

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.4400/Del./2016
(ASSESSMENT YEAR : 2011-12)**

**ITA No.4401/Del./2016
(ASSESSMENT YEAR : 2012-13)**

ACIT, Exemption Circle,
Ghaziabad.

vs. M/s. Meerut Development Authority,
Vikas Bhawan,
Meerut.

(PAN : AAALM0124D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Kapil Goel, Advocate
REVENUE BY : Ms. Pramita M. Biswas, CIT DR

Date of Hearing : 27.08.2019
Date of Order : 11.09.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

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

2. Appellant, ACIT, Exemption Circle, Ghaziabad. (hereinafter referred to as the 'Revenue') by filing the present appeals sought to set aside the impugned orders dated 28.03.2016 & 16.05.2016

passed by the Commissioner of Income - tax (Appeals), Meerut qua the assessment years 2011-12 & 2012-13 respectively on the grounds inter alia that :-

“AY 2011-12

1. The Ld. CIT (A) has erred in law on facts in allowing the appeal of the assessee to allow the registration u/s 12A in the case the departmental appeal is pending before the Hon’ble Allahabad High Court on this ground.

2. The order of Ld. CIT (A) be cancelled and the order of the AO be restored.

AY 2012-13

1. That the Ld. CIT (A) has erred in law in fact on facts in allowing the appeal of the assessee on the disallowance of various addition of Rs.97,49,24,270/- ignoring the facts.

2. The Ld. CIT (A) has erred in law on facts in allowing the appeal of the assessee to allow the registration u/s 12A in this case the departmental appeal is pending before the Hon’ble High Court of Allahabad on this ground.

3. The order of Ld. CIT (A) be cancelled and the order of the AO be restored.”

3. Briefly stated the facts necessary for adjudication of the issue at hand are : assessee is an authority constituted under U.P. Urban Planning and Development Act, 1973 to procure and secure the development of areas according to plan and for that purpose, it is empowered to acquire, hold, manage and dispose land and other properties to carry out building activities, engineering, mining and other operations, to execute works in connection with the supply of electricity and water to dispose of sewage and to provide and

maintain other services and amenities and generally to do anything necessary or expedient for the purpose of such development. Assessee authority was accorded registration under section 12A of the Income-tax Act, 1961 which was later withdrawn by the CIT, Meerut but the order of CIT has been overturned by the Tribunal vide order dated 29.08.2013 and decided in favour of the assessee and appeal against the said order is reportedly pending adjudication before the Hon'ble High Court. Assessing Officer (AO) declining the contention of the assessee authority treated it as Artificial Juridical Person as against charitable trust / institution and denied the exemption u/s 11 & 12 of the Act by invoking the First Proviso to section 2(15) of the Act and thereby made disallowance on account of Rs.91,02,28,130/- & Rs.97,49,24,270/- in AYs 2011-12 & 2012-13 respectively.

3. Assessee carried the matter by way of appeals before the Id. CIT (A) who has deleted the additions by partly allowing the appeals. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeals.

4. 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.

5. Ld. DR for the Revenue challenging the impugned order relied upon the order passed by the AO. However, on the other hand, ld. AR for the assessee contended that the issue in controversy is already covered by the decisions rendered by the coordinate Bench of the Tribunal in cases of *Moradabad Development Authority (assessee) vs. ACIT in ITA Nos.4631 & 4632/Del/2017 for AYs 2012-13 & 2013-14 order dated 04.01.2018* and *DCIT vs. Hapur Pilkhuwa Development Authority, ITA Nos.1384, 1385 & 1386/Del/2016 for AYs 2009-10, 2010-11 & 2011-12 order dated 06.06.2018* and the decision rendered by the Hon'ble High Court of Karnataka in *CIT vs. Hubli Dharwad Urban Development Authority in ITA No.593 of 2015 order dated 20.02.2019*.

6. From the grounds raised by the assessee in the present appeals, arguments addressed and from the orders passed by the lower Revenue authorities, the sole question arises for determination in this case is :-

“as to whether assessee authority which is registered u/s 12A of the Act is hit by amended provisions contained u/s 2(15) of the Act and is not entitled for exemption u/s 11 & 12 of the Act as contended by the ld. DR for the Revenue?”

7. If the aforesaid question is decided in favour of the assessee, addition / demand made by the Revenue for AYs 2011-12 & 2012-13 would not be sustainable.

8. Coordinate Bench of the Tribunal in case of the assessee (supra) examined the identical issue at length vis-à-vis the effect of proviso of section 2 (15) of the Act and after following the decision rendered by Hon'ble Allahabad High Court in case of Revenue's appeal for AY 2009-10 (in assessee's case) by following another judgment of the coordinate Bench in CIT vs. Yamuna Expressway Industrial Development Authority & Ors. vide order dated 03.05.2017 reached the conclusion that the assessee which is engaged in construction and sale of plots were incidental to the main object of town planning and as such entitled for exemption u/s 11 of the Act. For ready perusal, operative part of the order passed by the Tribunal is extracted as under :-

“3. We have heard both the sides and gone through the relevant material on record. It is seen, as is evident from para 4.1 of the impugned order itself, that the assessee was allowed exemption u/s 11 of the Act by the Tribunal for the assessment years 2008-09 and 2009-10. It is an admitted position that the regular assessment for the assessment years 2010-11 and 2011-12 was not taken up and the claim for exemption u/s 11 of the Act got automatically allowed. We have gone through the lead order passed by the Tribunal for the assessment year 2009-10, whose copy is available on page 75 of the paper book. In this order, the Tribunal considered the effect of proviso to section 2(15) and, thereafter, held

that the activities of the assessee of construction and sale of plots were incidental to the main object of town planning and, hence, exemption u/s 11 was to be granted. The said order of the Tribunal was challenged by the Department before the Hon'ble Allahabad High Court. Vide its judgment dated 03.05.2017, a copy of which is available on page 80 of the paper book, the Hon'ble Allahabad High Court dismissed the Revenue's appeal by following another judgment of the co-ordinate Bench in CIT vs. Yamuna Expressway Industrial Development Authority & Ors., in which similar questions were answered against the Revenue. A copy of the judgment of the Hon'ble jurisdictional High Court in the case of CIT vs. Yamuna Expressway Industrial Development Authority & Ors., is available on page 93 of the paper book. The Hon'ble High Court in its judgment has considered all the relevant aspects of the issue threadbare and, thereafter, decided similar issue against the Revenue.

4. It is, ergo, palpable that the assessee has been allowed exemption u/s 11 of the Act consistently in the past, either by the AO himself or by virtue of the orders of the Tribunal as affirmed by the Hon'ble High Court. This settled position ought not to have been ordinarily disturbed. The authorities below have chosen to deviate from the earlier consistent view by harping on the dismissal of SLP against the judgment of the Hon'ble J&K High Court in Jammu Development Authority. There are two reasons for not accepting the Departmental stand. Firstly, the issue before the Hon'ble Jammu and Kashmir High Court was cancellation of registration by the CIT u/s 12AA(3) of the Act and not the denial of exemption, as is prevailing in the extant case. Admittedly, the assessee's registration has not been canceled by the Commissioner. Further, it is a settled legal position that a summary dismissal of SLP cannot be construed as a declaration of law by the Hon'ble Supreme Court under Article 141 of the Constitution. A mere dismissal of SLP without giving any reasons, cannot be equated with exposition of law by the Hon'ble Supreme Court so as to indicate the imprimatur on the reasoning and/or the

ratio decidendi of the High Court in the judgment. In such circumstances, there is no merger of the judgment of the Hon'ble High Court. The Hon'ble Apex Court in Hemalatha Gargya vs. CIT (2003) 259 ITR 1 (SC), has held that dismissal of SLP in limine: "could not operate as a confirmation of the reasoning in the decision sought to be appealed against.....". Similar view has been taken by the Hon'ble Summit court in Kunhayammed & Ors vs. State of Kerala and Anr (2000) 245 ITR 360 (SC), in which their Lordships have held that an order refusing special leave to appeal does not stand substituted in place of order under challenge. In the hue of the above discussion, it is amply vivid that the mere dismissal of SLP by the Hon'ble Supreme Court against the judgment of the Hon J&K High Court in the case of Jammu Development Authority cannot be construed as having the effect of elocution of law by the Hon'ble Supreme Court on the subject against the assessee. In other words, the view point of the Department that the mandate of the Hon'ble jurisdictional High Court on the issue has ceased its binding force and hence preference should be given to the judgment of the Hon'ble J&K High Court as SLP against the same has been dismissed, cannot be countenanced. We, therefore, hold that the decision taken by the Hon'ble jurisdictional High Court in several cases including that of the assessee itself holds the field and, accordingly, the benefit of exemption u/s 11 of the Act cannot be denied. The impugned order on the issue is overturned and it is directed to grant exemption u/s 11 of the Act."

9. Following the decision rendered by the coordinate Bench of the Tribunal which is based upon the findings returned by *Hon'ble Allahabad High Court in Revenue's appeal for AY 2009-10 in assessee's case*, we are of the considered view that activities of the assessee authority inter alia to promote and secure development

areas according to plan to hold, manage, dispose of land and other properties to carry out building activities, engineering, mining, etc. are incidental to the main objective of the town planning, thus entitled for exemption u/s 11 of the Act as registration u/s 12A of the assessee authority has never been cancelled / withdrawn. We find no illegality or perversity in the impugned orders passed by the Id. CIT (A), hence both the appeals filed by the Revenue bearing ITA Nos. 4400/Del/2016 & 4401/Del/2016 for AYs 2011-12 & 2012-13 respectively are dismissed.

Order pronounced in open court on this 11th day of September, 2019.

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

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 11th day of September, 2019
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Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**