

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.4616/Del/2017
(ASSESSMENT YEAR 2007-08)**

**ITA No.4617/Del/2017
(ASSESSMENT YEAR 2008-09)**

Dy. CIT (Exemption) Circle-Ghaziabad.	Vs.	M/s Haridwar Development Authority, Mayapur, Haridwar. PAN -AAALH 0055Q
(Appellant)		(Respondent)

Appellant By	Ms. Kirti Sankratyaan, Sr. DR
Respondent by	Sh. Mahesh B. Chibber, Adv.
Date of Hearing	05.04.2021
Date of Pronouncement	30.06.2021

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

The present appeals are filed by the Department against orders dated 26/04/2017 passed by the Ld. Commissioner of Income Tax (Appeals), Dehradun {CIT (A)} for Assessment Years (AY) 2007-08 and 2008-09. Since common issue is involved in both these

appeals, they are being decided together for the sake of convenience.

2.0 The brief facts of the case are that the assessee is a Development Authority set up by Uttar Pradesh Government with the object of development of Hardwar, Pauri, Tehri and part of Dehradun. All developmental schemes as well as beautification of these Districts are to be done by the assessee. The original assessment for AY 2007-08 was framed u/s 143(3) after making addition of Rs. 4,74,82,663/- being amount transferred to Infrastructure Development Fund as revenue receipt in the Income and Expenditure a/c. The assessing officer also disputed the charitable nature of activities carried out by assessee in terms of section 2(15) of the Income Tax Act, 1961 (hereinafter called 'the Act'). At the time of original assessment, the assessee was registered u/s 12A of the Act and was claiming benefit of exemption u/s 11 of the Act. The said assessment order was subject matter of challenge before the Ld. CIT (A) and, thereafter, before this Tribunal (ITAT) and the assessment was finally remitted back to the file of the

assessing officer for fresh adjudication by ITAT vide order dated 27/07/2012 in ITA No. 182 and 183/Del/2012.

2.1 Pursuant to the order of this Tribunal, the assessing officer completed assessment u/s 143(3)/254 of the Act vide order dated 31/12/2013 thereby rejecting the benefit of exemption u/s 11 on the ground that registration u/s 12A of the Act granted to the assessee stood cancelled at the time of remand proceedings. Further, the addition of Rs. 4,74,82,663/- being amount transferred to Infrastructure Development Fund was reiterated.

2.2 The assessee, aggrieved by the order u/s 143(3)/254 preferred an appeal before the Ld. CIT (A) and the same was partly allowed wherein the claim of exemption u/s 11 was allowed and the action of assessing officer in treating Rs. 4,74,82,663/- as income was upheld. The assessing officer is in appeal before us against the order of the Ld. CIT (A).

2.3 The Revenue has raised identical grounds in both the years under appeal and the same are reproduced as under:

Grounds of appeal in ITA No.4616/Del/2017:

- “1. The Ld. CIT (A) has erred in law the facts in allowing the amount transferred directly to the balance sheet Rs.4,74,82,663/- on a/c of Infrastructure Development Reserve Fund.
2. The Ld. CIT (A) has erred in allowed the exemption u/s 11 and 12AA of I.T. Act, 1961 to the assessee.
3. The order of Ld. CIT (A) be cancelled and the order of the AO be restored.”

Grounds of appeal in ITA No.4617/Del/2017:

- “1. The Ld. CIT (A) has erred in law the facts in allowing the amount transferred directly to the balance sheet Rs.4,15,92,437/- on a/c of Infrastructure Development Reserve Fund.
2. The Ld. CIT (A) has erred in allowed the exemption u/s 11 and 12AA of I.T. Act, 1961.
3. The order of Ld. CIT (A) be cancelled and the order of the AO be restored.”

3.0 In the above background, we note that Ground No. 1 of the appeal is relating to issue of addition of Rs. 4,74,82,663/- being amount transferred to Infrastructure Development Fund. However, we find that the Ld. CIT (A) has affirmed the order of assessing officer on this count and as such the assessing officer could not be aggrieved by such order. Accordingly, this ground raised by the revenue is misconceived and dismissed as *infructuous*.

3.1 Coming to Ground No. 2, which is regarding issue of claim of exemption u/s 11 read with section 12AA of the Income tax Act, 1961, the assessing officer has challenged the order of Ld. CIT (A) in allowing benefit of application of income in terms of section 11 of the Income Tax Act, 1961.

3.2. At the outset, the Ld. AR submitted that the issue in hand is covered by the decision of the ITAT passed in assessee's own case restoring the registration u/s 12AA of the Act. It was highlighted that ITAT, vide order dated 25/07/2014, held that objects of the assessee authority are charitable in terms of section 2(15) of the Act and directed the Ld. CIT (Exemption) to grant

registration u/s 12A of the Income Tax Act, 1961 with effect from 01/04/2002. The order of the ITAT has subsequently been upheld by the Hon'ble Allahabad High Court vide order dated 18/07/2017 in Income Tax Appeal No. 90 of 2015. The copies of the said orders were placed on record. It was, accordingly, submitted that the Ld. CIT (A) has rightly allowed the claim of exemption u/s 11 of the Act.

3.3 The Ld. DR, on the other hand, supported the assessment order. However, she did not dispute the legal position arising from the order of ITAT and the Hon'ble High Court in assessee's own case.

4.0 We have considered the rival submissions and gone through the facts of the case. The surviving issue before us is regarding the charitable status of the respondent-assessee u/s 12A of the Act and validity of claim of exemption u/s 11 of the Income Tax Act, 1961. We find that the denial of claim of exemption by the assessing officer in the remand proceedings was on the ground that registration certificate u/s 12AA issued to the assessee stood cancelled by the Ld. CIT (Exemption). The Ld. CIT (A) considered the entire issue and decided in favour of the assessee after taking note

of the decision of the Coordinate Bench of this Tribunal vide order dated 25/07/2014 in ITA Nos. 3056/Del/12, 3013/Del/13 and 6058/Del/12 relating to AY 2006-07.

3.5 On careful perusal of overall facts of the case and the order of the Coordinate Bench of this Tribunal vide order dated 25/07/2014 as aforesaid, it is noted that the issue of registration u/s 12AA of the Act has already been decided by the Coordinate Bench in favour of the assessee wherein the Ld. CIT (Exemption) has been directed to grant registration u/s 12AA w.e.f. 01/04/2002. The direction of the ITAT is reproduced hereunder:

7.15. In view of above discussion we hold that assessee-Authority has been created with the object of general public utility which is a charitable object within the meaning of section 2(15) and the proviso to section 2(15) is not applicable because assessee-Authority is not carrying out activity with any profit motive but the predominant object is welfare of people at large.

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11. Respectfully following the above decision of Hon'ble Allahabad High Court we condone the delay and direct the ld. Commissioner to grant registration w.e.f. 1-4-2002.

3.6 In accordance with the direction of this Tribunal, the Ld. CIT (Exemption) granted certificate of registration u/s 12AA of the Act vide order dated 20/09/2016.

3.7 Eventually, the appeal of the revenue against the above order of the ITAT was dismissed by the Hon'ble Allahabad High Court vide order dated 18/07/2017 in Income Tax Appeal No. 90 of 2015.

3.8 In the present case, the assessing officer denied the benefit of exemption only on the ground of cancellation of registration u/s 12AA of the Act without assigning any further reason. However, in the light of the order of the Coordinate bench of this Tribunal and it being upheld by the Hon'ble High Court, the very basis of denial of benefit u/s 11 of the Act, as adopted by the assessing officer, stands vitiated and non-existent. Moreover, while deciding appeals for AY 2013-14 and 2014-15 in ITA Nos. ITA No. 6796/Del/17 and ITA No.5320/Del/17 on the issue of correctness of claim of exemption u/s 11 vis-à-vis charitable nature of activities in terms of section 2(15) of the Act, we have held as under:

“3.5 On close perusal of order Coordinate Bench restoring the registration u/s 12AA, we find that ITAT after examining entire gamut of facts and objects of the assessee authority gave a categorical finding that assessee authority is not carrying out any activity with any profit motive but the predominant object is welfare of people at large. It was further held, assessee authority has been created with the object of general public utility which is a charitable object within the meaning of section

2(15) and the proviso to section 2(15) is not applicable. The order of ITAT has since been upheld by Hon'ble Allahabad High Court vide order dated 18/07/2017 in Income Tax Appeal No. 90 of 2015.

3.6 We would like to stress upon the fact that assessing officer has not brought on record any new or distinguishing feature to counter the facts which were there before ITAT at the time of deciding the appeal against cancellation of registration u/s 12AA of the Act. Undisputedly, it is not a case where there is any change in object of the assessee authority or any allegation that assessee was engaged in any activity beyond its objects and as such there is compelling reason for us to deviate from finding given by Coordinate Bench. We also take note that CIT(A), while deciding this issue in favour of assessee, has placed reliance on various decisions rendered by Coordinate benches of ITAT and Hon'ble High Courts in other cases of statutory authorities formed with similar objects which in our view supports the case of the assessee authority.

3.7 We also draw strength from ratio laid down in following decisions:

- i. ITO (E) v. Saharanpur Development Authority (ITA No. 4113/D/17) (24/03/2021) (Delhi-Trib)
- ii. Jhansi Development Authority v. DCIT [2021] 123 taxmann.com 247 (Agra - Trib.)
- iii. CIT v. Ghaziabad Development Authority (ITA No. 2400/D/14) (Delhi-Trib)
- iv. Gujarat Industrial Development Corporation v. ACIT (ITA No. 278/Ahd/13) (Ahmedabad-Trib.)
- v. Bangalore Development Authority v. Addl. CIT [2019] 104 taxmann.com 266 (Bangalore-Trib.)
- vi. Gujarat Housing Board (GHB) v. DCIT(E) (ITA No. 3297/Ahd/2016) (Ahmedabad-Trib.)
- vii. Moradabad Development Authority v. ACIT (Exemption) (ITA No. 4631 & 32/D/17) (Delhi-Trib)
- viii. Firozabad Shikohabad Development Authority v. CIT [2018] 169 ITD 202 (Agra - Trib.)

- ix. *Ahmedabad Urban Development Authority v. ACIT [2017] 396 ITR 323 (Guj High Court)*
- x. *CIT v. Jodhpur Development Authority [2016] 287 CTR 473 (Raj HC)*
- xi. *CIT v. Lucknow Development Authority [2014] 265 CTR 433 (All HC)*
- xii. *New Okhla Industrial Development Authority v. CIT(E) (ITA No. 172/Del/2016) (Delhi-Trib.)*

3.8 *In view of above and respectfully following the decision of Hon'ble Allahabad High Court and Coordinate bench in assessee's own case, we are of the considered view the assessee authority is carrying out charitable activities with object of general public utility in accordance with section 2(15) of the Act and same cannot be termed as commercial or of business nature for the purpose of proviso to section 2(15) of the Act. Accordingly, we find no reason to interfere with the order of Ld. CIT (A) allowing benefit of application and exemption u/s 11 of the Act. As a result, the grounds raised by the revenue are dismissed."*

3.9 As we have already decided this issue in favour of assessee in AY 2013-14 and 2014-15 and in absence of any change of facts or circumstances, we uphold the order of the Ld. CIT (A) allowing the claim of exemption u/s 11 of the Act.

4.0 In the final result, both the appeals of the Department stand dismissed.

Order pronounced on 30th June, 2021.

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 30/06/2021

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Copy forwarded to:

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

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI