

आयकर अपीलिय अधिकरण , चण्डीगढ न्यायपीठ , चण्डीगढ
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

HEARD THROUGH: PHYSICAL MODE

BEFORE: SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND SHRI PARESH M. JOSHI, JUDICIAL MEMBER,

आयकर अपील सं. /I.T.A. Nos. 139, 140 & 141/CHD/2020

निर्धारण वर्ष /Assessment Years : 2012-13, 2014-15&2015-16

M/s Punjab Tourism Development Corporation Ltd., S.C.O. 183-184, Sector 8-C, Chandigarh	बनाम VS	The Deputy Commissioner of Income Tax, Circle-1(1), Chandigarh
स्थायीलेखासं./PAN /TAN No:AAACP8513E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं. /I.T.A. No. 142/CHD/2020

निर्धारण वर्ष /Assessment Year : 2016-17

M/s Punjab Tourism Development Corporation Ltd., S.C.O. 183-184, Sector 8-C, Chandigarh	बनाम VS	Assistant Commissioner of Income Tax, Circle-1(1), Chandigarh
स्थायीलेखासं./PAN /TAN No:AAACP8513E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh.Tejmohan Singh, Adv. and
Sh. Vineet Khurana, C. A.

राजस्व की ओर से/Revenue by : Sh.Vivek Vardhan, JCIT, Sr. D. R.

तारीख/Date of Hearing :22.08.2024

उद्घोषणा की तारीख/Date of Pronouncement : 18/11/2024

आदेश/ORDER

PER BENCH:

This is an appeal filed by the assessee for the AY 2012-13 corresponding to previous year period from 01/04/2011 to 31/03/2012. The corresponding first Appeal No. is:- 10370/18-19/AY 2012-13. The appeal is filed under Section 253 of the Income Tax Act, 1961 [which is hereinafter referred to as 'Act'] as the assessee is aggrieved by order dated 18.11.2019 which has disposed off first

Appeal No:-10370/18-19/AY 2012-13 for AY 2012-13, which is hereinafter referred to as the "**impugned order**".

I. Firstly, we shall deal with ITA No. 139/Chd/2020 for the A.Y. 2012-13 [In First Appeal No. 10370/18-19/A.Y. 2012-13 CIT(A) Order dt. 18/11/2019]

Factual Matrix (Proceedings before AO)

2. The Punjab Tourism Development Corporation is a Public Sector Undertaking fully owned by the Govt. of Punjab.

2.1 That due to continuous and excessive losses in the business, the Govt. of Punjab decided to disinvest the Corporation and all the regular employees of the Corporation were either given VRS, retrenched and their services have been dispensed with as per law.

2.2 Its commercial activities have been closed w.e.f **15.12.2009**. Some of its properties were sold and others have been transferred to the Department of Tourism, Govt. of Punjab.

2.3 That the assessee filed its return of income on 27.09.2012 at a total loss of Rs.1,19,66,785/-. The return was processed at the returned income. The case of the assessee was selected for scrutiny through CASS [computer aided Selection in scrutiny]. Notice under Section 143(2) was issued on 10.08.2013. The reasons for selection in scrutiny is "**large amount of sundry creditors**". Detailed questionnaire and notice under Section 142(1) was issued on 11.02.2014, which was duly served upon the assessee.

2.4 The assessee is a Public Sector Undertaking of the Punjab Govt. All the shares are held by the Govt. of Punjab or its representatives. The company was in the business of Hotel and Tourism industry and the company had been running Tourist complexes at various places in Punjab and outside Punjab. Besides this, the company had been **running petrol pumps also**. Presently the company has no working unit as some of the units were sold by the company and remaining units were taken over by the Dept. of Tourism, Govt. of Punjab, in the preceding years. The services of all the working staff that have not opted for the VRS were terminated w.e.f 15.12.2009 and thus company became non-functional.

2.5 That the only source of income of company is/was interest from FDRs with the State Bank of India and lease rent from Indian Oil Corporation. During the year the company/assessee has a total receipt of Rs.31,62,637/-. Out of this receipt Rs.27,85,609/- is income from interest of FDRs

2.6 That the assessee company as per profit and loss account, claimed **expenses of Rs.71,22,923/-**. Claim of this expenditure was unacceptable given that the Nature of the receipt is income from other sources and the business of the company **stands discontinued**.

2.7 That to earn interest from FDRs with the Bank practically no expenditure can be incurred. The counsel of the assessee was asked to explain why expenses claimed may not be disallowed. In response, the counsel stated as under:-

"The company has discontinued its operations with regard to running of hotels and restaurants. During the relevant years the company has received lease money/license fee from Petrol Pumps and the company has done its business and has been operational to this extent. However, no expenses have been debited to the profit and loss account which is related with discontinued business operation. The expenses debited to the profit and loss account are related with administrative expenses only which is necessary till the company is in existence. These expenses include salary of one officer only. All the employees were retrenched or relieved by 15.12.2009 and the company is working for maintaining accounts for the part of business which is still existing handling various court case and litigations filed by and against the company. All other expenses are incurred for the purpose of administration purposes and has not been booked against any such income which is not liable to tax or against any tax free income."

2.8 That the Id. AO after considering the reply of the assessee company and by taking into consideration that the assessee company business are nearly closed, administrative expenses were incurred and thought it prudent to restrict expenses claimed at **50% of the total**. Therefore, **addition of Rs.35,61,462/-** [50% of Rs.71,22,923/-] was added to the income of the assessee.

2.9 That in current liability the requisite annexure showed that an amount of Rs.12,32,000/- was credited under the Head 'Membership Fee "PTDC Club"', the counsel of the assessee was asked to explain the nature of this liability. In response it was submitted:-

"Membership fee PTDC Club Rs. 12,32,000/-. The amount of Membership was received, beginning from the F.Y. 1990-91. An amount of Rs. 32,55,000/- was received till the F.Y. 2001-02 and during the F.Y. 2001-02 an amount of Rs. 20,22,500/- was forfeited and transferred to the Profit & Loss Account during that year. Balance Membership Fee Rs. 12,32,000/- is appearing as a Liability in the Balance Sheet being the amount refundable to the members. The assessee company is not providing services to the members for refund of membership fee of PTDC Clubs. The copy Balance Sheet relevant page for the F.Y. 1990-91 and F.Y. 2001-02 are enclosed herewith alongwith copy of account during which the membership fee was forfeited."

2.10 The Id. AO on above issue had held that since in earlier year out of Rs.32,55,000/- was received till Financial Year 2001-2002, out of which

Rs.20,22,500/- was forfeited, therefore this amount of Rs.12,32,000/- which is claimed as amount refundable will never be refunded to members and consequently **addition of Rs.12,32,000/-** which was shown as **liability was added as addition to the returned income.**

2.11 In ultimate analysis the Id. AO passed the assessment order u/s 143(3) of the Act dated 24.02.2015 wherein total assessed income was determined as (-) Rs.71,73,323/-. In returned income Rs.(-) 1,19,66,785/- addition of Rs.35,61,462/- and Rs.12,32,000/- (supra) was made. Hence, aggregate loss was quantified as (-) Rs.71,73,323/-.

Proceedings before CIT(A)

3. The assessee company being aggrieved by the aforesaid assessment order wherein addition of Rs.35,61,462/- and 12,32,500/- (supra) were made preferred first appeal before CIT(A) being Appeal No:-10370/18-19/AY 2012-13 wherein by impugned order dated 18.11.2019 the aforesaid additions were sustained by the Id. CIT(A). In the impugned order the Id. CIT(A) at para 5.2 in so far as addition Rs.35,61,442/- is concerned has held as under:

5.2 **HELD:** I have perused the order of the Assessing Officer and examined the reply of the assessee. The issue at hand has been decided by the undersigned on identical facts at Para 5.2. in appellant's own case in Appeal No.10345/18-19/AY 2016-17 as reproduced below:

*"5.2 **HELD:** I have perused the order of the Assessing Officer and examined the reply of the assessee. Brief facts of the case are that the AO has made the addition of Rs.34,37,627/- by disallowing the 50% of total expenses of Rs.68,75,253/- claimed by the assessee. AO has observed during the assessment proceedings that "the main source of income of the company was interest from FDRs with State Bank of Patiala & HDFC Bank and lease rent from Indian Oil Corporation...no actual business activity has been carried out during the year under consideration by the assessee. This is no way means*

that business activity was being carried out by the assessee. The business of the assessee has actually been closed since the past many years. Further, regarding the allowability of the other expenses being claimed by the assessee, it is once again reiterated that in the absence of any business activity, the assessee cannot be allowed these expenses. No income has been earned by the assessee out of business activity either." During the appellate proceedings, the counsel of the assessee submitted that the assessee corporation is a Public Sector undertaking owned and controlled by the Government of Punjab. The main business of the Corporation was of tourism promotion, hotels, tourist complexes in the State of Punjab and a petrol pump at Madhopur, District Pathankot, Punjab. Due to continuous and excessive losses in the business, the Govt of Punjab disinvested in the Corporation. The properties of the Corporation were either sold or transferred to the Department of Tourism, Government of Punjab, before going into the merits of the case let us discuss the provisions of Section 37(1) of Income Tax Act, 1961:

"37. (1) **Any expenditure** (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), **laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession**

Explanation 1. For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or shall be made in respect of such expenditure.

Explanation 2-For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (10 of 2013) shall not be claimed to be an expenditure incurred by the assessee for the purposes of the business or professions."

5.2.1. From above, it is well established that for the purpose of claiming deduction under section 37(1) of the Act, expenditure should be incurred for the purpose of the business which is carried on by the assessee in the previous year and profits of which are to be computed and assessed. However, during the appellate proceedings, assessee has stressed only to justify that the claimed expenditure cannot be disallowed. Though, he failed to explain the nexus between claimed expenditure and the activities performed during the year as there was no business activity performed during the year. The anus is, therefore, upon the assessee to prove that the assessee in fact, carried out any business activity and the expenditure to the tune of Rs.68,12,209/- had been made for exigency of business, which has not been proved by the assessee through any evidence or material on record during the assessment as well as appellate proceedings. Further, the assessee has relied upon various judgments which are inapplicable in this case as the assessee has not even claimed and brought any evidence on record that the company is in the process for revival of business or incurred such expenditure in the expectation that business would be rejuvenated and it would be successful. Moreover, the assessee has stated that the Govt of Punjab disinvested in the

Corporation and the properties of the Corporation were either sold or transferred to the Department of Tourism. Therefore it is established that the assessee has neither proved any income earned from business nor explained the nexus between claimed expenditure and business activity made during the year under consideration. However, despite the facts discussed above, the Assessing Officer is generous enough to allow the 50% of expenses claimed by the assessee which is fair and reasonable and takes care of routine administrative/fixed expenses. Therefore, after considering the facts of the case, I hereby confirm the addition of Rs.34,37,627/- made by the AO. **The Ground of Appeal No.2 is dismissed."**

"5.2.1 By placing reliance on above referred order, addition made by the AO of Rs.35,61,462/- is hereby confirmed and the Ground of Appeal No. 2 is dismissed."

3.1 That in the impugned order the Id. CIT(A) at para 6.2 in so far as addition of Rs.12,32,000/- is concerned has held as follows:

"6.2 **HELD:** I have perused the order of the Assessing Officer and assessment record. Brief facts of the case are that the AO has made the addition of Rs.12,32,000/- by considering the fact that the assessee has forfeited the membership fee to the tune of Rs.20,22,500/- out of total membership fees of Rs.32,55,000/- received till F.Y.2001-02 and transferred the same to the Profit & Loss account of that year, hence, AO presumed that the balance amount of Rs. 12,32,000/- shown as liability by the assessee and claimed as amount refundable to the members will be forfeited in future and made the addition, accordingly. However during the appellate proceedings, assessee has not made any submission against the addition of Rs. 12,32,000/-. On perusal of assessment record, it is observed that during the assessment proceedings, the assessee has submitted that "The amount of Membership was received, beginning from the FY 1990-91. An amount of Rs.32,55,000/- was received till the FY 2001-02 and during the FY 2001-02 an amount of Rs. 20,22,500/- was forfeited and transferred to the Profit & Loss Account during that YEAR. Balance Membership Fee of Rs. 12,32,000/- is appearing as a Liability in the Balance Sheet being the amount refundable to the members. The assessee company is not providing services to the members as on date. However, no case has been filed by any member for refund of membership fee of PTDC Club. The copy Balance Sheet relevant page for the FY 1990-91 and FY 2001-02 are enclosed here-with along with copy of account during which the membership fee was forfeited. It is to reiterate that the assessee was in receipt of Rs.32.55,000/- as membership fee from the F.Y.1990-91 to 2001-02. Out of such, an amount of Rs 20,22,500/- was forfeited and balance amount of Rs. 12.32,000/- was shown as liability by the assessee. However, it is observed that during the assessment as well as appellate proceedings, the assessee has neither explained the basis and circumstances under which the membership fee was forfeited nor explained the reason behind the partial forfeiture of membership fees. The obligation to justify the partial membership fee as liability lies with the assessee which he has failed to elucidate during the appellate proceedings. Assessee has itself submitted during assessment proceedings that No Services have been provided to the members and the members in turn have also not asked for refund. However, as per the past history of membership fee, it is clear that major chunk of this

*amount has already been forfeited by the assessee and there is status quo in facts and circumstances of this fee. In view of these facts and circumstances, addition made by the AO to the tune of Rs. 12,32,000/- is hereby confirmed and **Ground of Appeal No. 3 is dismissed.***"

4. Additional grounds were allowed partly.

5. The assessee being aggrieved by the impugned order is before us in second appeal and has raised following grounds of appeal in Form 36:-

- "1. That on the facts and circumstances of the case, the appellate order of the Hon'ble Commissioner of Income Tax Appeals 1, Chandigarh under section 250 (6) is not a speaking order.*
- 2. That the Hon'ble Commissioner of Income Tax Appeals 1, Chandigarh has erred in upholding the addition of Rs. 35,61,462/ of administrative expenses without correctly appreciating the nature, quantum and reasonableness of the legitimate business expenditure incurred by the State Government undertaking in discharging its statutory and legitimate liabilities in performance of its duties That the expenditure cannot be disallowed without analyzing the nature and the reasons for the expenditure on the basis of estimates.*
- 3. That the Hon'ble Commissioner of Income Tax Appeals 1, Chandigarh has erred in treating the opening stock of Rs. 1,73,452/- as expenses and disallowed the same as non business expenditure.*
- 4. That the Hon'ble Commissioner of Income Tax Appeals 1, Chandigarh has erred in upholding the addition of Rs. 12,32,000/-on account of Membership fee PTDC without correctly appreciating the nature and the reasons for writing back the liability.*
- 5. That the appellant craves leave to add, to alter, to amend or vary from the aforesaid grounds of appeal at or before the time of hearing of the said appeal."*

Record of Hearing

6. The hearing before this Tribunal took place finally on 22.08.2024 when both the Id. AR for assessee and Id. for the Income Tax Department were heard patiently. The Id. AR at the outset and threshold brought to our notice that assessee is Public Sector enterprise of Govt. of Punjab. The assessee company is practically closed since years now, w.e.f. 15.12.2009. There are no employees. There is no business activities. Thereafter the Id. AR stated that ROI

is of loss; aggregating to Rs.1,19,66,785/- and the Income Tax Authorities below have made two additions one of Rs.35,61,462/- and second of Rs.12,32,000/-. Addition of Rs.35,61,462/- pertains to disallowance of expenditure claimed in P & L account. The original amount claimed is of Rs.71,22,923/- which was disallowed by 50% hence addition of Rs.35,61,462/-. Further addition of Rs.12,32,000/- is on account of its liability payable to remaining members of PTDC club. It was contended that lower authorities ought not have made the addition of Rs.35,61,462/- as the nature of Expenses incurred are actual. The expenses are not "make believe". These expenses are essential to keep the govt. company in floating State otherwise whatever assets goodwill is left too would disappear. Major steps towards closing the Assessee Company has already been done and the now nothing much is left. The Final fate of assessee company under these facts and circumstances is upto the Govt. of Punjab who have to take final call on Co's fate and whatever little is left which is minuscule. The Id. AR on assessee's company future fate stated that -it is difficult to close down even barely whatever is left. It was contended that that blanket disallowance of 50% of the legitimate expenses of the corporation is extremely unreasonable when admittedly entire expenses are genuinely incurred of Rs.71,22,923/-. It was further contended that Assessee Corporation is a Public Sector Undertaking and all the expenses incurred were due to statutory, legal and necessary requirements. Under no circumstances, any of the expenses incurred could be attributed to be excessive or personal in nature or illegal. The Id. AR also

brought to the notice of this Tribunal that Assessee Company once upon a time was a huge Public Sector Undertaking having 25 tourists' complexes and a few petrol pumps in earlier years. The major task of the Assessee Company was promotion of tourism, employment generation and improving the infrastructure of the State of Punjab at a very nominal profit. The 50% of expenses disallowed i.e. Rs.35,61,462/- out of Rs.71,22,923/- [total expenditure incurred] is not accompanied with any reasons. The expenditure incurred by the Corporation is not on whims and fancies of any individual or official but it is truly a need based expense and as per the Govt. guidelines and the rules. The Id. AR in Paper Book at 1 to 12 has given details of major expenses incurred exceeding Rs.1,00,000/- which broadly are towards (i) salary paid to Shri. BV Kumar IFS Additional Managing Director Rs.11,46,715/-, expenses relating to previous year Rs.17,11,421/-, hiring charges (salaries paid to outsourced staff) Rs.14,34,058/-, lease money paid (Water Tourist Complex Ropar) Rs.1,95,687/-, legal expenses paid to Advocate's etc. Rs.1,22,372/-, professional charges paid to Advocates, Chartered Accountants, Company Secretaries etc. Rs.14,71,977/- Retainership Fee to CS Rs.1,32,000/-. The thrust of the argument of Id. AR was that both the lower authorities i.e. Id. AO/Id. CIT(A) had a False Notion that only source of income of the Assessee Corporation was from Bank interest on FDRs and lease money of Indian Oil Corporation (a petrol pump), therefore expenditure of Rs.71,22,923/- is excessive and cannot be incurred to earn interest income and rental income (supra). They forgot that even after effective closure of 25 tourist Complexes

and few petrol pumps in earlier years, the Assessee Corporation is a going concern as some little business, legal cases, staff payment, Management of remaining assets etc. had to be performed. The Id. AR in respect of amount of Rs.12,32,000/- which they had collected it for membership of PTDC Club stated that total amount of Rs.32,55,000/- was received towards membership fee of PTDC Club [FY 90-91]and out of that amount of Rs.20,22,500/- was forfeited and transferred to Profit & Loss account in the FY 2001-2002. Balance membership fee of Rs.12,32,000/- is appearing as liability in the balance-sheet being the amount refundable to members of PTDC Club. For the present no services are provided to members and nor the amount is refunded and decision in this regard depends upon Government directives to be followed by Board of the Assessee Corporation. Per contra Id. DR has fully supported the orders of lower authorities i.e. Id. AO/Id. CIT(A) and has prayed that order of CIT(A) be upheld as the same is just, fair & legal.

Observations, Findings and conclusions

7. We now examine the legality, validity and propriety of the impugned order which is in appeal before us.

7.1 We are of the considered **view basis premises laid down** by us that the disallowance of expenses by **50%** to Rs.35,61,462/- out of total expenditure of Rs.71,22,923/- is totally wrong and illegal as the amount is added back to negative income for no plausible reasons. The reasoning of lower authorities for disallowing administrative expenses to the extent of Rs.35,61,642/- is that

nature of income of the assessee is interest income/rental income [FDRs +petrol pump] **which is not a business income** and that the assessee company **has closed its business** and therefore **entire claim of expenditure cannot be allowed**. Hence **50%** disallowed to the extent of Rs.35,61,642/- [50% of Rs.71,22,923/0]. **We respectfully do not subscribe** to the said **views of Revenue** as the assessee is in the position of "**going concern**" and is required to **remain floated**. In order to remain floated; the Administrative Expenses are must otherwise Assessee Company would not get any value in event if it is disinvested and/or revived again. It is a Public Sector enterprise of Govt. of Punjab; its assets, goodwill, infrastructure, etc. **needs** to be maintained and **protected in larger public interest**. Further, most of the properties have been given back to Govt. of Punjab the sovereign power i.e. the state still these are administrative expenses which are required to be incurred so that Assessee Company floats and retain its characters **as a separate legal person/entity**, before Govt. of Punjab the sovereign power i.e the State takes a **final call** on it about **closure** or '**revival**' or '**sell off**'. Further the lower authorities approach has been totally arbitrary and capricious. They have not spelt out any plausible explanation, reasoning as to why 50% of the administrative expenses should not be disallowed. There is no speaking, well reasoned order in support of addition made of Rs.35,61,642/-. We further hold that 50% **disallowance is oppressive to already a sick assessee**. We are therefore **not inclined to uphold the addition** and **we set aside the same**. Further in the Paper Book details of all major expenses are given which are essential to

ensure that Assessee Corporation remains **afloat as a going concern**. WE do not find any logic in proposition canvassed by Id. DR that income of the Assessee Corporation is from interest on FDRs and rental income and that since business income is not there from core business the amount expended to earn interest income and rental income cannot be allowed as business expenditure. **In brief Revenue is contending a sick man should not be treated and it should not be allowed to fade naturally.** We are afraid we cannot subscribe to this doctrine. A sick cooperate entity even if gravely sick requires a bare minimum support / subsistence and such bare minimum support / subsistence is administrative expenses which in our considered view should be allowed **100%**. Accordingly, we allow entire expenditure of Rs.71,22,923/- and delete addition of 50% i.e. Rs.35,61,462/-. Further admittedly these expenses have not held to be personal or excessive or disproportionate by both the lower authorities.

7.2 In so far as remainder amount of Rs.12,32,000/- is concerned which is appearing as liability in the balance sheet on account of nonpayment / refund of membership fee of "PTDC Club". We find some logic in the reasoning given by the lower authorities that in earlier years [Financial Year 90-91 onwards] total amount of Rs.32,56,000/- was realized by them and an amount of Rs.20,22,500/- was forfeited and transferred to P&L Account in the Financial Year 2001-2002. Therefore, refund of Rs.12,32,000/- is not just going to happen to customers/members of "PTDC Club". Hence disallowed and added to returned income [negative income (loss.)] On this score we hold that

the Assessee Corporation actual core operations are closed presently since 2009 rendering of any effective service to "PTDC Club Members" seems to be an Act impossible at this stage and since in the earlier years they have forfeited part amount of Rs.20,22,500/-. Same should hold good for year under consideration hence we concur with the finding of lower authorities and confirm the addition of Rs.12,32,000/- on this score. However before parting with this issue, we are of the considered view that Assessee Corporation ought to have refunded membership fee of PTDC Club to its members, by not doing so and forfeiting the amount, they have done dis service to PDTC Club Members. The amount of Rs.12,32,000/- is liable to be returned back to P/L A/c and is rightly added to returned income. We, therefore find no infirmity on this limited score.

7.3 With regard to the amount of Rs.1,73,452/- is concerned which is "opening stock" treated as expenses and disallowed the same as non business expenditure. We observe that in the original assessment order for AY 2012-13 which was impugned in the impugned orders of Id. CIT(A) there is no effective [debatable] discussion. Further, we observe that even in impugned order also there is no effective (debatable) discussion. We therefore are considerably handicapped in addressing this issue of the Assessee Corporation. Accordingly, we reject the contention of the Assessee Corporation on this score. We observe and note that the Id. AO in his order has quantified the amount towards administrative expenses as Rs.35,61,462/- [i.e. 50%] and has added this amount to the returned income, whereas the Id.

CIT(A) in the impugned order has reduced this amount to Rs.34,37,627/- [para 5.2.1 of impugned order of CIT(A)]. The excess/difference of Rs.1,73,452/- has arisen because in first appeal actual expenditure incurred has been shown as Rs.69,49,470/- / Rs. 68,12,209/- and the expenditure assumed and considered by Id. AO is Rs.71,22,923/- . The amount of Rs.6949470/-/6812209/- is accepted and 50% of it comes to Rs.34,37,627/- which is added by Id. CIT(A) and considered. The difference between Rs.71,22,923/- -6949470/- comes to Rs.1,73,452/- and therefore the opening balance according to Assessee Corporation. On this limited score we observe and hold that there are other provision under the Act where such grievances which are peculiar can be taken up and this Tribunal is not appropriate Form for this, at this stage.

7.4 We hold additionally that there is no express findings in the orders of lower authorities, i.e. Id. AO and Id. CIT(A) that Assessee Corporation is **closed permanently**. On the contrary it is an admitted position that during the year under consideration the Assessee Corporation has received lease money/licencefee from petrol pumps and the Assessee Corporation has done its business and has been **operational to this extent**. It is also an admitted position that the expenses debited to the Profit & Loss Account are related to with the administrative expenses only which is necessary and essential till the company is in existence as a separate legal person. It is also not disputed that administrative expenses incurred areas and by way of salary/wages, litigation filed by and against the company, lease money water electricity etc. The list of expenses shown are exhaustive [page 6 of

CIT(A) impugned order]. There is no categorical and 'express negation' of these administrative expenses incurred by the Assessee Corporation. The reply/contention of the Assessee Corporation has been considered and it is not expressly rejected by any authorities i.e. Id. AO/Id. CIT(A) expressly by stating that expenses incurred cannot be allowed as the same is not wholly and solely incurred towards business of the Assessee Corporation. The only objection of Revenue is business is discontinued therefore 50% of expenses are disallowed of total expenses incurred, which Revenue feels is reasonable. The discontinuation of the business thus assumes importance. Therefore, the question which arises for our determination is whether Assessee Corporation has discontinued its business. We are of the considered view that fact that Revenue has allowed 50% of expenses incurred 'itself' goes to show that Revenue recognizes one fact – undisputedly which is that the Assessee Corporation is not wound up or is in liquidation. The Assessee Corporation is a body corporate and is a separate legal person under Co's Act, 1956/2013. Its certificate of incorporation is not cancelled under Co's Act. The Assessee Company as a corporate entity of a Sovereign State is required to be on existence basis and not on non-existence basis. It being corporate entity is required to follow several Rules and Regulations which are statutory in nature. Non compliance of it would lead to several penal consequences particularly under Co's Act, 1956/2013, Income Tax Act, 1961, labour laws, etc. Since the Assessee Corporation is fully owned by Govt. of Punjab which has not yet ordered any compulsory closure of business as a whole and that there are

also no direction that business of Co is to be abandoned permanently the Assessee Corporation being an artificial juridical person is required to at least sustain itself as such. Hence, we hold that Administrative Expenses incurred are must for its survival till final call is taken by Govt. of Punjab on it's very existence / survival as a corporate entity. The decision to this effect is **under policy realm of Govt. of Punjab** and till that call is not take Assessee Corporation is required to sustain itself for which these expenses are must. The situation is like that of a insane person, or infirm person or an insolvent person who requires basis necessities of life. Why kill it? Further the expenses incurred have not expressly been held to be either personal, exorbitant, excessive, disproportionate etc. As stated earlier it has not been held to be not incurred solely or wholly for business of Assessee Corporation. We, therefore allow the expenses incurred 100%.

7.5 We agree with the view of co-ordinate bench case of ITAT Delhi benches case reported in [2009] 29 SOT 11 (Delhi) in case of ITO v/s Mokol Finance (P) Ltd. wherein in para 5 it has been held that:

“As Dr. Gupta rightly contends, the assessee being an artificial juridical person, it needs to incur certain expenditure to keep itself afloat and have its continued existence. Unlikely a natural person, a company can only operate through other natural persons whether employees or others. It is not the case of the Assessing Officer that the expenditure of the assessee company are excessive or unreasonable vis-a-vis its legitimate business requirements. The Hon'ble High Courts have consistently held that in the case of the corporate assessee such expenses have to be allowed as deduction irrespective of whether or not the assessee is engaged in active business and even if assessee has only passive incomes.”

The Tribunal was also pleased to hold as under:

“We agree with Dr. Gupta's second line of argument as well. We find that the whole cause of action of disallowance of expenses is in the background of Assessing Officer's observation that the assessee did not carry

out any business transactions which at best was Assessing Officer's finding about an activity of business not being functional in the relevant previous year. In our opinion, not carrying on business activity in a particular period cannot be equate with closure of business as it takes an unsustainably narrow view of the scope of cessation of a business. In the case of LVE. VairavanChettiar v. CIT [1969] 72 WR 114, their Lordships of Hon'ble Madras High Court were in seisin of a situation where the assessee had obtained an import licence for doing arecanut business but due to adverse conditions in market, he temporarily suspended the arecanut business for the assessment year in question, Nevertheless, he was maintaining the establishment and was waiting for improved market conditions in arecanut. It was thus an admitted position that no activities were carried out so far as this part of the business was concerned. On these facts, their Lordships took note of the position that "There is nothing on record to show that he completely abandoned or closed the business forever. On the other hand, his books of account revealed that he was meeting the establishment charges and interest payments as detailed in the accounts in the year of accounts". It was then observed that the question whether the business is being carried on must depend in each case on its own facts and not on any general theory of law. Their Lordships then referred to, with approval, Lord Summer's observation in IRC v. South Behar Railway Co. Ltd. [1925] 12 Tax Cases 657 that business is not confined to being busy, in many businesses long intervals of inactivity occur..."The concern is a going concern though a very quiet one." After elaborate survey of judicial precedents on the issue, their Lordships concluded, in the light of, as noted above, the factual position that "there is nothing on record to show that he completely abandoned or closed the business forever. On the other hand, his books of account revealed that he was meeting the establishment charges and interest payments as detailed in the accounts in the year of account," that the loss in arecanut business, in which admittedly no activity was carried out during the relevant previous year, was to be set off against assessee's business income in the year. As the ratio of the aforesaid judgment is summed up in the ITR headnotes at p for the improved market conditions the business forever, 115 of the report, "as the assessee was maintaining the establishment and waiting in arecanuts and there was nothing to show that he completely abandoned or closed the business must be deemed to be continuing". In the light of this legal potion, it would follow that unless there is some material on record to show that the assessee has completely abandoned the share dealing business merely because there are no business transactions in the relevant previous year cannot be reason though to come to the not be conclusion business has to an end. said, as was the case before the Hon'ble Madras High Court, that the assessee had "completely abandoned or closed the business forever". Unless the business is abandoned or closed and even if business is at a dormant stage waiting for proper market conditions to develop, the expenditure incurred in the course of such a business is to be allowed as a deduction. For this reason also, the disallowance made by the Assessing Officer was not justified, and the CIT(A) rightly deleted the same."

7.6 We also agree with the view of another co-ordinate Bench in the case of Ahmedabad ITAT Bench case in ITA No. 889/Ahd/2014 in case titled Chinubhai M Patel v/s ITO wherein it was held as under:

"5. We have noted that the authorities below have disallowed the expenses and the disallowance on the ground that no business activities were carried out but, in our considered view, business activities not being carried out during the year per se cannot even lead to the conclusion that the business was discontinued, leave aside the question of closure of 'assessee's business'. In the case of *L. Ve. VeravanChettiar vs. CIT* (1969) 72 ITR 114 (Mad), Their Lordships of Hon'ble Madras High Court were in seisin of a situation where the assessee had obtained an import licence for doing arecanut business but due to adverse conditions in market, he temporarily suspended the arecanut business for the assessment year in question. Nevertheless, he was maintaining the establishment and was waiting for improved market conditions in arecanuts. It was thus an admitted position that no activities were carried out so far as this part of the business was concerned. On these facts, their Lordships took note of the position that "There is nothing on record to show that he completely abandoned or closed the business forever. On the other hand, his books of account revealed that he was meeting the establishment charges and interest payments as detailed in the accounts in the year of accounts." It was then observed that the question whether the business is being carried on must depend in each case on its own facts and not on any general theory of law. Their Lordships then referred to, with approval, Lord Summer's observation in *IRC vs. South Behar Railway Co. Ltd.* (1925) 12 Tax Cases 657 that business is not confined to being busy, in many businesses long intervals of inactivity occur. The concern is still a going concern though a very quite one." After elaborate survey of judicial precedents on the issue. Their Lordships concluded, in the light of, as noted above, the factual position that "there is nothing on record to show that he completely abandoned or closed the business forever. On the other hand, his books of account revealed that he was meeting the establishment charges and interest payments as detailed in the accounts in the year of account," that the loss in arecanut business, in which admittedly no activity was carried out during the relevant previous year, was to be set off against assessee's business income in the year. As the ratio of the aforesaid judgment is summed up in the ITR headnotes at p. 115 of the report, "As the assessee was maintaining the establishment and waiting for the improved market conditions in arecanuts and there was nothing to show that he completely abandoned or closed the business forever, the business must be deemed to be continuing. In the light of this legal position, it would follow that unless there is some material on record to show that the assessee has completely abandoned the business. There is no finding by any of the authorities below that there was a cessation of business. It is not the case, as has been stated by the AO, that the assessee is claiming deduction of business expenses from rental income. The expenses incurred by the assessee are business expenses and just because there is no business income during the relevant period, such deductions cannot be declined. The depreciation is not in respect of the assets rented out either. The assessee is incurring a business loss and that all that matters. Whatever be the consequences of such losses on assessee's ultimate tax liability does not govern the question whether deduction for expenses could be allowed or not. In the light of these discussions and bearing in mind entirety of the case, in our considered view. therefore, the disallowances sustained by the CIT(A) infact deserve to be deleted. We do so. The assessee gets the relief accordingly."

7.7. We hold that 43 cases are pending in various courts and in order to honour the verdicts of these courts, the Assessee Corporation in its character

as 'state enterprise' is required to be in existence/ survival mode. Further, besides Assessee Corporation 3 other Co's are being looked after under their umbrella they are Neem Chameli Tourist Complex Ltd. Gulmohar Tourist Complex (HH) Ltd. and Amritsar Hotel as Records of these entities are with the Assessee Corporation. Holiday Home, Club Members of PTDC, liason with Govt. of Punjab and CA etc works are too with them. The above companies are corporate entities hence full compliance is their responsibility including taxes. Hence Assessee Corporation cannot be a called a closed business entity. Needless to state besides main objects a corporate entity has other objects too under its articles and memorandum of association under Companies Act, 1956 / 2013.

ORDER

8. The impugned order is set aside to the extend above i.e. addition of Rs.34,37,627/- is deleted and addition of Rs.12,32000/- is sustained/confirmed Rs.1,73,452/- relegated to other alternative and efficacious remedy under Act.

9. The appeal of the assessee is thus partly allowed.

II. Now we shall deal with ITA No. 140/Chandi/2020, AY 2014-15[In 1st Appeal No.- 10371/18-19/AY 2014-15, CIT(A) order dated 18.11.2019]

10. The above ITA No. 140/Chandi/2020 for AY 2014-15 is filed by the Assessee Corporation as they are aggrieved by order of Id. CIT(A) dated

18/11/2019 in 1st Appeal No. 10371/18-19/AY 2014-15 which is hereinafter referred to as the **Impugned order**. The original assessment order u/s 143(3) is deleted on 18.11.2016 which was passed by Id. AO DCIT C(1), Chandigarh.

10.1 The Assessee Corporation had filed return of income for AY 2014-15 on 28/09/2015 wherein they had declared total loss of **(-) Rs.1,15,89,635/-**. The return of income was initially processed u/s 143(1) and subsequently the case was selected for scrutiny. Statutory notice u/s 143(2) was issued on 22.09.2015 which was duly served on the assessee. Subsequently, questionnaire along with statutory notices u/s 142(1) and 143(2) were issued on 09.06.2016. Required details were given. During the course of the Assessment proceedings it was noticed that assessee had debited following expenses in the P&L A/c (i) Rs.7,88,372/- expenses relating to previous year (ii) Expenses for modification of deed:-Rs.12,60,000/-. The explanation of the Assessee Corporation before Id. AO was (i) Expenses relating to previous year incurred **during the year under consideration** was with regard to ex-employees, litigation expenses of stic travel cases, and Provident Fund cases etc. (ii) Expenses for rectification of conveyance deeds during the year under consideration. The expenses related to legal fee paid and counsels expenses. Accordingly, the Assessee Corporation was called upon to Show Cause as to why (i) Expenses relating to previous year of Rs.7,88,372/- (ii) expenses on modification of deed of Rs.12,60,000/- should be disallowed. The Assessee corporation gave an explanation that expenses are incurred **in real terms for** the relevant assessment year and that the same has been claimed as an

expenditure during the year under consideration. Therefore, the Assessee Corporation has not furnished or made a false /wrong claim of its expenses incurred and that the Show Cause Notice be dropped and claim made be allowed as expenses incurred. With regard to Rs. 7,88,372/- the claim of expenses incurred which was disallowed on the Ground that the expenses pertained to the previous year and thus are clearly not allowable as the expenses for the year under consideration. The expenses of Rs. 12,60,000/- (modification of deeds) too was disallowed as there was no evidence in support of the same. In aggregate total disallowance of expenses (supra) was Rs. 20,48,372/-. An amount of Rs. 1658/- as interest on late payment of TDS was too disallowed.

10.2 That during the year under consideration main source of income of Assessee Corporation was Interest from FDRs with SBI (Patiala), HDFC Bank and lease rent from Indian Oil Corporation. Total receipt was Rs. 69,15,921/-. Out of these receipts Rs. 66,78,574/- was on account of income from interest on FDR. As per Profit and Loss account the Assessee Corporation claimed expenses amounting to Rs. 1,86,50,155/- under various heads, aggregating to total 34 Heads and out of that against 27 headsexpenses of Rs. 64,41,475/- was disallowed due to fact that receipts of Assessee during the year under consideration was **“Income from other sources” and business of the Assessee corporation was discontinued** one further to earn interest from FDRs from the banks practically No expenditure was incurred. Assessee company was

thus disallowed Rs. 32,20,737/- [**50% of Rs. 64,41,475/-**] and that the same was added back to the income of the Assessee corporation.

10.3 The Id. A.O. computed the total income of the Assessee corporation as (-) Rs. 63,18,868/- in which amount of Rs. 20,48,372/- is added (supra), TDS interest of Rs. 1,658/- (supra) and amount of Rs. 32,20,737/- (supra). The impugned assessment order of the Id. A.O. is dated 18.11.2016, **wherein aggregate addition is of Rs. 52,70,767/-** (supra amounts). Assessed loss is of Rs. 63,18,868/- against returned loss of (-)Rs. 1,15,89,635/-.

11. The Assessee being aggrieved by the aforesaid impugned assessment order dated 18.11.2016 of Id. A.O. prefers first appeal before Id. CIT(A) who by impugned order has held as under:-

*"14.2.1. HELD From above, it is very much clear that the expenditure related to earlier year which crystallized during the year under consideration is eligible for deduction. Nonetheless, on perusal of assessment order, it is observed that the AO has disallowed the expense claimed to be pertained to **modification of deed of Rs. 12,60,000/- on the basis that the assessee has failed to submit any evidence of such expenditure. However, even during the appellate proceedings, the assessee has not submitted and documentary evidence and material on record in support to his claim of such expenditure.** Further, on addition of Rs.7,88,372/-, assessee claimed that the expenditure incurred on ex-employee litigation and stick travel matters etc. has crystallized in the current financial year. However, it is observed that during the assessment as well as appellate proceedings, no satisfactory submission and documentary evidence has been filed by the assessee that how these expenses were related to previous year and crystallized in current year. Assessee has failed to appreciate this fact that mere written submissions without any supporting documentary evidence is not sufficient to rebut the disallowance or addition made by the Assessing Officer. Therefore, in view of facts and circumstances of the case, **addition of Rs. 20,48,382/- made by the Assessing Officer is hereby upheld and Ground of appeal No.2 and 3 is dismissed"**.*

2 *"15.2 HELD: Have perused the order of the Assessing Officer and examined the reply of the assessee The issue at hand has been decided by the undersigned on identical facts at Para 5.2. in appellant's own case in*

Appeal No.10345/18-19/AY 2016-17. By placing reliance on above referred order, and considering the facts that assessee has no intention to revive the business as business is closed and transferred to other Government department, the case laws relied by the assessee are not on identical facts. Hence addition made by the AO of **Rs.32,20,737/- is hereby confirmed and the Ground of Appeal No. 4 is dismissed**".

3. "16.2 HELD. I have perused the order of the Assessing Officer and examined the reply of the assessee. The AO is hereby directed to reconsider the claim of the assessee for carry forward of losses and allow the same if found eligible as per the provisions of Income Tax Act, 1961. Needless to say, if loss is reduced by the AO after making additions to the returned income in the past, the same must be taken care of. This additional ground of appeal is allowed for statistical purposes".

12. The Assessee Corporation being aggrieved by the aforesaid impugned order of Id. CIT(A) prefers second appeal before this Tribunal and has inter alia raised following Grounds of appeal inform 36 which is as under:-

1. That on the facts and circumstances of the case, the appellate order of the Hon'ble Commissioner of Income Tax Appeals 1, Chandigarh under section 250(6) is not a speaking order.

2. That the Hon'ble Commissioner of Income Tax Appeals 1, Chandigarh has erred in upholding an addition on account of expenses incurred on rectification / modification of deed amounting to Rs. 12,60,000/- without correctly appreciating the nature of expenditure.

3. That the Hon'ble Commissioner of Income Tax Appeals 1, Chandigarh has erred in upholding an addition on account of expenses incurred of Rs. 7,88,372/- as expenses related to previous years.

4. That the Hon'ble Commissioner of Income Tax Appeals 1, Chandigarh has erred in upholding the addition of Rs. 32,20,737/- of administrative expenses without correctly appreciating the nature, quantum and reasonableness of the legitimate business expenditure incurred by the State Government undertaking in discharging its statutory and legitimate liabilities in performance of its duties. That the expenditure cannot be disallowed without analyzing the nature and the reasons for the expenditure on the basis of estimates.

5. That the appellant craves leave to add, to alter, to amend or vary from the aforesaid grounds of appeal at or before the time of hearing of the said appeal.

Record of Hearing

13. The hearing in the matter took before this Tribunal when both Id. AR for the Assessee and Id. DR for Revenue were heard on merits. The Id. AR gave brief description of the Assessee corporation which we have already narrated hereinabove. The Id. DR has supported the orders of lower authorities i.e. Id. A.O. / Id. CIT(A).

13.1 The core contention of the Id. AR in respect of ground No.2:- (supra) where there is a disallowance of expenses on account of modification of deed amounting to Rs. 12,60,000/- was that the expenditure is Revenue in nature as '**rectification of deeds**' erroneously registered in earlier years due to technical defect were carried out during the year under consideration. As the expenditure got **crystalized in the year under consideration** it should be allowed as per accounting standard of ICAI regarding the accounting standard on expenditure pertaining to previous years. This is a Revenue expenditure which has not been claimed in the years it pertains to and that. Under no circumstances, the provision of the same could have been created in the respective years, it is to be allowed in the year under consideration. It is not an error or omission in the previous year accounts. Hence, same may please be allowed. Reliance on clause 27(6) – guidance note on Tax Audit under section 44AB of the I.T. Act, 1961 was placed which states as under: -

That the expenditure pertaining to previous years is a Revenue expenditure which has crystalized during the relevant year **was not to be** considered as prior period expenditure to be disallowed. Only errors or omissions in the accounts of earlier years will be prior period items. **It was therefore, prayed that it should not be disallowed.**

13.2 The Id. AR with regard to ground No.3 which pertains to disallowance of expenses relating to previous years of Rs. 7,88,372/- is concerned inter alia contended that the expenditure of Rs. 7,88,372/- were on "Employee litigation and stock travel matters etc." which were too got crystalized in the year under consideration and relied upon ICAI Standard and in particular clause 27(6) of guidance note on Tax Audit under section 44AB of the I.T. Act,1961 which is reproduced as above (supra).

13.3 The Id. AR with regard to Ground No.4 which pertains to disallowance of expenses of Rs. 32,20,737/- being 50% of Rs. 64,41,475/- inter alia contended that these are administrative expenses and in all there are 27 Heads under which expenses are incurred. **50% of Rs.64,41,475/-** which works out to **Rs. 32,20,737/-** is disallowed arbitrary and the Id. A.O. has not taken cognizance that **expenses incurred are on real time basis and are actual**. The Id. Assessing Officer has not appreciated nature, quantum and reasonableness of the expenses actually incurred merely on the premises **that business has been discontinued**. It was emphatically contended by the Id. AR that these expenses under 27 Heads aggerating to Rs. 64,41,475/- are essential to the Core of the Corporation's is expenses after disinvestment for the activities of the Corporation which are legally to be performed. The disallowance by 50% is made of Rs. 32,20,737/- 50% of Rs. 64,41,472 on the premise that the only source of income of the Assessee Corporation is from bank interest and lease money of Indian Corporation. Further expenditure incurred of Rs. 64,41,475/- cannot be incurred to earn interest income and

rent income. The Id. A.O. failed to appreciate that Assessee was a huge public sector enterprise having 25 tourist complexes and few Petrol Pumps in earlier years. The primary motive of business was not profit generation but was promotion of tourism, employment generation and improving the infrastructure of State of Punjab at a very nominal profit. This aspect is ignored by the Id. Assessing Officer. **There is no speaking order on the disallowance the expenses incurred are need based as per govt -guidelines and rules.** It is not based on **whims** and **fancies**. In event the expenditure incurred are not made, the assets, the Court cases, the recovery of money, dues from various persons are not feasible. The remaining assets of the Corporation have to be managed, preserved and looked after till the time government is in a position to either restart or liquidate without too much loss to the Punjab Govt. State exchequer. The expenses are not held to be excessive or exorbitant on or personal benefit of any individual. These expenses have been incurred for complying with the statutory and business requirements of the corporation. All expenses are legitimate as per government approved norms too. Without prejudice to what is averred and stated it was further contended that even if Punjab Tourism Development Corporation Ltd had no interest income or non-operative income or lease rental income, these expenses under total 27 heads would have to be incurred to maintain the remaining infrastructure, payment of salaries of accountants, chowkidar, employees left, payment of electricity, water bills auditor's fees, bank charges etc. These expenses have been incurred to

comply with statutory laws and duties of staff etc. Disallowing 50% of genuine legitimate, business expenditure merely on the premise that the Assessee Cooptation has income from interest and lease rental is not at all logical and acceptable. It is illogical exercise. Reliance was placed on the decision of Coordinate Bench of ITAT Delhi in case of ITO v/s Mokul Finance (P) Ltd. reported in [2009] 29 SOT 11 (Delhi) wherein it was held that – “**unless the business is abandoned or closed** and even if business market condition is at dormant stage waiting for a proper market condition to develop, the expenses incurred in course of such a business is to be allowed as deduction”. Few other orders and judgements of ITAT, High Court, were relied upon. Per contra the Id. DR has fully supported the order of lower authority i.e. Id. Assessing Officer/ Id. CIT(A)/ and has prayed that the same be upheld as it is reasonable fair and just.

Observations, findings and Conclusions

14. We now examine the legality, validity and propriety of the impugned order which is in appeal in appeal before us.

14.1 With regard to disallowance of expenses on account of modification of deed amounting to Rs. 12,60,000/- is concerned which was on account for ‘**rectification of deeds**’ erroneously registered by the Corporation in earlier years due to technical defects; we are of the considered **view basis submission made** before us and material placed in paper book that the said expenditure was actually incurred in the year under consideration. The

expenses **crystalized** in the year under consideration as and by way of rectification of Deeds executed in earlier years. On page 12 of the paper book which was Profit & Loss account as on 31.3.2014 we notice that sum of Rs. 12,60,000/- is expended for modification of deed. On page 19 which is minutes of 144th meeting of the Board of Directors of the Assessee Corporation we notice that under Item No.144.5 there is an approval of board which stated that "Resolved that the incorrect wording in all the conveyance deeds be got rectified by executing a corrigendum of Conveyance deed in respect of each property sold by the Corporation and that Shri SPS Dhindsa, the Project Coordinator (Admn.) PHTPB, be and is hereby authorized to approach the Tehsildar / Revenue Authorities for doing the needful". Further "Resolved that Shri SPS Dhindsa, Project Coordinator (Admn.), PHTPB, be is hereby authorized to sign and execute such papers as he may deem fit to give effect to the above decision of the board". "The Board decided that Mr. Dhindsa be paid Rs. 5000/- per registry, plus usual TA / DA and other statutory expenses for getting the corrections made in the Conveyance deeds". On page 21, there is a Chart evidencing expenses of Rs. 12,60,000/-. On page 23 to 25 of paper book photocopy of receipts in support of list is attached.

14.2 Basis above we observe and hold that amount of Rs. 12,60,000/- is expended towards "modification of deeds" and the same is Revenue expenditure and ought to have been allowed. The order of lower authority is therefore set aside on this score. However, we hold in final analysis that since these documents were never produced before both the lower authorities i.e.

Id. A.O. & CIT(A), we deem it fit and proper that documents now filed before us be only verified and cross checked for its authenticity and genuineness. We further direct the Assessee corporation to produce Hard copies of "rectification deeds" so that their claim is sustained before AO. Save and accept due verification no other exercise would be done. Additional Directions as per para 15 to be followed as directed.

14.3 With regard to disallowance of Rs. 7,83,372/- as expenses related to previous years which was disallowed and added to the returned income. We observe that in response to show cause notice as to why the said expenses be not allowed, the Assessee has failed to offer any plausible explanation with supporting material. There is only a simple explanation by the Assessee Corporation that the expenses of Rs. 7,88,372/- are on ex-employee litigation and stick travel matters etc. **which got crystalized** in the year under consideration hence should be allowed as Revenue expenditure. We observe that both the lower authorities i.e. Id. A.O. and Id. CIT(A) have held that no supporting documents /material evidence have been furnished. In present appeal before us in paper book filed there is no supporting material / evidence under these circumstances we hold that the claim of amount expended has no basis and accordingly we upheld the disallowance and further hold that addition is correctly made and sustained by Id. CIT(A). The claim of Assessee Corporation is rejected on this issue.

14.4 With regard to disallowance of Rs. 32,30,737/- as Administrative expense **(50% of Rs. 64,41,475/-)**, we adopt our observations, findings and conclusion which we have given for identical situation in ITA no. 139/Chd/2020 (supra).

Order

15. In the premises we dismiss Ground No.3, where expense of Rs. 7,88,372/- is claimed as allowable expense. We allow Ground No.2 where expense of Rs. 12,60,000/- is claimed on account of rectification / modification of deed back subject to AO to only verify and cross check authenticity of documents placed before us for first time in paper book from Page No 21 to 28 and with an additional direction to Assessee corporation to produce **hard copy of “rectified deeds”** evidencing payment of requisite charges on documents itself or original receipts of photocopy from page No. 21 to 28. We allow Ground No.4 setting aside addition of Rs. 32,30,737/- [50% of Rs. 64,41,475/-] the amount expended as administrative expenses.

16. In result Appeal No. 140/Chandi/2020 is partly allowed as aforesaid.

III: Now we shall deal with ITA No. 141/Chandi/2020 for A.Y. 2015-16 [In 1st Appeal No.- 10381/18-19/A.Y. 2015-16-CIT(A) order dt. 18/11/2019]

17. The above ITA No. 141/Chandi/2020 for A.Y. 2015-16 is filed by the Assessee Corporation as they are aggrieved by order of Ld. CIT(A) dt. 18/11/2019 in 1st Appeal No. 10381/18-19/A.Y. 2015-16 which is hereinafter

referred to as the **impugned order**. The original assessment order u/s 143(3) is dated 30.11.2017 which was passed by Ld. AO DCIT Circle-1(3), Chandigarh.

18. The Assessee Corporation had filed its return for A.Y. 2015-16 on 28.09.2015 declaring a total income of Rs. 96,77,390/-. The return was processed u/s 143(1) and subsequently the case was selected for **scrutiny**. Statutory notice u/s 143(2) was issued on 16.03.2016 which was duly served on the assessee. Subsequently, questionnaire alongwith statutory notices u/s 142(1) & 143(2) was issued on 17/01/2017. Required details were give. During the year Assessee Corporation had total receipts of Rs. 1,70,58,218/- out of these receipts Rs. 1,14,01,563/- was on the account of income from **interest of FDRs** and receipts of Rs. 50,93,087/- under the head "**Misc. Income**" on **account of compensation** due to a decision of Hon'ble High Court of Himachal Pradesh at Shimla. The Assessee Corporation debited Rs. **75,75,443/- as expenses under 27 heads**. The Assessee Corporation since it had discontinued its core business and was earning interest from FDR's from bank for which no expenditure was / can be incurred was called upon to show cause as to why **50% of these expenses** claimed be not disallowed. In reply it was contended by the Assessee Corporation Counsel that these expenses are incurred **for day to day working of the Assessee Corporation**. The Assessee Corporation is facing number of litigations with its employees, property disputes and other litigations and need staff for the same besides maintaining books of accounts, managing assets of the company meeting compliance requirements of different acts and safeguarding the interest of

the company. The Ld. AO however computed Rs. 60,07,951/- under total **25 heads** as administrative expenses but however **disallowed 50% of 6407951/- i.e; Rs. 32,03,976/-** and added back the same to the returned income. Consequently the recomputed assessed income was worked out to Rs. 1,27,03,753/.

19. The Assessee Corporation being aggrieved by the aforesaid impugned assessment order dt. 30.11.2017 of Ld. AO prefers first appeal before Ld. CIT(A) who by impugned order has held as under:-

"23.2 HELD- I have perused the order of the Assessing Officer and examined the reply of the assessee. The issue at hand has been decided by the undersigned on identical facts at Para 5.2 in appellant's own case in Appeal No. 10345/18-19/AY 2016-17. By placing reliance on above referred order, addition made by the AO of Rs. 32,03,976/- is hereby confirmed and the Ground of Appeal No. 2 is dismissed."

*"24.2 HELD: I have perused the order of the Assessing Officer and examined the reply of the assessee. On perusal of the order of Hon'ble High Court of Shimla, it is seen that the assessee entered into an agreement with collaborator on 28.10.1986. As per the agreement, the collaborator was to arrange for the sale of approx. 2000 sq. yards land to the Corporation for construction of Holiday Home. The construction was to be carried out by the collaborator as per the specifications and designs provided by the Corporation, within twenty months. This Holiday Home was being set up by the Corporation to be run on a time share basis for its members. The collaborator could charge the members of the Holiday Home Club for the facilities provided by it. Though the agreement was entered into in the year 1986. the collaborator failed to provide the various facilities. After seven years the facilities were not provided, the Corporation rescinded the contract and took over the possession of the complex in June 1994. Accordingly, thereafter, process of appointment of Arbitrator and passing of award was started and finally settled in the favour of the assessee vide Hon'ble High Court of Shimla's Order dated 05.01.2012. It is observed that the project of construction of Holiday Home started in the year 1986 and fell in dispute in the year 1994. During appellate proceedings the assessee has failed to demonstrate with evidence that which expenses it has incurred during execution of the project from 1986 to 1994. Accordingly the amount of Rs.50,93,087/- received as compensation by the assessee during the year under consideration is just a compensation amount for nonperformance of the contract and cannot be considered as his business income Therefore, this additional Ground of **Appeal is hereby dismissed.***

20. The Assessee Corporation being aggrieved by the aforesaid impugned order of Ld. CIT(A) prefers second appeal before this Tribunal & has interalia raised following grounds of appeal in Form 36 which are as under:

1. *That on the facts and circumstances of the case, the appellate order of the Hon'ble Commissioner of Income Tax Appeals-1, Chandigarh under section 250(6) is not a speaking order.*
2. *That the Hon'ble Commissioner of Income Tax Appeals 1, Chandigarh has erred in upholding the addition of Rs. 32,20,737/- of administrative expenses without correctly appreciating the nature, quantum and reasonableness of the legitimate business expenditure incurred by the State Government undertaking in discharging its statutory and legitimate liabilities in performance of its duties. That the expenditure cannot be disallowed without, analyzing the nature and the reasons for the expenditure on the basis of estimates.*
3. *That the Hon'ble Commissioner of Income Tax Appeals 1, Chandigarh has erred in upholding the addition of Rs. 50,93,087/- on account of compensation received.*
4. *That the appellant craves leave to add, to alter, to amend or vary from the aforesaid grounds of appeal at or before the time of hearing of the said appeal.*

Record of Hearing

21. The hearing in the matter took place before this Tribunal when both Ld. AR for the assessee and Ld. DR for the Revenue were heard on merits. The Ld. AR gave brief description of the Assessee Corporation which we have already narrated hereinabove. The Ld. DR has supported the orders of lower authorities i.e; Ld. AO / Ld. CIT(A).

21.1 The core contention of Ld. AR in respect of Ground No. 2 wherein there is a disallowance of 50% of the expenditure incurred i.e; 50% of Rs. 64,07,951/- amounting to Rs. 32,03,976/- on the ground that nature of income was not from business as core business, had been discontinued, amounts to blanket disallowance. It was repeated and reiterated that the assessee corporation is a public sector undertaking owned and controlled by the Government of

Punjab. The main business of the Corporation was of tourism promotion, hotels, tourists complexes in the state of Punjab and a Petrol Pump at Madhopur District Pathankot, Punjab. Due to continuous and excessive losses in the business, the Government of Punjab disinvested in the corporation. The properties of the corporation were either sold or transferred to the Department of Tourism, Government of Punjab. **In the A.Y. 2015-16 there is a payable demand of Rs. 15,11,120/-** 50% of legitimate expenses of the corporation which has been made which is extremely unreasonable and uncalled for.

21.2 It was interalia contended that disallowance of Rs. 32,03,978/- being 50% of the Expenditure incurred of Rs. 64,07,951/- is **harsh**. There are in all 25 heads under which the aforesaid expenditure was incurred **on real time basis**.

21.3 It was once again repeated and reiterated that the Ld. AO & CIT(A) has just not taken cognizance of the fact that all the expenditure incurred under 25 heads in A.Y 2015-16 just cannot be disallowed without appreciating the nature, quantum and reasonableness of the expenses simply on the premises that business has been discontinued.

21.4 It was emphatically argued before us that these expenses are administrative expenses which are essential to the core of the Corporation existence after disinvestment and are towards various activities of the Assessee Corporation.

21.5 The disallowance has been made on the premise that the only source of income of the assessee corporation is from bank interest and lease money of Indian Oil Corporation. Hence expenditure incurred of Rs. 64,07,951/- cannot be incurred to earn interest income and rental income.

21.6 Ld. Counsel emphasized that no speaking orders are passed by authorities below on each head on the disallowances.

21.7 Expenditure incurred is need based.

21.8 Arguments earlier made were repeated and reiterated (supra)

21.9 With regard to Ground No. 3 which pertains to treating compensation received of Rs. 50,38,276/- as non business receipt it was urged that authorities have failed to appreciate that the assessee corporation had filed a suit against a business partner as a result a compensation was received of Rs. 50,93,087/-. The corroborator had not completed his side of the contract signed in the year 1987 and kept on delaying the construction which resulted in the loss of business for some years. The amount of Rs. 50,38,276/- received was not an income from other sources but was a business receipt because of non performance of the contract by the corroborator who was not a contractor ipso facto. Consequently there was loss of business to the corporation. The Hon'ble High Court of Himachal Pradesh at Shimla awarded this compensation alongwith separate interest on delay for payment of the above amount. Therefore the amount is a business receipt.

21.10 Lastly it was contended that no disallowance of expenditure incurred should be made as ancillary and incidental business activities are still being

carried on by the assessee corporation. Per contra the Ld. DR has fully supported the orders of the lower authorities i.e; Ld. AO and Ld. CIT(A) and has prayed that the same be upheld as it is reasonable, fair and just.

Observations, Findings & Conclusions

22. We now examine the legality, validity and propriety of the impugned order which is in appeal before us.

22.1 With regard to disallowance of Rs. 32,03,976/- as administrative expenses (50% of Rs. 6407951/-) we adopt our own observations, findings and conclusions which we have given for identical situation in ITA No. 139/Chd/2020 (supra).

22.2 With regard to amount of Rs. 50,38,276/- we hold that same is income of the assessee corporation in pursuance to an arbitration award for breach of contract for which an arbitration award was made on 10.10.2002 which went in favour of assessee corporation and one Kuldeep Kumar Sood challenged the same before High Court of Himachal Pradesh at Shimla under section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the same but his application u/s 34 of Arbitration and Conciliation Act, 1996 was rejected vide arbitration case no. 62/2003 dt. 11/11/2019. **In the absence of copy of** original Arbitration Award before Ld. AO, Ld. CIT(A) and even before us it is indeed difficult to decipher whether the amount of compensation ordered is towards the business income or compensation simplicitor for the breach of contract. We therefore for want of any argument basis the original arbitration award hold that compensation awarded is for the breach of

contract simplicitor and therefore the income from "other sources" and not a business income as there is no material in justification for that it was for or towards the core business activity of the assessee corporation which indeed resulted in business income loss. We concur with the findings of the Ld. CIT(A) who has held that the compensation received by the assessee corporation was towards the breach of contract only and not a business income. Be that as it may the finding of Ld. CIT(A) in para 24.2 (page 32 / 33 of impugned order) is reasonable fair and just. It is towards non-performance of the contract by the contractor / collaborator. We do not intend to further buttress the observation and findings of the Ld. CIT(A) made in the impugned order.

Order

23. In the premises we allow the ground no. 2 where expense of 32,03,976/- as administrative expenses is disallowed. Additions on this count is directed to be deleted. Addition of Rs. 50,38,276/- is however sustained.

24. In result, appeal of the assessee is partly allowed.

IV. Now we shall deal with ITA No. 142/Chandi/2020 A.Y 2016-17[In 1st Appeal No.- 10345/18-19/A.Y 2016-17, CIT(A) dated. 15/11/2019]

25. The above ITA No. 142/Chandi/2020 for A.Y. 2016-17 is filed by the assessee corporation as they are aggrieved by order of Ld. CIT(A) dt. 11/01/2019 in 1st Appeal No. 10345/18-19/A.Y. 2016-17 which is hereinafter referred to as the **impugned order**. The original assessment order u/s 143(3) is dt. 12/12/2018 which was passed by ACIT Cir 1(1), Chandigarh.

26. The Assessee Corporation had filed its return of income for the A.Y. 2016-17 on 14/10/2016 declaring a taxable income of Rs. 98,40,180/-. Subsequently the case was selected for scrutiny. Statutory notice u/s 143(2) was issued on 19/09/2017 which was duly served on the assessee. Subsequently questionnaire alongwith statutory notice u/s 142(1) was issued on 22/06/2018. Requisite details were provided on ITBA portal.

26.1 During the year under consideration, the main source of income of company was interest from FDRs with state Bank of Patiala and HDFC Bank and lease rent from Indian Oil Corporation. Further during the year, the Assessee Corporation had total receipts of Rs. 1,64,28,206/- out of these receipts, Rs. 1,12,00,536/- was on account of income from interest of FDRs and receipt of Rs. 50,00,000/- under non operative income. As per P&L Account, the assessee corporation had claimed expenses amounting to Rs. 69,75,254/-. Under total 24 Heads.

26.2 That the claim of the above expenditure was unacceptable due to nature of the receipts of the assessee during the year under consideration that is income from other sources as business of the assessee corporation was discontinued one. To earn interest from FDRs from the bank, practically no expenditure can be incurred. Assessee Corporation was therefore asked to show cause as to why 50% of these expenses claimed should not be disallowed. The assessee corporation made submission dt. 07/12/2018 wherein they interalia contended that (i) the assessee is a 100% Punjab

Government undertaking (ii) the earlier services and all facilities were meant for general public of India and not any individual, firm, corporate or any business house (iii) Assessee Corporation was not established for profit purpose but for providing facilities to improve tourism in State of Punjab & to provide employment to the youth and people of Punjab (iv) Expenditure incurred **are need based** and as per Government guidelines and rules. (v) In the events, the expenditure incurred was not made, the assets, the court cases, recovery of money/ dues from various persons is /are not feasible/possible (vi) the assets of the corporation have to be managed, preserved and looked after till the time Government is in a position to either restart or liquidate without too much loss to state of Punjab / State exchequer. (vii) Expenditure incurred are not excessive or exorbitant. They are not for personal benefit of any individual(viii) Expenses incurred are for complying with business requirements, statutory requirement of Assessee Corporation as a corporate legal entity (ix) All expenses under 24 heads are legitimate as per Government approved norms (x) Without prejudice even if assessee corporation had no interest income or non operative income, these expenses would have to be incurred to maintain the infrastructure, payment of salaries of accountants, chowkidar, employees, payment of electricity, water bills, auditor fees, bank charges etc. Further **rationale of 50% of genuine legitimate** business expenditure to be disallowed merely on the premise that the corporation has income from interest and lease rental is not logical and acceptable position. Reliance was placed on decision of Coordinate Bench

of ITAT Delhi in case of ITO v/s Mokul Finance (P) Ltd. reported in [2009] 29 SOT 11 (Delhi) and few other orders of ITAT and High Courts. It was finally contended in reply that the business expenditure cannot be disallowed solely on the ground that the assessee corporation has interest income and lease income only. The pertinent factor of nature of expenses, quantum of expenses, safeguarding the assets, carrying on with the fiduciary duties by the employees of the corporation is to be kept in consideration. The expenses incurred are reasonable, not excessive or personal in nature. Hence the disallowance should not be made.

26.3 That the Ld. AO was of the view that no actual business activity was carried out during the year under consideration by the assessee corporation. The business of the assessee is closed one hence these expenses cannot be allowed in the absence of any core business activity. There is no income from business.

26.4. The Ld. AO by an assessment order (supra) disallowed sum of Rs. 34,37,627/- (50% of Rs. 68,75,253/-) and added back to the income of the assessee. Total assessed income was computed as Rs. 1,32,77,807/-.

27. The assessee being aggrieved by the aforesaid impugned assessment order dt. 12/12/2018 prefers first appeal before Ld. CIT(A) who by impugned order has held as under:

"5 2 HELD: I have perused the order of the Assessing Officer and examined the reply of the assessee. Brief facts of the case are that the AO has made the addition of Rs 34,37,627/- by disallowing the 50% of total expenses of Rs 68,75,253/- claimed by the assessee, AO has observed during the assessment proceedings that *"the main source of income of the company was interest from FOH\$ with State Bank of Patiala & HDPC Bank and lease rent from Indian Oil Corporation...no actual business activity has been carried out during the year under consideration by the assessee. This is no way means that business*

activity was being carried out by the assessee. The business of the assessee has actually been closed since the past many years. Further, regarding the allowability of the other expenses being claimed by the assessee, it is once again reiterated that in the absence of any business activity, the assessee cannot be allowed these expenses. No income has been earned by the assessee out of business activity either." During the appellate proceedings, the counsel of the assessee submitted that the assessee corporation is a Public Sector undertaking owned and controlled by the Government of Punjab. The main business of the Corporation was of tourism promotion, hotels, tourist complexes in the State of Punjab and a petrol pump at Madhopur, District Pathankot, Punjab. Due to continuous and excessive losses in the business, the Govt of Punjab has since vested in the Corporation. The properties of the Corporation were either sold or transferred to the Department of Tourism, Government of Punjab. Before going into the merits of the case let us discuss the provisions of Section 37(1) of Income Tax Act, 1981:

"37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Explanation 1.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession."

5.2.1. From above, it is well established that for the purpose of claiming deduction under section 37(1) of the Act, expenditure should be incurred for the purpose of the business which is carried on by the assessee in the previous year and profits of which are to be computed and assessed. However, during the appellate proceedings, assessee has stressed only to justify that the claimed expenditure cannot be disallowed. Though, he failed to explain the nexus between claimed expenditure and the activities performed during the year as there was no business activity performed during the year. The onus is, therefore, upon the assessee to prove that the assessee in fact, carried out any business activity and the expenditure to the tune of Rs.68,12,209/- had been made for exigency of business, which has not been proved by the assessee through any evidence or material on record during the assessment as well as appellate proceedings. Further, the assessee has relied upon various judgments which are inapplicable in this case as the assessee has not even claimed and brought any evidence on record that the company is in the process for revival of business or incurred such expenditure in the expectation that business would be rejuvenated and it would be successful. Moreover, the assessee has stated that the Govt of Punjab disinvested in the Corporation and the properties of the Corporation

were either sold or transferred to the Department of Tourism. Therefore it is established that the assessee has neither proved any income earned from business nor explained the nexus between claimed expenditure and business activity made during the year under consideration. However, despite the facts discussed above, the Assessing Officer is generous enough to allow the 50% of expenses claimed by the assessee which is fair and reasonable and takes care of routine administrative/ fixed expenses. Therefore, after considering the facts of the case. I hereby confirm the addition of Rs.34,37,627/- made by the AO. The Ground of Appeal No.2 is dismissed.."

28. The Assessee Corporation being aggrieved by the aforesaid impugned order of Ld. CIT(A) prefers second appeal before this Tribunal & has interalia raised following grounds of appeal in Form 36 which are as under:

1. *That on the facts and circumstances of the case, the appellate order of the Hon'ble Commissioner of Income Tax Appeals 1, Chandigarh under section 250 (6) is not a speaking order.*
2. *That the Hon'ble Commissioner of Income Tax Appeals 1, Chandigarh has erred in upholding the addition of Rs. 34,37,627/- of administrative expenses without correctly appreciating the nature, quantum and reasonableness of the legitimate business expenditure incurred by the State Government undertaking in discharging its statutory and legitimate liabilities in performance of its duties. That the expenditure cannot be disallowed without analyzing the nature and the reasons for the expenditure on the basis of estimates.*
3. *That the appellant craves leave to add, to alter, to amend or vary from the aforesaid grounds of appeal at or before the time of hearing of the said appeal.*

Record of Hearing

29. The hearing in the matter took place before this Tribunal when both the Ld. AR for the assessee corporation and the Ld. DR for Revenue were heard on merits of their respective submissions. The Ld. AR gave brief description of the assessee corporation which we have already narrated hereinabove. The Ld. DR has supported the orders of the lower authorities i.e; Ld. AO and Ld. CIT(A).

29.1 The core contention of Ld. AR in respect of Ground No. 2 (supra) where there is disallowance of expenses incurred amounting to Rs. 34,37,627/- **(50% of Rs. 68,75,253/-)** was a blanket disallowance which has no logic and basis. The logic canvassed by the Department that there is no business consequently there is no business income. Business is discontinued. Income is by way of interest and lease by not treating the same as business income is unreasonable and cannot be legally sustained. It was contended that expenses incurred are administrative expenses. The lower authorities have not taken cognizance of the fact that the expenditure incurred are on real time basis and are actually incurred. The lower authorities including CIT(A) have not appreciated nature, quantum and reasonableness of the expenses actually incurred, merely on the premises that business has been discontinued. It was vehemently contended by the Ld. AR that expenses under 24 heads aggregating to Rs. 68,75,253/- are essential and vital to the core of the corporation existence. These expenses after disinvestment are for activities of the corporation which are legally to be performed. The disallowance of Rs. 34,57,627/- (50% of Rs. 68,75,253/-) on the premises that the only source of income of the assessee corporation is from bank interest and lease money / non operative income which is not business income.

29.2 The Ld. AR canvassed almost identical contentions which he has canvassed in earlier appeals and are not being repeated herein for sake of brevity.

30. Per contra the Ld. DR has fully supported Ld. CIT(A) impugned order including that of Ld. AO.

Observations, Findings and Conclusions

31. We now examine the legality, validity and propriety of the impugned order which is in appeal before us.

31.1 With regard to disallowance of Rs. 34,37,627/- (50% of Rs. 68,75,253/-) we adopt our observations, findings and Conclusions which we have given for identical situation in ITA No. 139/Chd/2020 particularly in **para 7.1, 7.4 7.5, 7.6 and 7.7.**

31.2 We notice that in the impugned order the Ld. CIT(A) has laid much emphasis on section 37 of the Act. **Section 37 falls under Chapter IV which deals with computation of total income**, part D deals with profits and gains of business or profession (S 28) Section 36 deals with other deductions. Section 37 is general. Section 37 states that any expenditure (not being expenditure of the nature described in Section 30 to 36 and not being in the nature of capital expenditure or personal expenditure of the assessee) laid out or expended wholly and exclusively for the purpose of business or profession shall be allowed in computing the income chargeable under the head "profits & gains of business or profession."

31.3 Basis above the Ld. CIT(A) has held that it is well established that for the purpose of claiming deduction under section 37(1) of the Act, expenditure should be incurred for the purpose of the business which is carried on by the

assessee in the previous year and the profits of which are to be computed and assessed. The assessee has not performed any business activities consequently no nexus between claimed expenditure and activities performed as business during the year under consideration. The onus is therefore upon the assessee to prove that the assessee in fact carried out any business activity and expenditure incurred is for exigency of business. There is no evidence that there would be revival of business or incurred such expenditure in the expectation that the business would be rejuvenated and it would be successful. It has been held by him that Government of Punjab has disinvested in the corporation and properties of the corporation were either sold or transferred to Department of Tourism. Therefore it is established that the assessee has neither proved any income earned from business nor explained the nexus between claimed expenditure and business activity made during the year under consideration. CIT(A) in the impugned order has termed 50% of expenses incurred as fair and reasonable with regard to routine administrative / fixed expenses and has termed the act of Ld. AO as generous in this regard.

31.4 In light of above categorical finding we are of the considered view that Revenue has gone by the fact that assessee corporation in order to claim expenditure incurred as allowable expenses must have its business activity in running condition and must earn some income out of its core business activity otherwise expenditure incurred would not be held to be allowable.

31.5 We are of the considered view that the Ld. CIT(A) has erred in law. It is an admitted position that expenses are indeed incurred which are administrative in nature that is why they have allowed 50% otherwise they would not have allowed the same even 50% of amount expended. The fact that they have **allowed 50% perse shows** that Revenue recognizes administrative expenses incurred by assessee corporation as in relation to business activity of the assessee corporation. They have infact by allowing 50% of expenses towards administration of company have recognized one fact that these expenses **are must for very survival of assessee corporation** otherwise the assessee corporation as a cooperate entity / separate legal person having a distinct name, and identity would not even survive as a artificial person in law. Revenue thus has recognized at least these expenses are genuine, bonafidely incurred. By allowing 50% and disallowing 50% they have not held balance 50% is disallowed as the same are bogus, not genuine, unreasonable and excessive besides exorbitant. In absence of such finding expressly in the impugned order we hold entire expenditure are for business. Revenue has not held expressly that business is abandoned. We hold that merely because there is no operational Revenue of the assessee corporation from its core activities **that perse does** not mean and imply that corporate entity has abandoned themselves. Many times factory establishment are closed due to several reasons but fixed and required expenses are incurred, and that Revenue is allowing. If reasoning and logic of

Revenue is to be followed by disallowing such expenses then enterprise would deteriorate more speedily and public purpose would be defeated.

31.6 Be that as it may the assessee is a body corporate an artificial person and its basis necessity in form of administration expenses must be fulfilled. It cannot be allowed to die or perforced closed as public good would suffer. Further it is upto Government of Punjab being its 100% owner to take a final call as to how what they should do. Revenue should recognize that assessee has some income of its own and is not seeking 100% state funds. They have some legs to stand on its own.

31.7 Reliance was placed on the decision of Coordinate Bench of ITAT Delhi in case of ITO v/s Mokul Finance (P) Ltd. reported in [2009] 29 SOT 11 (Delhi) is correctly made by assessee. We hold that unless business activity is not totally abandoned **in stricto senso** expenditure incurred by assessee corporation as a separate legal person or artificial person would have to be allowed as these are bare minimum and must for very survival / subsistence. Further, in few cases Corporation has realized their dues too as aforesaid(supra). Would the assessee corporation realized their dues had they ceased to exist legally is left for Revenue to answer.

Order

32. The impugned order is set aside and appeal of the assessee is allowed.

33. From the above discussion, appeal wise decision / order are as under:

Sr. No.	ITA No. & Assessment Year	Party Name	decision / order
1	ITA No. 139/Chd/2020 A.Y. 2012-13	Punjab Tourism Development Corporation Limited	Partly Allowed

2	ITA No. 140/Chd/2020 A.Y. 2014-15	Punjab Tourism Development Corporation Limited	Partly Allowed
3	ITA No. 141/Chd/2020 A.Y. 2015-16	Punjab Tourism Development Corporation Limited	Partly Allowed
4	ITA No. 142/Chd/2020 A.Y. 2016-17	Punjab Tourism Development Corporation Limited	Allowed

Order pronounced in the open court on 18/11/2024.

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANTMEMBER

Sd/-
(PARESH M. JOSHI)
JUDICIAL MEMBER

"GP, Sr. PS" / 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