

IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA Nos. 1970 & 1971/Bang/2018
Assessment years : 2013-14 & 2014-15

Bangalore Development Authority, T Chowdaiah Road, Kumara Park West, Bengaluru-560 020. <b>PAN – AAALB 0060D.</b>	Vs.	The Deputy Commissioner of Income-tax (E), Circle-1, Bangalore.
APPELLANT		RESPONDENT

&

ITA Nos. 1969 & 1968/Bang/2018
Assessment years : 2013-14 & 2014-15

The Deputy Commissioner of Income-tax (E), Circle-1, Bangalore.	Vs.	Bangalore Development Authority, Bengaluru-560 020. <b>PAN – AAALB 0060D.</b>
APPELLANT		RESPONDENT

Appellant by	:	Shri S Annamalai, Advocate
Respondent by	:	Shri.Suresh Battini, CIT(DR)

Date of hearing	:	03.06.2019
Date of Pronouncement	:	04.06.2019

**ORDER**

*Per N.V. Vasudevan, Vice President*

The appeals by the Assessee and revenue are against two orders both dated 31.3.2018 of CIT(Appeals), Bangalore-9, relating to assessment years 2013-14 & 2014-15.

2. In the appeals by the Assessee, if ground No.5 in both the appeals (which are identical) are adjudicated and if it is held that the Assessee is not hit by the proviso to Sec.2(15) of the Income Tax Act, 1961 (Act), then such adjudication will render the adjudication of other grounds in Assessee as well as revenue's appeals academic. Ground No.5 reads as follows:-

“5. Ground on applicability of proviso to Section 2(15) and related grounds.

- (a) The authorities below are not justified in holding that the proviso to section 2(15) of the Act is applicable to the appellant on the facts and circumstance of the case.
- (b) The authorities below are not justified in not considering that the appellant falls within several limbs of charity as defined in section 2(15) of the Act and hence ought not to have applied the proviso to the facts of the appellants case.
- (c) The learned Commissioner of Income-tax (Appeals) is not justified in law in not deleting the total income before the addition made by the learned Assessing Officer a sum of Rs.52,26,47,000 being surplus as per Income and Expenditure account after prior period adjustments, treating as taxable income by the learned Assessing Officer by invoking the proviso to section 2(15) of the Act on the facts and circumstances of the case.

- (d) The learned Commissioner of Income-tax (Appeals) is not justified in law in not holding that the learned Assessing Officer ought not to have considered the starting point of computation of total income at Rs. 1,72,37,000/- on the facts and circumstances of the case.
- (e) The learned Commissioner of Income Tax (Appeals) is not justified in law in denying the exemption as a charitable institution for the reason that appellant is carrying on business. The inference drawn for holding that the appellants are doing business are purely arbitrary and purely on suspicion and surmise devoid of factual foundation.
- (f) The learned Commissioner of Income Tax (Appeals) ought not to have denied exemptions for charitable purpose as the Appellant do not fall under second proviso to section 2(15) of the Act.
- (g) The learned Commissioner of Income Tax (Appeals) ought to have taken into account the speech of the Finance Minister which indicate the object and drift of the amendment in as much as that genuine Charitable Trusts are not hit by the proviso to section 2(15) of the Act.
- (h) Without prejudice the authorities below ought to have granted exemption in respect of the other limbs of charity by applying the principles of apportionment and ought to have granted proportionate relief in respect of the other limbs of charity being relief to the poor etc. on the facts and circumstance of the case.
- (i) Without prejudice, the learned Commissioner of Income Tax(Appeals) failed to appreciate that the appellant fall under first to fifth limb of the definition of charitable purpose on the facts and circumstances of the case.”

3. As far as ground 5 raised by the assessee is concerned, the issue for consideration is as to whether the revenue authorities were justified in

coming to the conclusion that the Assessee does not exist for charitable purpose as it was carrying on activities which were in the nature of trade or business. The facts and circumstances under which the aforesaid issue arises for consideration are that the assessee is a statutory body by name Bangalore Development Authority, constituted under the Bangalore Development Authority Act, 1976 (BDA Act). The Assessee claimed the benefits of exemption under Sec.11 of the Act on the ground that it was existing for charitable purpose as defined in Sec.2(15) of the Act. Section 2(15) of the Act has been amended by Finance Act, 2010 w.e.f. 01.04.2009 (i.e., w.e.f. Assessment Year 2009-10). It is not in dispute that the objects of the Assessee would fall within the ambit of "advancement of any object of general public utility" which is one of the purposes mentioned in the definition of Charitable purpose u/s.2(15) of the Act. As stated earlier, the definition of "Charitable Purpose" as given in Sec.2(15) of the Act was amended by the Finance Act, 2010, w.e.f. 1.4.2009. By the aforesaid Amendment, a proviso has been inserted to the definition of "Charitable Purpose" in Sec.2(15) of the Act, which reads as follows:-

"2(15)"Charitable purpose" includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

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

4. Thus the proviso to section 2(15) (supra) lays down that if any charitable organization recognized under section 12A of the Act (i)were to carry out any activity in the nature of trade, commerce or business or (ii)were to carry on any activity of rendering service in relation to any trade, commerce or business. for a cess or fee or any other consideration, then irrespective of the nature of use or application or retention of the income from such activity, such activity shall not constitute activity / activities of charitable purpose or nature, despite the fact that the same are carried out or performed for the advancement of any object of general public utility.

5. The AO was of the view that the assessee's activities are hit by the proviso to section 2(15) of the Act, introduced w.e.f. 01.04.2009 by Finance Act, 2010, consequently he denied the assessee the exemption claimed under section 11 of the Act and brought to tax the assessee's income from Assessment Year 2009-10 onwards. The AO, has laid emphasis on the fact that the objects of the assessee as per BDA Act, was to develop the City of Bangalore and areas adjacent thereto. The AO after referring to the Income and Expenditure Account of the Assessee has observed that the Assessee derives income from selling several categories of properties to the public. In Paragraph 5.12 & 5.13 of the order of assessment, he has brought out the various categories of receipts of the Assessee and has come to the conclusion in paragraph 5.14 of his order that the Assessee was carrying on systematic and regular activity of acquisition/purchase of land and development of the same as layout/sites and construction of houses and sale of the same to the general public and provided maintenance/infrastructure facilities in layouts/housing schemes. He has observed that the focus of the Assessee has been more on selling sites by auction to the highest bidder and was not for providing affordable housing to the public (vide paragraph 5.15 of his order). This is the main reason for

the AO's conclusion that the Assessee was carrying on business and therefore was not existing for charitable object as laid down in the proviso to Sec.2(15) of the Act. The AO has drawn the following inferences to come to conclusion as above:-

- (i) The assessee is mainly engaged in development of sites and houses and sale of the same to general public at large by way of collecting consideration and in respect of corner sites and flats, sale transactions are done through auction sale wherein highest bidder will only get the eligibility to own the sites or flats.
- (ii) The assessee is generating huge amount of profits year after year from sale of sites and flats indicating that the assessee is carrying out the activities as a business venture rather than charitable organization.
- (iii) The assessee is not applying the huge amount of profits generated from the activities towards any charitable activities such as relief of poor, education, medical relief and other objects of advancement of the general public utility and such surplus is being invested in fixed deposits in order to earn interest income.
- (iv) The activities of the assessee and the generation of profits on account of the same are akin to the activities carried on by real estate companies, property developers, infrastructure firms etc., and therefore, the activities of the assessee are squarely fall under the ambit of activities which are in the nature of trade, commerce or business. Accordingly, the activities of the assessee are hit by the first proviso below section 2(15).

6. Thereafter the AO computed total income of the Assessee for the two Assessment years as follows:

**AY 2013-14**

<i>(Amount in Rs.)</i>		
<b>COMPUTATION OF TOTAL INCOME</b>		
Surplus as per I & E a/c after prior period adjustments		52,26,47,000
<b>Total income before additions</b>		52,26,47,000
<b><u>Additions:</u></b>		
1. Interest paid to KUIDFC towards two level grade separators	<b>1,27,26,991</b>	
2. Interest paid to KUIDFC towards 'Grade Separator at Ananda Rao Circle'	<b>9,10,000</b>	—
3. Interest paid to KUIDFC towards '9 Grade Separator, Henur Junction'	<b>6,23,38,000</b>	
4. Current year capital expenditure claimed as revenue expenditure due to change in accounting policy	<b>213,92,70,000</b>	
5. Donation disallowed	<b>58,00,000</b>	
8. Prior period expenses disallowed	<b>7,58,01,000</b>	
0. conversion of loan into grant	<b>1,06,00,000</b>	
0. land transfer to KPTCL	<b>2,74,31,250</b>	
1. 'Receivable from BBMP	<b>2,29,43,000</b>	
1. Devpt. Expenditure on Arkavathy Layout	<b>2,69,09,000</b>	
2. Health Cess payable	<b>77,55,000</b>	
Total		291,51,31,241
10. Less: depreciation on current year capital expenditure disallowed @ 10% (i.e.10 % of 2139270000 = 213927000)		21,39,27,000
<b>Total taxable income</b>		<b>2701204240</b>

(Rupees Two hundred and seventy crores twelve lakhs four thousand two hundred and forty Only)

**AY 2014-15:**

		<i>(Amount in Rs.)</i>
<b>COMPUTATION OF TOTAL INCOME</b>		
Surplus as per Income & Expenditure a/c		1,72,37,000
<b>Total income before additions</b>		1,72,37,000
<b>Additions:</b>		
1. Interest paid to KUIDFC towards grade separators AT Ananda Rao Circle as per para 6.1	<b>2,23,000</b>	
2. Interest paid to KUIDFC towards 9 grade separator at Hennur Junction as per para 6.2	<b>6,47,47,000</b>	
3. Interest paid to KUIDFC towards two level grade separators as per para 6.3	<b>1,32,05,000</b>	
4. Interest paid to KUIDFC towards Nagavara Junction as per para 6.4	<b>17,37,000</b>	
5. Donation disallowed as per para 6.5	<b>3,89,00,000</b>	
6. Prior period expenses disallowed as per para 6.6	<b>22,67,85,000</b>	
7. Current year capital expenditure claimed as revenue expenditure due-to change in accounting	<b>100,28,80,000</b>	
8. Interest on FD with IOB of Rs.98,89,42,664 adopted @ 8% p.a. as per Para 8.00	<b>7,91,15,000</b>	
9. Conversion of loan into grant as per para 7.00	<b>1,06,00,000</b>	
10 Sundry debtors rectification entry passed in F./Y 2014-15 as per para 9 above	<b>38,50,000</b>	
11. Devpt. Expenditure on Arkavathy Layout as per para 10 above	<b>12,39,69,000</b>	<b>156,60,11,000</b>
Total		158,32,48,000
0. Less: depreciation on current year capital expenditure disallowed @ 10% (i.e.10 % of Rs. <b>100,28,80,000</b> = Rs. 10,02,88,000)		10,02,88,000
<b>Total taxable income</b>		<b>148,29,60,000</b>

(Rupees One hundred forty eight crores twenty nine lakhs sixty thousand Only)

7. On appeal by the assessee, the CIT(A) upheld the stand taken by the AO.

8. Aggrieved by the order of the CIT(A), the assessee has raised ground No.5 before the Tribunal.

9. At the time of hearing of the appeal, it was agreed by both the parties that identical issue had come up for consideration in assessee's own case for asst. year 2012-13 in ITA No.1104/Bang/2017 and this tribunal vide its order dated 22/3/2019 held that the assessee is entitled to the benefit of sec. 11 of the Act and that its activities cannot be said to fall within the ambit of proviso to sec. 2(15) of the Act. The conclusions of the Tribunal can be summed up as follows:-

1. In Paragraph 5.8.1, the Tribunal extracted the objects of the Assessee as per Section 14 of the BDA Act, 1976, which is as under:

“14. Objects of Authority:—The objects of the authority shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose the authority shall have the power to acquire, hold, manage and dispose of movable and immovable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary of expedient for the purpose of such development and for purposes incidental thereto.”

In Paragraph 5.8.2 the Tribunal came to the conclusion that there were five limbs to the definition of “Charitable Purpose” in Sec.2(15) of the Act, viz., (i) Relief of the poor, (ii) Education, (iii) Medical relief, (iv) Preservation of environment (including watersheds, forests and wildlife) and (v) Preservation of monuments or places or objects of artistic or historic interest). Though the five limbs are not specifically provided for in section 14 of the BDA Act, the objects enunciated involved preservation

of environment, preservation of water bodies, preservation of forest areas, etc., appears to have merit; for it is a fact that planned urban development cannot take place or be done without due consideration being given to the preservation of the environment, water bodies like lakes, streams, etc., and forest areas. In coming to the above conclusion, the Tribunal found that from the financial statements of the assessee it was evident that it has expended an amount of Rs.2095.24 lakhs on planting of one crore seedlings in the green belt area for improvement of the environment. The Assessee has expended a sum of Rs.2997.42 lakhs towards development of lakes. The Tribunal therefore held that the Assessee carried out the activity of preservation of environment and water bodies and that the conclusion of the revenue authorities that these activities were done only to enhance the commercial value of the layout developed is untenable.

2. The Tribunal held that allotment of sites and flats to the economically weaker sections of society constitutes relief for the poor and that relief to the poor does not necessarily mean giving something free of cost to the poor. It also includes providing them things at a concessional rate. The Tribunal also embarked upon an enquiry as to whether the word “poor” can mean only those who are below the official poverty line or does it include all those who are economically weaker, but not necessarily below the poverty line. The Tribunal concluded that it is not necessary that educational / medical assistance is to be given free only to those below the poverty line. It will suffice if education / medical assistance is provided at concessional rates. The Tribunal also held that the rules that govern the allotment of sites are so formed in order to facilitate the economically weaker sections of society to purchase these sites. In the case of construction of flats, it was clear from the very scheme and the name thereof, that these flats are meant only for the Economically Weaker Sections of society.

3. The Tribunal held that the complaint of the Revenue authorities that the assessee was not applying huge amount of profit generated from the activities towards any charitable activities such as relief of poor, education, medical relief and other objects of advancement of general public utility and such surplus is being invested in fixed deposits in order to earn interest income was also

not correct in as much as the Assessee was constructing grade separators, PRR Bridges on Flyovers, carrying out renovation and remodeling works, Maintenance of BBMP facilities, Development of Lakes, etc. The Tribunal also held that object of the Assessee was planned urban development of Bangalore City and not with the purpose of profit making; i.e., the activity of formation of layouts and allotment of sites is only carried out with the primary and main object to ensure planned development of Bangalore City and not with the intention to make profits. In coming to the above conclusion, the Tribunal has referred to the decision of the Hon'ble Apex Court in the case of Barendra Ray and Others Vs. ITO (1981) 129 ITR 295 wherein it was held one has to see whether the predominant object of the activity is to make profit or whether the predominant object of the activity is to carry out charitable purposes and not profit making. The Tribunal also referred to the decision of the Hon'ble Apex Court in the case of Surat Art Silk Organisation Vs. CIT (121 ITR 1), wherein it was held that a charitable organization cannot be expected to balance its accounts in such a manner that the income for the year matches exactly with its expenditure. It is inevitable that in carrying on the activities, certain surplus may ensue. The earning of such surplus, in itself, would not mean that the organization existed for profit. The Hon'ble Apex Court went on to observe that every Association requires funds for expanding the range of its activities (for example; an Educational Institution may require additional infrastructure under which more class rooms can be set up / created). If profits are generated to support and expand these activities, then it cannot, in the view of the Hon'ble Apex Court, be held that there is a profit motive involved to deny the exemption. From the above ratio of the decision of the Hon'ble Apex Court, it is clear that it is the basic motive behind the activity, which is important to be considered; whether it is one with profit motive or not. Merely because surplus is generated from a particular activity, it cannot be said that such activity is in the nature of trade, commerce or business. What needs to be seen is, what the intent and purpose of starting such activity is. The tribunal found that BDA's embarkation of the activity of setting up of residential layouts, including the activity of sale of sites and flats, is definitely not with a view to earn profit, but to ensure planned urban development and also to accomplish a social objective of providing

an opportunity to economically weaker sections of society to be able to own a residence on their own. The tribunal also held that the process of auctioning of corner sites by the BDA was only to ensure that officials do not use their discretion to allot corner sites and was therefore an activity which will ensure no loss to the public exchequer.

4. The Tribunal took note of the fact that the concerned Income Tax authorities have recognized the assessee as a public charitable organization by grant of registration under section 12A of the Act since 26.03.2003 and that the assessee's objects clause, i.e., section 14 of the BDA Act has not undergone any change or modification since its enactment; which is what must have prompted the Income Tax Department to take the view that it was charitable in nature. The tribunal took note of the fact that after the introduction of the proviso to section 2(15) of the Act the Income Tax Department took a view that the activity of 'BDA' was in the nature of trade, commerce or business and cancelled the registration, granted under section 12A of the Act, vide order dated 08.11.2011. The assessee's registration under section 12A of the Act however stood restored by a decision of the Co-ordinate Bench of this Tribunal vide order in ITA No.12/Bang/2012 dated 10.04.2015. In this prevailing factual matrix, there is no change in the objects and the only issue which apparently prompts Revenue to take the view it has taken, i.e., that the activity of the assessee is hit by the proviso to section 2(15) of the Act; is the fact that the activity of the assessee has resulted in huge surplus or profits. In our view, the fact of surplus or shortfall is not to be reckoned as the test for applicability of the proviso to section 2(15) of the Act; but rather, whether the activity is embarked upon solely with the view to earn profit or not; which the AO and CIT(A) have not done.

5. The Tribunal took note of the fact that in the case of similar urban development authorities in India, such as the Assessee, the revenue took a similar stand that those urban development authorities cannot be regarded as existing for "Charitable Purpose" after introduction of the proviso to Sec.2(15) of the Act and such approach has been held to be incorrect by the various judicial forums in the following cases:

- (i) Ahmedabad Urban Development Authority Vs. ACIT (Exemptions) (2017) 396 ITR 323 (Guj.);
- (ii) Jaipur Development Authority Vs. CIT (2014) 52 taxmann.com 25 (Jaipur – Trib.)
- (iii) Haridwar Development Authority Vs. CIT (2015) 57 taxmann.com 6 (Delhi – Trib.)
- (iv) CIT Vs. Lucknow Development Authority (2013) 38 taxmann.com 246 (Allahabad)
- (v) CIT Vs. Jodhpur Development Authority (2017) 79 Taxmann 361 (Raj.).

6. The Tribunal also held that the AO's reliance on the following decisions in support of his conclusion that the Assessee does not exist for "Charitable Purpose" was not correct because the issue involved in those cases were with regard to cancellation of registration u/s.12A of the Act. The cases referred to by the AO in this regard were as follows:

- (i) Jammu Development Authority Vs. UOI in ITA No.164/2012, CMA/2/2012 (J & K High Court);
- (ii) Punjab Urban Planning and Development Authority (103 TTJ 98) (ITAT – Chandigarh);
- (iii) Indore Development Authority – ITA No.366/Ind/2008 (ITAT – Indore).
- (iv) Improvement Trust Vs. CIT, Bhatirda (41 Taxmann.com 403) (ITAT – Amritsar).

10. In view of the aforesaid decision of the Tribunal, we are of the view that the assessee's activities have to be regarded as charitable in nature. The facts and circumstances under which the Tribunal decided the aforesaid issue and the basis of the conclusions in AY 12-13 and the AY 13-14 & 14-15, which are the AYs in the present appeals, are identical. The conclusions of the Tribunal in AY 12-13 would therefore be equally applicable to AY 13-14 & 14-15 also. The assessee would be entitled to the benefits of sec. 11 of the Act for AY 13-14 & 14-15. We hold

accordingly and allow ground No.5 in both the Assessment years. In view of the findings rendered as above, the other grounds/issues raised by the Assessee in these appeals and the grounds raised by the revenue in its appeal become academic in nature as these conclusions flow only on the basis that the Assessee does not exist for "Charitable Purpose", which conclusion has been held by us to be incorrect. The AO will therefore compute total income on the basis that the Assessee is entitled to the benefits of Sec.11 of the Act and if done so there would be no income which can be brought to tax.

11. In the result, the appeals by the Assessee are allowed while the appeals by the revenue are dismissed.

Pronounced in the open court on this 4<sup>th</sup> day of June, 2019.

Sd/-

( B.R. BASKARAN )  
Accountant Member

Sd/-

( N.V. VASUDEVAN )  
VICE PRESIDENT

Bangalore,  
Dated, the 4<sup>th</sup> June, 2019.  
/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.