
the company*

11. *A perusal of the above reproduced agreement reveals that the agreement in question was executed between the assessee and the Governor of Punjab through the Secretary, Department of Industries and Commerce, State Government of Punjab and not with GMADA. However, latter on, the work of regulating / development of the area falling in SahibzadaAjit Singh Nagar (Mohali) and some adjoining areas was entrusted to the GMADA by the Government of Punjab. However, no separate agreement was executed between the assessee and GMADA. A specific query was raised by this Tribunal vide order dated 4.1.2018 not only from the assessee but also the GMADA officials were summoned with record to reply as to whether any agreement was executed between the assessee and GMADA; whereupon, it was confirmed by them to the Tribunal that no such separate agreement was executed between the GMADA and the assessee. Under the circumstances, it cannot be said that the assessee paid the EDC charges to GMADA out of any contractual liability with the GMADA. GMADA has been authorized to collect the EDC charges as per the policy decision of the Govt. and not out of the free consent of the parties to the contract. Under such circumstances, the GMADA being not a party to the contract, the aforesaid contract can not be enforced against the assessee by the GMADA in its own rights.*

12. *We have come across a decision of the Hon'ble Punjab & Haryana High Court dated 16 December, 2016 in the own cases of the assessee bearing CWP No.5213 of 2015 (O&M) & CWP No.5620 of 2015 (O&M) styled as M/s Sukhm Infrastructures Pvt. Ltd. vs. State of Punjab &Ors. wherein the assessee had challenged the very action of the Govt. in levying the EDC charges on the ground that as per clause (iv) (j) of the agreement, the assessee's project was exempt from Punjab*

Apartment & Property Regulation Act, 1996 (PAPR Act). The Hon'ble High Court though held that the assessee was exempt from PAPR Act, yet, the assessee was liable to pay proportionate cost of infrastructure development which included EDC charges out of its contractual liability with the State Govt. However, it was established that the GMADA has no authority to assume the role of State Govt. to deny the concessions to the assessee by invoking Para 6 of the agreement. The relevant part of the order of the Hon'ble High Court is reproduced as under:

“The State Government thereafter at its own has extended the time limit repeatedly and its latest policy dated 06.02.2015 (R3) conclusively establishes its inclination towards the completion of projects by granting concession/relief in the agreed time schedules, for which an offer has been made even to the petitioner also. Since the respondents themselves are not keen to adhere to the time schedule, we hold that GMADA has no authority to assume the role of State Government or to invoke Para 6 of the Agreement to say that the petitioner has lost its right to claim concessions due to the 'expiry' of time period, within which the project was required to be completed.”

13. In view of this, so far as the EDC charges paid by the assessee to the GMADA are concerned, in our view, provisions of section 194C are not attracted to the agreement/contract in question executed by the assessee with the Governor/Govt. of Punjab.

14. Even if, we assume it otherwise, let us see whether the agreement executed by the assessee with the Governor of Punjab constitute a work / service contract, the contents of which have been reproduced above. A perusal of the above agreement reveals that the same was executed as per the policy of the State Government with a view to direct new investments in Punjab and for that purpose to give special packages or incentives for new as well as existing industrial units undertaking expansion providing fixed capital investment in the new units or expansion is Rs. 100 crores or above. As per the above incentive policy, the assessee proposed to set up new Technology Park in an area of

125 acres of land at Mohali with an investment of Rs. 952 cores to avail the benefits/ special package of concessions. The aforesaid agreement was executed between the assessee and the Governor of Punjab on behalf of the State Government. A perusal of the whole agreement, as reproduced above, shows that the clauses (i) to (iii) along with their sub clauses relate to the obligation of the assessee to invest and develop the stipulated amount and develop the project as per policy and guidelines of the state Government. Clause (iv) further provides for the relief and concessions for which the government of Punjab agreed to provide to the assessee as per its policy of development which included exemption of 100% of stamp duty and registration fee etc., acquisition of land to the extent of 10% of the total area of project by the state government if requested by the assessee, change of land user free of cost, permission to dig tube wells, permission to construct high rise buildings up to to 45 meters etc., concession in work contract tax on construction material, FAR allowability of 2 for industrial and commercial purposes, exemption of the industrial park from PAPR Act, 50% exemption form electricity duty for five years, permission to the company / assessee to connect the project area to the state transport network and to operate its own public transport system within the project area and further commitment of the state government not to allow hazardous industry with 500 meters of the project area, NOC from the Pollution Control Board and consent to operate to the Green Category Industry within the period of 30 days and the state government's commitment not to erect any barrier or create hindrance in various connectivities. However thee clauses (i) and (q) are seemed to be relevant for the adjudication of the issue. Clause (i) provides that the State Government will try to ensure that connectivity to power, roads, accessibility, communication, civic and other infrastructure up to project is provided within 240 days from the date the same is applied for to the concerned department / agency / authority / local body on fulfillment of various terms and conditions required in this regard at such rates / fee etc. which shall not be less favorable to them compared to similarly placed projects / customers, whereas Clause (q) provides that Proportionate cost of infrastructure development which will be carried out by the State Government in the area where project is located shall be borne by all the developers of Information Technology Park / Industrial Park proportionately.

15. *A perusal of all the clauses of the agreement, as discussed above, reveals that it is not a work or service contract between the parties. The various clauses of the agreement just show that if the assessee agrees to develop the infrastructure as per the policy of the Govt., then the assessee would be entitled to various concession and incentives. However, the assessee is required to deposit proportionate cost of infrastructure development which will be carried out by the State Government in the area where project is located but it does not mean that the External Development is carried out by the government on behalf of the developer / assessee on account of its contractual liability. The Development of the external area is carried out by the Govt. so as to provide road connectivity, water supply connectivity, sewerage connectivity etc. to the project which also includes the acquisition of land by the Govt. as may be required for such purpose. In our view, it will be illogical to say that the land is acquired/agreed to be acquired by the Govt. in lieu of any work/service contract with the assessee, external work is carried out by the Govt./local authority out of its own responsibility. Merely because the developers are required to deposit EDC on account of proportionate cost of infrastructure development, would not constitute the agreement a work contract. The External Development so as to connect the residential areas or industrial project with the main roads, system, water supply, sewerage / drainage, electricity supply or any other works, so required are to be carried out by the Govt./local authority out of its own responsibility and even if the contractor does not pay the EDC charges that does not absolve the government from carrying out the development works relating to the connectivity of the project. The government has also issued notifications from time to time so as to give concessions to the developer / promoters regarding External Development charges and also to formulate a policy regarding utilization of the EDC charges not only to provide infrastructure along with the approved project but also for the overall development of the area in general.*

16. *The State government vide its notification No. 17/17/2001-5HG2/P.F/1817 dated 22.6.2010, has prescribed the rates, time and manner of deposit of EDC charges wherein the EDC charges have been explained as under:-*

“3) *External Development Charges (EDC) are the charges for utilization and repair/ maintenance/ strengthening of existing infrastructure proposed infrastructure and License/ Permission fee is the fee for granting permission for the projects.*

The External Development Charges and Licence fee shall be utilized by the concerned Local Planning and Urban Development Authorities for providing infrastructure. In case the concerned Authority feels that connectivity is required from any local body or any work is to be got executed from a local body, the proportionate amount may be deposited by the authority with the Local Body on case to case basis.”

17. *Apart from that, the state government has also made a policy for utilization of EDC charges in the State of Punjab, which reads as under:-*

“Policy for utilization of External Development Charges in the State of Punjab.

In pursuance of the provisions contained in the Punjab Regional and Town Planning and Development Act, 1995 and Punjab Apartment and Property Regulation Act, 1995, the State Government issued Notification No. 17/17/2001- 5Hg2/53077/11 dated 17th May, 2013 and No. 17/17/2001-5Hg2/P.F/47962/1 dated 6 th May, 2013 to recover External Development Charges (EDC) in the State of Punjab. Various special development authorities are authorized to collect EDC from the promoters of various residential, commercial, industrial or any other project in their respective jurisdiction in accordance with the provisions of the Act.

It is felt that at the State level there is an urgent need to formulate a policy regarding utilization of EDC not only to provide infrastructure around the approved project but also for the overall development of the area is general. This policy shall detail the works on which EDC charges so collected are to be utilized.

A. EXTERNAL DEVELOPMENT WORKS WHERE EDC IS TO BE USED:

1. *External development works may include the provision of road connectivity to the project including cost of acquisition of land for*

such connectivity and construction of the roads. These roads shall be only Master plan roads.

2. It can be utilized for augmentation of water supply scheme in case the water supply is provided by the authority / Local bodies and provision to upgrade the water supply system for providing connectivity to project. No connection charges if any will be charged from the developer for providing water connectivity, however, the user charges to supply water are not included in EDC and will be charged by the authority according to the policy applicable.

3. It may also include augmentation of major sewer, if required to provide sewerage connectivity to the project, grid sewer or sewer lines for out flow of treated water from the project to the main STP of the area if required.

- 1. Where outfall sewer is laid by the development authority within sector grid, provision shall be made for the treated sewer to shall fall into that sewer, However for stand alone projects where no major sewer lines are laid or there is no provision to lay such lines in near future by the Local Government /special Development Authority. The promoter shall construct STP on its own cost. The licensee will also provide for the cost of outfall of the treated water into a proper outflow drain etc., as the case may be at its own cost. This condition should be mentioned in the license or exemption to Mega Projects by the Competent Authority. No connection charges if any will be charged for the developer for the main sewer, however the user charges for flow of treated or untreated water from the project to the STP or disposal are not included in the EDC.*
- 2. The EDC can be utilized for up gradation of Electric grid Station of 66kv and above if required for providing adequate power supply to the project. However, where the provision of electricity is made through Partial load, its expenditure shall be covered under EDC. Where any installation below 66kv or part of the project which caters to the needs of the project only will be the responsibility of the project owner and is not included in EDC.*

B. OTHER DEVELOPMENT WORKS FOR THE OVERALL DEVERLOPMENT OF AREA:

These works may include the up gradation and construction of major roads/ Master Plan Roads, construction of bye-passes,

provision and up gradation of educational, health and sports facilities, or any other infrastructure in the area for the benefit of area and public at large as decided by the authority.

- (i) *Major Road Network/Bye Pass*
- (ii) *Water Supply Network*
- (iii) *Sewerage Network and disposal sites.*
- (iv) *Power Stations*
- (v) *Social Infrastructure such as education, health, public buildings.*

The committee constituted to prepare & scrutinize the Action Plan for the utilization of EDC should finalize the priorities of works to be done out of EDC. However, the share for any component will not be fixed.

Note: Area means the area included within the limits of local planning area of any Master Plan for special Planning & Development Authority and Area within Municipal limits for the Urban Local Bodies.

C. Utilization of EDC

These funds may also be utilized for any specific purpose/ work on the special instructions of the state government.

D. WHAT IS NOT INCLUDED IN EXTERNAL DEVELOPMENT WORKS: *The provision of internal roads, water supply, sewer, storm water drainage, street lighting, development of parks, landscaping, electric supply, any electric installation (other than 66 KV electric grid station) within colony. The obligations of promoter under PAPRA will not be a liability of EDC.*

Manner of Utilization.

1. At the time of approval of the project/approval of the layout plan/grant of licence the competent authority may specify the provisions which would be made or for the external development of the infrastructure according to this policy for the project. However, in case the exact detail of all the development work is not possible to be mentioned at the time of license, it may be decided as per the requirements of the project & future needs. So that the applicant/project owner is clear on what kind of infrastructure will be provided by the Authority.

2. For the fair and optimum utilization of EDC , every local Planning and Development Authority or Local Authority should prepare an Action plan for up gradation of existing infrastructure, provision of new infrastructure and city level facilities in the periphery of approved projects and within the local planning area limits.

3. EDC collected from all the projects will not only be used for up gradation of infrastructure as explained above but for the overall development of the local planning area as per the policy. Such action program should be prepared in such a manner that the first priority should be given for the provision of infrastructure around approved projects and other city level infrastructure should be considered as second priority. The action program should be approved by the concerned development authority.

“Promoter may submit suggestions regarding the works to be undertaken out of EDC around his project; However the committee constituted to prepare & scrutinize the Action Plan for the utilization of EDC should finalize the priorities after considering the suggestions of promoter.”

3. In case of areas falling within municipal limits, where Local government has already prepared any Action Plan for the provision and upgradation of existing infrastructure, there should be no need to prepare a fresh Action Plan for the utilization of EDC Local Government may constitute its own advisory committee if required for the preparation of action plan.

Preparation of Action Plan.

Annual Action Plan for up gradation of existing infrastructure and provision of proposed infrastructure in view of the proposals of Master Plan in general and for its provision to the approved projects in particular be prepared by every local Planning and development Authority. An advisory committee may be constituted in each local planning and development authority to prepare and scrutinize the Annual Action Plan. The committee shall be as follows for the Planning & Development Authority.

1. Chief Administrator Chairman
2. Additional Chief Administrator Member Secretary
3. Representative of Deputy Commissioner Member
4. Superintendent Engineer Member (concerned dev. Authority)
5. District Town Planner (concerned) Member
6. XEN PWD (B&R) Member
7. XEN (PH) W/S & Sanitation Deptt., Pb. Member
8. SE, PWSS. Board Member (Where ever required)
9. Superintendent Engineer (PSPCL) Member
10. Any other special invitee.

The committee for Corporation Cities will be as follow:-

- | | |
|--|------------------|
| 1. Commissioner M. Corpn. | Chairman |
| 2. Addl./Joint Commissioner | Member Secretary |
| 3. . Rep. of Deputy Commissioner | Member |
| 4. S.E.M. Corpn. | Member |
| 5. XEN (PH) W/S & Sanitation Deptt., Pb. | Member |
| 6. SE, PWSS. Board | Member |
| 7. Municipal Town Planner | Member |
| 8. District Town Planner(Concerned) | Member |
| 9. Chief Engineer/SE(PSPCL) | Member |

The committee for the other Towns will be as follow:-

- | | |
|--|----------|
| 1. Regional Deputy Director(LG) | Chairman |
| 2. E.O.M.C.(Concerned) | Convener |
| 3. Rep. of C.T.P. Local Government | Member |
| 4. XEN (PH) W/S & Sanitation Deptt., Pb. | Member |
| 5. XEN, PWSS. Board | Member |
| 6. District Town Planner (concerned) | Member |
| 7. Superintendent Engineer(PSPCL) | Member |
| 8. Any other Special Invitee | Member |

Maintenance of Separate Account.

The separate account of amount received under the head of EDC should be maintained by every local planning and development authority or local authority. The expenditure incurred on various development works executed out of this account should also be maintained separately. The local authority should get this account audited every year and put up the report to the authority for its rectification.”

18 *A perusal of the above reproduced notifications and policies of the Govt. also clearly reveal that though, in lieu of the benefits, concessions, incentives given by the government to the promoter for the purpose of development of infrastructure, the proportionate cost at fixed rates is got deposited by the government from the promoter for external development work, yet, the development is carried out by the local authority out of its own obligations/duties. The entire discussion can be summed up in the manner that though the promoter contributes towards the proportionate cost of infrastructure development, however, the works are not carried out by the local authority in consequence of specific performance of the agreement/contract but out of its own obligations and duties towards the public. In view of this, since the agreement cannot be said to be a work / service contract, hence, the provisions of section 194C will not be attracted in this case.”*

15. In the aforesaid decision, the Coordinate Benches have held that GMADA has been authorized to collect the EDC charges as per the policy decision of the Government and not out of free consent of the parties to the contract which has been executed between the assessee and the Govt. and therefore, it cannot be said that assessee has paid the EDC charges to GMADA out of any contractual obligations and liability towards GMADA. It has been further held that though the developer contributes towards the proportionate cost of infrastructure development by way of EDC Charges, the work so carried out by the local authority is not in consequence of specific performance of the contract but out of its own obligations and duties towards the public and

thus, the contract cannot be said to be a work/service contract and thus, on both accounts, the provisions of section 194C are not attracted. Nothing has been brought on record or to our notice during the course of hearing that the aforesaid findings of the Coordinate Benches have been disturbed by an order of a Higher Court and therefore, taking the same into consideration and following the principle of consistency, we are of the considered view that the provisions of section 194C are not attracted on payment of EDC charges to GMADA and thus, the demand raised u/s 201(1) read with Section 201(1A) of the Act are hereby set aside.

16. In the result, the appeal of the assessee is allowed.

17. In ITA No. 237/Chd/2021 and 238/Chd/2021, both the parties submitted that the facts and circumstances of the case are exactly identical except that in ITA No.237/Chd/2021, the AO passed the order u/s 201(1) read with section 201(1A), whereas in ITA No. 238/Chd/2021, the AO had passed the order u/s 144 r.w.s. 147 of the Act and the additions have been made u/s 40(a)(ia) of the Act on account of non-deduction of TDS u/s 194C of the Act. Therefore, considering these submissions made by both the parties, our findings and directions contained in ITA

No.236/Chd/2021 shall apply equally in these two matters and the matter is decided in favour of the assessee.

18. In the result, all the three appeals filed by the assessee are allowed.

Order pronounced on 25/11/2022.

Sd/-
(DIVA SINGH)
Judicial Member

Sd/-
(VIKRAM SINGH YADAV)
Accountant Member

Dated : 25.11.2022
“आर.के.”

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