

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

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &  
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **336/CHD/2023**

निर्धारण वर्ष / Assessment Year : 2012-13

The ACIT (Exemptions), Circle-2, Chandigarh	Vs. बनाम	Infrastructure Development Fund, Town & Country Planning, Haryana, Ayojna Bhawan, Sector 18 Marg, Chandigarh 160018
स्थायी लेखा सं./PAN No: AAAL10136K		
अपीलार्थी ./ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/Assessee by : Sh. Parikshit Aggarwal, CA  
राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR

सुनवाई की तारीख/Date of Hearing : 08.05.2024  
उद्घोषणा की तारीख/Date of Pronouncement : 29.05.2024

**आदेश/Order**

**Per Dr. Krinwant Sahay, A.M.:**

The appeal in this case has been filed by the Department against the order dated 30.03.2023 of Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi.

2. The Grounds taken by the Department are reproduced as under:-

1. *Whether on the facts and circumstance of the case, the action of Ld. CIT(A) is legally sustainable in the eyes of law during the 12A registration proceedings, the assessee itself claimed that it is distinct & separate entity from State and its main source of income is IDC & IAC receipts and during assessment proceedings, the assessee has taken a complete turnaround and adopted a contradictory stand to save itself from taxation by claiming that it is a separate & distinct authority and taken its IDC & IAC receipts directly into balance sheet (Reference: Hon'ble ITAT Chandigarh Bench Decision in M/s Baddi Barotiwala Nalagarh Development Authority vs DCIT in ITA Nos 880 & 881/Chd/2014)?*
2. *Whether on the facts and circumstance of the case, the action of the Ld. CIT(A) is justified in holding the income earned as interest from FDRs as exempted from taxation when hon'ble supreme court in the case of Bangalore club vs CIT and other [reported in 350 ITR 509(SC)] has held that the earning of interest was not considered as charitable activity?*
3. *Whether on the facts and circumstances of the case, the action of the Ld. CIT(A) is justified in holding the income earned as interest from FDRs as exempted from taxation when the assessee itself has disclosed it in the income and Expenditure Account?*
4. *Whether on the fact and circumstances of the case, the action of Ld. CIT(A) is justified in holding the assessee as nodal agency when it has complied with the provisions of the Income Tax Act i.e. getting its account audited and submission of audit report, filing of ITR's for AY 2009-10 onwards etc. which shows its own belief that it was liable to tax under income Tax Act as a separate legal entity?*

3. Ground No. 1: During the course of proceedings, the Id. DR has argued vehemently and he also relied on the order of the Assessing Officer.

4. The Id. Counsel for the Assessee has argued and filed a written submission, which is as under:-

*“The assessee had been contending with the revenue that it is not a taxable entity being part of State Government of Haryana, hence, it could not be imposed any Income tax liability and could not be assessed under the Act. This issue came up earlier before the Hon'ble ITAT in assessee's own case for AYs 2009-10, 2013-14 & 2014-15 and the Hon'ble Bench decided it in favour of the assessee categorically holding that assessee was not a taxable entity till AY 2013-14 and due to amendment in the Constitution document of the assessee thereafter, it has become a separate from Govt and a taxable entity from AY 2014-15.”*

5. The Id. Counsel for the Assessee brought to the notice of the Tribunal, that the Chandigarh Bench of the ITAT has decided the identical issue in the Assessee's own case for assessment year 2009-10 and 2013-14 in ITA Nos. 644/Chandi/2018 and 528/Chandi/2017 dated 31.7.2020. The Tribunal has given a very categorical finding in the Assessee's own case in the ITA referred to above as under:-

“8. We have heard the rival contentions carefully, gone through the orders of the authorities below and also the various documents and case laws referred before us.

9. The issue to be adjudicated is regarding taxability of Infrastructure Development Charges, (IDC ) receipts in the hands of the assessee Fund. The contention of the Ld. Counsel for the assessee is that the Fund was just a bank account of the State Government and was not a separate legal entity. That the fund belonged entirely to the state government and therefore there arose no question of taxing the IDC receipts in the hands of the Fund. That at best the Fund was a nodal agency of the State , the IDC receipts constituting the Fund, being collected and utilized on behalf of and on the direction of the State, and therefore the IDC receipts could not be treated as Revenue receipts in the hands of the assessee Fund by the concept of diversion of income by overriding title. Revenue on the other hand , has argued that the assessee Fund is a separate entity from the State and has, besides relying on the statutory provisions creating it, also relied heavily on the assessee's admission of the said fact while seeking registration as a charitable trust u/s 12A of the Act, and complying with the provisions of the Income Tax Act by getting its accounts audited under it and filing income tax returns since A.Y 2009-10 projecting itself as a separate entity. The Revenue has also contended that there was no diversion of income by overriding title vis a vis IDC receipts as claimed by the assessee and relied on various case laws in support of its contention.

Both the parties have relied on the background facts and statutory provisions leading to the creation of the assessee fund, under the Haryana Development and Regulation of Urban Areas Act, 1975, (HDRUA Act) to buttress their arguments and which in our view are determinative factors for adjudicating whether the assessee fund belonged to the state or not.

10. We have gone through the relevant statutory provisions creating the Fund and facts relating to its functioning and what emerges is that the Fund merely represents money, belonging to the State, pooled for

*specific user purposes of infrastructure development in the state. The Fund belongs entirely to the State and has no distinct or separate identity of its own.*

*The relevant provision creating the Fund is section 3A of the Haryana Development and Regulation of Urban Areas Act, 1975, which reads as under:*

*3A. Establishment of Fund— (1) Any colonizer to whom a license has been given under this Act shall deposit as {infrastructure development charges a sum, {at such rate as may be prescribed by the Government from time to time, per square metres of the gross area and of the covered area of all the floors in case of flats proposed to be developed by him into a colony} in two equal installments. The first installment shall be deposited within 60 days from the date of grant of the license and the second installment to be deposited within six months from the date of grant of license.*

*(2) The Haryana Urban Development Authority {local authorities, firms, undertakings of Government and other authorities involved in land development} shall also be liable to deposit the {infrastructure development charges} and shall be deemed to be {colonizers} for this purpose only. The date of first inviting applications for sale of plots in any colony by it shall be deemed to be the date of granting of license under this Act for the purpose of deposit of {infrastructure development charges}.*

*(3) The {infrastructure development charges} shall be deposited by the colonizer with such officer or person as may be appointed by the government in this behalf.*

*(4) The colonizer shall in turn be entitled to pass on the {infrastructure development charges} paid by him to the plot holder.*

*(5) The amount of {infrastructure development charges} if not paid within the prescribed period shall be recoverable as arrears of land revenue.*

*(6) The amount of infrastructure development charges so deposited by the colonizer shall constitute a fund called the Fund, for stimulating socio-economic growth and development of major infrastructure projects for the benefit of the State of Haryana (hereinafter referred to as the Fund)].*

*(7) The Fund shall be administered by a High Powered*

*Committee as may be constituted by the Government for this purpose.]*

*(8)The amount of infrastructure development charges {and infrastructure augmentation charges} deposited by the colonizers, loans and grants from the Central/State Government or the local authority, or loans and grant from national/international financial institutions and any other money from such source as the state Government may decided, shall be credited to the fund.*

*[(9) The Fund shall be utilized for stimulating socio-economic growth and development of major infrastructure projects for the benefit of the state of Haryana. The Fund may also be utilized to meet the cost of administering the Fund.]*

*11. A bare reading of the section clearly shows that the Fund was constituted under the HDRUA Act,1975, of the State Government, from the Infrastructure Development charges [sub section (6)] , which were levied by the State [sub section (1)] and collected by the State [sub section(3)] , for development of major infrastructure projects for the benefit of the state [sub section (6)]. The administration of the Fund vested in a high powered committee, the notification relating to which is reproduced hereunder:*

*HARYANA GOVERNMENT*

*TOWN AND COUNTRY PLANNING DEPARTMENT*

*Notification*

*The 12<sup>th</sup> July 2007*

*No. DS.2007/17807 – In pursuance of the provisions of Sub-section (7) of Section 3A of the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), the Governor of Haryana hereby constitutes High Powered Committee consisting of following members for the administration of Fund for the development of major infrastructure projects in the State of Haryana namely :-*

- |   |                      |
|---|----------------------|
| <i>1. Chief Minister, Haryana</i>   | <i>Chairman</i>      |
| <i>2. Chief Secretary, Haryana</i>  | <i>Vice Chairman</i> |
| <i>3. Financial Commissioner and Principle Secretary to Government Haryana, Finance Department</i>    | <i>Member</i>        |
| <i>4. Financial Commissioner and Principal Secretary to Government Haryana, Irrigation Department</i> | <i>Member</i>        |
| <i>5. Financial Commissioner and Principal Secretary to</i>   | <i>Member</i>        |

*Government Haryana, Power Department*

6. *Financial Commissioner and Principal Secretary to Government Haryana, Public works, Building Roads Department* Member
7. *Financial Commissioner and Principal Secretary to Government of Haryana, Transport Department* Member
8. *Commissioner and Secretary to Government Haryana, Member Town and Country Planning Department*
9. *Director, Town and Country Planning Department Secretary Haryana* Member

*D.S. DHESI*

*Commissioner and Secretary to ,Government Haryana Town and Country Planning Department*

*As is evident from the above, the high powered committee was headed by the Chief Minister and comprised of Secretaries of various departments relevant for infrastructure development including the Finance Secretary. The committee therefore was merely representative of the State, being constituted as a platform where all the concerned department heads of the State for infrastructure development, were brought together so as to speed up the implementation/execution of infrastructure projects, which was the objective for which the Fund was created (sub section 6),i.e stimulation of socio economic growth and development of major infrastructure projects in the state. The Ld. Counsel for the assessee has also filed before us copies of documents being inter government department communication and minutes of the meeting of the High powered committee at P.B 30-115. On going through the same we find that the documents bring out the fact that the assessee Fund merely contributed to infrastructure projects in the state approved by the government and on direction of the government. The documents filed before us relate to funds utilized for projects relating to construction of Bridge over Tangri Nadi Crossing Jagadhri Ambala Road, extension of Delhi metro to gurgaon, Renuka Dam project and development of international civil air terminal at Chandigarh ,to name a few. The decision for undertaking all these projects were taken by the Government which is evident from the minutes*

*of the meeting held under the chairmanship of the Finance commissioner and Principal Secretary to Govt. of Haryana regarding cost(P.B 33) and his note seeking approval of the Chief Minister for release of funds from IDC for the Bridge Project,(P.B 30), the letter addressed to the Senior Town planner ,Chandigarh ,by the Chief Cordinator Planner(NCR) requesting release of funds from IDC for Delhi Metro Gurgaon project as approved in the meeting held under the chairmanship of FC Finance Department (P.B 34) and such other documents relating to other projects. Thus the Fund had no role in the development of infrastructure projects except being a depository of IDC charges collected by the state for the said purpose ,to be utilized as determined by the State.*

*What emerges from the from the above therefore is that the assessee fund merely represented money set apart/pooled by the government so as to facilitate its user for a specific purpose of infrastructure development in the state, all control over its collection and user remaining with the state .We therefore hold that the fund entirely vested in the State and no separate entity, distinct from the state had been created by virtue ofthe creation of the fund.*

*12. The argument of the Revenue that the formation of a high powered committee for administration of the Fund sufficiently established that an entity distinct from the State has been created, in our view holds no ground. The constituents who make up the committee coupled with the fact of exercise of power by the committee whether in its own right and distinct from the State would be essential factors determining whether an entity distinct and separate from the State had been created on the formation ofthe committee. In the facts of the present case as stated above, the committee comprised of the Chief Minister of the state, who headed it, and heads of government departments concerned with implementation of infrastructure projects. The constituents of the committee represented the State. This committee was empowered to administer the Fund as per the HDRUA Act, 1975. The documents filed before us show that the expenditure out of the Fund was incurred only with the directions and approval of State Government. Reading it all together, the committee represented the State carrying out the activities*

*relating to utilization of the Fund. The contention of the Revenue therefore that the formation of a High Powered Committee to administer the Fund showed that the Fund was a separate entity from the State, is rejected*

*We also do not find any merit in the argument of the Revenue that the assessee itself having admitted being a distinct and separate entity from the state ,while applying for grant of registration u/s 12A of the Act and filing income tax returns, it cannot now take a contrary stand. Undoubtedly the aforesaid admission of the assessee related to an interpretation of facts and did not relate to admitting a fact . Merely because the assessee had interpreted the facts relating to its creation and administration as demonstrating itself to be an entity distinct and separate from the state, while seeking registration u/s 12A of the Act, does not estop the assessee from taking a contradictory stand , which is in accordance with law, in any other proceeding. After all the purpose of the entire exercise of assessment proceedings, including appellate proceedings, is to determine the taxable income as per correct interpretation of law applied to the facts of each case. We therefore do not find any merit in the contention of the Revenue that the assessee having itself admitted to being an entity separate and distinct from the state in proceedings u/s 12A of the Act cannot now take a contradictory stand, and dismiss the same. At the same time we hold that considering our findings as above that the assessee Fund was not an artificial juridical person ,the Revenue is free to take all necessary action as a consequence ,within the framework of law.*

*Also merely because the assessee fund no longer requires approval of the Finance Department of the state while utilizing the funds , does not in our view alter or impinge upon its character as held by us as being money of the state kept aside for specific purpose. The presence of the Revenue Secretary in the high powered committee takes care of the requirement of obtaining approval of the Finance Department for utilization of funds.*

*In view of the above we hold that Upto A.Y 2013-14,the Fund belonged to the State and was not liable to tax.*

*The addition made of the IDC receipts and interest on FDRs in A.Y 2009-10 and A.Y 2013-14 are therefore directed to be deleted. Ground No 2 & 4 raised in ITA No. 644/Chd/18 & the additional grounds No.1 & 2 in ITA No.528/Chd/17, are accordingly allowed.”*

6. We have considered the findings of the ld. CIT(A), NFAC on this issue and written submissions filed by the ld. Counsel of the Assessee. We have also heard ld. DR and gone through the ITAT, Chandigarh aforesaid order in Assessee's own case for A.Y. 2009-10 and 2013-14 in the appeals referred to above. It is clear from the order that the Assessee was not a separate entity till assessment year 2013-14 but due to amendment in the Constitutional Document of the Assessee, it had become a separate entity from the Government and, therefore, it was taxable w.e.f. A.Y. 2014-15. Since in the instance case, the issue pertains to A.Y. 2012-13, therefore, as per findings of the Chandigarh Bench of the Tribunal in Assessee's own case for A.Ys. 2009-10 and 2013-14, the Assessee receipts from IDC and IAC are not taxable. Accordingly, the appeal on Ground No.1 is considered as squarely covered by the decision of the Chandigarh Bench of the Tribunal in favour of the Assessee in Assessee's own case. So, the Departmental appeal on Ground No.1 is dismissed.

7. Appeal on Ground No. 2 and 3 is against the addition of income earned as interest from FDRs. On this issue also, the Assessee has filed a written submission as under:-

*“These issues were also raised earlier before the Hon'ble ITAT in appeal in assessee's own case for AY 2009-10 & 2013-14 where the Hon'ble ITAT, while adjudicating the main ground held that the assessee is not a taxable entity upto AY 2013-14, as discussed above. In that decision, the Hon'ble ITAT decided the above grounds regarding FDR interest also in favour of the assessee.”*

8. We have heard the ld. DR and ld. Counsel of the Assessee on the issue and have also considered the written submissions filed by the ld. Counsel. The ld. DR relied on the order of CIT(A). From the record, it is seen that the issue raised vide aforesaid Grounds is covered by the decision of the ITAT Chandigarh Bench of the Tribunal in Assessee's own case for A.Y. 2009-10 and 2013-14, ITA No. 644/Chandi/2018 and 528/Chandi/2017 order dated 31.7.2020 and it is found that this issue is squarely covered in favour of the Assessee. In the order mentioned above, it has been categorically mentioned as under: -

*"Also merely because the assessee fund no longer requires approval of the Finance Department of the state while utilizing the funds, does not in our view alter or impinge upon its character as held by us as being money of the state kept aside for specific purpose. The presence of the Revenue Secretary in the high powered committee takes care of the requirement of obtaining approval of the Finance Department for utilization of funds.*

*In view of the above we hold that upto A.Y 2013-14, the Fund belonged to the State and was not liable to tax. The addition made of the IDC receipts and interest on FDRs in*

*A.Y 2009-10 and A.Y 2013-14 are therefore directed to be deleted. Ground No. 2 & 4 raised in ITA No. 644Chd/18 & the additional grounds No. 1 & 2 in ITA No. 528/Chd/17, are accordingly allowed."*

9. We have considered the findings of the ld. CIT(A) on this issue and we have also considered the arguments put forward by the ld. DR. Simultaneously, we have taken into consideration the arguments put forward by the ld. Counsel of the Assessee and the written submissions filed by him. We find that this issue is squarely covered by the order dated 31.7.2020 (supra) of the Chandigarh Bench of the Tribunal for A.Y. 2009-10 and 2013-14 in Assessee's own case. Accordingly, Department's appeal on this issue is dismissed.

10. The appeal on Ground No.4 is that whether the Ld. CIT(A) is justified in holding the assessee as nodal agency when it has complied with the provisions of the Income Tax Act, i.e., getting its account audited and submission of audit report, filing of ITR's for AY 2009-10 onwards etc., which shows its own belief that it was liable to tax under income Tax Act as a separate legal entity.

11. After considering the arguments of the ld. DR and the ld. Counsel of the Assessee we find that this issue is also squarely covered with the findings given the Chandigarh Bench of the Tribunal in Assessee's own case vide order dated 31.7.2020 (supra) for A.Y. 2009-10 and 2013-14 wherein, it was categorically held that

the Assessee was not a taxable entity till A.Y. 2013-14 but became a taxable entity only after amendment in the Constitutional document of the Assessee w.e.f. A.Y. 2014-15. Prior to the amendment, the Assessee was acting as a nodal agency of the State Government of Haryana. As the findings of this Tribunal on this issue is very clear and categorical, therefore, we find no reason to disturb the ratio already decided on this issue in Assessee's own case by the order of the Tribunal (supra). Accordingly, Departmental appeal on this issue is dismissed.

12. In the result, the Departmental appeal is dismissed.

Order pronounced on 29.05.2024.

**Sd/-**  
**( A.D. JAIN )**  
**Vice President**

**Sd/-**  
**(DR KRINWANT SAHAY)**  
**Accountant Member**

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,  
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar