

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND SHRI P. K. GADALE, JUDICIAL MEMBER**

ITA Nos.2018 to 2021/Bang/2018
Assessment year : 2008-09 to 2011-12

The Income Tax Officer (E), Ward – 1, Hubli.	Vs.	M/s. Chitradurga Urban Development Authority, C. K. Pura, Chitradurga – 577 501. <b>PAN : AAALC 0135 A</b>
APPELLANT		RESPONDENT

Revenue by	:	Shri.M. Vijay Kumar, Add. CIT
Assessee by	:	Shri. S. Ramasubramanyam, CA

Date of hearing	:	07.11.2019
Date of Pronouncement	:	27.11.2019

**ORDER**

***Per B. R. Baskaran, Accountant Member***

All appeals filed by the Revenue are directed against the orders passed by the learned CIT(A), Davanagere and they relate to the Assessment Years 2008-09 to 2011-12.

2. At the time of hearing, the learned AR submitted that the appeals pertaining to Assessment Years 2008-09 to 2011-12 are covered by the Circular No.17/2019 dated 08-08-2019 issued by CBDT prescribing monetary limit of Rs.50.00 lakhs for the revenue for preferring appeals challenging the order passed by Ld CIT(A), since the tax effect involved in these appeals are less than 50 lakhs. The learned DR, in

principle, accepted the submissions made by the learned AR. However, he pleaded that the Revenue should be given liberty to move appropriate application for recall of the orders, if it is found later that the issues contested in these appeals are covered by exceptions provided in the circular issued from time to time.

3. We heard the parties and perused the record. Since the tax effect involved in the appeals pertaining to 2008-09 to 2010-11 is less than Rs.50.00 lakhs, the Revenue is precluded from pursuing this appeal as per CBDT Circular No.17/2019 Dt.8.8.2019. Accordingly, we dismiss the appeals filed by the Revenue for these three years. However, liberty is given to the Revenue to move appropriate application for recall of the order in accordance with law, if it is found later that the Circular is not applicable to these appeals.

4. We shall now take up the appeal pertaining to Assessment Year 2011-12, wherein following two issues are contested:

- a. Carry forward and set off of unabsorbed deficit
- b. Rejection of exemption under section 11 holding that the proviso to section 2(15) is applicable to the assessee.

5. The assessee is Urban Development Authority undertaking planned development of urban areas and sale of CA and other sites. The AO took the view that the assessee would be covered by the proviso to section 2(15) of the Act, since the activities carried on by the assessee are commercial in nature i.e., in the nature of carrying on of trade or business or commerce. In this regard, the AO took support of the decision rendered by ITAT, Panaji Bench, in the case of Belgaum Urban

Development Authority. Accordingly, he rejected the claim for exemption under section 11 of the Act. The assessee had claimed set off of brought forward unabsorbed deficit, which was also rejected by the AO.

6. In the appellate proceedings, the learned CIT(A) noticed that the issue relating to applicability of proviso to sec.2(15) was examined by Bangalore Bench of Tribunal in the case of Karnataka Industrial Area Development Board (KIADB) Vs. Addl. DIT (ITA No.378/Bang/2013 dated 04.09.2015), wherein the Tribunal has held that the activity of the KIADB in acquiring sites and developing industrial area and selling sites / factory sets to various persons will not be hit by the first proviso to section 2(15) of the Act. Accordingly, following the above said decision, the learned CIT(A) allowed the appeal of the assessee on this issue. With regard to the issue relating to set off of brought forward deficit, the learned CIT(A) followed the decision rendered by Co-ordinate Bench in the case of Seva Sadan Orphanage and Training Institute Vs. DCIT, wherein the Tribunal, by holding the decision rendered by Hon'ble Bombay High Court in the case of Institute of Banking and Hon'ble Gujarat High Court in the case of Shri Plot Swetamber Murti Pujak Jain Mandal, 211 ITR 293, wherein it was held that the assessee is entitled to set off of brought forward amount of excess application. The Revenue is aggrieved by the decision so rendered by learned CIT(A).

7. The learned AR submitted that the learned CIT(A) has followed the decision rendered by the Co-ordinate Benches in respect of both the issues. He further

submitted that an identical issue was considered by the Co-ordinate Bench in the case of Bangalore Development Authority Vs. DCIT (2019) 73 ITR Tribunal 711 (Bang.) wherein the Tribunal has held that the activities of the assessee therein was not hit by proviso to section 2(15) of the Act. The learned AR submitted that the objects of the assessee herein are identical with the objects of Bangalore Development Authority. In this regard, he took our attention to para 14 of Karnataka Urban Development Authorities Act and submitted the assessee herein as also formed with similar objectives. The learned AR further invited our attention to the submissions made before the learned CIT(A) which read as follows:

2.2 *It is submitted that the learned assessing officer has completely missed out the objects for which the appellant has been formed. The appellant is an arm of the Government of Karnataka and has been formed under Karnataka Urban Development Authorities Act 1987. The Statement of Objects and Reasons of the above Act states as under:*

*With a view to speeding up planning and development of land in urban areas in the State, it is felt desirable to have for each urban area a single agency for performing functions both as a Planning Authority and as Development Authority.*

*The preamble of the Act states as under:*

*An Act to provide for the establishment of Urban Development Authorities for the planned development of major and important urban areas in the State and the areas adjacent thereto and for matters connected therewith.*

*Whereas it is expedient to provide for the establishment of Urban Development Authorities for the planned development of major and important urban areas in the State and the area adjacent thereto and for matters connected therewith.*

*The objects of the Karnataka Urban Development Authorities Act are prescribed in Sections 14 and 15 of the above Act. The said sections are reproduced below:*

**Section. 14.** *Objects of the Authority - The objects of the authority shall be planning and promoting and securing the development of the urban area and for these purposes the authority shall have the power to acquire, hold, manage and dispose of moveable and immovable property, whether within or outside the urban area under its jurisdictions, to carry out building, engineering and other operations and generally to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto.*

**Section. 15.** *Power of Authority to undertake works and incur expenditure*

*for development*

*etc. (1) The authority may –*

- (a) draw up detailed schemes (hereinafter referred to as “development scheme”) for the development of the urban area; and*
  - (b) with the previous approval of the Government, undertake from time to time any works for the development of the urban area and incur expenditure therefor and also for the framing and execution of development scheme –*
- (2) The authority may also from time to time make and take up any new or additional*
- development schemes –*
  - (i) on its own initiative, if satisfied of the sufficiency of its resources; or*
  - (ii) on the recommendations of the Local Authority, if the local authority places at the disposal of the authority, the necessary funds for framing and carrying out any scheme; or*
  - iii) otherwise*
- (3) Notwithstanding anything in this Act or in any other law for the time being in force, the Government may, whenever it deems it necessary, require the authority to take up any development scheme or work, and execute it subject to such terms and conditions as may be specified by the Government.*

*A perusal of the above would show that the primary purpose of the appellant is to ensure orderly growth of urban areas in Chitradurga district through proper planning. For this purpose the appellant acquires sites, forms the layout and sells them to various persons.*

*We further state that Sections 16 & 17 of KUDA Act provides for the components of development scheme and procedures to be followed. The approval of the Government for scheme has to be obtained u/s 18.*

*Rule 13(2) of the Karnataka Urban Development Authority (Allotment of Sites) Rules, 1991 (UDA Rules for short) mandates allotment of sites in following manner:*

<i>a) Backward class</i>	-	<i>2%</i>
<i>b) Schedule Tribe</i>	-	<i>3% 20%</i>
<i>c) Schedule Caste</i>	-	<i>15%</i>
<i>d) Ex-Soldiers or family members of deceased Soldier and members of Central Armed Forces</i>	-	<i>5%</i>
<i>e) Employees of State Government /Board, Public Sector undertakings and Legislative Authorities</i>	-	<i>10%</i>
<i>f) Employees of Central Government/Board, Public Sector and Legislative Authorities</i>	-	<i>5%</i>
<i>g) Public</i>	-	<i>50%</i>
<i>h) Persons who have excelled in the field of arts, science sports or any other field</i>	-	<i>8%</i>
<i>i) Physically handicapped</i>	-	<i>2%</i>

2.3 *The appellant is required to sell 20% of its sites to schedule caste, schedule tribes and backward classes. Another 20% can be sold to ex-servicemen and employees of the government. Another 10% can be sold to persons who have excelled in the field of arts, science etc and physically handicapped. 50% sites can be sold to public. It will be clear from the above that the dominant purpose of the appellant is not to make profits but to ensure orderly growth of urban area.*

2.4 *It is also to be noted that the one of the important objects of the appellant is to acquire sites, construct house and sell them to general public and economically weaker sections and other deserving sections of the public. Sites are allotted at nominal rates and the prices charged are not commercial prices. Therefore, it is clear that the activities of acquiring and selling sites are not carried out with commercial/profit motive. It is submitted that once the dominant object of an institution is*

*charitable in nature, the first proviso will not apply just because certain activities which have the characteristics of a business are carried on.*

2.5 *We rely on the decision of the Hon'ble Income Tax Appellate Tribunal, Bangalore Bench in Karnataka Industrial Area Development Board Vs Additional Director of Income Tax (Exemptions), Bangalore (ITA No. 378/Bang/2013 dated 4.9.2015). The Hon'ble Tribunal held that the activity of KIADB in acquiring sites and developing industrial area and selling the sites/factory sheds to various persons is not hit by the first proviso to S.2(15). We refer to Para 49 of the order:*

*49. Keeping in mind the above factual aspects and provisions of the KIDA Act, and principle laid down in the aforesaid decision of the Hon'ble Delhi High Court in the case of India Promotion Organization (supra), in our view, will clearly show that the Assessee does not driven primarily by desire or motive to earn profits but to do charity through advancement of an object of general public utility. The assessee is operating on no profit basis. This is substantiated by the actual income received on operations of the Assessee and the expenditure incurred set out in the earlier paragraphs of this order. The proviso to Sec. 2(15) of the Act is therefore not applicable to the case of the Assessee. We therefore hold that the assessee is entitled to the benefits of Sec. 11 of the Act. The AO has not disputed the conditions necessary for allowing exemption u/s 11 of the Act, except the applicability of proviso to Sec. 2(15) of the Act. In view of our conclusions that the said proviso is not applicable to the case of the Assessee, we hold that the Assessee's income is not includible in the total income and therefore the income returned by the Assessee is directed to be accepted.*

8. Accordingly, the learned AR submitted that the issue is fully covered by the decision of the Co-ordinate Bench in the case of Bangalore Development Authority. With regard to the second issue, the Ld A.R submitted that the same is covered by the decisions rendered by Hon'ble Bombay and Gujarat High Courts.
9. The learned DR, on the contrary, supported the order passed by the assessee.
10. We have heard the rival submissions. We notice that the learned CIT(A) has followed the decisions rendered by the Co-ordinate Benches in deciding the first issue, i.e., the issue relating to applicability of proviso to sec.2(15) of the Act and accordingly held that the said proviso will not apply to the activities carried on by the assessee. We also notice that the Ld CIT(A) has followed the decisions rendered by Hon'ble Bombay and Gujarat High Courts in holding that the assessee is entitled to

claim set off of brought forward excess application (deficit) during the year under consideration. Accordingly, we do not find any infirmity in the order passed by the CIT(A).

11. In the result, all the four appeals filed by the Revenue are dismissed.

*Order pronounced in the open court on this day of 27<sup>th</sup> November, 2019.*

Sd/-

**(PAVAN KUMAR GADALE)**  
**Judicial Member**

Sd/-

**(B. R. BASKARAN)**  
**Accountant Member**

Bangalore.

Dated: 27<sup>th</sup> November, 2019.

/NS/\*

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|---------------|----|------------|
| 1. Appellants | 2. | Respondent |
| 3. CIT        | 4. | CIT(A)     |
| 5. DR         | 6. | Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.