

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JM AND SHRI N. K. PRADHAN, AM**

आयकर अपील सं./I.T.A. Nos.4326/Mum/2017, 4327/Mum/2017,  
4329/Mum/2017, 4331/Mum/2017, 4332/Mum/2017, 4475/Mum/2017 &  
4476/Mum/2017

(निर्धारण वर्ष / Assessment Years: 2007-08, 2008-09, 2009-10,  
2010-11,2012-13,2013-14 &, 2014-15)

Maharashtra Industrial Development Corporation Udyog Sarathi, Mahakali Caves Road, Andheri (East) Mumbai – 400093	<b>बनाम/</b> Vs.	Assistant Commissioner of Income Tax (Exemptions) 2(1) Piramal Chambers, Lalbaug, Mumbai – 400012
स्थायी लेखा सं./जीआइआर सं . /PAN/GIR No. AAACM3560C		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri V. Sridharan & S. Sriram
प्रत्यर्थी की ओर से/Respondent by	:	Shri Sanjay Singh (CIT-DR)

सुनवाई की तारीख / Date of Hearing	:	08.10.2018
घोषणा की तारीख / Date of Pronouncement	:	31.10.2018

**आदेश / ORDER**

**Per Bench**

The aforesaid appeals by the assessee are against six separate orders passed on dated 31.03.2017 & 12.04.2017, by the Id. Commissioner of Income Tax (Appeals)-

57, Mumbai for the assessment years 2007–08, 2008–09, 2009–10, 2010–11, 2012–13, 2013–14 & 2014–15. Since, the appeals relate to same assessee and involve common issues they have been clubbed together and are disposed off in a consolidated order as a matter of convenience.

2. Since, issues raised in all these appeals are more or less common we propose to take up ITA no. 4332/Mum/2017 for Assessment Year 2012–13 as the lead appeal. Ground no.1 of the aforesaid appeal being general in nature does not require adjudication. In ground no.2 assessee has challenged the decision of the Departmental Authorities in holding the assessee as not to be existing for charitable purpose by applying the proviso to section 2(15) of the Act. Briefly the facts are, the assessee is a corporation formed under the Maharashtra Industrial Development Corporation (MIDC) Act. 1961 and is engaged in development of industrial assets by providing basic infrastructural facilities like land, road, street light, drainage system, water supply etc. The assessee is maintaining facilities such as water supply, drainage and also providing certain facilities to the occupants of industrial assets and collects charges for the same. Industrial plots are allotted by the assessee to various entities on receipt of lease premium, rent etc. It is also a fact that the assessee has been granted registration under section. 12AA of the Act by the DIT(E) Mumbai vide order dated 01.04.2002. For the assessment year under dispute assessee filed its return of income on 25.09.2012 declaring a deficit of ₹.34,39,60,131/-. On the strength of the registration granted under section 12AA of the Act the assessee claimed exemption

under section 11 of the Act. During the assessment proceeding, the Assessing Officer referring to the proviso to section 2(15) of the Act introduced to the statute w.e.f. 01.02.2009, called upon the assessee to explain why the exemption claimed under section 11 of the Act should not be disallowed as the assessee is engaged in various commercial activities, therefore, not existing for charitable purpose as defined under section 2(15) of the Act. In response to the show cause notice issued by the Assessing Officer, the assessee filed elaborate written submission justifying the claim of exemption under section 11 of the Act. The Assessing Officer however did not find merit in the submissions of the assessee. Analyzing the nature of various activities carried out by the assessee qua the provision contained under section 2(15) of the Act read with its proviso, the Assessing Officer ultimately concluded that the activities of the assessee are commercial in nature, hence, do not qualify to be considered as charitable purpose as defined under section 2(15) of the Act. While doing so the Assessing Officer also negated assessee's contention regarding immunity from taxation under Article 289 (1) of the Constitution of India by claiming itself to be an agency of the Government of Maharashtra. Accordingly, the Assessing Officer disallowed assessee's claim of exemption under section 11 of the Act. Being aggrieved with the aforesaid decision of the Assessing Officer assessee preferred appeal before the learned Commissioner (Appeals). However, learned Commissioner (Appeals) also upheld the decision of Assessing Officer in this regard.

3. Shri V. Sridharan, learned coaused appearing for the assessee fairly submitted, the issues relating to applicability of proviso to section 2(15) along with assessee's claim of exemption under section.11 as well as the plea of the assessee that it is immune from taxation under Article 289(1) of constitution of India have been decided against the assessee by the Tribunal in A.Y.2011-12 vide ITA no.6552/Mum/2014 dated 27.03.2015.

4. Shri Sanjay Singh, learned Departmental Representative agreed with the submissions of the learned counsel for the assessee.

5. We have considered rival submissions and perused materials on record. As could be seen from the facts on record, identical issues arose for consideration before the Tribunal in assessee's own case for A.Y.2011-12. The co-ordinate bench after exhaustively dealing with the contentions raised by both the parties has decided the issues against the assessee while disposing off assessee's appeal in ITA No.6552/Mum/2015 dated 27.03.2018. The relevant observations of the bench both on the issue of nature of activity carried out by the assessee and applicability of proviso to section 2(15) of the Act as well as assessee's claim of immunity from taxation of 289(1) of constitution of India are extracted hereunder for convenience:-

*"17. We have heard the rival contentions and perused the record. The main contention of the assessee was that it is an agent or instrumentality of Government of Maharashtra Government, since it is performing Sovereign functions of development and allotment of industrial plots for public purposes. Accordingly, it was contended*

*that the assessee's income is immune from Union Taxation. In this regard the assessee placed reliance on various case laws, mainly Ramatanu Co-operative Housing Society Ltd (supra) and MD., H.S.I.D.C. and others (supra). However, as submitted by the Ld D.R, these decisions have not been rendered in the context of Income tax provisions of the Act. In the case of Ramatanu Co-operative Housing Society Ltd (supra) the appellant therein has challenged the power of the Government of Maharashtra to enact the MID Act and the Hon'ble Supreme Court, by considering various provisions of the Act, came to the conclusion that the MID Act was a valid piece of legislation. In our view, the Hon'ble Supreme Court has considered the provisions of the MID Act, the objectives sought to be achieved, the functions prescribed in the MID Act etc. with reference to the questions raised before it. Thus, predominantly, the Hon'ble Apex Court has examined the vires of the Act and all the observations made therein were related to the same. The following observations made by the Hon'ble Supreme Court in paragraph 9 of its order will clarify this point:-*

*"9. The development of industrial areas and industrial estates (sic) intended to serve two objects. In the first place, there is to be an orderly development and growth' of industries in the Bombay Poona Sector. The second object is to secure dispersal of industries from the congested areas of the Bombay Poona sector to the under developed parts of the State. The industrial areas are broadly classified into two categories, namely, first, those meant for engineering and other industries which are not obnoxious, and secondly, those meant for chemical industries. The establishment and growth of industries in the State is inextricably bound up with availability of land. Available land is limited. Such limited supply leads to speculation in land. Power is therefore required for*

*compulsory acquisition of land to achieve the purposes of the Act. At the same time, land owners are not to be deprived of the legitimate benefit of reasonable increase in land values in a developing economy.....The absence of amenities is envisaged and answered in the Act by empowering the Corporation to provide these essential amenities, facilities and conveniences."*

*Thus, it can be seen that the Hon'ble Supreme Court has examined the provisions of the MID Act and the object purpose sought to be achieved by formation of the assessee under the MID Act and accordingly rendered its decision upholding the validity of MID Act. Admittedly, <sup>the</sup> provisions of MID Act were not examined vis-à-vis the Income tax provisions. Further, the Hon'ble Apex Court has examined the provisions of MID Act and not actual functioning of the assessee.*

18. In the case with M.D., H.S.I.D.0 (supra), following facts narrated by the Hon'ble Apex Court are relevant:-

*"4. Appellant-Corporation is public sector undertaking. Its principal function is allotment of industrial plots belonging to the State of Haryana. It was set up as a catalyst for promoting economic growth and accelerating the pace of industrialization. It not only provides financial assistance to the industrial concerns by way of term loans; it also develops infrastructure for setting up of industrial units. The Corporation also invests money in developing the industrial estates at strategic locations. **In exercise of its functions, it also allots industrial plots to entrepreneurs for setting up their industries on "no profit no loss" basis.** The entrepreneurs, according to the Corporation, must be the deserving ones. For the said purpose, it keeps in mind the principle that allotment of land should not be made to speculators who invest in property for getting high returns on escalation of price."*

*Thus, it can be noticed that the decision in the above said case was also rendered in the above said background. The Hon'ble Apex Court has proceeded on the basis that the industrial plots are allotted on "no profit no loss" basis. Admittedly, the issue before the Hon'ble Apex Court was not examined in the context of the Income tax Act. Accordingly, we are of the view the observations made by the Hon'ble Supreme Court in the above said cases should be considered to have been made in a different context and hence, we are of the view that the assessee cannot take support of the same for the issues considered under the Income tax Act.*

*19. Before us, the Id A.R placed strong reliance on the observations made by Hon'ble Supreme Court in the case of Shri Ramtanu Co-operative Housing Society Ltd (supra) in order to contend that the activities of the assessee would not fall in the category of "trade, commerce or business". However, we notice that the Hon'ble Apex Court was mainly guided by the objectives and purpose of enactment of MID Act in deciding this issue. Following observations made by the Hon'ble Apex Court are relevant here:*

*The establishment, growth and development of industries in the State is within the State list of Industries. Furthermore, to effectuate the purposes of the development of industries in the State it is necessary to make land available. Such land can be made available by acquisition or requisition. The Act in the present case deals with the acquisition of land by the State and on such acquisition, the State may transfer the land to the Corporation which again may develop it itself and establish industrial estates or may develop industrial areas Corporation is therefore established for carrying out the purposes of the Act. The pith and substance of the Act is establishment, growth and organisation of industries, acquisition of*

*land in that behalf and carrying out the purposes of the Act by setting up the Corporation as one of the limbs or agencies of the Government. The powers and functions of the Corporation show in no uncertain terms that these are all in aid of the principal and predominant purpose of establishment, growth and establishment of industries. The Corporation is established for that purpose.....*

*These features of transfer of land or borrowing of moneys or receipt of rents and profits will by themselves neither be the indicia nor the decisive attributes of trading character of the Corporation.....The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates , and developing industrial areas ..... Receipts of these moneys arise not out of any business or trade, but out of the sole purpose of establishment, growth and development of industries."*

*It can be noticed that the Hon'ble Apex Court has made **all** the above said observations, mainly, taking into account the purpose and object of the Act, viz., establishment, growth and organisation of industries. Since the State Government has to take the initiative for the same and since the assessee was incorporated with the said purpose, the Hon'ble Apex Court has observed that **the real role of the Corporation was to act as "Agency of the Government in carrying out the purpose and object of the Act which is the development of industries.** In some other place, the Hon'ble Supreme Court observed that the assessee Corporation was set up as "one of the limbs or agencies" of the Government. By placing reliance on the above said observations, it was argued on behalf of the assessee that the assessee is a limb or agency of the Government and it is performing a "Sovereign function".*

*20. We are unable to agree with the said contentions. A careful perusal of the observations made by the Hon'ble Supreme Court would show that the Hon'ble Apex Court has expressed the view that the assessee*

*Corporation was set up as one of the limbs or agencies of the Government "for carrying out the purposes of the Act Only in respect of carrying out the purposes of the Act, the assessee corporation is considered as limbs or agency of the Government. In yet another place, the Hon'ble has clarified this point by observing as under:-*

*"These provisions in regard to finance of the Corporation indicate **the real role of the Corporation, viz., the agency of the Government in carrying out the purpose and** object of the Act which is the development of industries."*

*Thus the Hon'ble Apex Court has observed that the "real role" of the assessee corporation was to perform as an agency of the Government in carrying out the purpose of the Act. The Hon'ble Apex Court nowhere stated that the assessee is acting as "an agent" of the Government. In our view, there is a difference between "agency" and "agent". In trading circles, an agent is considered to be representing the Principal and all his actions are binding upon the Principal. However, an agency is just an organisation or an outfit and its actions are not binding upon the State Government. Further, it is an admitted fact that the assessee is a "Statutory Corporation" or "body Corporate" or legal person" having an independent existence. The legal status of the assessee is made clear in section 3(2) of MID Act, which reads as under:-*

*"(2) The said Corporation shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name, and shall be competent to acquire, hold and dispose of property, both the movable and immovable, and to contract and do all the things necessary for the purposes of this Act."*

*Since the assessee is a separate personality, it alone is liable for its actions. The Ld AR invited our attention to the Resolution No. IDC 1079/(1966)/IND.14 dated <sup>11th</sup> September 1986, wherein it is stated that the*

*assessee is undertaking the development work as an agency function on behalf of Government and further the Corporation will act as an agent of Government for development of industrial area and other infrastructural facilities under the provisions of the Maharashtra Industrial Development Act, 1961. In our view, the provisions of MID Act shall have supremacy over the resolutions passed by the Government of Maharashtra. We have already noticed that the Hon'ble Supreme Court has also considered various provisions of the MID Act only in the case of Shri Ramatanu Cooperative Housing Society Ltd (supra). Hence, we are of the view that the resolutions passed by the State Government should not be considered to determine the status of the assessee. The Ld D.R has already placed reliance on the decision of Hon'ble Supreme Court rendered in the case of Ramana Dayaram Shetty Vs. The International Airport Authority of India Ltd (supra), wherein the Hon'ble Apex Court has listed out certain criteria to ascertain the nature or status of a Corporation. The Ld D.R also contended that the assessee failed to satisfy all the criteria prescribed by the Hon'ble Apex Court and accordingly contended that the assessee cannot be considered to be an agency or instrumentality of the State Government. However, the discussions made in the ensuing paragraphs would not make any difference so far as taxation under the Income tax Act is concerned.*

*21. We shall now refer to some of the observations made by the Hon'ble Supreme Court in the case of Andhra Pradesh State Road Transport Corporation Vs. ITO (52 ITR 524), which are relevant here:-*

*"It may be that the statute under which a notification has been issued constituting the appellant Corporation may provide expressly or by necessary implication that the income derived by the Corporation from its trading activity would be the income of the State. The doctrine of separate identity or personality of the corporation is always subject to the exceptions which statutes may create, and if there is a statutory provision which clearly indicates that despite the concept of separate*

*personality of the corporation, the trade carried on by At belongs to the share holders who brought the corporation into existence and the income received from the said trade likewise belongs to them, that would be another matter. It would then be possible to hold that as a result of the specific statutory provisions the income received from the trade carried on by the corporation belongs to the shareholders who have constituted the said corporation, and so, we must look to the Act to determine whether the income in the present can be said to be income of the State of Andhra Pradesh.*

*In this connection, we may usefully refer to the observations made by Lord Denning in Tamlin Vs. Hannaford (1950) 1 KB 18:*

*18. "In the eye of the law" said Lord Denning, "the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government."*

*These observations tend to show that a trading activity carried on by the corporation is not a trading activity carried on by the State departmentally, or is it a trading activity carried on by a State through its agents appointed in that behalf"*

*The observations made by Lord Denning, viz., "It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government" are very much relevant here and, in our view, they squarely apply to the assessee herein. We notice that the Hon'ble Gujarat High*

*Court in the case of Gujarat Industrial Development Corporation V/s CIT [1985] 151 ITR 255 (Guj) has considered an identical issue and has held as under:*

11. *Having considered as to whether the assessee—Gujarat Industrial Development Corporation, Ahmedabad—is entitled or is not entitled to exclude its income from liability under the 1922 Act, we are clearly of the opinion that from their total income, no exclusion could be made on the ground that it is a State, as contemplated by article 289(1). The State is entirely different from the corporations, which are created by laws which are enacted either by the Parliament or by the State Legislatures for different and distinct purposes. They are separate entities in law. They sue and are sued in their own capacities and for any contractual liability of the corporation, no person can sue the State because every corporation in itself is not the State but a separate legal entity.*

*Under these circumstances, our opinion on the first question would be in the affirmative, and we hold that the decision of the Tribunal is right. Therefore, this point is decided in favour of the revenue and against the assessee."*

*The Ld. DR, in his written submissions, has also placed reliance on the decision of jurisdictional High Court rendered in the case of Vidarbha Housing board V/s ITO (1973) (92 ITR. 430). Identical view has been expressed by Pune Bench of ITAT in the case of Goa, Daman and Diu Industrial Development Corporation (151 ITD 447). The Hon'ble Supreme Court in the case of Andhra Pradesh State Civil Supplies Corporation Ltd (1984)(148 ITR 497) has, in clear terms, held that **"What is exempt from taxation is the income of a State and not the income of the instrumentality or agency of a State."** Hence, we are of the view that the assessee cannot be considered to be a part of the Government department immune from Union Taxation. We may*

*point out here that the assessee itself has understood this factual and legal position and accordingly obtained registration u/s 12A of the Act, filed returns of income etc. Accordingly, we reject the contentions of the assessee that it is a part of Government of Maharashtra.*

*22. The next contention urged before us was that the assessee is performing sovereign function of the Government. Since we have held that the assessee cannot be considered to be a part of State Government and since the private parties are allowed to carry on the activity of development of industrial estates, in our view, the said contention is bound to fail.*

*23. The next contention of the assessee is that the activities carried on by the assessee would not fall in the category of "trade, commerce or business". Reliance was placed by Ld A.R on the decision of Hon'ble Supreme Court rendered in the case of Shri Ramtanu Co-operative Housing Society Ltd and Anr. (supra), wherein the Hon'ble Apex Court has held as under:-*

*".....These features of transfer of land, or borrowing of moneys or receipt of rents and profits will by themselves neither be the indicia nor the decisive attributes of the trading character of the Corporation.....Receipt of these moneys arise not out of any business or trade, but out of the sole purpose of establishment, growth and development of industries."*

*It was submitted that the meaning of the term "Commerce" is the activity of buying and selling, especially on large scale or the exchange of goods and services on a large scale involving transportation between cities, states and nations. Accordingly, it was contended that the assessee is not carrying on any trade or business or commerce.*

*24. A perusal of paragraph 16 of the decision rendered in the case of Shri Ramtanu Co-operative Housing Society Ltd and Anr. (supra) would show that the petitioners contended that the assessee Corporation was a*

*trading one for the reasons that the Corporation could sell property, namely, transfer land; that the Corporation had borrowing powers, and that the Corporation was entitled to moneys by way of rents and profits. Thus, it can be seen that the claim of the petitioners was that the assessee corporation was engaged in "trading activity" and the same has been negated by the Hon'ble Supreme Court, mainly, taking into account the purpose or objective of the assessee. While discussing the issue, the Hon'ble Apex Court has used the term "business" also and, in our view, the same was to be used as distinct and separate from "trading". Hence, in our view, the expression "business" was used in the context of "trading business" only, since the expression "business" is of a word of large and indefinite import and it would encompass the trading also.*

*25. We find that the meaning of the expressions "trade, commerce or business" was analysed by the Hon'ble Delhi High Court in the case of Institute of Chartered Accountants of India Vs. DGIT (347 ITR 99) and the relevant discussions have been extracted by the Hon'ble Delhi High Court in the case of GS1 India Vs. DGIT (Exemption) (20140(360 ITR 138)(Delhi) as under:-*

*"Scope of 'trade, commerce or business*

*16. The key words, namely; trade, commerce and business were enumerated and elucidated in Institute of Chartered Accountants of India (supra) as under (page 113):-*

*'Trade', as per the, Webster's New Twentieth Century Dictionary (2nd edition), means, amongst others, "a means of earning one's living, occupation or work. In Black's Law Dictionary, "trade" means a business which a person has learnt or he carries on for procuring subsistence or profit; occupation or employment, etc.*

*The meaning of "commerce" as given by the Concise Oxford Dictionary*

*is "exchange of merchandise, specially on large scale". In ordinary parlance, trade, and commerce carry with them the idea of purchase and sale with a view to make profit. If a person buys goods with a view to sell them for profit, it is an ordinary case of trade. If the transactions are on a large scale it is called commerce. Nobody can define the volume, which would convert a trade into commerce. For the purpose of the first proviso to section 2(15), trade is sufficient, therefore, this aspect is not required to be examined in detail.*

***The word "business" is the broadest term and is encompasses trade, commerce and other activities. Section 2(13) of the Income-tax Act defines the term "business" as under***

*"2. Definitions.— (13) 'business' includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture."*

***The word "business" is a word of large and indefinite import. Section 2(13) defines business to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The intention of the Legislature is to make the definition extensive as the term "inclusive" has been used. The Legislature has deliberately departed from giving a definite import to the term "business" but made reference to several other general terms like "trade", "commerce", "manufacture" and "adventure or concern in the nature of trade, commerce and manufacture".***

*In Black's Law Dictionary, Sixth Edition, the word "business" has been defined as under:*

*"Employment, occupation, profession or commercial activity engaged in for gain, or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood. Union League Club V/s Johnson 18 Cal 2d 275. Enterprise in*

*which' person engaged shows willingness to invest time and capital on future outcome. DoggettV/s Surnet62 App DC 103; 65 F. 2D 191. That which habitually busies or occupies or engages the time, attention, labour and effort of persons as a principal serious concern or interest or for livelihood or profit."*

*According to Sampath Iyengar's Law of Income Tax (9th edition), a business activity has four essential characteristics. Firstly, a business must be a continuous and systematic exercise of activity. **Business is defined as an active occupation continuously carried on.** Business vocation connotes some real, substantive and systematic course of activity or conduct with a set purpose. **The second essential characteristic is profit motive or capable of producing profit.** To regard an activity as business, there must be a course of dealings continued, or contemplated to be continued, normally **with an object of making profit and not for sport or pleasure** (Bharat Development P. Ltd. V/s CIT [1982] 133 ITR 470 (Delhi). The third essential characteristic is that **a business transaction must be between two persons. Business is not a unilateral act.** It is brought about by a transaction between two or more persons. And, lastly, the business activity usually involves a twin activity. There is usually an element of reciprocity involved in a business transaction.'*

17. *In the said case reliance and reference was made to State of Punjab V/s Bajaj Electricals Ltd. [1968] 2 SCR 536, Khoday Distilleries Ltd. V/s State of Karnataka [1995] 1 SCC 574, Bharat Development (P) Ltd. V/s CIT[1982] 133 ITR 470 198014 Taxman 58 (Delhi), Barendra Prasad Ray V/s ITO [1981] 129 ITR 295/6 Taxman 19 (SC), State of Andhra Pradesh V/s H. Abdul Bakhi & Bros [1964] 15 STC 664 (SC), State of Gujarat V/s RaiourMfg. Co. [1967] 19 STC 1(SC), Director of Supplies & Disposal V/s. Member, Board of Revenue [1967] 20STC 398(SC) and*

*Mrs. Sarojini Rajah V/s CZT [1969] 71 ITR 504 (Mad) to explain the terms "trade, commerce or business".*

18. Referring to the concept and principle of "economic activity" that has gained some acceptability in European Union and England it was explained that the said principle is applicable to Sales Tax, Value added tax, Excise duty etc. because these are not taxes on income but the taxable event occurs because of the "economic activity" involved. Even if a person/organization is carrying on trading/business on "no loss no profit" principle, it may be liable to pay taxes or comply with the statute when the charge, or incident of tax, is on the "economic activity". The words trade, commerce and business are etymological chameleons and suit their meanings to the context in which they are found. Five tests propounded in *Customs & Excise Commissioner V/s Lord Fisher [1981] 'S.T.C. 238* and decision in *Commissioner Of Sales Tax V/s Sal Publication Fund 12002] 252 ITR 701122 Taxman 437 (SC)* was quoted.

19. The final and determining factors, it was observed was consequential profit motive or purpose behind the activity and when an activity is trade, commerce or business was elucidated in *Institute of Chartered Accountants of India (supra)* in the following words (page 123):

*'Section 2(15) defines the term charitable purpose. Therefore, while construing the term business for the said Section, the object and purpose of the Section has to be kept in mind. We do not think that a very broad and extended definition of the term business is intended for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act to include any transaction for a fee or money. **An activity would be considered "business" if it is undertaken with a profit motive, but in some cases this may not be determinative.** Normally the profit motive test should be satisfied but in a given case activity may be regarded as*

*business even when profit motive cannot be established/proved. In such cases, there should be evidence and material to show, that the activity has continued on sound and recognized business principles, and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is in fact in the nature of business. The test as prescribed in Raipur Manufacturing Company (supra) and Sai Publications Fund (supra) can be applied. The six indicia stipulated in Lord Fisher (supra) are also relevant. Each case, therefore, has to be examined on its own facts.'*

*Recently in another decision in WP(C) No. 1755/2012 titled Bureau of Indian Standards V/s Director General of Income Tax (Exemptions) 1-20131212 Taxman 210/1'20121 27 [taxmann.com](http://taxmann.com) 127 (Delhi) it was held that Bureau of Indian Standards (BIS) was carrying on charitable activities as described within the ambit of Section 2(15) and was entitled to registration/notification under Section 10(23C)(iv). We, however, note that there is one distinction between the present petitioner and BIS. BIS is a statutory authority created by Legislation and, 'therefore, their case and claim stands on a better footing but this does not imply that only statutory bodies can be treated as established for charitable purpose under Section 2(15) of the Act. Such contention has not been raised and cannot be sustained/accepted.'*

*The Hon'ble Delhi High Court, after referring to the Circular No.11 of 2008 issued by the Central Board of Direct taxes, further held that the legal terms "trade, commerce or business" in section 2(15), means activity undertaken with a view to make or earn profit. Profit motive is determinative and a critical factor to discern whether an activity is business, trade or commerce. The Hon'ble Delhi High Court further discussed about the difference between the objectives while carrying on a pure business activity and charitable activity:-*

*"Business activity has an important pervading element of self interest, though fair dealing should and can be present, whilst **charity or charitable activity is anti-thesis of activity undertaken with profit motive or activity undertaken on sound or recognized business principles. Charity is driven by altruism and desire to serve others, though element of self-preservation may be present. For charity, benevolence should be omnipresent and demonstrable but it is not equivalent to self sacrifice and abnegation. The antiquated definition of charity, which entails giving and receiving nothing in return is outdated. A mandatory feature would be; charitable activity should be devoid of selfishness or illiberal spirit. Enrichment of oneself or self-gain should be missing and the predominant purpose of the activity should be to serve and benefit others. A small contribution by way of fee that the beneficiary pays would not convert charitable activity into business, commerce or trade in the absence of contrary evidence. The quantum of fee charged, economic status of the beneficiaries who pay, commercial value of benefits in comparison to the fee, purpose and object behind the fee, etc., are several factors which will decide the seminal question, is it business?***

*26. Now, let us discuss about the facts prevailing in the case under consideration. When the assessee corporation was originally incorporated, the activity of promotion of industrialization all over the State of Maharashtra should have been the avowed objective of the State Government. Hitherto, the relevant activities were carried out through a Board and subsequently, it should have been decided to form a separate autonomous body or statutory corporation to carry out or accelerate the process of industrialization by developing industrial estates. Accordingly, MID Act was enacted and the assessee Corporation was incorporated under that Act. At that point of time, the assessee Corporation was enjoying monopoly, i.e., it was the only organisation involved in orderly development of industrial estates. As*

*observed earlier, the profit motive should have been absent at that point of time. Since, the industrialization brought in many economic benefits, like, development of undeveloped areas, economic activity, employment, generation of fresh taxes etc., it was considered to be useful to the public at large and hence the activities of the assessee was considered to be an object of general public utility falling within the definition of charitable purpose as defined u/s 2(15) of the Act.*

*27. However, we notice from the contentions of Ld DR, there appears to be drastic change in the approach of the assessee. In the present days, the assessee appears to be adopting the system of offering plots/space by way of "auctioning", obviously the object is to corner maximum possible price on sale of plot / space. We also understand that the Government of Maharashtra has framed The Maharashtra Industrial Development Corporation (Disposal of Land) Regulations, 1975 in order to give effect to the provisions of MID Act. We came to understand that the Regulation 4 provides for disposal of land covered by the lay out prepared by the Corporation by the Corporation by public auction or by entertaining individual applications.*

*The Id. DR brought to our notice the following paper report which supports the view that the assessee had adopted the practice to dispose of land by public auction.*

*"TWO FLOT AUCTIONS PROMPT MIDC TO MULL CHANGE IN IT PARK POLICY*

*Tushar Pawar, TNN | Nov 5, 2014, 04.08 AM 1ST*

*NASHIK: Twice bitten, never shy. The Maharashtra Industrial Development Corporation (MIDC) looks determined to make the IT park project in its Ambad industrial estate a success.*

*After two failed auction attempts, the MIDC is planning to change the*

*reservation of the IT park following poor response from the industry. Around a decade ago, the state government had set up several state-of-the-art IT parks in some select cities across Maharashtra, including the one in Nashik. The IT park building, which was built by MIDC at Rs.2.23 crore, was inaugurated in 2002. But since then, it has been lying idle because of poor response from industry. The MIDC tried to auction the IT park twice in the past one-and-a-half years, but failed miserably as not a single industry filed any bid on both the occasions.*

*Speaking to TOT, a senior MIDC official said, "There is no response from the industry to the IT park in the Ambad MIDC areas. In March last year, we had invited bids from industrial houses for the auction of shops at the IT park. But we did not receive a single bid. Our second attempt was in August this year. This time, we had reduced the minimum bid rate by 10% from Rs.24,530 per Sq. m to Rs.22,300 per Sq. mt keeping in minds demands from the industry. Nevertheless, we did not receive any response from the industries. We are now planning to change the reservation of the IT park and allot the shops to industrial houses from other sectors. We are preparing the proposal for the change of IT reservation of the park, which will be sent shortly to our head office in Mumbai for approval."*

*This news paper report would show that the policy of "no profit no loss" has been given a go-by by the assessee. Further, as submitted by Ld DR, the assessee has also lost its monopoly in this field and the private entrepreneurs are also nowadays allowed to develop industrial estates. The present day scenario would show that the private entrepreneurs are developing many Special Economic Zones all over the Country. Hence, in the present day scenario, the activities of the assessee and the private entrepreneurs stand on same footing. There cannot be any dispute that the activity of setting up/developing industrial estates and maintaining the infrastructure facilities by the private entrepreneurs is considered as "Business activity". Since the activity*

*carried on by the assessee is no different from that one carried on by the private entrepreneurs, in our view, the activity carried on by the assessee should also be considered to be "business activity" only. Hence, the activity carried on by the assessee, in our view, would be hit by the proviso to Sec. 2(15) of the Act.*

*28. The Ld A.R invited our attention to the various provisions of MID Act to contend that the assessee is carrying on its operations in accordance with the directions issued by the State Government. He further submitted that the lands vested with the assessee can also be taken back by the State Government. Accordingly he contended that the activities of the assessee cannot be considered to be a business activity, since it is acting in accordance with the directions issued by the State Government. In our view, the control or directions issued by the State Government would not change the character of "business activity". We are of the view that the activity carried on by the assessee should be examined independently and the fact that the assessee is being regulated by the State Government would not make any difference. In our view "Ownership" of the Corporation and "activities" of the Corporation are two different aspects and the ownership cannot be considered or taken into account to determine the character or nature of the activities carried on by the Corporation.*

*29. In view of the foregoing discussions, we agree with the Ld CIT(A) in /11 holding that the activities of the assessee are commercial in nature and hence would be hit by the proviso to sec. 2(15) of the Act."*

6. In view of the aforesaid decision of the co-ordinate bench in assessee's own case and considering that there is no difference in facts in the impugned assessment year, respectfully following the aforesaid decision of the co ordinate bench we hold that the assessee is not entitled to claim under section 11 of the Act as the activities

carried out are of commercial nature, hence, is hit by the proviso to section 2(15) of the Act. Further, we hold that the assessee cannot be regarded as a part of the Government of Maharashtra so as to claim immunity under Article 289 (1) of Constitution of India. Accordingly, ground no. 2 is dismissed.

7. Ground no. 3 being consequential to ground no. 2 is accordingly dismissed.

8. Ground no. 4 is with regard to assessee's claim that lease premium, rent, interest on bank deposits etc. having been received on behalf of Govt. of Maharashtra are not taxable as income at the hands of the assessee. Facts relating to this issue are, during the assessment proceedings the Assessing Officer while examining the accounts of the assessee found that receipts from lease premium, rent, interest on bank deposits etc. instead of being shown as income have been shown as liability in the balance sheet. When the Assessing Officer called upon the assessee to explain the reason for not offering the income, through an elaborate written submission assessee submitted, since, it has received the lease premium and other charges on behalf of Govt. of Maharashtra, they are not taxable

9. The Assessing Officer did not find merit in the submission of the assessee and held that the amount received towards lease premium and other charges shown in the liability side of the balance sheet have to be treated as income of the assessee and accordingly brought them to tax at the hands of the assessee as he has already denied assessee's claim under section.11 of the Act. The assessee challenged the addition made by the Assessing Officer before Commissioner (Appeals). Learned

Commissioner (Appeals) after considering the submissions of the assessee and taking note of the fact that while deciding identical issue in assessee's own case for A.Y.2011-12 the Tribunal has restored the issue to the Assessing Officer, directed the Assessing Officer to decide the issue following the directions of the Tribunal in A.Y.2011-12.

10. The learned counsel for the assessee submitted, after the appeal for the impugned assessment year was decided by the learned Commissioner (Appeals) there has been some development with regard to this issue as in pursuance to the directions of the Tribunal in A.Y.2011-12 the Assessing Officer had again completed the assessment by assessing the lease premium and other charges as income of the assessee. He submitted, when the issue ultimately came up for consideration before the Tribunal in A.Y.2011-12, the co-ordinate bench vide order dated 07.09.2018 in ITA No. 4474 /Mum/2017 has accepted assessee's claim that lease premium and other charges received by the assessee on behalf of the Govt. of Maharashtra are not taxable as the assessee is merely a custodian of such funds. In this context he drew our attention to relevant observations of the bench with regard to the disputed issue. Thus, the learned counsel for the assessee submitted, the Tribunal having held that the assessee cannot be considered to be the owner or deemed owner of the land, the receipts arising from lease premium, rent, interest etc cannot be taxed at the hands of the assessee.

11. The learned Departmental Representative drawing our attention to the ground raised by the assessee in this regard submitted, the assessee has not claimed any specific relief in the said ground. Without prejudice to the aforesaid submission the learned Departmental Representative submitted, since, the latest order of the Tribunal for the A.Y.2011–12 was neither available before the Assessing Officer nor Commissioner (Appeals), the issue may be restored to the Assessing Officer for fresh examination in the light of the order passed by the Tribunal for A.Y.2011–12.

12. We have considered rival submissions and perused material on record. Facts emerging from record clearly indicate that during the assessment proceedings the Assessing Officer noticing that the assessee has shown receipts from lease premium, rents, interest etc in the liability side of the balance sheet without offering them as income, has show caused the assessee to explain why such receipts should not be treated as its income. In response, the assessee has taken a categorical stand that, since, it is not the owner of the land, the lease premium, rent and interest arising out of deposits on surplus funds belong to the Govt. of Maharashtra and the assessee merely holds such fund as the custodian of State Govt. However, the Assessing Officer rejecting the claim of the assessee assessed the income in the hands of the assessee. Notably, learned Commissioner (Appeals) has restored the issue to the Assessing Officer for deciding the issue following the direction of the Tribunal in A.Y.2011-12. As could be seen from the materials placed before us, after the disposal of the appeal by the Commissioner (Appeals) further development has taken place and the issue

relating to assessee's claim that the income from lease premium, rent, interest as raised in A.Y.2011-12 came up for consideration before the Tribunal in ITA no.4474/Mum/2017 and the Tribunal allowed assessee's claim vide order dated 07.09.2018 observing as under:-

*"13. We shall now advert to the core issue involved in the present appeal i.e as to whether the CIT(A) was right in law and the facts of the case in concurring with the A.O that as the lands under consideration were not owned by the Government of Maharashtra, hence the income arising there from viz, lease premiums, rent, interest income earned on the funds parked as deposits with the banks etc. were liable to be assessed as the income of the assessee corporation. We are of the considered view that as held by the Hon'ble Supreme Court in the case of ITO vs. Ch. Attchiaiah (1996) 218 ITR 239 (SC), it is obligatory on the part of the revenue authorities to assess the income in the hands of the right person and the right person alone. We have deliberated at length on the issue under consideration in the backdrop of the contentions advanced by the representatives for both the parties and perused the exhaustive material placed on record and the judicial pronouncements relied upon by both the parties to drive home their respective claims. It is the contention of the assessee before us that all the industrial lands are held by the assessee corporation on behalf of the State Government of Maharashtra. It is further claimed that the assets which are owned by the assessee in its own name viz, buildings and other assets are separately shown in its own name in its 'balance sheet'. We are of the considered view that the issue as to in what status the lands under consideration were held by the assessee corporation can be appreciated in the backdrop of the scheme of the "Maharashtra Industrial Development Corporation Act, 1961" [for short "MIDC Act"]. We find from a perusal of the MIDC Act that the assessee corporation viz. MIDC had been established for securing and assisting rapid and orderly establishment and organisation of industries in industrial areas and industrial estates in the*

*State of Maharashtra. On a perusal of Sec. 3(2) of the MIDC Act, it emerges that the assessee corporation viz. MIDC is competent to acquire, hold and dispose off property, both moveable and immovable, and to contract and do all things necessary for the purposes of the Act. Still further, a perusal of the functions of the assessee corporation as contemplated in Sec. 14(ii) of the MIDC Act reveals that the same particularly includes viz. (i). establishing and managing industrial estates at places selected by the state government; (ii). developing industrial areas selected by the State Government for the purpose and make them available for undertakings to establish themselves; and (iii). undertaking schemes or works, either jointly with other corporate bodies or institutions, or with Government or local authorities, or on an agency basis, in furtherance of the purpose for which the assessee corporation is established and all matters connected therewith. Still further, the assessee corporation as provided in Sec. 15 of the MIDC Act inter alia stands vested with the powers viz. (i). to acquire and hold such property, both movable and immovable as the assessee corporation may deem necessary for the performance of any of its activities and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by it; (ii). to purchase by agreement or to take on lease or under any form of tenancy any land, to erect such buildings and to execute such other works as may be necessary for the purpose of carrying out its duties and functions; (iii). to provide or cause to be provided amenities and common facilities in industrial estates and industrial areas and construct and maintain or cause to be maintained works and buildings thereof; (iv) to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings; (v). to construct buildings for the housing of the employees of such industries; (vi). to allot factory sheds or such buildings or parts of buildings, including residential tenements to suitable persons in the industrial estates established or developed by the assessee corporation; and (vii). to modify or rescind such allotments, including the right and power to evict the allottees concerned on breach of any of the terms or conditions of their allotment. We find from a perusal of the aforementioned functions and powers of the assessee corporation that in furtherance of its*

*object of establishing and developing industrial estates and industrial areas selected by the State Government for the said purpose, the assessee corporation subject to the provisions of the MIDC Act is vested with the powers of acquiring and holding property and leasing, selling, exchanging or transferring the same on such conditions as it may deem fit, as well as purchasing or taking on lease or under any form of tenancy any land, erect buildings on the same and make the same available on hire or sale to industrialists or persons intending to start industrial undertakings. Still further, the assessee corporation as per Sec. 17 of the MIDC Act also stands vested with the power to levy fees or service charges for providing amenities or common facilities viz, maintenance of roads, drainage, water supply, providing of street lighting etc in such industrial estates and industrial areas on the plot holders or other persons receiving benefit of said services or amenities. Further, perusal of Sec. 19 of the MIDC Act reveals that the property, fund and other assets vesting in the assessee corporation shall be held and applied by it, subject to the provisions and the purposes of the said Act.*

14. We further find from a perusal of Sec. 32 of the MIDC Act that in case the State Government is of the opinion that any land is required for the purpose of development by the assessee corporation, or for any other purpose in furtherance of the objects of the said Act, then after putting the owner of the land or any other person interested therein to notice as regards its decision of acquiring such land, calling for his objections and disposing off the same after affording an opportunity of being heard to such person, the State Government shall acquire such land by publishing a notice in the official gazette. On a perusal of sub-section (4) of Sec. 32 of the MIDC Act, it emerges that when a notice under Sec. 32(1) of the Act is published in the official gazette, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances. Still further, as per sub-section (5) of Sec. 32 of the MIDC Act, where any land is vested with the State Government under sub-section (4) of Sec. 32 of the

15. We thus, in the backdrop of our aforesaid observations that the land acquired is vested with

the State Government, therein deliberate upon the issue that on the transfer of the land to the assessee corporation for the purpose for which it was acquired by the State Government under Sec. 32 of the MIDC Act, or placing of the land vested in the State Government at the disposal of the assessee corporation within the meaning of Sec. 43-IA of the MIDC Act, can in either of the situations be construed as a 'transfer' of the ownership of the land to the assessee corporation, which resultantly would lead to assessing of the income arising therefrom viz, lease premiums, rent, interest income from the funds parked as deposits with the bank etc., as the income of the assessee corporation. We have perused the copy of the 7/12 extracts placed on record by the assessee (Page 338- 342 and Page 792- 9 of 'APB'), which as claimed by the Id. A.R reveals that the assessee in the said revenue records is only stated to be an occupier of the land (kabzadhar), while for the ownership of the same remains vested with the State Government of Maharashtra. We are further persuaded to subscribe the claim of the Id. A.R that in case the ownership of the land vested with the State Government was to be transferred to the assessee corporation, the same could only have been possible by way of a registered document as required under the Transfer of Property Act, 1882 and Registration Act, 1908, which however was not so in the case of the assessee. We are of the considered view that the term 'transfer' used in sub-section (7) of Sec. 32 of the MIDC Act, which therein reads as under:

*?)• Where the land has been acquired for the corporation or any local authority, the State Government shall, after it has taken possession thereof, by notification published in the Official Gazette, transfer the land to the corporation or that local authority, as the case may be, for the purpose for*

*has to be accorded its contextual meaning. Rather, a thoughtful deliberation of the context in which the term 'transfer' had been used in sub-sec. (7) of Sec. 32 reveals that the same is in reference to advancing of the purpose for which such land was acquired, with a further mention of application of the provisions of Sec. 43-1A of the MIDC Act to the land acquired by the State Government. In the backdrop of our aforesaid observations, we are of the considered view that now when Sec. 43-1A [application of which is referred to in sub-sec. (7) of Sec. 32] contemplates placing of the land vested in the State Government at the disposal of the assessee corporation for developing by, or under the control and supervision of the corporation, and thereafter to be dealt with for the furtherance of the*

objects of the MIDC Act in accordance with the regulations made and directions given by the State Government in this behalf, hence the claim of the revenue of there being an absolute transfer of the ownership of the land to the assessee corporation can safely be ruled out. We have given a thoughtful consideration to the issue under consideration and are of a strong conviction that a perusal of the scheme of the MIDC Act reveals beyond any scope of doubt that the land acquired by/ vested with the State Government were only placed at the disposal of the assessee corporation for the furtherance of the objects of the MIDC Act viz. (i) in general to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Maharashtra, and in specific (ii). to establish and manage industrial estates at places selected by the State Government; (iii). develop industrial areas selected by the State Government for the purpose and make them available for undertakings to establish themselves; and (iv). to undertake schemes or works, either jointly with other corporate bodies or institutions, or with Government or local authorities, or on an agency basis, in furtherance of the purposes for which the corporation is established and all matters connected therewith. We are of the considered view that a bare perusal of the scheme of the MIDC Act, and the absence of any instrument of transfer evidencing vesting of the ownership of the land in favour of the assessee corporation, both militates against the observations of the lower authorities that the ownership of the land had been transferred to assessee corporation. We thus, in the backdrop of our aforesaid observations are of the considered view that as neither there is any material borne from record, nor any documentary evidence had been furnished before us by the revenue which could irrefutably dislodge the claim of the assessee and therein persuade us to conclude that either the ownership of the land under consideration had been transferred to the assessee corporation, or the latter could justifiably beheld as a 'deemed owner' of the same for the purpose of justifying assessing of the income arising therefrom viz. lease premiums, rent, interest income on funds parked as

*deposits with the bank etc., as the income of the assessee corporation, hence the said claim of the revenue fails and is thus rejected. The **Grounds of appeal Not 1,4,5 ,8 and 14** are allowed in terms of our aforesaid observations.”*

13. Thus, as could be seen from the aforesaid observations of the Tribunal, in assessee's own case for A.Y. 2011–12 the co-ordinate bench has categorically held that, since, the assessee cannot be considered either owner or deemed owner of the lands, the lease premium, rent, interest etc. cannot be brought to tax at the hands of the assessee. In view of the aforesaid and considering the fact that the aforesaid decision was not available before the Departmental Authorities when they decided the issue in the impugned assessment year, we are inclined to restore the issue to the Assessing Officer with a direction to examine the facts and decide the issue following the observations of the Tribunal in ITA No. 4474/Mum/2017 dated. 07.09.2018. Of course, the Assessing Officer must decide the issue after affording reasonable opportunity of being heard to the assessee. Ground raised is allowed for statistical purposes.

14. Ground no.5 being general in nature does not require adjudication.

15. Grounds raised in ITA Nos. 4475/Mum/18 & 4476/Mum/2017 for Assessment Years 2013–14 and 2014–15 respectively being identical, our decision in ITA No. 4332/Mum/2017 will apply mutatis mutandis to these two appeals also.

16. Accordingly, all these appeals are partly allowed for statistical purposes

**ITA No. 4326/Mum/2017-A.Y.2007–08**

17. In ground no. 1 of both these appeals the assessee has challenged the validity of reopening of assessment under section.147 of the Act. For the A.Y.2007-08 assessee filed its return of income on 31.10.2007 declaring loss of ₹.54,39,99,473/-. Subsequently, assessee filed a revised return of income on **25.2008** reducing the loss to ₹.40452295/-. Assessment in case of the assessee was originally completed under section 143(3) of the Act vide order dated 21.12.2009 determining the total income at Nil. Much After completion of the original assessment the Assessing Officer reopened the assessment under section 147 of the Act by issuing a notice under section 148 of the Act on 29.03.2014. As could be seen from the reasons recorded by the Assessing Officer for reopening the assessment, on perusing the balance sheet of the assessee as on 31.03.2009, he could find that the assessee has not offered the receipts on account of sale / long term lease of industrial plots as income. On further verification he found that amount of ₹.960,10,40,437/- received by the assessee on account of sale / long term lease for the impugned assessment year has been shown in the liability side of the balance sheet and had not offered it as income. Accordingly, the Assessing Officer initiated proceeding under section 147 of the Act and in due course completed the assessment under section 143(3) r.w. section 147 of the Act denying assessee's claim of exemption under section.11 of the Act. In the process he brought to tax an amount of ₹.1294,27,24,217/- shown in the liability side of the balance sheet as income of the assessee. Being aggrieved of the assessment order so passed the assessee preferred appeal before learned Commissioner (Appeals)

challenging both the validity of reopening of assessment under section 147 of the Act as well as merits of the addition made. As regards the issue relating to the validity of assessment under section 147 of the Act, learned Commissioner (Appeals) rejected all contentions of the assessee by upholding the validity of proceeding initiated under section 147 of the Act.

18. The learned Counsel for the assessee drawing our attention to the reasons recorded by Assessing Officer for reopening the assessment submitted, the Assessing Officer had no tangible material before him after completion of original assessment to form the belief that income assessable to tax has escaped assessment. He submitted, only upon re examining the balance sheet of the assessee the Assessing Officer formed opinion that there is escapement of income. Thus, he submitted, there being no failure on the part of the assessee to disclose fully and truly all material facts required for assessment, reopening of assessment after expiry of four years from the end of the relevant assessment year is invalid. The learned counsel submitted, assessee being a statutory corporation of Govt. of Maharashtra has to maintain its accounts as per the MIDC Act and is not required to maintain accounts as per Companies Act. He submitted, accounts of the assessee are subjected to audit by the CAG and there is no chance of any manipulation or suppression of income. He submitted, during the original assessment proceeding the Assessing Officer has thoroughly examined the books of account and all other relevant material and document and thereafter completed the assessment. Thus, he submitted, reopening of assessment on a mere

change of opinion, that too, after expiry of four years from the relevant assessment year is invalid.

19. The learned Departmental Representative strongly supporting the observations of the learned Commissioner (Appeals) submitted, though, the original assessment was completed under section 143(3) of the Act, however, the issue of taxability of lease premium and other charges was not at all examined by the Assessing Officer. Therefore, no opinion on the issue was formed while completing the original assessment. The learned Departmental Representative submitted, during the reassessment proceeding the assessee had raised objections against the reopening of assessment and the Assessing Officer has disposed of the objection of the assessee separately, dealing with each of the issues raised by the assessee point by point. Thus, he submitted, the decision of the Commissioner (Appeals) should be upheld.

20. We have considered rival submissions and perused the material on record. Undisputed facts are, for the impugned assessment year originally assessment was completed under section 143(3) of the Act. It is also a fact that the notice under section 148 of the Act was issued to the assessee on 29.03.2014 i.e. after expiry of four years from the end of the impugned assessment year and just before expiry of six years from the end of the relevant assessment year. Therefore, there is no doubt that the proviso to section 147 is attracted to the facts of the present case. Hence, it has to be examined whether the conditions of the proviso to section 147 are satisfied to empower the Assessing Officer to reopen the assessment under section 147 of the Act.

On perusal of reasons recorded, a copy which is at page 1 of the paper book, we find that the Assessing Officer has made a specific allegation that without offering the income from sale / long term lease of industrial plots, since, the assessee has directly taken them to the liability side of the balance sheet, there is failure on the part of the assessee to make full and true disclosure of material facts for computing its income. It is also noticed that the aforesaid facts came to the notice of the Assessing Officer while examining the balance sheet of the assessee for year ending 31.03.2009. Further, no material has been brought to our notice from assessee's side to demonstrate that this issue was examined by the Assessing Officer during the course of assessment proceeding. It is also observed, the issue on which assessment was reopened was a issue in dispute in subsequent years as well and the Assessing Officer has made similar additions in those assessment years. Thus, in our opinion, the Assessing had material before him to form a prima facie belief that income has escaped assessment. In view of the aforesaid, we do not find any reason to interfere with the decision of learned Commissioner (Appeals) on the issue of validity of reopening of assessment under section 147 of the Act. Ground no.1 is dismissed.

21. In ground no. 2 assessee has challenged the addition made on account of lease premium, rent, interest etc as income of the assessee. This ground is identical to ground no.4 of ITA No.4332/Mum/2017. Following our decision therein we restore the issue to the Assessing Officer for deciding afresh in terms with our direction therein. Ground raised is allowed for statistical purposes.

**ITA No.4327/Mum/17-A.Y.2008-09**

22. Grounds raised in the aforesaid appeal are more or less identical to ITA No.4326/M/2017. Following our decision therein we dismiss ground no.1. Whereas, ground no.2 is allowed for statistical purposes.

**ITA no.4329/Mum/ 2017 A.Y.2009-10**

23. Ground no.1 is on reopening of assessment under section.147 of the Act. The facts relating to this ground are almost similar to facts involved in respect of similar ground in ITA No. 4327/M/17. The only difference being, in the impugned assessment year the reopening of assessment is before expiry of four years from the end of relevant assessment year. In view of our decision in respect of similar grounds raised in other appeals considered by us earlier in this order, we dismiss the ground raised by the assessee.

24. Ground no. 2 is identical to ground no. 2 of ITA No. 4332/Mum/2017. Following our detail reasoning therein, we dismiss the ground raised by the assessee.

25. Ground no. 3 being consequential to ground no. 2 is dismissed.

26. Ground no. 4 is identical to ground no. 4 of ITA No. 4332/M/17. Following our detail reasoning therein we allow the ground for statistical purposes.

**ITA no.4331/Mum/17 A.Y.2010-11**

27. Ground no.1 is identical to ground no.1 of ITA no.4329/M/1. Following our decision therein we dismiss the ground raised.

28. Ground no. 2 is identical to ground no. 2 of ITA No. 4332/Mum/17.

Following our decision therein we dismiss the ground.

29. Ground no. 3 being consequential to ground no. 2 is dismissed.

30. Ground no. 4 is identical to ground no. 4 of ITA No. 4332/Mum/17.

Following our decision therein we allow the ground raised by the assessee for statistical purposes.

30. In the result, all the appeals are partly allowed for statistical purposes.

*Order pronounced in the open court on 31.10.2018*

Sd/-  
(N. K. Pradhan)

लेखा सदस्य / Accountant Member

Sd/-  
(Saktijit Dey)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 31.10.2018

MP

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CMMISSIONER (APPEALS)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**