

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B': NEW DELHI)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 1070/Del/2018
(Assessment Year: 2013-14)**

ITO, Exemption Ward, Ghaziabad.	Vs.	Saharanpur Authority, Saharanpur.	Development
PAN No: AAALS0359L			
APPELLANT		RESPONDENT	

Revenue By : Ms. Nidhi Srivastava, CIT (DR)
Assessee By : Shri Sanjay Kumar, CA

Per Anadee Nath Misshra, AM

(A) This appeal by Revenue is filed against the impugned order of Learned Commissioner of Income Tax (Appeals), Muzaffarnagar, ["Ld. CIT(A)", for short], dated 14.11.2017 for Assessment Year 2013-14. Grounds taken in this appeal of Revenue are as under:

- "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 the case of 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 to allow the*

benefit of section 11/12AA of the I.T Act, without considering the fact that against the Allahabad High Court decision in the case of Khurja Development Authority, the SLP has been admitted.

3. That the Learned CIT(A) has erred in law and on facts in directing the A.O to allow the benefit of section 11/12AA of the I.T Act, without considering the fact that the receipts of authority are hit by the proviso to section 2(15) of the I.T. Act, and entire receipts are thus business receipts and surplus of Rs 53,49,620/- is taxable.

4. 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 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.

5. That the Learned CIT(A) has erred in law and on facts treating the infrastructure fund amount of Rs. 10,65,43,944/- (net) receipt for specific purpose relying on the submission of assessee that " the fund is required to be utilized as per direction of High Powered committee, whereas it is quite normal that any fund is to be utilized by the direction of any person/ management / committee, which does not tantamount that it is a receipt for specific purpose which is to be shown directly in the Balance sheet instead of showing in the Income & expenditure a/c as revenue receipt.

6. That the order of the Id. CIT(A) be cancelled and the order of the A.O be restored.

7. Appellant craves leave to modify/ amend or add any one or more grounds of appeal."

(B) The Assessee filed return of income on 30.09.2013 showing nil income. The Assessing Officer ("AO", for short) rejected the assessee's claim of being a charitable institution within the meaning of Section 2(15) of Income Tax Act, 1961 ("I.T. Act", for short); and made additions of Rs. 53,49,620/-(on account of surplus over expenditure) and Rs. 10,65,43,944/- (on account of unspent balance under the head Infrastructure Development Fund). The Assessee filed an appeal before the Ld. CIT(A) vide impugned appellate order dated 14.11.2017. The Ld. CIT(A) decided these issues in favour of the assessee following earlier order of Ld. CIT(A) dated 20-03-2017 for Assessment Year

2012-13. The relevant portion of the impugned order dated 14.11.2017 of Ld. CIT(A) is reproduced below:

"5. Grounds of appeal Nos. 1 to 9 are against the action of the AO in not treating the appellant as a charitable institution u/s 2(15) of the Act and are against the addition of Rs.53,49,620/- on account of surplus over expenditure and are against the addition of Rs. 10,65,43,944/- on account of unspent balance under the head infrastructure development fund.

6. The facts of the case as well as submission made by the appellant have been considered. The AO has held in the assessment order that the appellant is not a charitable entity within the meaning of section 2(15) of the Act and has brought to tax amount of Rs.53.49 lac on account of surplus over expenditure and Rs. 10.65 crore on account of infrastructure development fund on account of detailed reasoning given in the assessment order. The AR in his submission as reproduced above has explained that the facts of the case are similar to that of that of AY 2012-13 in the appellant's own case where its appeal has been allowed on similar facts of the case.

On perusal of the record it is noted that the appeal of the appellant for AY.2012-13 has been disposed off vide order in Appeal No.64/15-16/MZR dated 20-03-2017 wherein in similar facts, the appeal has been allowed for the detailed reasoning elucidated therein. As the facts are same, therefore, following the same reasoning the additions made by the AO are hereby deleted. Grounds of appeal Nos. 1 to 9 are allowed."

(B.1) The present appeal before us has been filed by Revenue against aforesaid impugned order dated 14.11.2017 of Ld. CIT(A). In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short), the Ld. Authorized Representative ("Ld. AR", for short) of the assessee made written submissions, relevant portion of which are reproduced as under:

*"2. Both the aforesaid two issues have been adjudicated by the Ld. CIT(A) vide order dated **14.11.2017** by following his earlier order dated **20.03.2017**, as had been passed for **assessment year 2012-13** in the case of assessee's own case involving similar facts and issues. The relevant finding appears in **para 6** at **Pg. 12** of the CIT(A)'s order which reads as under:*

"6. The facts of the case as well as submission made by the appellant have been considered. The AO has held in the assessment order that the appellant is not a charitable entity within the meaning of section 2(15) of the Act and has brought to tax amount of Rs.53.49 lac on account of surplus over expenditure and Rs. 10.65 crore on account of infrastructure development fund on account of detailed reasoning given in the assessment order. The AR in his submission as reproduced above has explained that the facts of the case are similar to that of that of AY 2012-13 in the appellant's own case where its appeal has been allowed on similar facts of the case.

On perusal of the record it is noted that the appeal of the appellant for AY. 2012- 13 has been disposed off vide order in Appeal No.64/15-16/MZR dated 20-03-2017 **wherein in similar facts, the appeal has been allowed for the detailed reasoning elucidated therein. As the facts are same, therefore, following the same reasoning the additions made by the AO are hereby deleted. Grounds of appeal Nos. 1 to 9 are allowed."**

3. It is worthy of mention that against the order of Ld. CIT(A) for **A.Y. 2012-13**, an appeal being **ITA No. 4113/Del/2017** was filed by the Revenue before the Hon'ble 'G' Bench of ITAT, which has since been adjudicated vide order dated **24.03.2021** by upholding the order of Ld. CIT(A) and dismissing revenue's appeal. Copy of said order is enclosed herewith.

3.1 By virtue of said order the **issue of exemption U/ s 11/ 12AA** has been decided in favour of the assessee after holding that activity of City Development Authority of acquiring land, development of plots and construction of residential as well as commercial places is of charitable in nature. Kind attention is invited to **para 3 & 4 at page 2** of the said order dated 24.03.2021.

3.2 Further, the second **issue of Infrastructure Development Fund** has been decided in favour of the assessee after holding that in the instant case it is an undisputable fact that the fund is not under the exclusive control of assessee and the expenditure to be incurred out of the infrastructure fund are approved on the regimentation of high powered committee and the similar issue has been decided consistently in favour of assessee for the assessment years 2004-05 to 2007 08. Further 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. Thus, declined to interfere with the order of Ld. CIT(A). Kind attention is invited to **para 5, 6, 7 & 8 at page 3-4** of the said order dated 24.03.2021.

4. *In view of aforesaid, as there is no change in the factual matrix during the year, the order of the Id. CIT(A) deserves to be upheld and appeal filed by the Revenue deserves to be dismissed.*”

(B.1.1) The Ld. AR of the assessee also filed copy of order dated 24.03.2021 passed by Coordinate Bench of ITAT, Delhi, in assessee’s own case for Assessment Year 2012-13 in ITA No.- 4113/Del/2017.

(C) At the time of hearing before us, the Ld. AR of the assessee submitted that the disputed issues in the present appeal are squarely covered in favour of the assessee by the aforesaid order dated 24.03.2021 of Coordinate Bench of ITAT, Delhi for Assessment Year 2012-13 in assessee’s own case. The learned Commissioner of Income Tax (Departmental Representative) [“Ld. CIT(DR)”, for short] of Revenue agreed with the contention of the Ld. AR for the assessee that the issues in dispute are squarely covered in favour of the assessee by the aforesaid order dated 24.03.2021 of Coordinate Bench of ITAT, Delhi in assessee’s own case. We have perused the aforesaid order dated 24.03.2021 of Coordinate Bench of ITAT, Delhi, for Assessment Year 2012-13 in assessee’s own case, relevant portion of which is reproduced as under:

“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 infrastructure 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.”

(C.1) As mentioned earlier in this order, both sides are in agreement that the issue in dispute in the present appeal before us are squarely covered in favour of the assessee

by aforesaid order dated 24.03.2021 of Coordinate Bench of ITAT, Delhi. In view of the foregoing; and respectfully following the aforesaid order dated 24.03.2021 of Coordinate Bench of ITAT, Delhi for Assessment Year 2012-13 in assessee's own case; we decline to interfere with the aforesaid impugned appellate order dated 14.11.2017 of the Ld. CIT(A). Accordingly, this appeal filed by Revenue is dismissed.

Order pronounced in the Open Court on 12/08/2021 .

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 12/08/2021

Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

ate of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	