

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

**I.T.A. Nos.1692 & 1693/Ahd/2017  
(Assessment Years : 2012-13 & 2013-14)**

Vadodara Urban Development Authority (“VUDA”), VUDA Bhavan, VIP Road, Nr.LT Circle, Karelibaug, Vadodara.	Vs.	Deputy Commissioner of Income Tax (Exemption), Circle – 2, Aayakar Bhavan, Ahmedabad.
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**I.T.A. Nos. 2435, 2436 & 2437/Ahd/2017  
(Assessment Years : 2009-10, 2011-12 & 2014-15)**

Deputy Commissioner of Income Tax (Exemption), Circle – 2, Ahmedabad.	Vs.	Vadodara Urban Development Authority (“VUDA”), Vadodara.
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[PAN No. AAABV 0141 M]

**(Appellant)**

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**(Respondent)**

<b>Appellant by :</b>	Shri Bandish Soparkar, A.R.
<b>Respondent by :</b>	Shri O. P. Vaishnav, CIT – D.R.

<b>Date of Hearing</b>	30.01.2019
<b>Date of Pronouncement</b>	05.02.2019

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The bunch of appeals filed by the assessee and revenue are against the orders dated 28.04.2017 & 11.08.2017 passed by the Commissioner of Income Tax (Appeals)-9, Ahmedabad arising out of the different orders for the Assessment Years 2012-13, 2013-14, 2009-10, 2011-12 & 2014-15 respectively under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as “The Act”).

Since the issues involved in these cases are identical the same are heard analogously and are being disposed of by a common order. ITA No.1692/Ahd/2017 is taken as the lead case.

2. The order passed by the Learned AO in determining the total income to the tune of Rs.2,38,37,730/- after disallowing the claim u/s 11(1) and 11(1)(a) of the Act for A.Y. 2012-13.

3. The brief facts leading to this case is this that the assessee, an authority notified by the Government of Gujarat under Gujarat Town Planning and Urban Development Act, 1976 filed its return on 14.10.2010 declaring total income at Rs. Nil which was processed u/s 143(3) of the Act. Under scrutiny notice u/s 143(2) of the Act dated 28.09.2013 was served followed by a detailed questionnaire dated 03.11.2014. Ultimately, the assessment was finalized under section 143(3) of the Act on 18.03.2015; total income was determined at Rs.2,38,37,730/- denying the exemption u/s 11 and Section 11(1)(a) of the Act. Till the Financial Year 2002-03, the income of authorities like Urban Development Authority was exempted u/s 10(20A) of the Act in view of the omission of Section 10(20A) of the Act and the addition of Section 10(20) w.e.f 01.04.2003 the benefit confirmed by Section 10(20)(A) of the Act on the assessee upto the A.Y. 2002-03 has been expressly taken away and the explanation added to Section 10(20) enumerates the "Local Authority" which does not cover the VUDA. Subsequently, the assessee claimed that its objects falls under the provisions of Section 2(15) of the Act and has complied with all the eligibility criteria for grant of registration u/s 12A of the Act, which was allowed by CIT-I, Baroda on 29.11.2005 subject to fulfillment of conditions laid down in the Act. It is relevant to mention that provisos of Section 2(15) were not existed at that material point of time. It is the case of the assessee that it is an institution registered u/s 12AA of the Act engaged in the activity of general public utility after verifying the nature of activity of the institutions and hence eligible u/s 11(1) of the Act for claiming exemption. However, such plea of the

assessee was not accepted by the Learned AO. The Learned AO did not accede to the claim as prayed for and the income of Rs.2,38,37,730/- was added in the hands of the assessee rejecting the claim of exemption u/s 11 of the Act by the assessee which was rejected under Section 13(8) of the Act.

4. In appeal, the assessee alleged before the Learned CIT(A) that the Learned AO wrongly disallowed the claim and stepped into the shoes of the powers of the Learned CIT who has granted registration u/s 12AA even he has found any activity of the institutions to be contrary to the objects of the trust or not in the nature of following within the purview of the charitable.

5. The Learned CIT(A) however dismissed the appeal with the observation that the assessee is covered with the proviso to Section 2(15) of the Act and therefore, the provision of Section 13(8) of the Act shall be applicable to the assessee. The claim of the benefit of Section 11 and 12 of the Act was therefore ultimately rejected by the Learned CIT(A) with the following observation:

*“27. Accordingly, I hereby confirm the position taken by AO that VUDA is covered by first and second proviso to section 2(15) of the Act thereby the provisions of section 13(8) of the Act shall be applicable to the appellant. I agree with the AO and confirm that he has rightly applied section 13(8) of the Act to VUDA. The AO is directed to recompute the income of the appellant based on observations made above. While recomputing the income the AO would taken into account the receipts by VUDA reflected under various schedules of the balance sheet received during the year under consideration. These are the receipts of VUDA received as per the GTPUD Act and the GDCR. At the same time the AO is also directed to give deduction of expenses incurred by VUIDA while fulfilling its objects under the GTPUD Act. These would include expenses on VUDA Road etc. Thus the appellant would be assessed as an AoP under section 28 to 44 of the Act. The appellant would also be eligible to claim depreciation on the fixed assets that are reflected in its inventory/schedule and created out of its funds and not from the grants. As the AO has rightly invoked proviso to section 2(15) of the Act r.w.s. 13(8) of the Act the appellant will not be eligible to claim any benefit of section 11 & 12 of the Act. Thus the first ground of appeal stands dismissed.”*

6. At the time of hearing of the instant appeal, the Learned Counsel appearing for the assessee submitted before us that the case is covered by the judgments of Jurisdictional

High Court passed in the matter of **Ahmedabad Urban Development Authority-vs-ACIT 396 ITR 323 (Guj.)** and **CIT-vs-Gujarat Industrial Development Corporation [2017] 89 Taxmann.com 366 (Guj.)** where the claim of the assessee has been allowed in its proper prospective. He further relied upon the order passed by the Co-ordinate Bench in assessee's own case for A.Y. 2010-11 where the claim of the assessee was upheld. The Learned DR however, relied upon the order passed by the authorities below.

7. Heard the respective parties and perused the relevant materials available on record. We have also perused the order passed by the Co-ordinate Bench in ITA No.2751/Ahd/2014 for Asst. Year 2010-11, relevant portion whereof is as follows:

*“We find that in similar set of facts the Jurisdictional High Court passed the orders in the case of **Urban Development Authority-vs-ACIT**, where it was held as follows:*

*“Held, that the object and purpose of permitting the Authority to sell the plots to a maximum extent of 15% of the total area, was to meet the expenditure for providing infrastructural facilities like gardens, roads, lighting, water supply, drainage system, etc. The reasons for selling the plots by holding public auction were; (a) to avoid any further allegation of favoritism and nepotism and (b) so that the maximum market price could be fetched, which could be used for the development of the urban development area. Considering the fact that the assessee was a statutory body, an Authority constituted under the provisions of the Act, to carry out the object and purpose of Town Planning Act and collected regulatory fees for the object of the Acts, no services were rendered to any particular trade, commerce or business; and whatever income was earned by the assessee even while selling the plots (to the extent of 15% of the total area covered under the Town Planning Scheme) was required to be used only for the purpose to carry out the object and purpose of the Town Planning Act and to meet the expenditure of providing general utility service to the public such as electricity, road, drainage, water etc. and the entire control was with the State government and accounts were also subjected to audit and there was no element of profiteering at all. The activities of the assessee could not be said to be in the nature of trade, commerce and business and therefore, the proviso to Section 2(15) of the Act was not applicable so far*

*as the assessee was concerned. Therefore, the assessee was entitled to exemption under section 11.”*

*Apart from that CIT-vs.-Gujarat Industrial Development Corporation, wherein it was held as follows:*

*“Section 2(15), read with section 11, of the Income-tax Act, 1961 – Charitable purpose (Objects of general public utility) – Assessment year 2009-10 – Whether where assessee – corporation was constituted under Gujarat Industrial Development Act, 1962, for purpose of securing and assisting rapid and orderly establishment and organization of industrial areas and Industrial estates in State of Gujarat, and for purpose of establishing commercial centers in connection with establishment and organization of such industries it could not be said that activities carried out by assessee were either in nature of trade, commerce or business, for a Cess or Fee or any other consideration so as to attract proviso to section 2(15) and same could be said to be for charitable purpose and, consequently,. Assessee was entitled to exemption under section 11- Held, yes (Paras 15 and 17)[In favour of assessee]”*

8. We find that the issue involved in this matter is squarely covered by the order passed by the Co-ordinate Bench in ITA No. 2751/Ahd/2014 is narrated hereinabove and respectfully following the same we allow the claim of the assessee towards exemption u/s 11 of the Act and delete the order of disallowance of exemption and an addition of Rs.2,38,37,730/-.

9. In the result, out of the five appeals two preferred by assessee are allowed and rest three preferred by the Revenue are dismissed.

**This Order pronounced in Open Court on**

**05/02/2019**

Sd/-  
( WASEEM AHMED )  
**ACCOUNTANT MEMBER**

Sd/-  
( Ms. MADHUMITA ROY )  
**JUDICIAL MEMBER**

Ahmedabad; Dated 05/02/2019  
*Priti Yadav, Sr.PS*

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ITA Nos.1692, 1693, 2435, 2436 & 2437/Ahd/2017  
Vadodara Urban Development Authority  
Asst.Years-2012-13, 2013-14, 2009-10, 2010-11 & 2014-15

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-9, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad