

आयकर अपीलीय अधिकरण, विशाखापट्टणम पीठ, विशाखापट्टणम ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM BENCH: VISA KHAPATNAM**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.52/Viz/2020

M/s. Visakhapatnam Metropolitan
Region Development Authority
(VMRDA), VMRDA Bhavan,
Siripuram, Visakhapatnam (Urban),
Andhra Pradesh – 530003.

Vs. The Commissioner of Income
Tax (Exemptions),
2nd Floor, Ayakar Bhawan,
Basheer Bagh,
Hyderabad – 500 004.

[PAN: AAAGV 0571L]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Shri M.V. Prasad, A.R

प्रत्यर्थी की ओर से /Respondent by

: Shri D.K. Sonowal, CIT(DR)

सुनवाई की तारीख/Date of Hearing

: 26.11.2020

घोषणा की तारीख /Date of Pronouncement

: 27.01.2021

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Exemptions), Hyderabad in F. No.CIT(E)/Hyd/51(05)/12A/2019-20, dated 28.11.2019.

2. The brief facts of the case are that the assessee M/s. Visakhapatnam Metropolitan Region Development Authority (VMRDA for short) has been formed on 05.09.2018 by Government of Andhra Pradesh through issue of G.O. Ms.No.301 & 302 by dissolving Visakhapatnam Urban Development Authority (VUDA for short). Subsequently, the VMRDA filed an application in Form No.10 for registration u/s. 12AA of the Act. The Ld. CIT(Exemptions) by order dated 28.11.2019 has noted that VUDA has been granted registration u/s. 12AA of the Act on 31.07.2006 and that registration was cancelled by the Ld. CCIT by order dated 04.05.2012 on the ground that the assessee has been engaged in commercial activities and has been rendering services for fee and as per amendment to Sec. 2(15) which came into effect from 01.04.2009 clearly lays down that the advancement of any other object of general public utility shall not be of charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any services in relation to 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, and if such income from above mentioned activity exceeds Rs. 25 lakhs. Ultimately, the Ld. CCIT order dated 28.11.2019 has rejected Form No.10 filed by the assessee on the

ground that the assessee is not fit for registration u/s. 12AA of the Act mainly for the reason that the registration granted already earlier was cancelled by order dated 04.05.2012 and the same is pending before ITAT and also the commercial receipts of the assessee for this period exceeding 25% of the total receipts of the said period and the activity of the assessee is of not charitable activity.

3. On being aggrieved, the assessee carried the matter before the Tribunal.

4. The Id. counsel for the assessee has submitted that the Ld. CIT(Exemptions) rejected the fresh application filed by the assessee on the ground that the registration granted already to the assessee by order dated 31.07.2006 has been canceled by another order dated 04.05.2012. The Ld. counsel for the assessee further submitted that when the assessee preferred an appeal, the Hon'ble ITAT by order dated 20.03.2020 in ITA No.295/Viz/2012 cancelled the order passed by the Ld. CIT(A) by order dated 04.05.2012 and therefore, submitted that Sec. 12A of the Act may be granted to the assessee.

5. On the other hand, the Ld. Departmental Representative relied upon the order passed by the Ld. CIT(Exemptions).

6. We have heard both the sides and perused the materials available on record and gone through the orders of the authorities below. The assessee before us is VMRDA has been formed on 05.09.2018 by Government of Andhra Pradesh through issue of G.O. Ms. No.301 & 302 by dissolving that the VUDA has already applied for registration u/s. 12A of the Act which was duly granted registration u/s. 12AA of the Act on 31.07.2006. However, the said registration was cancelled by the Ld. CCIT(OSD), Visakhapatnam, vide order in F. No. Asst./VUDA/CIT-1/VSP/2011-12 dated 04.05.2012 on the ground that the assessee has been engaged in commercial activities and also rendering services for fee and as per amendment to Sec. 2(15) of the Act, the assessee is a commercial charitable organization. The assessee preferred an appeal before the Hon'ble ITAT. When the appeal is pending, the assessee filed another application before the Ld. CIT(Exemptions) for registration u/s. 12A of the Act on 15.05.2019 and the same is dismissed by the Ld. CIT(Exemptions) on 28.11.2019 mainly on the ground that the registration granted to the assessee was already cancelled earlier on the ground that the assessee is carrying on commercial activity and is no more a charitable organization. We find that the cancellation order passed by the Ld. CCIT(OSD) by order dated 04.05.2012 has been cancelled by Hon'ble ITAT by order dated 20.03.2020 in ITA

No.295/Viz/2012, wherein the Hon'ble ITAT categorically gave a finding that there is no material to say that the assessee is carrying the activities not in accordance with the objects or the activities of the assessee are not genuine. The Ld. CCIT has cancelled the registration on presumptions and assumptions without having proper material. For the sake of convenience, the entire portion of the order is extracted as under:

"5. We have heard both the parties and perused the material placed on record and gone through the orders of the Ld.CCIT. The Ld.CCIT had cancelled the registration granted u/s 12AA(3) w.e.f. 2006 onwards. The assessee was granted registration u/s 12AA(3) in 2006 w.e.f. 01.04.2003. The reason for cancellation of registration of the assessee is under the impression that the assessee is engaged in commercial activity, acted as an agent of Government of Andhra Pradesh, sold the lands indiscriminately belonging to State Government, from 2008 onwards it had lost sight of the objects and acted like realtor and lastly for the reason that being engaged in the commercial activity, Ld.CCIT held that the assessee is hit by amendment to section 2(15) of the Act which has come into force w.e.f. 01.04.2009. In brief, the Ld.Counsel of the assessee argued that the assessee never lost sight of its object, carrying on the activities in accordance with the objects of the Society and the department has not brought on record any incidence which was violated by the assessee in furtherance of its objects. It has never diverted its funds for any other purpose and carrying on the activity as per its objects and sale of lands was made as per the objects and the procedure laid down in the Act and amendment to section 2(15) has no application in the assessee's case, since, the assessee is carrying on the development activities and no commercial activity was taken up. Ld.Counsel has also relied on the Circular No.21 of CBDT dt.27.05.2016. The gist of the argument of the Ld.Standing Counsel for the revenue is the assessee being owner of the lands, instead of utilizing the funds for the purpose of furthering the objects, it had remitted the sale proceeds to Government account which is against the objects of the assessee trust and the assessee acted as an agent and the agent is not entitled for registration. Further the assessee is the owner of the lands since, the lands were alienated to the assessee, hence, the funds ought to have been utilized for the purpose of objects, instead of remitting to Government account. We have carefully examined the arguments of both the parties. VUDA is constituted u/s 3 of the Urban Areas (Development) Act, 1975 and its objects are to promote, secure and development of areas in the jurisdiction according its master plan. The objects of the Authority are defined in section 5 which reads as under:

Section 5

5. Object and powers of the Authority :— The object of the Authority shall be to promote and secure the development of all or any of the areas comprised in the development area concerned according to plan and for that purpose, the Authority shall have the power to acquire, by way of purchase or otherwise, hold, manage, plan, develop and mortgage or otherwise dispose of and aid other property, to carry out by or on its behalf building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewerage and control of pollution, other services and amenities and generally to do anything necessary or expedient for purposes incidental thereof. (2) The Authority may, for the purpose of efficient performance of its functions, constitute as many committees as it thinks fit, in such manner as may be prescribed, and provide by regulations made in this behalf for rules of procedure at the meeting of the Committees and allowances to members thereto.

As per the objects, the assessee has power to acquire the land by purchase or otherwise to carry out its objects.

5.1. Section 19 of the APUDA Act provides the procedure for disposal of the lands and section 19 reads as under:

Section 19

(1) Subject to any directions given by the Government under this Act, the authority or, as the case may be, the local authority concerned may dispose of

(a) any land acquired by the Government and transferred to it, without undertaking or carrying out any development thereon ; or

(b) any such land after taking or carrying out such development as it thinks fit; to such persons in such manner and subject to such terms and conditions as it considers expedient for securing the development of the area concerned according to plan.

(2) The powers of the Authority, or as the case may be, of the local authority concerned with respect to the disposal of land under sub-section (1) shall be so exercised as to secure so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to

purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.

According to which, subject to the directions given by the Government under this Act, the assessee may dispose of any land acquired by Government and transfer to it without undertaking and carrying out any development thereon. Any such land after taking or carrying out such development as it thinks fit to such persons in such manner and subject to such terms and conditions as it considers expedient for securing the development of the area concerned according to plan. 5.2. Section 20 provides for placement of Government vacant lands at the disposal of Authority on the terms and conditions agreed between the Government and the Authority, in the instant case, VUDA is the Authority. Section 20A provides for sale of Government land by public auction and their administration. As per section 20A, the Government is permitted to sell their vacant lands by public auction on such terms and conditions as may be prescribed. Section 22 of the Act provides for procedure for managing the funds of the assessee.

5.3. Section 34 gives authority to Government to give directions from time to time for efficient administration of the Act.

5.4. In the instant case, the Ld.CCIT viewed that the assessee has lost sight of the objects from the assessment year 2008 onwards and carrying on commercial activity. In this regard, the Ld.Counsel has elaborately discussed the activities carried out by the assessee for furtherance of the objects and argued that the assessee is continuously engaged in the activities for development of the area in its jurisdiction and carried on various activities which are discussed in detail in para No.3 of this order, such as construction of houses for low income groups, widening of roads, development of various areas as per the master plan, sports complex, maintenance of schools, parks, bridges etc. and given a note on the projects which were undertaken and the projects in progress vide note dated 04.10.2019 and argued that the assessee is continuously taking all possible steps for overall development of the areas entrusted to it for orderly growth of the area as per the objects. Thus submitted that the observation of the Ld.CCIT is misplaced and without any evidence or without any foundation. During the appeal hearing, the Ld.Standing Counsel did not controvert the developmental activities undertaken by the assessee, therefore, we hold that the observation of the Ld.CCIT that the assessee has lost sight of its objects is not based on proper appreciation of facts, hence, we are unable to accept the same.

6. The next issue for rejection of the registration is selling of vacant lands to the highest bidders in auction and entering into joint ventures for construction of buildings. As provided in section 19 of APUDA Act the assessee is permitted to dispose off the lands after development or without carrying out any development in such manner as per the terms and conditions mentioned therein.

6.1. Sub sec.3 of sec.19 allows the assessee to dispose the lands by sale. Therefore, the assessee is permitted to sell the lands in public auction which is one of the most popular and transparent methods approved by courts also. The Hon'ble Supreme Court in the case of Spectrum also approved the method of selling the properties to highest bidders. It is explained that the assessee is selling the lands earmarked for commercial ventures and high income groups to the highest bidders in public auction by giving wide publicity, but not the lands earmarked for civic amenities or for weaker sections. The Department did not explain how the sale of lands earmarked for high income groups and for commercial ventures in public auction violate the objects of the assessee. As long as the sale proceeds are utilized for advancement of the objects without diversion, it does not violate the objects of the assessee. The department did not place any material to show that the funds of the assessee other than the sale proceeds of land in GO No.1401 are diverted for other purposes. Therefore, we, are of the opinion that the same is not against the objects of the Society and do not violate the objects mentioned in APUDA Act.

7. Apart from the above, the Ld.CCIT observed that the assessee had entered into joint venture for construction of commercial buildings which is also treated to be not within the purview of objects of the society. Overall development of the area is the order of the day and for overall development of any city or town, commercial complexes, malls etc., have become the signs of development in the cities. Visakhapatnam is tier II city and private operators do not come forward for building such infrastructure facilities. Hence, it is necessary for VUDA to come forward for developing the malls and commercial complexes for the benefit of the public. Therefore, we are of the view that entering into joint venture for construction of buildings cannot be held to be against the object of the assessee society. The Ld.CCIT has not brought on record how the construction of commercial buildings are against the objects of VUDA. Therefore, we hold that construction of commercial complexes, Malls etc., and entering into joint ventures for construction of the houses does not violate the objects of APUDA Act.

8. The next contention of the Ld.CCIT as well as the Ld.Standing Counsel of the revenue is that the assessee is the owner of the lands alienated to VUDA, thus the assessee becomes the absolute owner of the lands, hence the assessee ought to have utilized the funds instead of remitting the funds back to Government. For this purpose, the Standing Counsel has referred page No.181 to 187 of the paper book and various pages of paper book No.3. More particularly, the agreement with Global Entropolis Asia Pvt. Ltd. We observe from the paper book that the development agreement entered with Global Entropolis Asia Pvt Ltd enclosed in page No.391 to 426 was cancelled vide cancellation deed dated 01.04.2008 which is furnished in page Number 427 to 432 of paper book and a fresh agreement was entered with Global Entropolis Pvt. Ltd. which is also enclosed in page No.433 to 445. The Ld.DR did not demonstrate whether this land in survey number 1/P Yendada Village is part of

G.O.Ms.No.1401 dated 02.11.2007 or not. On cursory look of page No.232 of paper book No.2, wherein G.O.No.1401 dated 02.11.2007 is furnished, we find that land in Sy.No.1 of Yendada village is not part of the lands sold in public auction for resource mobilization of the State. The Department also did not place any material to show that the sale proceeds of the cited land were remitted to the Government. Therefore the sale of land to Global Entropolis (P) Ltd., has no relevance to the cancellation of Registration u/s 12AA of the Act. Similarly, the Ld. Standing Counsel referred page No.181 to 187 of the paper book and argued that the assessee has paid the consideration for acquiring the lands, hence the assessee ought not to have remitted the sale proceeds to Government account. Perusal of page No.181 to 186, we find that the said lands do not find figure in G.O.No.1401 and were related to the orders dated 23.11.1992 and 26.09.1995 which are not relevant for cancellation of Registration and there is no evidence to show that the sale proceeds of subject lands were remitted to Government. Therefore, the same cannot be taken into consideration for deciding the validity of cancellation of Registration u/s 12AA(3) of the Act. The Ld.Standing Counsel also taken the help of page No.347 of the paper book and argued that the assessee was the owner of the land and Page No.347 of the paper book refers to the sale deed dated 09.03.2004 with Gandeva Properties Pvt. Ltd., which is also not related to the period of cancellation of the registration u/s 12AA(3) of the Act. Thus, the sale proceeds of lands mentioned by the Ld.Standing Counsel which were stated to be belonged to the assessee were neither proved to be remitted to the government nor the parts of the lands in GO No.1401, thus there is no impact on Registration u/s 12AA of the Act. Therefore, we are unable to accept the contention of the Ld.Standing Counsel that the assessee has sold the lands belonging to it and remitted the sale proceeds to Government account.

9. The next contention of the Department is that the assessee acted as an agent for sale of lands and the agent is disentitled for grant of registration u/s 12AA(3) of the Act. The assessee is the government institution constituted u/s 3 of APUDA Act, 1975 and as per section 20A of the Act, the Government is allowed to sell the vacant lands by public auction or otherwise on such terms and conditions as may be prescribed. Even the Ld.CCIT made observation in the order that the Government is permitted to sell their vacant lands by public auction. In general District Collector auctions the lands by public auction. In the instant case, the assessee sold the lands which does not belong to the assessee, but belonged to the Government for which the Govt. of Andhra Pradesh has issued the GO in G.O.Ms.No.1401. Government has given the lands to VUDA for which the VUDA did not make any payment and sold the lands for mobilization of resources to Government account as per para No.6 of G.O.No.1401. There is no evidence brought on record by the department in the order that VUDA has sold the lands allotted to it for development purpose or for any other purpose. The Government has given the lands with a clear direction to auction and remit the proceeds to Government account as provided in para No.7 of G.O.No.1401 and the VUDA is

permitted to collect service charges for the services rendered. Whether VUDA can act as an agent for sale of Government lands or not is not an issue in this case and the Ld.CCIT has not dwelled up on it. VUDA has been directed to sell the Government lands which will be utilized for the public purposes by the state, but not for any individual benefit or for particular community or class of the society. The Ld.Counsel argued that there is no prohibition placed against the assessee to act as an agent for selling the lands, being, it is one of the organizations of the Government and getting all the support from the Government. VUDA has also collected the service charges and utilized the same for its objects. The Ld. Standing Counsel of the Revenue also did not place any evidence or material to show that the VUDA is barred from acting as an agent or in assisting the sale of Government's lands. When Government is giving the loans, funds, grants, loans and advances and giving all the support for advancement of its objects, we do not find any reason to hold that VUDA is prohibited from helping the Government in selling the Government's vacant lands as per the specific directions of the Government and there is no case law brought on record by either parties to support or to prohibit the assessee to sell the lands of the Government. Therefore, we are of the considered opinion that assisting the Government, in sale of lands, after collecting the expenses does not make the assessee disentitle for registration u/s 12AA(3) of the Act.

10. The next contention of the department is that the assessee has carried on commercial activity, hence, the assessee is hit by the amendment to section 2(15) of the Act. In the instant case, the assessee is a Government institution and the department did not place any material to show that the assessee is engaged in the commercial activity. We have already held that the activities such as sale of lands by public auction, entering into joint development agreement for construction of commercial complexes, houses and malls are held to be for public utility services for furtherance of objects, hence, the activities of the assessee are within the purview of the Act and objectives. The assessee has neither established to have made the profit out of the above activities nor proved to be used for other purposes other than its objects. There was no material placed by the department to establish that the assessee has made trade, commerce or commercial activity and the funds are distributed among the shareholders of the individual persons or for the benefit of any individual or the persons or the association or the profits being remitted to Government account. In the instant case, whatever surplus generated was used for the activities of the assessee society, therefore, the same cannot be held to be the commercial activities. Even otherwise, through Circular No.21 of CBDT dated 27.11.2016, it has directed the field authorities not to cancel the registration of charitable institution already granted u/s 12AA of the Act just because the provision to section 2(15) comes into play. The process for cancellation of registration to be initiated strictly in accordance with the provisions of section 12AA(3) and 12AA(4) of the Act after carefully examining the provisions. The assessee also relied on the following decisions which

support the assessee that sale of lands and collection of gross receipts exceeding Rs.25 lakhs does not automatically cancel the registration.

1. Rajasthan Housing Board Vs. Commissioner of Income Tax (2012) 19 ITR (Trib) 524 (Jaipur) held that "cannot cancel registration given to assessee u/s 12AA. If gross receipts exceed Rs.10 lakhs or Rs.25 lakhs, then AO can examine and the allowability of exemption u/s 11."

2. H.P.Government Energy Development Agency Vs. Commissioner of Income Tax (2010) 46 DTR 126 (2010) 7 taxman.com 69, held that "cancellation of Registration on 2 grounds : 1. Activities are not genuine 2. Activities are not being carried out with the objects of the trust. Objects of trust or institution fall within the ambit of Section 2(15) is not a condition for cancellation of registration."

3. Jodhpur Development Authority Vs. CIT (2012) 31 CCH 017 Jodh Trib, 27 taxmann.com 183 held that "if profit arises from sale of property it does not lose the character of charitable purpose. Can sell property at market rate through auction after development on that property."

4. CIT Vs. Sarvodaya Ilakkiya Panni (2012) 81 CCH 171 Chen HC (2012) 20 taxmann.com 546, held that "cancel of trust registration was set aside as it could not be traced out to Sec.12AA(3) and did not carry out activities contrary to its object."

10.1. From the above we find that there is no material placed before us to establish that the assessee is not carrying on the activities in accordance with the objects or the activities of the assessee are not genuine. The Ld.CCIT has cancelled the registration on presumptions and assumptions without having proper material. Therefore, we cancel the order of the Ld.CCIT passed u/s 12AA(3) of the Act and restore the registration granted to the assessee. Accordingly, appeal of the assessee is allowed.

11. In the result, appeal of the assessee is allowed."

7. In view of the above decision of the Hon'ble ITAT, we find that the present appeal before us, the objects of the assessee are one and the same and there is no material before us to say that the assessee is carrying on its activities contrary to the objects and the activities are not genuine. The Department has not placed any material before us that the

objects and activities are not genuine. Therefore, we are of the opinion that the Ld. CIT(Exemptions) is not correct in rejecting the registration applied by the assessee u/s. 12AA of the Act. Thus, we are of the considered opinion that the assessee is entitled for registration u/s. 12AA of the Act. Accordingly, we grant the registration to the assessee u/s. 12AA of the Act.

We order accordingly.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 27th January, 2021 in Visakhapatnam.

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापट्टणम /Visakhapatnam,

दिनांक/Dated: 27th January, 2021

EDN, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/**Copy to:** 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent,
3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF