आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ,चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH'A' CHANDIGARH

BEFORE: SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER ANDSHRI PARESH M. JOSHI, JUDICIAL MEMBER,

आयकर अपील सं./ITA No. 126/CHD/2019

निर्धारण वर्ष /Assessment Year : 2014-15

M/s Chandigarh Housing Board, 8, Jan Marg, Sector 9, Chandigarh.	बनाम VS	The DCIT, Circle 1(1), Chandigarh.
स्थायीलेखासं./PAN /TAN No:AAALC0132H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 103/CHD/2019

निर्धारण वर्ष /Assessment Year : 2013-14

The DCIT, Circle 1(1), Chandigarh.	बनाम VS	M/s Chandigarh Housing Board, 8, Jan Marg, Sector 9, Chandigarh.
स्थायीलेखासं./PAN /TAN No:AAALC0132H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 44/CHD/2021

निर्धारण वर्ष /Assessment Year : 2015-16

M/s Chandigarh Housing Board, 8, Jan Marg, Sector 9, Chandigarh.	बनाम VS	The Pr.CIT, Circle 1(1), Chandigarh.
स्थायीलेखासं./PAN /TAN No:AAALC0132H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 125/CHD/2019

निर्धारण वर्ष /Assessment Year : 2014-15

M/s Chandigarh Housing Board, 8, Jan Marg, Sector 9, Chandigarh.	बनाम VS	The DCIT, Circle 1(1), Chandigarh.
स्थायीलेखासं./PAN /TAN No:AAALC0132H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri A.K.Jindal, CA & Smt. Rattan Kaur, CA

राजस्व की ओर से/Revenue by : Shri Rohit Sharma, CIT DR

तारीख/Date of Hearing :10.07.2024

उदघोषणा की तारीख/Date of Pronouncement : 31.07.2024

PHYSICAL HEARING

आदेश/ORDER

PER BENCH:

All these four appeals raises broadlya common issue with regard to an Income earned by Chandigarh Housing Board as a nodal agency for and on behalf of Chandigarh Administration a Union Territory which is described in details hereunder stated. And how such an income should be treated by the Income Tax Department including the issue of interest and penalty thereon and so also other incidental and ancillary / miscellaneous issues connected with the income of Chandigarh Housing Board. Since, all these four appeals arises out of broader issues i.e; an income as aforesaid they were all clubbed and heard together so they are being disposed off by this "consolidated order" for the sake of convenience and brevity.

Firstly we shall deal with Appeal in ITA No. 126/Chd/2019 pertaining to A.Y. 2014-15.

This is an appeal filed by the assessee for the assessment year 2014-15 corresponding to previous year 2013-14 before this Tribunal u/s 253 of the Income Tax Act, 1961.

2. The assessee is aggrieved by the order dated 22.11.2018 of the ld. CIT(A) passed in respect of appeal No. 10085/17-18/A.Y. 2014-15 which is hereinafter referred to as the "**Impugned Order**".

3. The core issue before the ld. CIT(A) and before us is the imposition of **penalty u/s 271(1)(c)of the Act**. The order of Ld. AO is dated 29/06/2017 wherein a penalty of Rs. 8,51,34,922/- is imposed u/s 271(1)(c). The order of Ld. AO is sustained by CIT(A).

Factual Matrix

4. The Chandigarh Housing Board **(CHB)** was designated by the Chandigarh Administration a Union Territory to construct **25728 one room flats** for the slum dwellers under **Jawaharlal Nehru National Urban Renewal Mission (JNNURM)**. In order to raise funds for the said scheme, it was decided to develop **Rajiv Gandhi Chandigarh Technology Park(RGCTP)** on Public Private Partnership basis and to generate funds through auction of plots in this Park. To facilitate the development of RGCTP, the assessee Chandigarh Housing Board purchased certain lands from Chandigarh Administration, a Union Territory and after the necessary formalities, some of the plots were sold through public auction to **M/s Parsvanath Developers Ltd**. as a Developer of **RGCTP and approximately Rs.800 Crore was received from them in assessment year 2007-08**. It was also decided that the revenue received from the allottees would be shared in the ratio of 30:70 between the Chandigarh Housing Board and Parsavnath Developers Ltd.

4.1 **As per the guidelines issued by the Government of India, the funds were to be kept in such a way that**

these were available for construction of houses as and when required and simultaneously they did not remain idle.

4.2 The Chandigarh Housing Board kept the funds in the Nationalised Banks as FDRs and earned interest on the same.

4.3 The assessee, the Chandigarh Housing Board neither returned income from the sale of development rights nor interest earned on FDRs to tax, treating itself as Nodal Agency of the Chandigarh Administration a Union Territory.

4.4 The Department of Income Tax in assessment year 2007-08 made the **addition** of surplus on **sale of development rights of land** transferred to the assessee by the Chandigarh Administration to M/s Parsavnath Developers Ltd. being the developer in RGCTP and the **interest income of FDRs**.

4.5 The Income Tax Department had also been making **addition of interest income** in all the subsequent years and **levied penalty** from assessment year 2007-08 to assessment year 2014-15.

4.6 **The penalty for assessment year 2007-08 to assessment year 2012-13 already stands deleted by this Hon'ble Tribunal** and the issue regarding penalty for the assessment year 2014-15 is pending in the present appeal No. ITA No. 126/Chd/2019 and so also in

appeal for the A.Y. 2013-14 in the ITA No. 103/CHD/2019.

Brief submission of the assessee

5. The assessee was under a reasonable and bonafide belief that the aforesaid funds invested in **FDRs** did not belong to it and that the same were collected by it **as a Nodal agency for and on behalf of the Chandigarh Administration a Uniion Territory**. These funds so obtained as aforesaid were kept separately in Nationalized Banks. The assessee was not paying taxes on the interest income earned. **In the books of account, the assessee showed the interest income as income in P&L account and simultaneously showed the same amount as expense being payable to the Chandigarh Administration a Union Territory**. However, the Income Tax Department had been making the addition payable on account of the same from assessment year 2007-08 onwards by disallowing the amount payable to Chandigarh Administration and **treating the interest income as income chargeable to tax and imposing penalty thereon.**

6. The aforesaid issue was challenged before the Hon'ble **P&H High Court** in assessment year 2007-08 and the Hon'ble High Court in its **interim order** dated **18.12.2012** observed that the matter could be resolved by way of **an amicable settlement**. On 21.02.2013 the counsel of the Department stated that the course as

suggested by the High Court may not be acceptable to the Department of Income Tax. However, the Hon'ble High Court directed the Secretary Finance that both the parties be summoned for working out an amicable settlement. This fact is recorded in the order of this Tribunal in assessee's own case in ITA No.736/CHD/2018 assessment year 2010-11 and ITA No. 737/CHD/2018 assessment year 2011-12. [Chandigarh Housing Board V/s Pr. CIT-I, Chandigarh] vide order dated 22.05.2019 wherein at para 17 and 18, following is recorded:

> *17. While admitting these appeals, the Hon'ble Court stayed the recovery proceedings in the case. Consequent upon the stay, the Department filed an SLP(C) No. 5346/13 before the Hon'ble Supreme Court. During the pendency of the SLP, the proceedings before the Hon'ble P & H High Court transpired in the form of orders dated 18.12.2012 and 21.02.2013 .The Hon'ble High Court passed an interim order dated 18.12.2012 and observed that the matter could be resolved by mediation between the assessee and the Revenue, as under:*
>
> > *"After hearing learned counsel for the parties for some time, we have put across the counsel for both parties as to whether they would, agree for referring the matter for mediation, which may preferably be conducted by Ex-Chairman of the Central Board of Direct Taxes alongwith an expert mediator. Counsel of parties say that one month time be given them to have instructions in the matter.*
> >
> > *We, accordingly, adjourn the matter to 31.01.2013."*
>
> *18. In the order dated 21/02.2013 the Hon'ble Court observed that both the parties be summoned for working out an amicable settlement of the dispute, as under:*
>
> > *"Mr. Ramaswamy, learned senior counsel appearing for the respondents states that*

> *since there is no provision for mediation under the Income Tax Act, that course of action, as suggested in our orders dated 18.12.2012, may not be acceptable to the respondents.*
>
> *At the same time, we are of the opinion that there is a possibility of amicable solution of the dispute having regard to its nature.*
>
> *In these circumstances, we feel that the Secretary, Finance may summon both the parties and discuss the matter with them to find out the possible solution, if any."*

7. Thereafter the meeting was convened by the Finance Secretary on 12.03.2013 which was attended by CIT-I Chandigarh and Chairman CHB. In the record of discussion**(ROD)** issued by Secretary Finance it was agreed that no penalty will be levied on the assessee which fact is recorded in para 19 of the ITAT order (supra) which is as follows :

> *19. Consequently, the Worthy Finance Secretary, Govt. of India held a meeting on 12.03.2013 with the Member (L&C), CBDT, New Delhi, the Commissioner of Income Tax-I, Chandigarh and the Chairman, Chandigarh Housing Board alongwith other officers of Govt. of India. In the "Record of discussion" issued by the Finance Secretary, it was agreedthat prima facie it appeared that tax waspayable on the transaction and the* ***amountdeposited as non tax revenue be adjusted in Income Tax head and be treated as final. It was further agreed that no penalty be levied on the tax dues ,though the final decision was left to the competent authority or court****. The relevant portion of Record of Discussion is reproduced as under:-*
>
> > *"After detailed discussions, it was noted that so far as Government of India is concerned, it is revenue neutral, whether the amount is deposited as non-tax revenue by the Chandigarh Housing Board (as*

> *already directed by MHA to the UT Administration, Chandigarh), or whether the amount is deposited as Income Tax revenue. However, while the deposit as tax may not be preferable, the issue is that Income tax is legally leviable on the transaction, then no waiver can be considered in respect of the principal tax due, since that would have legal complications. Prima-facie, since the land was transferred through a conveyance deed, it would appear that Income tax is payable. Accordingly, the adjustment of the amount of Rs. 278 crores in Income tax head may be treated as final. As an amicable view, it may be appropriate that penalty is not levied on Chandigarh Housing Board in respect of the Income tax dues. A decision in this regard can however betaken only by the competent Income Tax Authority or in any appellate proceedings. Hon'ble High Court may consider passing appropriate orders in this regard."*

8. The Record of Discussion was approved by the High Court on 14.05.2013.

9. We note from para 16 of the order of ITAT (supra) that quantum additions were made in the assessment year 2007-08 (ITA 41/2012) and assessment year 2008-09 (ITA No. 284/2012) and a writ petition was filed by the assessee against the recovery proceedings (CWP No. 13364/2012). They were admitted on 18.12.2012 and Hon'ble Punjab & Haryana High Court stayed the recovery proceedings. Consequent upon the stay, the Department filed an SLP(C) No. 5346/13 before Hon'ble Supreme Court and which SLP was pending by the Hon'ble Punjab & Haryana High Court two orders came

to be passed on 18.12.2012 and 21.12.2013 which are as under :

> *“"After hearing learned counsel for the parties for some time, we have put across the counsel for both parties as to whether they would, agree for referring the matter for mediation, which may preferably be conducted by Ex-Chairman of the Central Board of Direct Taxes alongwith an expert mediator. Counsel of parties say that one month time be given them to have instructions in the matter.*
>
> *We, accordingly, adjourn the matter to 31.01.2013.”*
>
> *"Mr. Ramaswamy, learned senior counsel appearing for the respondents states that since there is no provision for mediation under the Income Tax Act, that course of action, as suggested in our orders dated 18.12.2012, may not be acceptable to the respondents.*
>
> *At the same time, we are of the opinion that there is a possibility of amicable solution of the dispute having regard to its nature.*
>
> *In these circumstances, we feel that the Secretary, Finance may summon both the parties and discuss the matter with them to find out the possible solution, if any.”*

10. The Supreme Court of India passed an order on 30.04.2014 giving legal sanctity to the record of discussion by holding as under :

> *“This special leave petitionis filed against an interimorder dated07.05.2012passed by the High Court in ITANo.41/12.Since the matteris betweenthe Income Tax Departmentand the Chandigarh Housing Board, which is a statutory Board under the provisions ofChandigarh Administration, there was some discussion of an amicable settlement*of *the dispute between the parties. The "Record of Discussion' held on 14.05.2013is placed on record in ITA NO.2 of 2014. A perusal thereofwould demonstrate*

> *that a sum of Rs. 278 crores which was deposited by the Chandigarh Housing Board in the Government treasury, is agreed to be adjusted in income tax head and it is treated as final in so far as liability of income tax is concerned. Having regard to the settlement reached between the parties, it is clear that the dispute regarding payment of tax by the Chandigarh Housing Board to the Income Tax Department stands resolved. It is further agreed that no penalty proceeding would be initiated against the Chandigarh Housing Board. However, it is also stated that the decision in this regard can further be taken only by the competent Income Tax authority.*
>
> *Needless to mention that the competent authority shall keep in mind the spirit of the agreement arrived at in 'Record of Discussions'.*
>
> *Needless to mention that the competent authority shall keep in mind the spirit of the agreement arrived at in Record of Discussion.*
>
> *The parties shall also approach the High Court for disposal of the pending ITA.*
>
> *In view thereof, this Special Leave Petition is disposed of.*
>
> *As a sequel to disposal of the special leave petition, ITA No.2 of 2014 is also disposed of.*

11. In the above judgement issue regarding the tax liability of Rs.278 Crores has been settled in favour of the revenue. Thus, the matter regarding adjustment of tax and penalty only wasdecided by the Supreme Court and for disposal of ITA (quantum appeal) it was referred back to High Court.

12. The CIT(A) in assessment year 2013-14deleted the penalty levied u/s 271(l)(c) holding that it is the same issue on which record of discussion was made after the directions of Honorable High Court and subsequently

was upheld by Honorable Supreme Court vide its order dated 30.04.2014. Keeping in mind the spirit of the agreement arrived at in record of discussion, penalty levied by AO was cancelled.

13. However, the CIT(A) has upheld the penalty for AY 2014-15 holding that "it can be safely inferred from the order of Supreme Court that the issue involving addition on disallowance of interest was settled vide order dated 30.04.2014. It was made clear that no penalty proceedings would be initiated. This position was crystal clear on 30.04.2014 and the appellant in violation to this settled position filed the return of income on 27.11.2014 and claimed the expenditure/ deduction... Therefore the AO was right in levying the penalty for filing inaccurate particulars of income.

14. In this regard, it is stated that the CIT(A) while recording his finding that the position was crystal clearand the issue was settled on 30.04.2014 has completely ignored the fact that the department had not accepted the settlement recorded in ROD and the directions of Supreme Court till December 2014. This will be clear from following:-

> “Considering the observation of Supreme Court in order dated 30.04.2014, the assessee filed an application with Chief Commissioner regarding waiver of penalty. The Commissioner in the order u/s 273A dated 17.09.2014 declined the request of the assessee by observing that no settlement has been reached between the assessee and the department in respect of waiver of penalty.”

We have perused the copy of the order u/s 273A which is dated 17.09.2014 and so also para 21 of ITAT order supra; which confirms this fact.

15. In para 5.1of the order passed u/s 273A, it has also been mentioned that "**observations/finding of the Honorable Supreme Court is factually incorrect** in as much as penalty was already initiated, imposed and stands confirmed by the CIT(A) for AY 2007-08 and is pending with the Honorable ITAT, Chandigarh. For other years, the appeals against the penalty order are pending with CIT(A)."

16. In para 8 of the orderpassed u/s 273A, it has been mentioned further that "The application of the assessee and the subsequent submissions made and arguments put forth by the authorized representatives for the assessee have been considered. It is seen that the assessee is only relying upon the minutes of the meeting held with Finance Secretary and their subsequent interpretation by the Hon'ble Supreme Court in the decision supra. A careful perusal of the minutes of the meeting/record of discussions and the order of Hon'ble Supreme Court brings out that no ‘settlement’ was ever arrived at in respect of waiver of penalty.

17. The DCIT vide ordervide order dated 17.09.2014 dismissed the petition of the Board for waiver of interest and penalty on the ground that no settlement has been reached between the assessee and department.

18. The assessee aggrieved by the said orderu/s 273A filed a writ petition before High Court. During the course of hearing of the writ petition, the counsel for the revenue made a statement which is also forming part of the order of High Court dated 05.12.2014 (copy at PB Page 62-63).The said Statement has also been referred in Para 21 of ITAT Order of AY 2010-11 & 2011-12 PB Page 33. For reference the statement is reproduced hereunder:-

> *"Mr. G.C. Srivastava appearing for the revenue states, on instructions that a compromise effected before the Secretary Finance, union of India was reduced into writing and is titled as "Record of Discussion'. Mr. Srivastava further states, on instructions that observations by the Honorable Supreme Court in order dated 30.04.2014 passed in I A No 2 in Special Leave to Appeal (Civil No) 5346 of 2013 (Commissioner of Income Tax, Chandigarh vs Chandigarh Housing Board) recording that dispute regarding payment of tax by the Chandigarh Housing Board stands resolved, is correct. Mr. Srivastava also states that it is correct that it was agreed before the Honorable Supreme Court that no penalty would be initiated against the Chandigarh Housing Board and the decision in this regard would be taken by the competent authority. Mr. Srivastava further states that he has instructions to make a positive statement that the revenue shall not oppose the assessee's prayer for quashing of penalty in the appeal pending before the Income Tax Appellate Tribunal.*
>
> *In view of the submissions of the counsel for the department, the honourable High Court passed the following order:-*
>
> *Liberty is granted to the counsel for the assessee to file an application before the Tribunal for preponing the appeal. In case, such an application is filed, we hope and expect that the appellate authority takes up the appeal for hearing before the end of the year."*

18.1 Fromthe various proceedings referred above, it becomes amply clear that the <u>department accepted the settlement arrived at and recorded in ROD for the first</u>

time on 05.12.2014 and prior to that the department has not accepted the settlement which is clear from the findings recorded in order u/s273A, both of ld. AO dated 29.06.2017 and impugned order of ld. CIT(A) dated 22.11.2018.

18.2Thussince the department did not accept the settlement before 05.12.2014, the assessee under the reasonable and bonafide belief that the issue has not attained finality continued to file the returns treating itself as a nodal agency of the Chandigarh Administration showing the interest income as income in the Profit and Loss Account and correspondingly debiting the same as amount payable to Chandigarh Administration as expense. Thus, it cannot be interpreted that the assessee has concealed income or furnished inaccurate particulars of income in the return filed for AY 2013-14 and 2014-15 on 26.09.2013 and 27.11.2014 i.e. before the date of statement made by the counsel of the department in High Court on 05.12.2014 regarding penalty. Under the circumstances, it is requested that all the penalties levied for the period upto 05.12.2014 are liable to be deleted.

18.3 Further the ITAT in Para 26, Page 21 of order of ITAT for AY 2010-11 & AY 2011-12 has upheld the bonafide belief of the assessee by holding as under:-

> *"Even other wise, we hold that the claim of the assessee that the interest income was not taxable in its hands, was based on a bonafide belief that the funds invested*

> *in FDR's did not belong to it and were collected by it as a nodal agency of the Chandigarh Administration. This stand was consistently taken by the assessee and was conceded only py amicable settlement with the department on taking a prime facie vie of the matter. It is not that the claim was found out rightly untenable by any authority. Therefore till the date of settlement of dispute the claim of the assessee was undoubtedly under a bonafide belief. In view of the same therefore the assessee could not be charged with having concealed or furnished any inaccurate particulars of income so as to levy penalty u/s 271(1)(c) of the Act."*

18.4 Considering that Honourable ITAT in Para 25 has clearly held that amicable settlement arrived was issue specific and not the year specific and also the fact that the returns had been filed by the assessee before the statement was made by the counsel for the department before High Court on 05.12.2014 accepting the ROD and not to contest the penalty.

19. It is prayedthat since the settlement has attained finality on 05.12.2014, the order passed by CIT(A) deleting the penalty for AY 2013-14 may please be upheld and the order passed for AY 2014-15 upholding the penalty may please be reversed and penalty levied be cancelled.

Brief Submission of the Department

20. We notice that in so far as present ITA No. 126/CHD/2019 for assessment year 2014-15 is concerned, the Department vide their submissions dated 24.09.2019 has placed on record chronology of events in this case from assessment year 2007-2008 to assessment

year 2014-15 as Annexure 'A'. In so far as assessment year 2014-15 is concerned we notice that following chronology of event is given under caption Chandigarh Housing Board assessment year 2014-15 :

Sr. No.	Date	Order	Remarks
1.	27.11.2014	u/s 143(1)	The assessee is declared a income of Rs. 56,79,62,950/-
2.	14.12.2016	U/s 143(3)	Assessed income at Rs. 84,34,80,497/- (i) Addition of Rs. 27,50,96,202/- on a/c of disallowance of expenditure/deduction claimed by the assessee under the head interest payment to MOF, GOI and Chandigarh Administration as it is clearly a diversion of income having no under line business use/commercial expediency. (ii) Addition of Rs. 4,21,345/- on account of expense of Income Tax on perk values as per provision of section 40(a)(ii)of the Income Tax Act, 1961..
3.	20.11.2018	u/s 250(6)	The CIT(A) has confirmed the addition.As the assessee has not filed any appeal with regard to CIT(A) order. Hence, the addition has attained finality.
4.	29.06.2017	u/s 271(l)(c)	Penalty was imposed by the Assessing Officer amounting to Rs.8,51,34,922/-.
5.	22.11.2018	CIT(A) order against the penalty order	Upheld the penalty levied that when in the instant year the issue was settled on 30.04.2014, the appellant has deliberately filed inaccurate particulars of income while filing the return of income dated 27.11.2014.

Record of hearing

21. The hearing took place before us when both the parties appeared, they were treated equally and equal opportunity was given to both the parties to make their submissions. At the outset and threshold ld. DR Dr. Rohit Sharma brought to our notice lucidly entire factual backdrop of the dispute between the Department and CHB. The ld. DR contended that inter-se dispute is

pending since long and case has a chequered history. The ld. DR contended that despite the order of Hon'ble Supreme Court dated 30.04.2014 wherein legal sanctity was accorded to the Record of Discussion for one or other reason, issue kept on lingering. Itbriefly stated that despite Court order, the ball was finally kept in the compound of the Department. The present issue therefore, complexed. There was no certainty at-least till assessment year 2014-15. The ld. AR then contended that now CHB is in the last leg of litigation with the Department. The core dispute both with regard to quantum and penalty is resolved by Supreme Court, High Court and even by ITAT, Chandigarh Benches supra. He finally prayed that issue be closed and appeal of CHB be disposed off in light of the order dated 22.05.2019 passed in ITA No. 736/CHD/2018 and ITA Nos. 737/CHD/2018 [A.Y. 2010-11 and assessment year 2011-12] which order is placed at page 17 of the Paper Book filed wherein all facts and history of the case is recorded and finally the penalties for both years have been set aside. He prayed for setting aside of the impugned order.

Findings and Conclusions

22. In the foregoing, we have to adjudge and adjudicate the legality, validity and proprietary of the impugned order dated 22.11.2018 for assessment year 2014-15 which is before us in the present ITA No. 126/CHD/2019.

23. After perusing all papers and proceedings of the present case as brought to our notice by both the parties, we are of the considered view that despite the order dated 30.04.2014 of Hon'ble Supreme Court of India which had nearly settled the controversy, we fail to understand why both the parties who are organs of Govt. of India could not bury the dispute. We are of the opinion both the parties lingered the issue for nothing despite blessings of the Supreme Court of India. Further, even this Tribunal vide order dated 22.05.2019 (supra) had settled the controversy between the parties.

24. We are of the considered view that on 30.04.2014 by Supreme Court order matter was put to the rest finally. The Hon'ble Supreme Court of India had very categorically held that "having regard to the settlement reached between the parties, it is clear that the dispute regarding payment of tax by the Chandigarh Housing Board to the Income Tax Department stands resolved. It is further agreed that no penalty proceeding would be initiated against Chandigarh Housing Board". However, Hon'ble Supreme Court of India further held that "However, it is also stated that the decision in this regard can further be taken only by the competent Income Tax Authority. Needless to mention that the competent authority shall keep in mind the spirit of the Agreement arrived at in Record of Discussion. The parties shall also approach the High Court for disposal of the pending ITA." We are subordinate to the Hon'ble

Supreme Court of India and so also one and all particularly so when a judicial order is passed it is but incumbent upon all the stakeholders to obey the same unconditionally particularly so when Hon'ble Supreme Court had said that it is **needless to say that competent authority shall follow the spirit of the Agreement arrived at in record of discussions**. The use of words "**Needless to Say"** and **"Shall"** Supra clearly meant that direction of Supreme Court of India was a judicial dictum where one and all are subordinate to it. Judicial discipline is required to be maintained by all authorities be it Executive or Judiciary itself (subordinate to SC). Unfortunately this did not happen as CIT-I Chandigarh by an order dated 17.09.2014 passed u/s 273A of the Income Tax Act – post order of Hon'ble Supreme Court dated 30.04.2014 (supra) held as follows :

> *"8...............A careful perusal of the Minutes of the meeting/record of discussions and the order of Hon'ble Supreme Court, brings out that no settlement was ever arrived at in respect of waiver of penalty............."*
>
> *"9.........There is no agreement for waiving off penalty.............."*
>
> *"15...........No proceedings or deliberations or negotiations can overrule the authority of the Statute laid down by the Parliament. Hence no agreement or settlement can assume a status greater than the provisions of the law governing the subject matter of such settlement..............."*
>
> *"..................It is established undisputedly that these conditions are not met in case of the assessee and the application u/s 273(4) of the Income Tax Act, 1961 for assessment year 2007-08, 2008-09 and 2009-10 is therefore, hereby rejected".*

25. We are of the considered opinion that above order dated 17.09.2014 despite facts (supra) revived the dispute inter se between the parties as CHB wanted a complete waiver of penalty on strength of order of Supreme Court of India dated 30.04.2014 which had laid great emphasis on spirit of record of discussion held on 14.05.2013 and had held that dispute regarding payment of tax by CHB to Income Tax Department stands resolved. It had further held that no penalty proceedings would be initiated against the CHB. However decision in this regard can **further be (emphasis supplied by us)** taken only by the Competent Income Tax Authority. Simultaneously Supreme Court had held that spirit of Agreement arrived at Record of Discussion would hold the field which was sufficient indication to Income Tax Authorities to take appropriate decision on penalty in favour of the CHB. But unfortunately that did not happen.

26. On page 62 and 63 of the Paper Book filed before us reveals that further there is an order of Hon'ble Punjab & Haryana High Court dated **05.12.2014** which is reproduced below :

CWP No.22601 of 2014
CWP No 22611 of 2014
CWP Nc.22612 of 2014
CWP No.22613 of 2014
CWPNo 22614 of 2014
CWPNo.22616 of 2014
CWPNo.22617 of 2014

CWP No.22618 of 2014

CWP No.22629 of 2014

"Chandigarh Housing Board, Chandigarh Vs. Commissioner of Income Tax-1, Chandigarh &anr

Present Mr. AkshayBhan, Sr. Advocate, with Mr. Alok Mittal, Advocate, for the petitioner.

Mr G.C Snvastva Advocate and Mr.Yogesh Putney Advocate for the respondents.

Mr G.C. Srivastva appearing for the revenue states on instructions that a compromise effected before the Secretary, Finance, Union of India, was reduced into writing and is titled as 'Records of Discussion'. Mr. Srivastva further states, on instructions, that observation by the Hon'ble Supreme Court in order dated 30.4.2014 passed in IA No.2 in Special Leave to Appeal (Civil) 5346 of 2013 (Commissioner of income Tax Chandigarh Vs.Chandigarh Housing Board recording that dispute regarding payment of tax by the Chandigarh Housing Board stands resolved is correct.Mr.Srivastva also states that it is correct that it was agreed before the Hon'ble Supreme Court that no penalty proceedings would be initiated against the Chandigarh Housing Board and decision in this regard would be taken by the competent authority. Mr. Srivastva further states that he has instructions to make a positive statement that the revenue shall not oppose the assessee's prayer for quashing of penalty inthe appeal pending before the Income Tax Appellate Tribunal.

Libertyis granted to counsel for the assessee to file an application before the Tribunal for preponing the appeal. In case, such application is filed, we hope and expect that the appellate authority takes up the appeal for hearing before the end of the year.

Adjourned to 9.1 2015.

A photocopy of this order be placed on the connected files."

27. In view of order of Punjab & Haryana High Court dated 05.12.2014, we quash and set aside the impugned order of CIT(A) dated 22.11.2018.

28. We further hold that between 14.05.2013/30.04.2014 [Date of order of Supreme Court] approving Record of Discussion dated 14.05.2013 till 05.12.2014(Date of the order of Hon'ble Punjab &

Haryana High Court), there ought not to have been any conflict inter se between the parties as matters were amicably resolved in accordance with law.

28.1 Further even this Hon'ble Tribunal in their order dated 22.05.2019 in ITA No. 736/CHD/2018 assessment year 2010-11 and in ITA No. 737/CHD/2018 assessment year 2011-12 have in para 26 has held as under :-

> *"26 Even otherwise, we hold, that the claim of the assessee that the interest income was not taxable in its hands, was based on a bonafide belief that the funds invested in FDR's did not belong to it and were collected by it as a nodal agency of the Chandigarh administration. This stand was consistently taken by the assessee and was conceded only by amicable settlement with the department on taking a prima facie view of the matter. It is not that the claim was found outrightly untenable by any authority. Therefore till the date of settlement of the dispute the claim of the assessee was undoubtedly under a bonafide belief. In view of the same therefore the assessee could not be charged with having concealed or furnished any inaccurate particulars of income so as to levy penalty u/s 271(1)(c) of the Act.*

28.2 We hold that since 14.05.2013/30.04.2014 till 05.12.2014 supra, the assessee was too under a reasonable belief that in view of the peculiar facts and circumstances supra that how to account the interest component in books whether as income liable to tax or not liable to tax hence, we hold such reasonable belief on part of assessee as reasonable and bonafide warranting no imposition of penalty on them.

29. We therefore hold that the order passed by the AO dated 29.06.2017 which was sustained by ld. CIT(A) order dt. 22/11/2018 in appeal No. 10085/17/A.Y.

2014-15 by virtue of which penalty of Rs.8,51,34,920/- was imposed by virtue of Section 271(1)(c) of the Act as not legally sustainable. We, therefore, set aside the impugned order of Ld. CIT(A) dt. 22/11/2018.

30. In the result, Appeal of assessee is allowed.

Now we shall deal with appeal in ITA No. 103/CHD/2019 pertaining to A.Y. 2013-14

31. Since the facts in ITA No. 103/CHD/2019 are common except the assessment year 2013-14 and that**theDepartment is in appeal against the order of ld. CIT(A) dated 22.11.2018 [in Appeal No.10436/16-17/A.Y. 2013-14]** whereby order dated 30.08.2016 the ld. AO had imposed penalty of Rs.9,17,81,215/- u/s 271(1)(c) is held to be **not correct** and consequently Department is in appeal before us. Basis our above order, we reject the appeal of the Department and sustain the order of ld. CIT(A) supra.

31.1 In the result, the above appeal of the Department is rejected.

32. Now we shall deal with the appeal inITA No. 44/CHD/2021 pertaining to A.Y. 2015-16

32.1 This appeal is against the order passed by ld. PCIT u/s 263 of the Act, bearing No:- ITBA/REV/F/REV5/2020-21/1031468635(1) dt. 14/03/2021.

32.2 The brief facts of the case arising out of factual matrix supra are as follows for the assessment year 2015-16.

32.3 The RGCTCP Project could not be implemented by the Developer as per the Development Agreement and same got revoked. The project could not be completed due to the dispute between the assessee and the developer due to which the applicants in the project started approaching the Courts by filing the petition against CHB and the Developer. The Courts held at various levels and that the money be refunded to the applicants alongwith the interests. The CHB has from assessment year 2014-15 started making the refunds of the booking amounts to the allotteesalongwith the interest as per the Court's order. **The CHB has paid an interest of Rs.3,09,65,064/- in the assessment year 2014-15 and Rs.3,95,42,526/- in the year under consideration**. However, the interest was not claimed as expenditure in the Profit & Loss Account in the assessment year 2014-15. The interest so paid was shown as recoverable from the RGCTP Project Funds in the books of account and Balance Sheet of the previous year. The request for claim of the said amount was made by the assessee during the course of assessment proceedings. **However, for the year under consideration the said amount has been claimed as expenditure in the Profit & Loss Account. The claim was allowed by the ld. AO at the time of passing the**

assessment order u/s 143(3) for the year under reference.

32.4 The interest paid is basically the compensation awarded to the applicants by Courts and respectfully following the same, booking amounts have been refunded alongwith interest to the applicants. The interest/compensation has been awarded by the Courts on the ground that the advance/booking amount has been received by the assessee and the Developer but the applicants did not get any plot/house as per the Scheme. There was failure in delivery on part of both the Board and the Developer. The compensation has been paid in the normal course of business and is allowable expenditure as per the provisions of the Act.

32.5 The order of ld. AO is dated 29.12.2017 for assessment year 2015-16. The order u/s 263 bearing No. ITBA/REV/F/REV5/2020-21/1031468635(1)is dated 14.03.2021. The consequential order No: ITBA/AST/S/144/2011-22/1042386989(1) is dated 31.03.2022 in the pursuance to the order u/s 263 impugned in the appeal. It is now contended before us that AO in consequential order dated 31.03.2022 **has not made any modification to the assessed income**. Considering that, no addition has been made by the Ld. AO on account of the issues (1) disallowance of interest paid to allottees – Rs. 3.5 Crores (ii) Amount forfeited from allottees as Rs. 0.30 Crores (iii) Reimbursement of litigation expenses – Rs. 1.63 Crores[in fresh assessment

order] basis which the proceedings were initiated. It is therefore again contended, the present appeal filed by the assesseeagainst the impugned order passed u/s 263 be disposed off as not pressed.

32.6 In the result, the appeal of the assessee is dismissed as withdrawn and not pressed.

33. Now we deal with the appeal in ITA No. 125/CHD/2019 pertaining to A.Y,. 2014-15

In this appeal, the assessee CHB is aggrieved by the order dated 20.11.2018 which has been passed by the ld. CIT(A) in appeal No. 10640/16-17 for assessment year 2014-15 wherein the appeal of assessee was dismissed and order of ld. AO dated 14.12.2016 for assessment year 2014-15 passed u/s 143(3) was sustained. The ld. AO against the returned income of Rs.56,79,62,950/- has disallowed interest expense of Rs.27,50,96,202/- and has also disallowed income tax expenditure of Rs.4,21,345/- and assessed total income as Rs.84,34,80,437/-. The assessee has now made following submissions before us which is reproduced below :

> "*Chandigarh Housing Board was designed by Chandigarh Administration for construction of 25728 one room flats for slum dwellers under JNNURN. In order to raise funds for the said scheme it was decided to develop Rajiv Gandhi Chandigarh Technological Park (RGCTP) on Public Private Partnership basis and to generate funds through auction of plots in this park. To facilitate the development of RGCTP the assessee purchased certain lands from Chandigarh administration and after necessary formalities some of the plots were sold through public auction to M/s Parsvanath Developers Ltd as a developer of RGCTP and approx. Rs. 800 crores was received from*

them in AY 2007-08. It was also decided that the revenue received from allottees would be shared in the ratio of 30:70 between the Chandigarh Housing Board and Parshavnath Developers Limited. As per the guidelines issued by the Government of India, the funds were to be kept in such a way that these were available for construction of houses as and when required and simultaneously they did not remain idle. The funds were kept in the nationalized banks as FDR's and earned interest on the same. The assessee neither returned income from the sale of development rights nor interest earned on FDR's to tax, treating itself as nodal agency of Chandigarh Administration. The Income Tax Department in the AY 2007-08 made the addition of surplus on sale of development rights of Land transferred to the assessee by Chandigrah Administration, to M/s Parsvanath Developers Ltd being the developer in RGCTP and the interest income of FDR's. The Income Tax Department had also been making the addition of interest income in all the subsequent years.

Since the project could not take off, the allottees approached various courts for refund of application money along with interest. The issue was settled by the National Commission which directed that the amount be refunded to allottees in the ratio of 30:70 along with interest @ 9%. Accordingly, the assessee during the year paid the amount of Rs. 3.09 crores towards interest which was claimed as deduction during the course of assessment proceedings. The assessee did not claim the interest as expenditure in P & L Account due to the accounting policy being followed by the assessee treating itself as a Nodal Agency. The amount was thus shown as recoverable from Chandigarh Administration in the Books of Accounts. Since the income tax department had been making addition of the said amount and accordingly after the amicable settlement the assessee has paid the income tax on interest earned on deposits received from allottees, therefore the amount paid as interest to allottees was claimed as expenditure. For this, the claim was made vide letter dated 14.12.2016 during assessment proceedings.

Ground No. 1

The issue of claim of interest paid to allottees is exactly the same for which the proceedings u/s 263 was initiated by the PCIT The claim of the assesse has been accepted by the department in assessment proceedings in response to proceedings-initiated u/s 263 for AY 2015-16. The assessee placing reliance on the order of the AO, requested before the Honorable Bench that once the claim of the assessee has been accepted by the Income Tax Department in subsequent year, therefore the claim of the appellant be allowed in the present appeal also.

Ground No. 2

Regarding the income tax on perk value, the assesse during the course of hearing before AO submitted as under:-

"The Income tax on Perk Value is the income tax on perquisite on account of concessional residential accommodation to CHB Employees is deposited by CHB as ***per the policy approved by the Board****. The CHB provides residential house to* ***some of its employees*** *on* ***nominal rent****. The Income Tax on the difference value of the perquisite is deposited by CHB as per the decision and approval of BOD."*

However the AO has made the addition, disallowing the aforesaid expenditure as per the provisions of Section 40(a)(ii) which says that any sum payable as Income Tax is not an allowable expenditure.

The assessee aggrieved by the order of AO, preferred an appeal before CIT(A), wherein the CIT(A) had upheld the order of the AO by holding that Income Tax Paid by CHB on behalf of deductions is not allowable as a deduction under the Act,

The assessee still aggrieved had preferred an appeal before the Honorable Bench, for which we make our submissions as under:-

The amount paid towards Income Tax on Perquisites is not the payment of Income Tax of Chandigarh Housing Board which could be disallowed but has to be treated as perquisite for the purpose of Section 17(2) of the Income Tax.

The term perquisite has been defined in Section 17(2) which stated as under:-

Perquisite includes

(i)………………

(ii)……………..

(iii)…………….

(iv) Any sum paid by the employer in respect of any obligation, which but for such payment, would have been payable by the assesse.

The bare reading of the above provides that perquisite include any obligation discharged by the employer. In the case at hand, the assessee by paying the taxes on concessional residential accommodation has discharged the obligation of its employees, thus is clearly covered under the definition of perquisites.

Thus, the amount has to be treated as perquisite u/s 17(2)(iv) and to be treated as part of salary. Therefore, cannot be disallowed in the hands of the assessee.

Without prejudice to the above it is stated that the addition if any was to be made, the same could have been made in the hands of employees and not the assessee.

33.1 We find considerable force in the above submission of the assessee. Since the Department in assessment year 2015-16 [ITA No.44/CHD/2021] upon fresh assessment order i.e., consequential order dated 31.03.2022 has accepted the ROI without any modification, we deem fit and proper that acceptance of allowance of interest to the extent of Rs.3.95 crores as having been allowed in the Financial Year 2015-16 would too should be allowed for earlier assessment year 2014-15. Hence, to the limited extent of allowance of interest paid to allottees of Rs.3.09 Crores is allowed and order of ld. CIT(A) is accordingly, modified. Further, we allow income tax on perquisites of Rs.4.21 lakhs as discussed supra too to some employees only and agree with the contention that same be recovered from those few employees who have got benefit of it if law permits at this stage.

33.2 In the forgoing appeal of assessee is partly allowed as aforesaid and order of ld. CIT(A) which has sustained the finding of ld. AO stands modified to above extent only i.e., Rs.3.09 Crores as allowance of interest paid to allottees and allowance of Rs. 4.21 lacs as allowance on perquisites.

33.3 In the result, the Appeal of assessee is partly allowed.

34. To sum up the aforesaid consolidated order we hold as under:

Appeal No.	Result
ITA No. 126/Chd/2019 (Assesse Appeal)	Allowed
ITA No. 103/Chd/2019 (Revenue Appeal)	Dismissed
ITA No. 44/Chd/2021 (Assesse Appeal)	Dismissed as withdrawn
ITA No. 125/Chd/2019 (Assesse Appeal)	Partly Allowed

Order pronounced on 31/07/2024.

Sd/- **Sd/-**

(SHRI KRINWANT SAHAY)
ACCOUNTANT MEMBER

(PARESH M. JOSHI)
JUDICIAL MEMBER

“Poonam”/AG

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar