

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

**SHRI N V VASUDEVAN, VICE PRESIDENT AND
BEFORE SHRI ARUN KUMAR GARODIA, AM**

ITA Nos. 2091/B/2016, 588 & 900/B/2018
Assessment Year : 2013 – 14 to 2015 – 16

M/s Mangalore Urban Development Authority, Urva Stores, Ashok Nagar, Mangaluru – 575006. PAN: AAALC0002E	vs.	ACIT (Exemption) Circle - 1, Mangaluru
APPELLANT		RESPONDENT
Assessee by	:	Smt. Pratibha, Advocate
Revenue by	:	Shri C. H. Sundar Rao, CIT DR
Date of Hearing	:	07.11.2019
Date of Pronouncement	:	04.12.2019

ORDER

PER SHRI A.K. GARODIA, AM:

These three appeals are filed by the assessee and these are directed against three separate orders of learned CIT (A), Mangaluru dated 29.09.2016 for A. Y. 2013 – 14, dated 28.12.2017 for A. Y. 2014 – 15 and dated 28.02.2018 for A. Y. 2015 – 16. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. In course of hearing, it was submitted by the learned AR of the assessee that grounds in all these three years are identical. She also submitted that Ground No. I is general and Ground No. II is not pressed in all these three years. Accordingly, we hold that no adjudication is called for about Ground No. I and Ground No. II is rejected as not pressed in all these three years.

3. Regarding Ground No. III, she submitted that in this ground, the grievance of the assessee is this that CIT (A) is not justified in upholding the order of the AO regarding his action to assess the income of the assessee u/s 13 (8) by applying the first proviso to section 2 (15) of Income Tax Act, 1961. Learned AR of the assessee made various arguments but finally, she placed reliance on the tribunal order rendered in the case of Bangalore Development Authority (BDA) vs. DCIT in ITA No. 1104 & 1087/Bang/2017 dated 22.03.2019. She submitted a copy of this tribunal order and submitted that in this case, similar issue under similar facts was decided by the tribunal in favour of the assessee. At this juncture, the bench pointed out that in Para 5.8.3 of this tribunal order, it is noted by the tribunal that in that case, the assessee has expended an amount of Rs. 2095.24 lacs on planting of one crore seedlings in the green belt area for improvement of the environment and an amount of Rs. 2997.42 lacs was expended towards development of lakes and these facts were the main basis of the finding of the tribunal in the same para that the contentions of the AO and CIT (A) that the assessee has not carried out any of the activities specified/contained in the first four limbs of section 2 (15) of the Act is not correct. The bench wanted to see the finding of the lower authorities on this aspect if any or the bench wanted to examine the facts of the present case on this aspect if available in the paper book. In reply, it was submitted by the learned AR of the assessee that there is no finding recorded by the lower authorities on this aspect and the facts on this aspect are not readily available and hence, the matter may be restored to AO for a fresh decision after examining these facts in the light of this tribunal order. Learned DR of the

revenue supported the order of CIT (A). He also submitted that the tribunal order rendered in the case of BDA (Supra) cited by the learned AR of the assessee is not applicable in the present case because facts are different.

4. We have considered the rival submissions. In our considered opinion, these facts are very important as to whether, the assessee has undertaken any activity which can be accepted as forming part of the first four limbs of section 2 (15) i.e. (1) Relief of Poor, (2) Education, (3) Medical Relief and (4) Preservation of Environment. In the case of BDA (Supra), it was found by the tribunal that substantial amount of Rs. 2095.24 lacs was spent on planting of one crore seedlings in the green belt area for improvement of the environment and another substantial amount of Rs. 2997.42 lacs was spent towards development of lakes. Both these activities i.e. planting of one crore seedlings in the green belt area for improvement of the environment and development of lakes are no doubt part of Preservation of Environment which falls in first four limbs of section 2 (15). In the present case, facts in this regard are not available before us and there is no finding of AO or CIT (A) on this factual aspect as to whether the assessee has carried out any activity which may be said to be part of first four limbs of section 2 (15). Hence, we feel it proper to restore the matter back to AO for fresh decision after examining the relevant facts of the present case in the light of this tribunal order rendered in the case of BDA (Supra) cited by the learned AR of the assessee. We order accordingly. Needless to say, adequate opportunity of being heard should be provided by the AO to the assessee. Ground No. III is allowed for statistical purposes in all three years.

5. Regarding Ground No. IV & V, it was submitted by the learned AR of the assessee that in these grounds, the grievance of the assessee is regarding disallowance of Depreciation (Ground IV) and Disallowance of Unabsorbed Depreciation and deficit to be carried Forward (Ground – V). She submitted that on both these issues, the tribunal order in assessee's own case for A. Ys. 2009 – 10 to 2011 – 12 in ITA Nos. 694 to 696/Bang/2014 dated 11.03.2015 is in favour of the assessee and this tribunal order is available on pages 78 to 81 of the paper book. Learned DR of the revenue although supported the order of CIT (A) but he could not point out any difference in facts or legal position.

6. We have considered the rival submissions. In the absence of any difference in facts or legal position, we find no reason to take a different view on these two issues. Hence, respectfully following this tribunal order, we decide both these issues in favour of the assessee. Grounds IV and V are allowed in all three years.

7. In the result, all three appeals of the assessee are partly allowed in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N. V. VASUDEVAN)
Vice President

Bangalore,

Dated, the 04th December, 2019.

/MS/

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

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.