

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
&  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 4290/Del/2014  
Assessment Year: 2009-10**

Khurja Development Authority Yamunapuram Commercial Complex M.G. Road, Bhoor, Bulandshahr. <b>PAN No. AAALK0805D</b>	vs	Addl. CIT Bulandshahr Range Bulandshahr.
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No. 4291/Del/2014  
Assessment Year: 2010-11**

Khurja Development Authority Yamunapuram Commercial Complex M.G. Road, Bhoor, Bulandshahr. <b>PAN No. AAALK0805D</b>	vs	JCIT Range-3 Bulandshahr.
<b>APPELLANT</b>		<b>RESPONDENT</b>

&

**ITA No. 5103/Del/2016  
Assessment Year: 2012-13**

Khurja Development Authority Yamunapuram Commercial Complex M.G. Road, Bhoor, Bulandshahr. <b>PAN No. AAALK0805D</b>	vs	ACIT (E) Ghaziabad.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	<b>Dr. Rakesh Gupta, Adv. Sh. Somil Aggarwal, Adv.</b>
<b>Revenue by</b>	<b>Smt. Naina Soin Kapil, Sr. DR</b>

<b>Date of Hearing</b>	<b>01.04.2019</b>
<b>Date of Pronouncement</b>	<b>03.04.2019</b>

**ORDER**

**PER SHRI BHAVNESH SAINI, J.M.**

All the appeals by assessee are directed against different orders of Ld.CIT(Appeals)-Meerut dated 28.03.2014 for AYs 2009-10 and 2010-11, Ld. CIT(Appeals)-Ghaziabad dated 22.06.2016 for AY 2012-13.

2. We have heard Ld. Representatives of both the parties and perused the material available on record.

3. In the present case, all the above appeals were decided by the Tribunal, vide order dated 19.07.2018, whereby all the appeals of the assessee were dismissed. The assessee filed three miscellaneous applications in MA Nos. 551 to 553/Del/2018. The Tribunal recalled its earlier order dated 19.07.2018. All the appeals were directed to be listed for fresh hearing. The MAs of the assessee were allowed, vide order dated 04.02.2019. Accordingly, all the appeals were listed for fresh hearing.

4. The appeals are decided as under:

**ITA No. 4290/Del/2014 (AY 2009-10):**

The AO noted that assessee has filed its return of income in the status of AOP (Trust), showing taxable income at Rs. Nil, after claiming exemption u/s 11 of the Act towards excess of income

over expenditure at Rs. 1.33 crores. The AO noted that assessee deals in town planning and development with the grant sanctioned by the State Government as well as its own funds. The assessee applied for registration u/s 12A of the Act before CIT, Meerut who had rejected the application. The assessee preferred appeal before ITAT who have restored the matter to the CIT, Meerut. The CIT, Meerut again rejected the registration application. The assessee contended before AO that appeal is pending before ITAT for registration u/s 12A of the Act. The AO, however, noted that since no registration u/s 12A have been granted to the assessee, therefore, assessee is not eligible for exemption u/s 11 of the Act. The AO, accordingly, assessed the total income at Rs. 1.33 crores.

5. The assessee challenged the addition before Ld. CIT(A) who has also on the same reasoning that no registration have been granted to the assessee u/s 12AA of the Act confirmed the order of the AO and dismissed the appeal of assessee.

6. After considering the rival submissions, we are of the view that the matter requires reconsideration at the level of the AO. Ld. Counsel for assessee pointed out from the findings of the Ld.CIT(A) in AY 2012-13 that assessee pleaded before Ld.CIT(A) that appeals of the assessee has been allowed by ITAT granted registration to the assessee u/s 12AA of the Act and that departmental appeal has been dismissed by the Allahabad High Court. The Ld. CIT(A), however, rejected the claim of the assessee because matter is pending in SLP before the Supreme Court. Ld. Counsel for

assessee submitted that ITAT 'A' Bench in the case of the assessee in ITA No. 905/2011, vide order dated 29.04.2014 has allowed the appeal of the assessee directing the CIT to grant registration to the assessee w.e.f. the date requested as per provisions of law. He has submitted that the order of the Tribunal above has been confirmed by the Allahabad High Court by dismissing the appeal of Department, vide order dated 12.04.2015. He has submitted that merely because SLP of the Department is pending before Supreme Court is no ground to deny exemption to assessee u/s 11 of the Act. He has further submitted that AO in the case of assessee for AY 2010-11, vide order dated 16.11.2017 u/s 148/147 has accepted the nil returned income, thereby granting benefit u/s 11 of the Act.

6.1 In view of these facts, it is clear that the Tribunal has allowed registration u/s 12AA of the Act in favour of the assessee, vide order dated 29.04.2014. The order of the Tribunal has been confirmed by the Hon'ble Allahabad High Court. The AO granted exemption u/s 11 of the Act to the assessee in AY 2010-11 in scrutiny assessment. Merely because SLP of the Department is pending before Hon'ble Supreme Court is no ground to deny exemption to assessee u/s 11 of the Act. We are, therefore, of the view that AO shall have to verify the condition of Section 11 of the Act before passing the assessment order afresh and shall have to grant exemption u/s 11 of the Act because of the orders passed by the Tribunal granting registration u/s 12AA of the Act in favour of the assessee. We, accordingly, set aside the orders of the

authorities below and restore the matter in issue to the file of AO with direction to grant exemption to the assessee u/s 11 of the Act after satisfying the conditions of the same as per law by giving reasonable sufficient opportunity of being heard to the assessee.

7. In the result, appeal of the assessee is allowed for statistical purposes.

ITA No. 4291/Del/2014 (AY 2010-11):

8. In this year facts are same, the AO denied exemption u/s 11 of the Act because registration u/s 12AA have been denied to the assessee. The AO completed the assessment at Rs. 2.22 crores. The Ld. CIT(A) dismissed the appeal of assessee. Following the reasons for decision for AY 2009-10 (supra), we set aside the orders of the authorities below and restore the matter in issue to the file of AO with direction to grant exemption to the assessee u/s 11 of the Act after satisfying the conditions of the same as per law by giving reasonable sufficient opportunity of being heard to the assessee.

9. In the result, appeal of assessee is allowed for statistical purposes.

ITA No. 5103/Del/2016 (AY 2012-13):

10. In this year also the AO denied exemption u/s 11 of the Act because registration u/s 12AA has been refused to the assessee. The AO also noted that case of the assessee would fall in proviso

to section 2(15) of the Act. The AO also noted that assessee has received infrastructure fund which have not been credited to the income and expenditure account. The assessee, however, submitted that there is no diversion of income since the assessee is working as a development agency to the State Government for collecting the funds and spending the same in development activities. The assessee is only custodian of the funds and the amount can be utilized only after the approval of State Authorities. The Department has accepted the same treatment in past. The AO, however, did not accept the contention of the assessee and also made addition on account of infrastructure fund taken in the balance sheet and made further addition of Rs. 4,17,94,857/- and computed the total income of assessee at Rs. 8.93 crores. The Ld. CIT(A) dismissed the appeal of assessee as regards exemption claimed u/s 11 of the Act on the same reasoning that SLP of the Department is pending before the Hon'ble Supreme Court. As regards infrastructure reserve fund kept pending on account of surplus, Ld. CIT(A) found that the receipt in question is Revenue in nature, and accordingly, dismissed the appeal of the assessee.

11. After considering the rival submission, we are of the view that the matter requires reconsideration at the level of the AO. As regards exemption u/s 11 of the Act, issue is same as has been considered and decided in AYs 2009-10 & 2010-11 (supra). Following the reasons for decision in these years, we set aside the orders of the authorities below and restore the matter in issue to the file of AO with direction to grant exemption to the assessee u/s

11 of the Act after satisfying the conditions of the same as per law by giving reasonable sufficient opportunity of being heard to the assessee.

12. As regards, the addition made on account of infrastructure fund, Ld. Counsel for assessee relied upon the judgment of Allahabad High Court in the case of CIT vs. Lucknow Development Authority 265 CTR 433 in which it was held as under:

*“Where the trust is carrying out its activities on non-commercial lines with no motive to earn profits, for fulfillment of its aims and objectives, which are charitable in nature and in the process earn some profits, the same would not be hit by proviso to section 2(15).”*

13. Ld. Counsel for assessee submitted that this issue is related to exemption u/s 11 of the Act and that assessee is custodian of the amount in question and this amount can be used by the assessee as per directions of the State Authorities. Therefore, it can never be the income of the assessee.

14. Ld. DR, however, submitted that this issue has been decided in detail by the CIT(Appeals), therefore, the order may be maintained.

15. After considering the rival submissions, we are of the view that this issue also requires reconsideration at the level of the AO. The assessee has now been granted registration u/s 12AA of the Act and thus, assessee is entitled for exemption from income u/s 11 of the Act as per law. Even if the infrastructure reserve fund

may be treated as income of assessee, it will have to be examined, whether, assessee is entitled for exemption u/s 11 of the Act on the same income. Therefore, it would depend upon fundings with regard to exemption u/s 11 of the Act. We have already restored the issue of exemption u/s 11 of the Act to the AO for fresh decision as per law. Further, the authorities below have not appreciated the fact that assessee claimed that infrastructure fund was received for development activities from the State Authorities, the assessee has to spend the amount on the same as per approval of the State Authorities. Thus, there may not be any profit element out of the same sources. It may also be noted here that whatever amount has been spent by assessee on the same issue, the AO has accepted that assessee spent the same amount as per the directions of the State Authorities. Then in that event it is difficult to believe that part amount is capital receipt and part would be Revenue in nature. Therefore, there was no justification for Ld. CIT(A) to hold that the impugned receipt is Revenue in nature. This issue also requires reconsideration in view of the fact that assessee is entitled for exemption u/s 11 of the Act. We, accordingly, set aside the orders of the authorities below on the issue of infrastructure fund as well and restore the issue to the file of AO with direction to redecide the issue as per law by giving reasonable opportunity of being heard to the assessee.

16. In the result, the appeal of assessee is allowed for statistical purposes.

17. In the result, all appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court.

Sd/-  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated: 03.04.2019  
\*Kavita Arora

Sd/-  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	01/04/2019
Date on which the typed draft is placed before the dictating Member	02/04/19 03/04/19
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	03/04
Date on which the fair order comes back to the Sr. PS/PS	03/04
Date on which the final order is uploaded on the website of ITAT	03/04
Date on which the file goes to the Bench Clerk	03/04
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

