IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 7497/MUM/2018
Assessment Year: 2007-08

Assistant Commissioner of Income Tax- 3(2)(1), Mumbai	Vs.	Maharashtra Airport Development Co. Ltd., 12th Floor,World Trade Centre, Tower No.1, Cuffe Parade, Mumbai – 400 005 (PAN : AADCM9623M)
(Appellant)		**(Respondent)**

ITA No. 520/MUM/2019
Assessment Year: 2007-08

Maharashtra Airport Development Co. Ltd., 8th Floor, World Trade Centre, Tower No.1, Cuffe Parade, Mumbai – 400 005 (PAN : AADCM9623M)	Vs.	Assistant Commissioner of Income Tax- 3(2)(1), Mumbai
(Appellant)		**(Respondent)**

Present for:

Assessee : Shri Rushabh Mehta, CA
Revenue : Smt. Sanyogita Nagpal, CIT, DR

Date of Hearing : 02.07.2024
Date of Pronouncement : 27.09.2024

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two appeals filed by the Revenue and assessee are appeals against the order of Ld. CIT(A)-8, Mumbai, vide order no. CIT(A)-8/IT-

414/16-17, dated 18.10.2024, against the assessment order passed by Assistant Commissioner of Income Tax, Circle-3(2)(1), Mumbai – 27(3)(1), u/s. 143(3) r.w.s. 254 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 30.12.2016 for Assessment Year 2007-08.

2. Grounds taken by the Revenue are reproduced as under:

"1. Whether on the facts and in the circumstances of the case and in law, the decision of Lad.CIT(A) is not perverse in accepting additional evidence in the form of statement from the assessee which was never filed before the AO earlier and adjudicating in favour of Assessee on that basis without fulfilling the conditions of Rule 46A of IT Rules, 1962, thereby denying AO the opportunity to examine the same?

2. Whether on the facts and in the circumstances of the case and in law, the decision of Ld.CIT(A) is not perverse in admitting the additional evidence filed by the assessee after a time gap of 7 years (between original assessment proceedings concluded on 15.10.2009 and hearing before CIT(A) in impugned order) and allowing relief to the assesse without appreciating that such statement of interest to establish the nexus of borrowed funds and investment in FDRs was never filed by the assessee before any of the authorities who had decided the issue earlier and without examining why the same was not filed before any of these authorities who had decided the issue earlier?

3. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored"

2.1. Grounds taken by the assessee are reproduced as under:

A. Grounds of Appeal vide Form 36 dt. 01-02-2019

1) That appeal effect order passed by the AO/CIT (A) is illegal, bad in law, without jurisdiction and against the principles of law and natural justice.

2) That AO/CIT (A) has failed to follow the directions of the Hon'ble ITAT while passing order giving effect to the appellate order of ITAT.

3) That Assessing Officer has in view of the facts and circumstances of the case, erred in not allowing interest on borrowed funds against the interest on FD with banks u/s 57 of The Income Tax Act, 1961.

4) That in view of the facts and circumstances of the case, the AO/CIT(A) has erred on facts and in law in restricting the allowance at Rs 1,72,15,048 as against the correct amount of Rs. 8,87,83,570/- claimed by the Assessee.

5) That without prejudice, the AO/CIT(A) has erred in law and in fact in not allowing deduction of interest paid, in case the interest on FDRs is being treated as Income from Other Sources.

6) That the AO/CIT (A) has erred in facts and in law in holding that the Assessee failed to prove nexus between the borrowed fund and fixed deposit. Assessing Officer has failed to appreciate that aforesaid investment of fixed deposits have been made out of the funds borrowed from banks.

7) That observation and findings of the learned Assessing Officer are incorrect and are based on surmises and conjectures and cannot be justified by any material on record.

8) That on the facts and in the circumstances of the case, the AO has erred in law and on facts levying / charging interest under section 234B, 234C of the Income Tax Act, 1961 and it has also been wrongly worked out.

9) That on the facts and in the circumstances of the case, the AD has erred in law and in facts in ling /charging interest under section 220(2) of the Income Tax Act and it has also been wrongly worked out.

10) That appeal effect order was passed by the leamed Assessing Officer without giving sufficient opportunity to the appellant

11) The Appellant craves leave to add, to alter to amend the above Ground of Appeal at the time of hearing.

B. Additional Grounds of Appeal under Rule 11 of the ITAT Rules vide letter dt. 01-08-2023

1) On facts and circumstances of the case, the Id. Assessing Officer has enec in law in not allowing set off of unabsorbed depreciation against the assessed income

2) Without prejudice, on facts and circumstances of the case, the id Assessing Officer has erred in law in not increasing/restating the "Capital Work in Progress" to the extent of additional interest income of Rs. 10,56,49,189/-made by the id. Assessing Officer under the heat Income From Other Sources' which was reduced by the assessee from Capital Work in Progress in its Balance Sheet

General

3) The above grounds of appeal are without prejudice to one another and the original grounds a appeal and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal.

C. Revised Ground of Appeal vide letter dt. 26-12-2023 in respect of Ground No.04 in Form 36

1) a) The Id. CIT(A) erred in facts and in law in restricting the deduction of interest expenditure u/s. 57(iii) of the Act to Rs. 1,72,15,048/- from the interest income on Fixed deposit as against the interest expense of Rs. 8,87,83,570-claimed by the assessee

b) The Id. CIT(A) and ld. Assessing Officer failed to appreciate that one to one nexus per se is not relevant for allowing the deduction of interest expense u/s. 57(iii) of the Act.

*c) Without prejudice, the Id. CIT(A) failed to appreciate that the Liabilities side of the Balance Sheet of the appellant reflects both interest bearing funds and interest free funds which indicates that mixed pool of funds have been used by the assessee towards investment in Fixed Deposits and therefore, for the purpose of computing deduction of interest expenditure u/s. 57(iii) of the Act, the principle of 'Proportionate Theory' ought to have been applied by apportioning the 'interest expense on borrowed funds' towards *interest income on Fixed deposits' based on the proportion of the 'investment in fixed deposits' to the 'Total Assets sourced from common pool of funds'.*

D. Additional Ground of Appeal under Rule 11 of ITAT Rules, vide letter dated 27.05.2024

4) On facts and circumstances of the case, the addition of interest income of Rs. 10,56,49,189/- earned on Fixed Deposit ought to have not been made as the assessee is a State by itself or a surrogate of the State or an agent, performing the functions of the State and/or on behalf of the State of Maharashtra within the meaning of Article 12 r.w. clause (1) of Article 289 of the Constitution of India and that the said interest income is not derived from any trade or business carried on by the assessee.

2.2. From the above, we note that grounds of appeal, in the appeal by Revenue essentially relate to fulfilling the conditions to Rule 46A of the Income Tax Rules, 1962, thereby denying the ld. Assessing Officer for the reasonable opportunity of examining the same.

2.3. In the appeal by the assessee, grounds originally taken along with revision to ground no.4, essentially deals with deduction claimed by the assessee u/s.57 of the Act, against interest income earned by it on fixed deposits with banks, offered under the head “income from other

sources". Apart from this, there are four additional grounds raised in two parts, latest being additional ground no.4 by which legal issue has been raised on the status of the assessee claimed to be a State by itself or a surrogate of the State or an agent, performing the functions of the State and/or on behalf of the State of Maharashtra, within the meaning of Article 12 read with clause (1) of the Article 289 of the Constitution of India.

3. Present set of appeals is against the order giving effect to the order of the Co-ordinate Bench of ITAT passed u/s.143(3) r.w.s. 254 dated 30.12.2016, pursuant to the order of Co-ordinate Bench, dated 16.12.2015, wherein the Co-ordinate Bench had set aside the matter to the file of ld. Assessing Officer and directed the ld. Assessing Officer to decide afresh the quantum of interest expenditure to be allowed against interest income. It is worthwhile to reproduce the directions of the Co-ordinate Bench given while setting aside the matter as aforesaid:

> *"10.1 Para no.5 of Hon'ble ITAT order dated December 16, 2015*
>
> *Both Id. AR add DR fairly conceded that in view of the above decision of Tribunal, matter is required to be set aside to the file of AO for deciding afresh the quantum of interest expenditure to be allowed against interest income"*
>
> *10.2 Para no. 6 of Hon'ble ITAT order dated December 16, 2015:*
>
> *.....Respectfully following the order of the Tribunal in assessee's own case, we set aside the matter back to the file of AO for deciding afresh the quantum of interest expenses to be allowed against interest expenses, in terms of direction given by the Tribunal. Copy of Hon'ble ITAT order "B" Bench, Mumbai dated December 16, 2015is attached herewith. (Pg. No. 1 to 4 of P.B.)"*

4. In view of the above, being a set aside matter, scope before us in the present appeals is limited to the direction so given, whereby we have to ascertain whether the said direction has been complied or not. However, at this stage before us, for the first time, assessee has raised a legal issue vide additional ground no.4, under Rule 11 of the ITAT Rules. While raising this additional ground, assessee has submitted

that it has received orders for various years in its own case, passed by the Co-ordinate Bench wherein it is affirmed that assessee is a State by itself or a surrogate of the State or an agent, performing the functions of the State and/or on behalf of the State of Maharashtra within the meaning of Article 12 of the Constitution of India read with clause(1) of Article 289. Therefore, the assessee contends that the interest income earned by it on fixed deposits which has been added under the head "income from other sources" and not derived from any trade or business carried out by the assessee, cannot be added in the hands of the assessee. It is contended by the assessee that it is a legal ground which goes to the root of the matter and no fresh investigation is required in respect of the same. Assessee relies on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. (1998) 229 ITR 383(SC) and Jute Corporation of India (1991) 187 ITR 688(SC), wherein it is held that legal grounds can be raised at any stage of the proceedings. Before we take up the matter for admissibility of this additional ground, brief history and facts of the case are noted as under:

4.1. Assessee is a company registered under the Companies Act, 1956 and carries on the activity of development of "Multi-modal International Hub Airport at Nagpur" as a Special Planning Authority appointed under section 40(1)(b) of the Maharashtra Regional and Town Planning Act, 1966. It also carries on the activity of maintenance and development of various airports in the State of Maharashtra situated at Shirdi, Solapur, Amaravati, Pune, Karad, Phaltan, Dhule and Chandrapur. Assessee is also appointed as SEZ Developer in accordance with provisions of SEZ Act, 2005.

4.2. Assessee filed its return of income on 20.10.2007 reporting total income at Rs. Nil. During the course of scrutiny assessment u/s 143

(2), ld. Assessing Officer rejected the assessee's claim of commencement of business and accordingly disallowed all the expenditure and taxed receipts amounting to Rs. 13,56,67,377/- under the head "Income from other sources". Aggrieved, assessee went in appeal before the ld. CIT(A).

4.3. Ld. CIT(A) partly allowed the appeal of the assessee and directed the ld. Assessing Officer to ascertain those expenses which are directly related to earning of this income from other sources and the same should be allowed as expense for earning such income u/s 57 of Act. Ld. Assessing Officer, passed an order on 03.02.2012, giving effect to directions of ld. CIT(A), in respect of allowing expenditure u/s 57 of the Act, related to earning of income from other sources, but did not allow the aforesaid expenses. Aggrieved, assessee once again went in appeal before the ld. CIT(A) who vide order dated 21.12.2012, allowed only 10% of expenditure which is debited to Profit and Loss account as expenditure u/s 57 against income from other sources. Aggrieved, assessee went in appeal before the Tribunal. Co-ordinate Bench of ITAT heard the case on 16.12.2015 and the matter was set aside to the file of ld. Assessing Officer for deciding afresh the quantum of interest expenses to be allowed against interest income. However, while giving effect to the directions of ITAT, ld. Assessing officer denied assessee's claim of deduction in respect of interest on borrowings to the tune of Rs. 8,87,83,570/- against interest income on fixed deposits. Aggrieved, assessee is in appeal before the Tribunal.

5. In the back drop of the above stated facts and contesting on the additional ground no.4 referred above, claim of the assessee for its non-taxability is on the strength of the Article 289 of the Constitution of India, since its activities are akin to that of the State or any agent of the State. It was submitted that this ground was not raised before the

authorities below, but the plea of the assessee can be appreciated on the strength of the statute under which it has been set up by the State legislature which does not require any long-drawn investigation of fresh facts. By this ground, assessee has made a point that it must be considered as State or an agent of the State so as to fall within the prescription of Article 289(1) of the Constitution of India, for which examination of the statute under which it is constituted is to be examined along with the objective and the activities undertaken by it.

5.1. In the course of hearing, reliance was placed on the decision of Co-ordinate Bench of ITAT, Mumbai in assessee's own case in ITA No.3682/Mum/2017 for AY 2012-13, dated 15.03.2024 which in turn placed reliance on another decision in assessee's own case in ITA No.3072/Mum/2014 for AY 2010-11, dated 19.06.2019, wherein assessee has been held as an agent of the State. Assessee further placed reliance on the decision of Co-ordinate Bench in the case of City and Industrial Development Corporation of Maharashtra Ltd. vs. PCIT (2012) 25 taxmann.com 333 (Mum), wherein similar issue was considered. Reliance was also placed on the decision of PCIT vs. Maharashtra Labour Welfare Board in ITA No.137/Mum/2023, dated 25.09.2023 which also held that the assessee therein is a State within the meaning of Article 289(1) of the Constitution of India being an instrumentality of State.

5.2. Considering the findings in the above judicial precedents, in our considered opinion a plea of the assessee goes to the root of the jurisdiction of the ld. Assessing Officer to levy tax on the income of the assessee. In the year under consideration, this issue has not been taken before the authorities below and is raised for the first time before us as

a pure point of law which is relevant to determine the tax liability of the assessee.

5.3. In the present case, only a fresh appraisal of the facts in the context of the legal issue raised by the assessee is required to be undertaken and no new facts are to be investigated. The bonafide of the additional ground so raised by the assessee are not contested and therefore, in the given set of facts and circumstances, the additional ground so raised is admitted for adjudication. While doing so, the ratio of the judgment of Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. (supra) fortifies the admission of the said ground for adjudication. Since this additional ground goes to the root of the matter, we are inclined to take it up first before dealing with all other grounds taken by the assessee as well as by the Revenue, in their respective appeals.

6. To deal with this additional ground, we appraise ourselves with Article 289 of the Constitution of India which is reproduced as under:

> *"(1) The property and income of a State shall be exempt from Union taxation.*
>
> *(2) Nothing in clause (1) shall prevent the Union from imposing, or authorizing the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.*
>
> *(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government."*

6.1. From the above, we note that Article 289 exempts state income or property from taxation. On plain reading of above article, it is clear that Union can (i) itself impose or authorize to impose (ii) any tax to such

extent, as parliament may by law provide (iii) in respect of a trade or business of any kind carried on or on behalf of Government of a state. Further, Article 289 (2), which is the exception to 289(1), it is important to note that parliament by law provide to tax the property or income in relation to only trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.

7. Further, a bare perusal of Article 12 of the Constitution of India shows that the definition of "the State" given in this article is inclusive and not exhaustive. "The State" includes:

(a) the Government and Parliament of India,

(b) the Government and the Legislature of each of the States,

(c) all local and other authorities within the territory of India, and

(d) all local and other authorities under the control of the Government of India.

7.1. The expression "other authorities" used in Article 12 is neither defined in the Constitution of India nor in any other statute. Therefore, the Hon'ble Supreme Court of India and the Hon'ble High Courts have interpreted this expression in various judgements. The Hon'ble Supreme Court of India while interpreting the expression "other authorities" in the case of Som Prakash Rekhi vs. Union of India reported at AIR 1981 SC 212 culled out certain tests to determine as to when a Corporation should be said to be an instrumentality or agency of the State. The tests laid down by the Hon'ble Apex Court are summarized as under:

"1. If the entire share capital of the corporation is held by the Government, It would go a long way towards indicating that the corporation is an instrumentality or agency of the Government.

2. Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

3. Whether the Corporation enjoys monopoly status which is State conferred or State protected.

4. If the functions of the corporation are of public importance and closely related to governmental functions. It would be a relevant factor in classifying the corporation as an instrumentality or agency of the Government

5. If a department of a Government is transferred to a corporation, it would be a strong factor supporting this inference of the corporation being an instrumentality or agency of the Government."

7.2. After applying the cumulative effect of all the relevant factors mentioned above, if the body is found to be an instrumentality of the agency of the Government, it would be an authority included in term "State" under Article 12 of the Constitution of India. However, the tests indicated by the Hon'ble Apex Court in the case of Som Prakash Rekhi are merely indicative and not absolute and thus, have to be applied discretely. If any body or organisation falls within the criteria as laid down by the Hon'ble Apex Court, it can be considered that it falls within the term "State".

8. With the above understanding, we look at the status and structure/set up of the assessee. The assessee, Maharashtra Airport Development Company Limited ('MADC') was constituted as a company under the Companies Act, 1956 in the year 2002 by the Government of Maharashtra ('GoM') as a special purpose company to develop Multi-modal International Hub Airport at Nagpur ('MIHAN') and aviation infrastructure in the State of Maharashtra to provide the regional air connectivity and operationalizing certain government schemes. MADC is governed under the Maharashtra Regional and Town Planning Act,

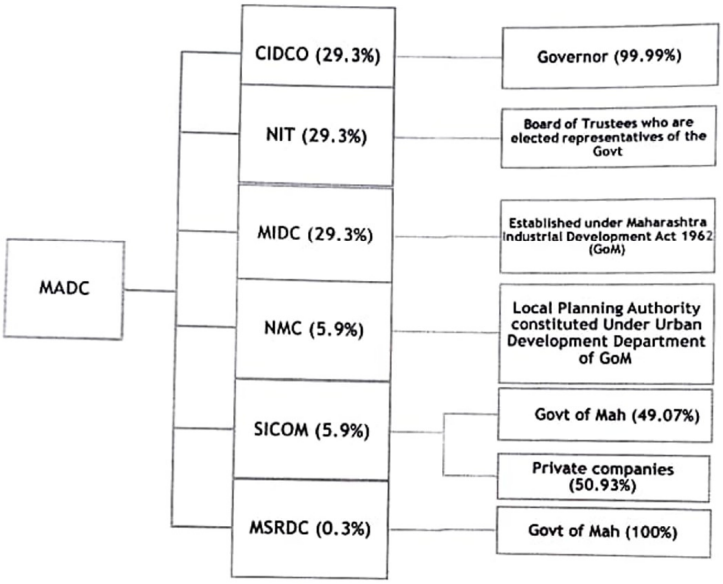
1966 (for short, "MRTP Act") and as per section 160 of MRTP Act, assessee shall be dissolved once the purpose of the GoM is achieved and from such date, all properties, funds and dues vested in MADC shall vest in or be realisable by the State Government.

8.1. The main objects of MADC as per clause III (A) of the Memorandum of Association is to design, plan. construct, erect, build, remodel, repair, execute, develop, operate, sale, lease, rent, improve, administer, manage control, maintain and demolish airport, air-traffic equipment, traffic terminals, roads, railways, highways, expressways, bridges, tunnels, railroads, urban transport systems, alleys, township schemes, industrial, docks, shipyards, canal, wells, ports, reservoirs, embankments, dams, r-cation works. reclamations, improvements, sanitary systems, water works, water gas or any other structural or architectural work and Special Economic Zones.

8.2. Pursuant to the above stated objectives, assessee has carried out Development of Nagpur airport as world class Multi-modal International Hub Airport, adjacent multi product Special Economic Zone and supporting infrastructure. It is also carrying out activities to Build and Operate airports in the State, to facilitate Intra-state and Inter-state Connectivity, to encourage overall growth of aviation sector in the State and to ensure planned development around airports.

8.3. The shareholding structure as well as constitution of Board of the assessee is pictorially represented as under for better understanding:

Shareholders of MADC



CIDCO – City and Industrial Development Corporation Ltd.

NIT- Nagpur Improvement Trust

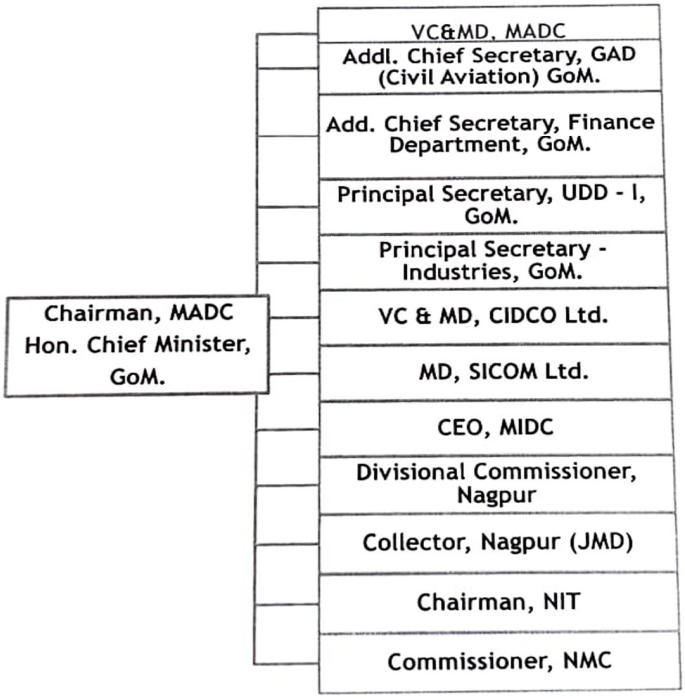
MIDC – Maharashtra Industrial Development Corporation

NMC – Nagpur Municipal Corporation

SICOM – State Industrial & Investment Corporation of Maharashtra Ltd.

MSRDC – Maharashtra State Road Transport Corporation

Constitution of Board



9. On the above stated factual status/setup of the assessee, we note that identical additional ground was raised by the assessee before the Co-ordinate Bench of ITAT in its appeal for Assessment Year 2012-13 and 2015-16 in ITA No. 3682/Mum/2017 and ITA No.522/Mum/2019, respectively, which was admitted and adjudicated upon to hold that assessee is an arm of the State, thus an instrumentality of the State. The relevant observations and findings of the Co-ordinate Bench in this respect are reproduced below for ready reference.

> *22. In order to decide the issue in controversy we would decide if the assessee company is a state while executing the work of development of airports, repair and maintenance of airports as an arm of the state,*
>
> *23. Undisputedly the assessee company was incorporated as a company under the Companies Act, 1956 by the Government of Maharashtra as a special purpose company to develop multi model international hub airport at Nagpur and aviation infrastructure in the State of Maharashtra in order to provide regional air connectivity and operationalising certain government schemes. It is also not in dispute that the assessee company was formed with equity participation from various government companies namely CIDCO, MIDC, NIT, MSRDC, SICOM & NMC which are owned and controlled by Government of Maharashtra; that the entire management and functional control of the assessee company is that of Chief Minister of Government of Maharashtra and all other board persons are senior officers of the State Government of Maharashtra; that grant-in-aid was received by the assessee company from Government of Maharashtra in order to carry out statutory functions and its activities are for the development of the state in general and for the benefit and welfare of the general public in particular; that it is also not in dispute that the assessee company is appointed by the State Government as a special planning authority under section 40(IB) of the Maharashtra Regional Town Planning (MRTP) Act, 1966; that it is also not in dispute that the assessee company being a special planning authority is required to carry out the work of development and disposing of land in the notified area as an agent of the state.*
>
> *24. In the backdrop of the aforesaid undisputed facts, we are of the considered view that the assessee company being a wholly owned company of the State of Maharashtra to carry out/execute the work of development of land acquisition, development of airports, repair and maintenance of airports etc. as an arm of the state, thus an instrumentality of the state for the following reasons:*
>
> > *i) that the assessee company being a special planning authority is carrying out its activities as an agent of the Government of Maharashtra as per section 113 of the MRTP Act.*
> >
> > *ii) that the assessee company as a special planning authority is constituted to carry out the work of developing and disposing of land in the notified area as an agent of the State Government.*

iii) that under section 114(2) of the MRTP Act the assessee company is empowered to exercise its power only after obtaining consent and only in the manner as directed by the Statement Government independently. and cannot function

iv) that all the development proposals of the assessee company are sent to the state government for approval as required under section 115 of the MRTP Act.

(v) that the assessee company is required to submit the timely reports/returns etc. to the state government from time to time as required under section 155 of the MRTP Act.

vi) that under section 160 of the MRTP Act a state government can dissolve the special planning authorities and upon dissolution its properties, the liabilities, undischarged functions shall get transferred to the state government.

vii) that as per sub-section 3A of section 113 of MRTP Act any corporation/company or subsidiary company which is into the work of developing and disposing of land in the area of a new town is an agent of the state government. Sub section 3A of section 113 of the Act reads as under:

> *"(3A) Having regard to the complexity and magnitude of the work involved in developing any area as a site for the new town, the time required for setting up new machinery for undertaking and completing such work of development, and the comparative speed with which such work can be undertaken and completed in the public interest, if the work is done through the agency. of a corporation including a company owned or controlled by the State or a subsidiary company thereof, set up with the object of developing an area as a new town, the State Government may, notwithstanding anything contained in sub-section (2) require the work of developing and disposing of land in the area of a new town to be done by any such-corporation, company or subsidiary company aforesaid as an agent of the State Government, and thereupon, such corporation or company shall, in relation to such area, be declared by the State Government by notification in the Official Gazette, to be the New Town Development Authority for that area."*

viii) that the co-ordinate Bench of the Tribunal in case of City and Industrial Development Corporation of Maharashtra Ltd. vs. ACIT (2012) 25 taxmann.com 333 (Mum.) while deciding the identical issue in case of City and Industrial Development Corporation (CIDCO) which is also a subsidiary company under the control and supervision of State Government into business of construction of residential and commercial structures as well as development of infrastructure in towns and any development project completed by the CIDCO was held to be an agent of the state government. And as such its income cannot be assessed as business income in the hands of the CIDCO.

ix) that like CIDCO the assessee company is also wholly owned company of State of Maharashtra which is into land acquisition, development of airports, repair and maintenance of airports and as such receiving of grant-in-aid from Government of Maharashtra by the assessee company being an agent of the state is not assessable to tax.

x) that Hon'ble Bombay High Court in Writ Petition No.1211 of 2009 (supra) vide its order dated 07.11.2009 held that "acquisition of land on behalf of the state government at the cost of state government by CIDCO appointed as new town development authority under sub section 3A of section 113 is doing the work of developing and disposing of the land in the area as an agent of the state government. So the appointment of CIDCO being under section 3A of section 113 of the MRTP Act the CIDCO acts as an agent of the state government".

xi) that when we apply the ratio of the decision rendered by Hon'ble Bombay High Court in case of Percival Joseph Pareira (supra) to the case at hand the assessee company is also appointed as a town planning authority under sub section 3A of section 113 of MRTP Act for acquisition of land for development of airports, repair and maintenance of airports and for rehabilitation of the project affected persons (POP), for infrastructure development of airports in the notified area as an agent of the state. The assessee company carries out all the activities for and on behalf of the state government and after development and completion of the project the entire property vests in the state government. The entire control over the assessee company is of state government being exercised through the officer of the state government. In these circumstances the assessee company is an agent of the state not assessable to tax. As such grant-in-aid received by the assessee company from the Government of Maharashtra for land acquisition, development of airports, repair and maintenance of airports etc. is not a capital receipt as has been held by the Ld. CIT(A) rather the assessee company has performed these functions as an agent of the state and as such not assessable to income tax

xii) that the assessee company has been formulated with a specific purpose i.e. to acquire the land for development of airports, repair and maintenance of airports etc, for which it receives grant-in-aid from the state of Maharashtra which is not taxable under Income Tax Act.

xiii) that it is however brought on record and candidly admitted by the Ld. A.R. for the assessee that other income derived by the assessee company from its project is not claimed as exempt.

xiv) that the contention of the Ld. D.R. for the Revenue that when the assessee company itself is paying taxes on its business income the grant-in-aid received by the assessee on which profit is to be earned is also business income is not sustainable in view of what has been discussed in the preceding paras.

xv) that even Article 289(1) of the Constitution of India itself says about the income from trade etc. but the grant-in- aid received by the assessee company from State of Maharashtra for the purpose of land acquisition, development of airports, repair and maintenance of airports is not a trade activity, hence not taxable to the income tax.

9.1. Thus, from the perusal of the above, we note that it has been held that the assessee is an agent of the State of Maharashtra, amenable to immunity as per Article 289(1) of the Constitution of India.

9.2. We also take note of the decision of Co-ordinate Bench of ITAT in the case of Maharashtra Labour Welfare Board vs. DCIT in ITA No.137/Mum/2023 dated 25.09.2023, wherein the assessee was held as a State, within the meaning of Article 289 of the Constitution of India, being an instrumentality or an agency of the State and thereby the interest earned on the FDRs was held to be exempt. While holding so, the Co-ordinate Bench relied on the decision of the Hon'ble Supreme Court in the case of Som Prakash Rekhi vs. Union of India (supra). Support was also drawn from the decision of the Hon'ble High Court of Karnataka in the case of CIT vs. Karnataka Urban Infrastructure Development and Finance Corporation (2006) 155 taxmann.com 228 (Kar), wherein the Hon'ble High Court held that assessee acted as a nodal agency of the Government for implementing the scheme of the Government and therefore the interest income earned on the bank deposits cannot be treated as the income of the assessee, as the interest is earned out of the money given by the Government for the purpose of implementing the scheme.

10. Having considered the above findings of the Co-ordinate Bench of ITAT in assessee's own case as well as in other decisions referred above, we are in agreement with the same to hold the assessee to be a State, being an instrumentality / agent of the State, thereby resulting in its interest income earned on fixed deposits not chargeable to tax. Further, we note that clause (2) of Article 289 provides an exception and authorises the Union to impose a tax in respect of the income derived by the Government of a State from trade or business carried out by it or on its behalf. In this respect, it is undisputed fact that ld. Assessing Officer has himself assessed the interest income on fixed deposits under the head "income from other sources". The said interest income thus,

cannot be said to be derived from trade or business carried out by the assessee. Accordingly, clause(2) of the Article 289 is inapplicable. Since the assessee is held to be a State, or a surrogate of the State or an agent, performing the functions of the State and /or on behalf of the State of Maharashtra, whereby its income is not chargeable to tax within the meaning of clause(1) of the Article 289, all the other grounds of appeal raised by it in Form no.36 including the revised one and other additional grounds are rendered academic in nature and therefore not adjudicated upon. In terms of our above stated findings, even the grounds raised by the Revenue in its appeal relating to ld. CIT(A) not fulfilling the conditions of Rule 46A of the Rules are rendered infructuous.

11. In the result, appeal of the assessee is allowed and that of the Revenue is dismissed.

Order pronounced on day of 27 September, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Satbeer Singh Godara)	(Girish Agrawal)
Judicial Member	Accountant Member

Dated: 27 September, 2024

MP, Sr.P.S.

Copy to :

1 The Appellant
2 The Respondent
3 DR, ITAT, Mumbai
4 Guard File
5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai