

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA Nos.5576 & 5580/M/2007, 4177/M/2008, 5761/M/2010 & 6756/M/2011
Assessment Years: 2003-04, 2004-05, 2005-06, 2007-08 & 2008-09**

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| Dy. Director of Income Tax (Exempt)-I(2), R. No.504, Piramal Chambers, 5 th Floor, Parel, Mumbai - 12 | Vs. | M/s. The Mumbai Metropolitan Region Development Authority (MMRDA), Griha Nirman Bhavan, Bandra (E), Mumbai – 51 PAN: AAATM7106R |
| (Appellant) | | (Respondent) |

**ITA Nos.5421 & 5422/M/2007, 3841/M/2008, 5957/M/2010 & 6674/M/2011
Assessment Years: 2003-04, 2004-05, 2005-06, 2007-08 & 2008-09**

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| M/s. The Mumbai Metropolitan Region Development Authority (MMRDA), Plot No.C-14 & C-15, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051 PAN: AAATM7106R | Vs. | Asst. Director of Income Tax (Exemp)-I(1), Mumbai |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri Ronak G. Doshi, A.R.
Revenue by : Shri N.P. Singh, D.R.

Date of Hearing : 04.07.2016
Date of Pronouncement : 13.07.2016

ORDER

Per Bench:

The above captioned appeals by the Revenue and corresponding cross appeals by the assessee have been preferred against the orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] dated 14.06.2007, 15.06.2007, 31.03.2008, 10.03.2010 & 19.07.2011 relevant to assessment years 2003-04, 2004-05, 2005-06, 2007-08 & 2008-09

respectively. Since the facts and issues involved in all the assessment years are identical in nature, hence the same were heard together and are being disposed of by this common order. First we take up the appeals of the Revenue.

Revenue's Appeals:

2. Common grounds have been taken by the Revenue in its appeals for different years. The issue involved in all the appeals of the Revenue is 'whether assessee is entitled for exemption under section 11 of the Act'. The facts in brief are that The Mumbai Metropolitan Region Development Authority (MMRDA) was a local authority created by the Government of Maharashtra as per the MMRDA Act, 1974. Assessee was claiming exemption of its income as per section 10 (20A) of the IT. Act till A.Y.2002-03. Section 10(20A) was removed from the statute w.e.f. A.Y.2003-04. Furthermore, section 10(20) which defined local authorities placed limitations under this section. Hence assessee no more enjoyed exemption U/S 10(20A) or section 10(20). Therefore, assessee applied for registration under sec. 12A with the Director of Income- tax (Exemption), Mumbai, and was granted Registration u/s.12A vide order of DIT No. DIT(E)/McI12A136714/2003 dtd. 22.07.2002.

The Assessing Officer (hereinafter referred to as the AO), however observed that despite the registration under section 12A having not been withdrawn by the DIT(E), the AO was entitled to go beyond and verify whether assessee was engaged in charitable activity and whether it was entitled to exemption of income under section 11 of IT Act. He further observed that at the time of granting of registration u/s.12A, the DIT is not required to verify the application of income and as such despite registration, AO can deny the exemption under section 11. The A.O. thereafter proceeded to examine whether MMRDA was a valid trust within the meaning of sec. 11 to 13 and whether it is entitled to claim exemption. He concluded that MMRDA is not a Valid Trust and is not

entitled to exemption under section 11 for the following reasons:

- "(1) Within the meaning of preamble to the MMRDA Act, 1974, the handing over of ownership, control, management of the MMRDA hitherto belonging to the State Government is considered not to have created a lawful Trust within the meaning of term Trust used for the purpose of section 11, 12, 12A, 12AA and 13 of the I.T. Act, 1961.
- (2) The MMRDA was created as a Local Authority within the meaning of term "person for the purpose of Income Tax Act, 1961 and w.e.f. its inception to 2002, the MMRDA continues to be Local Authority in the eyes of law. It cannot be considered as a Public Trust or Charitable Trust or Trust of any other kind.
- (3) On a proper interpretation of the intention behind the enactment of the provision of section 11, 12, 12A, 12AA and 13 of the I.T. Act, 1961, it appears that the tax incentive proposed in the scheme of exemption from charge of income tax is more applicable to the case of private individual and groups and association who create valid Public Trust and dedicate its income for the purpose of general public welfare,. The scheme of section 11 to 13 specifically the restrictive provision of section 13 cannot be made applicable to the case of public enterprises/public sector undertakings/public sector utility service provider. The basic incentive provided in the exemption section cannot be intended for utilization of public property and application of income of public property administered through Govt. reaching the people as a whole.
- (4) The absence of profit motive in the functioning of the MMRDA does not by itself create a situation of total exemption from the charge of income tax in respect of income which has earned or likely to earn from its activities comprising of providing various infrastructural facilities and also deriving income ancillary to its principal activities such as rental income from let out property/ sale and leasing out of commercial plots to its customers, development charges, income from investments etc.
In view of the nature and activities being carried out by the authority as well as the legal status discussed in the foregoing paragraphs, its claim for Exemption under section 11 of the I. T. Act cannot be entertained."

3. Before the Ld. CIT (A) assessee contended that during the currency of registration granted by the Ld. DIT (E), AO cannot deny registration and refuse exemption under section 11 to 13 of the Act. After considering the submissions of the assessee, the Ld. CIT (A) upheld assessee's contention that AO was not entitled to examine whether such

Trust or Institution was created for charitable or religious purpose or not once it was registered under section 12A. The learned CIT (A) relied on the following decisions:

- “i) Income Tax Officer vs. Mrs. Dwarika Prasad Trust (1989), 30 ITD 84 (Delhi)
- ii) Audit Bureau of Circulation vs. ADIT, 55 ITD 408 (Bom.)
- iii) U.S. Srivastava Educational Memorial Society vs. ACIT, 30 SOT 151 (Lucknow)
- iv) Stock Exchange of Ahmedabad vs. ACIT 74, ITD 1
- v) Surat City Gymkhana vs. ACIT 106 Taxmann, 114 Ahd (Mag.)”

The learned CIT (A) also relied on the following High Court judgments:

- a) Madhya Pradesh Madhyam vs. CIT (2002), 256 ITR 277 (MP)
- b) Hiralal Bhagwat vs. CIT (2000) 246 ITR 188 (Guj.)

4. Following the decisions quoted above of various High Courts and different Benches of the Tribunal, the CIT (A) held that in the assessment proceedings, AO has to give effect to the registration granted under section 12A after satisfying himself to the correctness of application of income of such Trust or Institutions or accumulation of such income in accordance with section 11. He held that AO wrongly assumed the jurisdiction to examine whether the Trust or Institution was created wholly for charitable or various purposes and whether the registration granted under section 12A was right or wrong. The CIT (A) also held that a local authority was entitled to exemption under sections 11, 12 and 13 of the I.T. Act. He in this respect relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Gujarat Maritime Board 295 ITR 561 and further on the conclusions derived in the decision of the Hon'ble Supreme Court in the case of CIT vs. AP State Roadways Transport Corporation 159 ITR 1 and DIT vs. Bharat Diamond Bourse 259 ITR 280 and concluded that for the purpose of falling under section 11 it was not necessary that the status of assessee should be that of a Trust and any institution or Trust was entitled to claim exemption, if it is satisfied the

conditions mentioned in section 11 to 13. The CIT (A) further observed that the issue whether the present activities undertaken by assessee were for the public at large has already been examined and accepted in favour of the assessee at the time of grant of registration under section 12A hence, AO was precluded from making inquiry about the genuineness of the institution and correctness of the certificate regarding the activities of the institutions being charitable. He held that AO was empowered to verify the application of income only and was precluded from making inquiries about the genuineness of the institution as such. Being aggrieved by the above order of the CIT(A), the Revenue has come in appeals before us raising the following common grounds:

"1. On the facts and circumstances of the case, and in law, the learned CIT (A) erred in directing AO to allow exemption u/s. 11 of the IT Act, 1961 ignoring the elaborate discussion of the issues and facts and circumstances of the case by AO.

2. On the facts and circumstances of the case, and in law, the learned CIT (A) erred in holding that AO has wrongly held that the appellant is not entitled to exemption because it is not trust and that because it is no longer a local authority for the purpose of section 10(20) and therefore, by exclusion not entitled to exemption u/s 11.

3. On the facts and circumstances of the case, and in law, the learned CIT (A) erred in not appreciating the findings of AO that the activities of the appellant are not genuine and not charitable in nature."

5. At the outset, the Ld. AR of the assessee has placed reliance on the decision dated 29.06.2012 passed in ITA No.5584/Mum/2009) of the co-ordinate Bench of the Tribunal on the identical issue and in identical facts and circumstances in the own case of the assessee for Assessment year: 2006-07. We find that the Tribunal while adjudicating identical issue for AY 2006-07 and further relying upon the Coordinate Bench decision in the case of Slum Rehabilitation Authority, Mumbai in ITA No.5150/Mum/2010 dated 30.9.2011 and Maharashtra Housing & Area Development Authority in ITA No.5758/Mum/2010 dated 16-11-2011 has decided the appeal in favour of the assessee. The relevant part of the order of the Tribunal is

reproduced as under:

“12. The learned Counsel placed on record the Coordinate Bench decision on the issues in assessee's case similarly considered in the case of Slum Rehabilitation Authority (Supra) and Maharashtra Housing & Area Development Authority (Supra) whereas the learned CIT (DR) relied on the orders of AO.”

13. We have heard the rival submissions and perused the records and gone through the case laws relied upon by the parties. So far as the merits of the case are concerned, in our opinion, the principles laid down by the Hon'ble Supreme Court in the case of Gujarat Maritime Board 259 ITR 561 (SC) are squarely applicable to assessee's case. The Coordinate Bench in the case of Slum Rehabilitation Authority (Supra) has considered the similar issue held as under:-

“4. We have heard the rival submissions of the parties, perused the records and gone through the case laws relied on by the parties. We find that, in the preceding years, when the revenue's appeals were dismissed for want of the COD approval. So far as merits of the case is concerned, in our opinion, the principles laid down by the Hon'ble Supreme Court in the case of Gujarat Maritime Boards (supra) are squarely applicable to the assessee's case.

5. It is necessary to reproduce sub-sec. (15) of Sec. 2 of the Act, which defines term 'charitable purpose which reads as under:-

"Charitable purpose" includes relief of the poor, education, medical relief, preservation of environment including watersheds, forests and wildlife and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility;

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity."

In the case of Gujarat Maritime Boards (supra) while interpreting the expression "Charitable purpose" in section 2(15) of the I.T. Act, the Hon'ble Supreme Court has held as under:-

"14. We have perused number of decisions of this Court which have interpreted the words, in section 2(15), namely, 'any other object of generally public utility'. From the said decisions it emerges that the said expression is of the widest connotation. The word 'general' in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose—CIT v. Ahmedabad Rana Caste Association [1983] 140 ITR 1 (SC). The said expression would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public

welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the general public the purpose would be charitable purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry CIT v. Andhra Chamber of Commerce 55 ITR 722 (SC). If the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity—Addl. CIT v. Surat Art Silk Cloth Mfrs. Association 121 ITR 1 (SC).

15. The present case in our view is squarely covered by the judgment of this Court in the case of CIT v. Andhra Pradesh State Road Transport Corpn. 159 ITR 1 in which it has been held that since the Corporation was established for the purpose of providing efficient transport system, having no profit motive, though it earns income in the process, it is not liable to income tax." In the present case, the Slum Development Authorities is established for providing residential settlements to the slum dwellers without any profit motive. Moreover, primary purpose and the predominant object are to promote the welfare of the general public by providing better residential accommodations to slum dwellers and economically deprived class of society and said purpose would be charitable in nature only. Hence, in our humble opinion assessee's case is squarely covered by the principles laid down by the Hon'ble Supreme Court of India in the case of Gujarat Maritime Boards (supra).

7. In our opinion, the activities of the SRA, present assessee are charitable in nature and hence, the assessee is entitled for exemption u/s. 11 of the LT. Act. Moreover, the assessee has been also granted the registration u/s. 12AA that has not been cancelled. Therefore, in our opinion, in the light of our above discussion no interference is called in the order under challenged before us and we accordingly confirm the order of the Ld. CIT (A) and dismiss the ground taken by the revenue".

Similar view was also expressed by the Coordinate Bench in the case of Maharashtra Housing & Area Development Authority in ITA No.5758/Mum/2010 where the Coordinate Bench held as under:

"3. We have perused the records and considered the matter carefully. The dispute is regarding allowability of deduction under section 11 of the Income Tax Act in case of the assessee. There is no dispute that the assessee has been registered under section 12AA of the Income tax Act by the DIT(E) which means that charitable character of the assessee is not in dispute. Therefore, exemption under section 11 in case of the assessee can not be denied. We also find that identical dispute had arisen in case of SRA in which the Tribunal in ITA No.5150/Mum/2010 noted that charitable purpose included advancement of any other job of general public utility. Moreover the institution had also been registered under section 12A by the department which also confirmed its charitable status. The Tribunal, therefore, held that exemption under section 11 could not be denied. The facts in case of the assessee are identical, therefore, respectfully following the decision of the Tribunal in the case of SRA (supra), we see no

infirmary in the order of CIT(A) allowing the claim of exemption under section 11 to the assessee. Accordingly the order of CIT(A) is upheld".

14. *The facts of assessee are similar to the other two institutions considered by the Coordinate Bench, as they were also the local authority created by the Govt. of Maharashtra and consequent to the amendment brought out in financial year 2002 to the provision of section 10(20) and 10(20A), the entities become taxable. Subsequently, assessee applied for exemption and got registration under section 12AA. Since the facts are similar, respectfully following the Coordinate Bench decision, we uphold the orders of the CIT (A) on this issue and dismiss the Revenue Grounds. Accordingly the Revenue appeal is dismissed."*

6. The Ld. A.R. has further submitted that the issue is now squarely covered by the decision dated 21.01.2015 of the Hon'ble Bombay High Court passed in ITA No.121 of 2013 in the own case of the assessee for A.Y. 2006-07 vide which the Hon'ble Bombay High Court has dismissed the appeal of the Revenue upholding the order of the Tribunal in favour of the assessee. The relevant part of the order is reproduced as under:

"1. This appeal by the Revenue under section 260A of the Income Tax Act, 1961 (Act) challenges the order dated 29.6.2012 passed by the Income Tax Appellate Tribunal (Tribunal).

2. This appeal relates to Assessment Year 2006-07. The appellant-Revenue has framed the following question of law for our consideration:-

"(1) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in confirming the order of the Commissioner of Income Tax (Appeals) allowing exemption under Section 11 of the Income Tax Act,1961, ignoring the fact that MMRDA continues to be local authority in the eyes of law and it cannot be considered as a valid Trust within the meaning of Sections 11 to 13 of the Income Tax Act in view of the elaborate discussion of the issues made by the Assessing Officer and facts and circumstances of the case?"

3. The Tribunal by the impugned order dismissed the Revenues appeal by placing reliance upon the decision of the Supreme Court in the case of "CIT Vs. Gujarat Maritime Board, (295 ITR 56)" and the decisions of Co-ordinate Benches of the Tribunal in the case of Slum Rehabilitation Authority (SRA) and Maharashtra Housing and Area Development Authority (MHADA). In fact while allowing the appeal, the impugned order records as under:

“14. The facts of assessee are similar to the other two institutions considered by the Coordinate Bench, as they were also the local authority created by the Govt. of Maharashtra and consequent to the amendment brought out in financial year 2002 to the provision of section 10(20) and 10(20A), the entities become taxable. Subsequently, assessee applied for exemption and got registration under section 12AA. Since the facts are similar, respectfully following the Co-ordinate Bench decision, we uphold the orders of the CIT(A) on this issue and dismiss the Revenue Grounds. Accordingly the Revenue appeal is dismissed.”

3. Mr. Malhotra, learned Counsel for the Revenue very fairly informs us that the Revenue's appeals against the orders of the Tribunal passed in the cases of MHADA and SRA were dismissed by this Court by order dated 8.3.2013 and 8.8.2014 respectively.

4. In view of the above no substantial question of law arises for our consideration. Accordingly, the appeal is dismissed.”

7. The Ld. D.R., at this stage, though, fairly admitted that the issue is squarely covered by the decision of the Hon'ble Bombay High Court so far as the appeals relating to the assessment years under consideration before us are concerned. He, however, has submitted that later on the registration of the assessee trust under section 12A was cancelled by the DIT(E) invoking his jurisdiction under section 12AA(3) of the Act vide order dated 27.12.11 that the appeal against the said order is still pending before the Tribunal.

8. We find that so far as the assessment years prior to A.Y. 2009-10 are concerned, the assessee was having a valid registration under section 12A of the Act and the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional Bombay High Court in the own case of the assessee for A.Y. 2006-07. The said decision holds a binding precedent on this Tribunal on the identical issue for the assessment years under consideration before us. Respectfully following the same, we do not find any merit in the appeals of the Revenue and the same are accordingly dismissed.

9. So far as the appeals of the assessee are concerned, the common grounds raised by the assessee in its appeals read as under:

Ground I:

1. On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals)-XXXII, Mumbai ("the CIT (A)") erred in not adjudicating the action of the Asstt. Director of Income Tax (Exemptions)-1(1), Mumbai ("AO") in making notional addition on account of interest aggregating to 124.24 crore on loans given and deposits made with various Public Sector Undertakings (PSU)/ Govt. of Maharashtra/Government Bodies.
2. The Appellant prays that the AO be directed to delete the notional addition made above.

Ground II:

1. On the facts and in the circumstances of the case and in law, the CIT (A) erred in upholding the action of AO in not allowing exemption to the Appellant under section 10(20) of the Act
2. He failed to appreciate and ought to have held that:
 - i. As per clause (ii) of the explanation to section 10(20) of the Act, the term local authority has been defined to mean Municipality as referred to in clause (e) of article 243P of the constitution
 - ii By virtue of Mumbai Metropolitan Region Development Authority ("MMRDA") (Second Amendment) Act, 2002 and sub section 2 of section 17 of the said act, the appellant has been authorized to prepare any project or scheme with a view to provide infrastructure with specified territorial limits and it shall be deemed to be corporation.
3. The Appellant therefore prays that the AO be directed to allow the Appellant exemption U/S 10(20) of the Act."

Apart from that, in appeal for A.Y 2003-04, the following Grounds have also been taken:

"On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals) – XXXII, Mumbai ("the CIT(A)") erred in not adjudicating ground nos.4 and 5, which were without prejudice to the grounds of appeal on merits, relating to computational aspect.

2. The Appellant prays that the CIT(A) be directed to adjudicate the without prejudice grounds of appeals relating to computational aspect.

Without prejudice to ground I & Ground II

1. On the facts and circumstances of the case and in law, the CIT(A) erred in upholding the action of AO in denying exemption to the Appellant under section 10(20) of the Act.
2. He failed to appreciate and ought to have held that:

- i. As per clause (ii) of the Explanation to section 10(20) of the Act, the term local authority has been defined to mean Municipality as referred to in clause (e) of article 243P of the Constitution.”

Apart from the above stated common Grounds, the following have also been taken in appeal for A.Y 2004-05:

“On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals) – XXXII, Mumbai (“the CIT(A)”) erred in not adjudicating ground nos.4, 5, 6 and 7, which were without prejudice to the grounds of appeal on merits, taken before him relating to computational aspect.”

The grounds of appeal for A.Y 2005-06 read as under:

GROUND I

1. On the facts and circumstances of the case and in law, the Commissioner of Income tax- (Appeals) -XXXII Mumbai, ["the CIT(A)"] erred in upholding the action of the Assistant Director of Income Tax Exemptions 1(1), Mumbai ("the A.O.") in disallowing the deduction of excess interest income offered to tax in earlier assessment years, amounting to Rs. 11.33 crores in respect of deposits with Shivshahi Punarvasn Prakalp Ltd (SPPL), CIDCO, GOM-FD, MSSIDC, FDCM and several other Public Sector Undertakings;
2. The Appellant prays that the AO be directed to allow the deduction as claimed by the Appellant.
3. Without prejudice, the AO be directed to allow the aforesaid deduction aggregating to Rs. 11.33 crores as business loss u/s. 28 of the Act.

GROUND II

1. On the facts and circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in disallowing the deduction on account of Ground Lease Rent Receivable offered to tax in earlier assessment years, amounting to Rs. 5.57 crores;
2. The Appellant prays that the AO be directed to allow the deduction as claimed by the Appellant.
3. Without prejudice, the AO be directed to allow the aforesaid deduction aggregating to Rs. 5.57 crores as business loss u/s. 28 of the Act.

GROUND III

1. On the facts and circumstances of the case and in law, CIT(A) erred in upholding the action of the AO in adding notional interest aggregating to Rs. 97.36 Crore (including penal interest of Rs.14.46 Crore) on deposits with the Public Sector Undertakings(PSU)/ Government of Maharashtra.
2. The Appellant prays that the AO be directed to delete the notional addition made as above.”

Apart from the common grounds taken, Ground No. 1 in appeal for A.Y 2007-08 read as under:

“On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax-(Appeals) –1, Mumbai ["the CIT(A)"] erred in not adjudicating the

action of the Deputy Director of Income Tax (Exemptions)-1, Mumbai ("the AO") in making notional addition on account of interest aggregating to Rs.120.56 Crore, on loans given and deposits made with various Public Sector Undertakings (PSU)/Government of Maharashtra/Government Bodies.

2. The Appellant prays that the AO be directed to delete the notional addition made above."

The grounds of appeal for A.Y 2008-09 read as under:

"GROUND I:

1. On the facts and circumstances of the case and in law, the Honble Commissioner of Income Tax (Appeals)-] ("the CIT(A)") erred in confirming the action of the Deputy Director of Income Tax (E)-1(1) ("the AO") in making addition of Rs. 12,55,52,060/- on account of alleged suppression of sale of land transferred to Thane Municipal Corporation for rehabilitation of Project affected people.

2. The Appellant prays that the A.O. be directed to delete the aforesaid addition.

3. Without Prejudice, since the amount receivable is towards transfer of land, the gains if any ought to be assessed as capital gains as per provisions of law.

GROUND II:

1. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the action of the AO in not allowing exemption u/s 10(20) of the Act.

2. The Appellant prays that the AO be directed to allow the Appellant exemption u/s 10(20) of the Act.

GROUND III:

The Appellant craves leaves to add to, alter, amend and / or delete all or any of the above grounds of appeal."

The assessee has also taken the following additional ground in all the appeals:

"Without Prejudice to Ground I & II:

Ground III: Assessee is an agent of the State Government and therefore exempt from tax

1. The assessee is appointed under the provisions of Maharashtra Regional and Town Planning Act, 1966 and therefore is an agent of the State Government. Hence assessee is exempt from tax.

2. The Appellant prays that the assessee be held as an agent of the State

Government and therefore is exempt from tax.

Ground IV:

The Appellant craves leave to add to, alter and / or amend the above grounds of appeal.”

10. The Ld. A.R of the assessee has stated that the issues raised by the assessee in its appeals are the alternative contentions and will be relevant only if the issue of denial of exemption under section 11 of the Act would have been decided against the assessee. He has further submitted that similar grounds taken by the assessee in its appeal bearing ITA No.5062/Mum/2009 relating to AY 2006-07 have been dismissed by the Tribunal being rendered academic in nature. The relevant part of the order of the Tribunal is reproduced as under:

“16. Briefly stated, AO while denying the benefit of section 11 to assessee held that assessee is not a local authority and further also held that assessee has not accounted for the amount of Z124.24 crores of interest on loans given and deposits made with various public sector undertakings/ Govt. of Maharashtra. After considering the submissions of assessee, the CIT (A) considered that as assessee is entitled for exemption of income, the ground of bringing to tax notional interest becomes infructuous. However, he on the issue of assessee being local authority, after discussion in the order, held that assessee is not a local authority for the purpose of section 10(20). In doing so he relied on the decision of the Hon'ble Supreme Court in the case of Adityapur Industrial Area Development Authority, 283 ITR 97 (SC), U.P. State Road Transport Corporation vs. CIT, 286 ITR 350, CALCUTTA STATE TRANSPORT CORPORATION - VS - CIT 219 ITR 515 (SC) and CIT vs. U.P. Forest Corporation, 230 ITR 945 (SC) wherein it has been held that institutions set up for the specific purposes, does not amount to 'local authority' for the purpose of section 10(20) of the I.T. Act.

17. In the course of arguments the learned Counsel squarely admitted that these issues became academic in nature and can be left open for adjudication at the relevant point of time in view of the granting benefits of section 11 to assessee. He fairly admitted that in case the Revenue appeal is dismissed, there is no need for adjudication of the grounds raised by assessee. Since we have dismissed the Revenue appeal and upheld the order of the CIT (A) granting benefit of section 11 to assessee, this issue becomes academic in nature and so not adjudicated. Issues are left open for consideration in an appropriate case as and when required. The grounds are, therefore considered rejected.

18. In the result, both the appeals filed by Revenue and Assessee are dismissed.”

11. The Ld. Counsel for the assessee has stated that following the similar line, there is no need for adjudication of the grounds raised by the assessee as they being rendered academic in nature and can be left open for adjudication. Since we have dismissed the appeals of the Revenue and upheld the order of the Ld. CIT(A) granting benefit of section 11 to the assessee, the issues raised by the assessee having become academic in nature hence, following the coordinate bench decision, on the similar line, the same are not adjudicated at this stage and are left open for consideration in an appropriate case as and when required. The appeals of the assessee are therefore dismissed having become infructuous.

In the result, all the appeals by the revenue as well of the assessee are hereby dismissed.

Order pronounced in the open court on 13.07.2016.

**Sd/-
(R.C. Sharma)
ACCOUNTANT MEMBER**

**Sd/-
(Sanjay Garg)
JUDICIAL MEMBER**

Mumbai, Dated: 13.07.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.