

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI.**

**BEFORE SHRI L.P. SAHU, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**Stay No.181/Del/2019
(in ITA No.6643/Del./2018)
(ASSESSMENT YEAR : 2013-14)**

AND

**ITA No.6643/Del./2018
(ASSESSMENT YEAR : 2013-14)**

**Stay No.182/Del/2019
(in ITA No.6644/Del./2018)
(ASSESSMENT YEAR : 2014-15)**

AND

**ITA No.6644/Del./2018
(ASSESSMENT YEAR : 2014-15)**

**Stay No.183/Del/2019
(in ITA No.6645/Del./2018)
(ASSESSMENT YEAR : 2015-16)**

AND

**ITA No.6645/Del./2018
(ASSESSMENT YEAR : 2015-16)**

M/s. Greater Noida Industrial Development Authority,
Plot No.1, Sector – Knowledge Park – 04,
Greater Noida,
Gautam Budh Nagar – 201 308 (Ghaziabad).

vs.

Addl.CIT,
Exemption Range,
Ghaziabad.

(PAN : AAALG0129L)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri Jasmeet Singh, Advocate
Shri Sunil Gupta, CA
Ms. Raj Rani Lakra, CA
REVENUE BY : Shri Amit Katoch, Senior DR**

Date of Hearing : 01.03.2019

Date of Order : 13.03.2019

ORDER

PER BENCH :

Since common questions of facts and law have been raised in the aforesaid appeals, the same are being disposed of by way of composite order to avoid repetition of discussion.

2. The appellant, M/s. Greater Noida Industrial Development Authority (hereinafter referred to as 'the assessee'), a body corporate established in terms of section 3 of U.P. Industrial Development Act, 1976 and also registered u/s 12 A of the Income-tax Act, 1961 (for short 'the Act') by filing the aforesaid appeals, sought to set aside the composite order dated 30.07.2018 passed by Ld. CIT (Appeals)-I, Noida qua the Assessment Years 2013-14, 2014-15 & 2015-16 on the identical grounds except for amount of additions. For the sake of brevity, grounds of appeal raised in AY 2013-14 are inter alia that :-

“1. Because the order passed by Ld. Commissioner of Income Tax (Appeals) (hereinafter referred "Ld. CIT(AY) is bad in law.

2. Because the Ld. CIT(A) , while passing the Impugned Order, failed in providing an adequate opportunity of being heard to Greater Noida Industrial Development Authority (hereinafter referred as" Appellant")

3. Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the grounds of appeals raised in the appeal and passed the Impugned Order on the erroneous premise that the appeal is not maintainable for the reason that the proof of payment of fee has not been enclosed in terms of S. 249(1)(iii) of the Income Tax Act, 1961.

4. *Because the Ld. CIT(A), while passing the Impugned Order, and without going into the particulars involved in the appeal, erred in making the observation that the issues involved in the appeal has been settled by the Hon'ble Supreme Court of India in New Okhla Industrial Development Authority v Chief Commissioner of Income Tax; C.A. 792-793/2014*

Without prejudice to the grounds raised herein above the following are the grounds on the merits:

5. *Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the fact that the Ld. Assessing Officer (hereinafter referred to as "Ld. AO") erred in taking the status of the Appellant as body corporate.*

6. *Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the fact that the Ld. AO erred in holding that registration u/ s 12AA is not applicable for the A.Y. 2013-14 and disallowing the exemption u/ s 11 and 12 to the Appellant.*

7. *Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the fact that the Ld. AO erred in invoking S. 13(8) r/w S. 2(15) of the Income Tax Act, 1961 by treating the activities of Appellant as commercial activities without considering the constitution of the Appellant.*

8. *Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the fact that the Ld. AO erred in invoking the provisions of Proviso to S. 2(15) of the Income Tax Act, 1961 in contravention of judgement by Hon'ble Allahabad High Court in Appellant's case.*

9. *Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the fact that the Ld. AO erred in invoking the provisions of S. 11(4A) of the Income Tax Act, 1961 by treating the activities of Appellant as commercial activities without considering the constitution of the Appellant.*

10. *Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the fact that the Ld. AO erred in making addition of Rs.83,39,875/- on account of disallowance made u/s 11 and 12 of the Income Tax Act, 1961.*

11. *Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the fact that the Ld. AO erred in making the addition of 411,05,84,344/- in respect of reserves/fund made by the Appellant.*

12. Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the fact that the Ld. AO erred in making the addition of 35,06,05,545/- in respect of amount transferred to Maintenance fund and fund for urban services.

13. Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the fact that the Ld. AO erred in making adhoc disallowance of the expenses of Rs.4,44,60,803/- in respect of Legal expenses, Consultancy, Professional fees and Audit fees paid by the Appellant.

14. Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the fact that the Ld. AO erred in disallowing Rs.82,00,000/- in respect of amount paid to Udyog Bandhu by the Appellant.

15. Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the fact that the Ld. AO erred in making disallowance of interest paid by Appellant amounting to Rs.3,75,49,720/-

16. Because the Ld. CIT(A), while passing the Impugned Order, failed to appreciate the fact that the Ld. AO erred in disallowing depreciation claimed by Appellant amounting to Rs.2,02,511/- in respect of Electrical Fittings.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : The assessee, a body corporate, established in terms of section 3 of U.P. Industrial Development Act, 1976 and also registered under section 12A of the Act. Initially, the AO reopened the assessment after recording reasons and completed the assessment under section 143 (3) read with section 147 of the Act on 27.12.2017, 05.01.2018 & 27.12.2017 for AYs 2013-14, 2014-15 & 2015-16 respectively.

4. AO after treating the assessee as a company without considering the fact that the assessee is registered under section

12A of the Act and has declined the exemption under section 11 and 12 of the Act by invoking the provisions contained under section 13(8) read with section 2(15) of the Act by treating the activities of the assessee as commercial activities. Consequently, AO disallowed amount of Rs.4,11,05,84,344/-, Rs.4,70,09,12,532/- & Rs.1,41,34,83,732/- for AYs 2013-14, 2014-15 & 2015-16 respectively transferred to various reserves/ provisions after allowing their utilization. AO also disallowed amount of Rs.35,06,05,545/-, Rs.15,24,60,860/- & Rs.51,83,83,332/- for AYs 2013-14, 2014-15 & 2015-16 respectively transferred to maintenance fund and fund for urban services. AO also made adhoc disallowance amounting to Rs.4,44,60,803/-, Rs.9,33,33,493/- & Rs.5,20,93,863/- for AYs 2013-14, 2014-15 & 2015-16 respectively in respect of consultancy fee, professional fee and audit fee. AO has disallowed an amount of Rs.82,00,000/-, Rs.2,50,00,000/- & Rs.2,50,00,000/- for AYs 2013-14, 2014-15 & 2015-16 respectively given as grant to Udyog Bandhu on the directives received from State Government. AO also disallowed an amount of Rs.3,75,49,720/-, Rs.3,75,49,720/- & Rs.3,75,49,720/- for AYs 2013-14, 2014-15 & 2015-16 respectively on account of proportionate disallowance of interest paid to loans and advances and AO also disallowed an amount of

Rs.2,02,511/- & Rs.2,26,986/- for AYs 2013-14 & 2014-15 respectively claimed as depreciation of electrical fittings and thereby assessed the total income of the assessee at Rs.455,99,42,800/-, Rs.506,00,08,550/- & Rs.210,00,96,720/- for AYs 2013-14, 2014-15 & 2015-16 respectively.

5. Assessee carried the matter before the Id. CIT (A) by way of appeals who has dismissed all the appeals being not maintainable for want of payment of necessary court fees in the absence of the assessee. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Bare perusal of the impugned order passed by the Id. CIT (Appeals) goes to prove that Id. CIT (A) has first time listed the appeals pending before him for hearing for 20.07.2018 on which date Authorized Representative of the assessee sought adjournment which was rejected by Id. CIT (A) being without any ground and dismissed the appeals ex parte on ground of maintainability on the sole reason that the assessee has not annexed the proof of payment

of fee in terms of provisions contained under section 249(1)(iii) of the Act but has not preferred to decide the appeals on merit.

8. However, when we examine the aforesaid facts recorded by the Id. CIT (A) in the impugned order that assessee has failed to annexe the receipt of appeal fees paid in terms of provisions of section 249(1)(iii) of the Act, from Form No.35 it is categorically mentioned in Col.No.16 that the assessee has duly deposited the appeal fee of Rs.1,000/- each vide BSR Code No.0202976, Sl.No.40444, 40737 & 40430 on 31.01.2018, 07.02.2018 & 30.01.2018 for AYs 2013-14, 2014-15 & 2015-16 respectively, which shows that in AY 2014-15, the appeal fee is stated to have been deposited on 07.02.2018 but the same is also prior to the date of passing the impugned order i.e. 30.07.2018.

9. When assessee has given complete particulars of payment of appeal fee but, if somehow, copy of receipt has not been annexed with the appeal, it was for the Id. CIT (A) to give the assessee an adequate opportunity to bring on record receipts for making the payment of appeal fee. Id. CIT (A) has rather short-circuited the entire process of hearing by summarily dismissing the appeals for non-enclosure of the proof of payment of receipts. So, we are of the considered view that this is a case where that the Id. CIT (A) has not given adequate opportunity of being heard to the assessee

and thereby violated the principles of natural justice. Consequently, we set aside the impugned orders passed by the Id. CIT (A) for AYs 2013-14, 2014-15 & 2015-16 and remanded the cases back to the Id. CIT (A) to decide afresh after providing an opportunity of being heard to the assessee. Consequently, appeals bearing ITA Nos.6643/Del/2018, 6644/Del/2018 & 6645/Del/2018 filed by the assessee are allowed for statistical purposes.

9. Keeping in view the fact that since appeals bearing ITA Nos.6643/Del/2018, 6644/Del/2018 & 6645/Del/2018 have been decided, aforesaid stay petitions filed therein stand dismissed having been become infructuous.

Order pronounced in open court on this 13th day of March, 2019.

Sd/-

**(L.P. SAHU)
ACCOUNTANT MEMBER**

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 13th day of March, 2019
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-I, Noida.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**