

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Sh. Bhavnesh Saini, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 4113/Del/2017 : Asstt. Year : 2012-13**

Income Tax Officer (E), Saharanpur, U.P.	Vs	Saharanpur Development Authority, Yadavpuri, Near Ganna Bhawan, Saharanpur, U.P.
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAALS0359L</b>		

**Assessee by : Sh. Sanjay Kumar, CA**

**Revenue by : Sh. Dilip Kothari, CIT DR**

**Date of Hearing: 25.02.2021**

**Date of Pronouncement: 24.03.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the revenue against the order of the Id. CIT(A), Muzaffarnagar dated 20.03.2017.

2. Following grounds have been raised by the revenue:

*"1. That the Learned CIT(A) has erred in law and on facts in directing to allow the benefit of section 11/12AA of I.T Act, and treating the activity as charitable relying on the decision of High Court in the case of Lucknow Development Authority without considering the fact that SLP in one of the case of development authority i.e. Khurja Development Authority has been admitted by the Hon'ble Supreme Court on the issue.*

*2. That the Learned CIT(A) has erred in law and on facts in directing the allow the benefit of section 11/12AA of the Act, without considering the fact that the Hon'ble Jammu & Kashmir, High Court has upheld the order of the A.O in the case of Jammu Development Authority, Jammu and the SLP*

*filed by the Jammu Development Authority, has not been admitted by the Hon'ble Supreme Court.*

*3. That the Learned CIT(A) has erred in law and on facts in treating the infrastructure fund amount of Rs.3,73,81,705/- ( net) receipt for specific purpose, whereas it is revenue receipt subject to Income & expenditure a/c and subject to tax".*

3. The issue of treating the activity of the various city development authorities as charitable or not has been adjudicated by various Courts and Tribunals which consistently held that the activity of acquiring land, development of plots and construction of residential as well as commercial places is an activity considered as charitable in nature.

4. To quote a few judgments,

- *CIT Vs Hridwar Development Authority [ITA No. 3056 &3013/Del/2013 dated 25.07.2014*
- *CIT Vs Muzaffarnagar Development Authority*
- *CIT Vs Khurja Development Authority [ITA No. 1851/Del/2009 dated 14.07.2009]*
- *Jalandhar Development Authority 124 TTJ 598*
- *The Improvement Trust, Moga Vs CIT, Ludhiana [ITA 365/ASR/2013 dated 16-09-2015]*
- *CIT Vs Sangrur Development Authority*
- *CIT Vs Ghaziabad Development Authority in [ITA No. 2399/DEL/2014 dated 16.06.2019]*
- *CIT Vs Jhansi Development Authority*
- *CIT Vs Lucknow Development Authority [(2013) 38 taxmann.com 246 (All.)*
- *Agra Development Authority Vs CIT [(2013) 31 taxmann.com 40 (ITAT Agra Bench)*
- *Mathura Development Authority Vs CIT [(ITA No. 13/Agra/2013 dated 19.07.2013*
- *Jaipur Development Authority Vs CIT [(2014) 52 taxmann.com 25 (ITAT Jaipur Bench)]*
- *Kapurthala Development Trust Vs CIT [(ITA No. 732/Asr./2013 dated 11.06.2015*
- *M/s Patiala Urban Planning & Development Authority Vs CIT [ITA No. 775/Chd./2015 dated 04.12.2015]*

5. With regard to the "Infrastructure Development Fund" in the instant case, the AO held that the amount should have been first credited in the income and expenditure account and the amount spends out of the same should have been debited to this account. It is an undisputable fact that the fund is not under the exclusive control of the assessee and the expenditure to be incurred out of the infrastructure funds are approved on the recommendation of high powered committee.

6. It is noted from the material on record that in the case, similar issue has been decided in the case of the assessee for the assessment years 2004-05 to 2007-08 by the Co-ordinate Bench of ITAT "G" Bench, Delhi where in it was held that,

*"the appellant has received infra structure funds under the orders of Govt. of U.P. and it was required to use such funds as per the direction of the High Powered Committee and has no control over the said funds. Therefore, the interest income from such funds is not the income of the appellant."*

7. This observation has been given consistently by the ITAT in favour of the assessee for the Assessment years 2004-05 to 2007-08. Further, the Hon'ble Allahabad High Court in the case of Lucknow Development Authority has held that the money transferred to the Infra structure fund account is to be utilized for the purpose of the projects as specified by the Committee having constituted by the State Government and cannot be treated as belonging to the authority or receipt is taxable nature in its hand.

8. In the absence of any change in the factual matrix brought to our notice by either of the parties, we hereby decline to interfere with the order of the Id. CIT (A).

9. In the result, the appeal of the revenue is dismissed.  
Order Pronounced in the Open Court on 24/03/2021.

Sd/-

**(Bhavnes Saini)**  
**Judicial Member**

**Dated: 24/03/2021**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**