IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW

BEFORE SHRI A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.574/Lkw/2019
Assessment Year:2016-17

Dy.C.I.T. (Exemption), Lucknow.	Vs.	M/s U.P. Forest Corporation, 21/475, Indira Nagar, Lucknow. PAN:AAATU3944K
(Appellant)		(Respondent)

Appellant by	Smt. Namita Pandey, CIT, D.R.
Respondent by	Shri D. D. Chopra, D.R.
Date of hearing	08/09/2021
Date of pronouncement	22/09/2021

O R D E R

PER T. S. KAPOOR, A.M.

This is an appeal filed by the Revenue against the order of learned CIT(A) dated 16/07/2019 pertaining to assessment year 2016-2017. In this appeal the Revenue has raised the following grounds:

"1. Ld. Commissioner of Income Tax (A) has erred in law and facts by allowing the appeal of the assessee ignoring the fact that the activities of the assessee do not fall within "Preservation of environment (including watersheds, forest and wildlife)" as inserted in Section 2(15) of the Act w.e.f. 01.04.2009;

2. Ld. Commissioner of Income Tax (A) has erred in law and facts by allowing the appeal of the assessee ignoring the fact that the activities of the assessee are commercial and in the nature of trade, commerce or business which qualifies

under the advancement of an act of general public utility, therefore the object of the assessee does not fall within 'charitable purpose' as defined in section 2(15) of the Act;

3. Ld. Commissioner of Income Tax (A) has erred in law and facts by allowing the appeal of the assessee ignoring the fact that the Registration u/s 12A of the I.T. Act, 1961 to the assessee was granted for "Preservation, supervision and development of forest" and not for the exploitation of forest produce;

4. Ld. Commissioner of Income Tax (A) has erred in law and facts by deleting the addition/disallowance made by the AO on disallowance of capital expenditure amounting to Rs.5,16,73,527/- and disallowance of repayment of loans amounting to Rs.16,99,99,664/.

5. Ld. Commissioner of Income Tax (A) has erred in law and facts by allowing exemption u/s 11 of the I.T. Act, 1961 ignoring the fact that the assessee is involved in the activities of trade/commerce/business and is as such hit by the provisions of the first proviso to section 2(15) of the I.T. Act, 1961;

6. Ld. Commissioner of Income Tax (A) has erred in law and facts by holding that assessee had incurred expenses for the objects by which it was created, ignoring the facts that the assessee is involved in the activities of trade/ commerce /business and is as such hit by the provisions of the first proviso to section 2(15) of the I.T. Act, 1961;

7. The order of Ld. CIT(A) be cancelled and the order of the A.O. be restored."

2. Learned D. R., at the outset, submitted that Assessing Officer had rightly disallowed the exemption u/s 11 and had rightly made the addition and in this respect relied on the order of the Assessing Officer.

3. Learned counsel for the assessee, on the other hand, submitted that the issue has been settled vide various orders of the Tribunal in favour of

the assessee and in this respect our specific attention was invited to the copy of the Tribunal order dated 26/07/2019 at pages 1 to 28 wherein the Tribunal, relying on the earlier year's order, had decided the issue in favour of the assessee. Learned counsel for the assessee submitted that learned CIT(A) has also relied on the orders of the Tribunal and has rightly allowed relief to the assessee.

4. We have heard the rival parties and have gone through the material placed on record. We find that the issue raised by the Revenue are already covered in favour of the assessee by various decisions of the Tribunal. The Tribunal, in assessment year 2015-16 vide order dated 26/07/2019 relying on earlier orders of the Tribunal, has already dismissed the appeal of the Revenue and learned CIT(A) has rightly allowed the appeal of the assessee relying on the orders of the Tribunal. For the sake of completeness, the findings of the Tribunal in I.T.A. No.649/Lkw/2019 dated 26/07/2019 are reproduced below:

> *"6. We have heard the rival parties and have gone through the material placed on record. We find that vide its order dated 29/03/2019 in I.T.A. Nos.357 to 360/Lkw/2017 for assessment year 2009-10 to 11-12 & 13-14, I.T.A. No.282/Lkw/2017 for assessment year 2012-13 and I.T.A. No.556/Lkw/2018 for assessment year 2014-15, this Bench of the Tribunal, has dismissed the appeals of the Revenue under similar facts and circumstances. During those years the assessee had claimed exemption under the specific head 'preservation of environment' (including watersheds, forest and wildlife) as this specific head has been included in the definition of section 2(15) w.e.f. 01/04/2009. The activities of the assessee remained same and the activities being carried out by the assessee has already been held charitable in nature. Learned CIT(A), while allowing relief to the assessee, had held that if the assessee falls into a specific category then specific category will have precedent over the general category. The Tribunal, while dismissing the appeals of the*

Revenue vide its order dated 29/03/2019 in I.T.A. Nos.357 to 360/Lkw/2017 for assessment year 2009-10 to 11-12 & 13-14, I.T.A. No.282/Lkw/2017 for assessment year 2012-13 and I.T.A. No.556/Lkw/2018 for assessment year 2014-15, has held as under:

"4. We have heard the rival parties and have gone through the material placed on record. We find that vide order dated 13/12/2018 the Tribunal has dismissed the appeals of the Revenue for assessment year 2002-03 to 2008-09 on similar grounds though in those years the assessee had claimed exemption under the head 'objects of general public utility'. However, during the year under consideration the assessee had claimed exemption under the specific head 'preservation of environment' (including watersheds, forest and wildlife) as this specific head has been included in the definition of section 2(15) w.e.f. 01/04/2009. The activities of the assessee remained same and the activities being carried out by the assessee has already been held charitable in nature. Learned CIT(A), while allowing relief to the assessee, has held that if the assessee falls into a specific category then specific category will have precedent over the general category. The matter regarding registration has attained finality when Hon'ble Supreme Court dismissed the appeal of the Revenue. The facts regarding grant of registration u/s 12AA has been reproduced by Tribunal in its order dated 13/12/2018for assessment year 02-03 to 08-09, which for the sake of convenience are reproduced below:

"5. We have heard the rival parties and have gone through the material placed on record. We find that assessee was initially denied registration u/s 12AA of the Act and later on the application of the assessee for registration u/s 12A was granted as the assessee was held to be doing charitable activity. The matter regarding registration has attained finality when Hon'ble Supreme Court dismissed the appeal of Revenue. These facts have been noted by learned CIT(A) in his order. For the sake of completeness, we reproduce these facts from the order of learned CIT(A) as under:

"(i) The appellant furnished an application under Section 12AA of the Act with the Office of the Commissioner of

Income-Tax, Lucknow on 11-07-1988 for seeking registration under Section 12A of the Act. The registration to the appellant was denied vide order dated 18.03.1997 primarily on the findings by the Commissioner of Income-Tax, Lucknow that the Appellant has requested for grant of registration after a gap of 14 years and the application was not in prescribed form 10-A as specified in the rules.

(ii) The appellant preferred appeal against the order of the CIT, Lucknow dated 18.03.1997 regarding refusal of registration before the Hon'ble Allahabad High Court wherein the Hon'ble court vide order dated 26-11-2002 in Civil Misc Writ Petition No 173 (MB) of 1998 has quashed the order of the CIT, Lucknow dated 18.03.1997 with the observation that necessary opportunity of being heard was not afforded to the appellant and the CIT, Lucknow was directed to decide the application for grant of registration afresh on merits.

(iii) The CIT, Lucknow vide its order 13-06-2007 in compliance to the terms of the directions of the Hon'ble Allahabad High Court in Civil Misc Writ Petition No 173 (MB) of 1998 reconsidered the merits for grant of registration under Section 12A of the Act. The CIT, Lucknow proceeded to deny registration on the findings that the appellants activities do not qualify to be in the nature of Charitable Activities and reliance was also placed on the Judgment of the Hon'ble Allahabad High Court in appellants own case reported in (129 TAXMAN 527) wherein the Hon'ble Court has observed that the "Exploitation of forest" is a commercial Activity.

(iv) The order of the CIT Lucknow dated 13-06-2007 denying registration under Section 12A of to the Act to the appellant was again challenged before the Hon'ble ITAT, Lucknow in ITAT appeal No I.T.A No 512/LLIC/2007.

(v) In the interim, the appellant also filed a Special Leave Petition (SLP) before the Hon'ble Supreme Court against the order dated 26-11-2002 as passed by the Hon'ble Allahabad High Court, for remanding the case back to CIT, Lucknow to decide the grant of registration afresh. While deciding the said SLP the Hon'ble Supreme Court

vide its order dated 27-11-2007 reported under citation no (165 TAXMAN 533) held that the primary condition for grant of exemption under Section 11 is to have a registration under Section 12A of the Act and the same being pending for disposal before the Hon'ble Tribunal. The Hon'ble Tribunal was directed to decide the grant of registration against the order passed by the Commissioner rejecting the application filed under section 12A of the Act without being influenced by any of the findings recorded by the Hon'ble High Court in the impugned order.

(vi) In pursuance of the directions of the Hon'ble Supreme Court in case reported under citation no 165 TAXMAN 533, the Hon'ble Income-Tax Appellate Tribunal at Lucknow in I.T.A No 512/LUC/2007 vide order dated 16-01-2009 has proceeded to grant the registration under Section 12A of the Act with its findings that appellant is doing a charitable activity Which encompasses the "Object of General Public Utility. It is important to point out here that the subject order / finding of the-Hon'ble ITAT is after taking into account that the Hon'ble Tribunal is not required to be influenced by the findings of the Hon'ble High Court at Allahabad. The order of the Hon'ble ITAT granting registration has attained finality pursuant to dismissal of the appeal preferred by the Department both at Hon'ble Jurisdictional Allahabad High Court in case no ITA No 70 of 2009 bearing date 12-05-2010 and Hon'ble Supreme Court in SLP No CC 2590/2011 bearing date 12-05-2011.

(vi) Accordingly as on date, the registration as duly granted by the Hon'ble ITAT Lucknow In ITA No 512/LUC/2007 and as duly attained finality pursuant to dismissal of the appeal preferred by the Department both by at Hon'ble Jurisdictional Allahabad High Court in case no ITA No 70 of 2009 bearing date 12-05-2010 and Hon'ble Supreme Court in SLP No CC 2590/2011 bearing date 12-05-2011 stands valid. The CIT, Lucknow vide order dated 17-12-2012 read with order dated 18.04.2011 has duly granted the registration under Section 12A of the Act holding appellant eligible for claiming exemption under Section 11

of the Act. The said registration is retrospective with effect from 25-11-1974, being the date when appellant was incorporated."

4.1 The reasoning of the Assessing Officer that activity of the assessee do not qualify under head 'preservation of environment' (including watersheds, forest and wildlife) has also been decided by the Tribunal for assessment year 02-03 to 08-09 in favour of the assessee, which findings for the sake of completeness, are reproduced below:

"As regards the contention of Revenue that activities of the assessee do not fall within the definition of preservation of environment, we find that learned CIT(A), after relying on the decision of Hon'ble I.T.A.T., as upheld by Hon'ble Supreme Court, has held that the activities of the assessee are charitable in nature. The learned CIT(A) has noted these facts in his order and the relevant findings of learned CIT(A) are reproduced below:

"Ground of appeal No. 5 & 6

(a) This ground of appeal relates to the inference drawn by the AO by placing reliance on the Judgment of the Hon'ble Allahabad High Court decided on 26.11.2002 and reported under 129 Taxman 527 wherein it exploitation of forest was held to be commercial activity and the AO not observing the directions of the Hon'ble Supreme Court as given -in Judgment reported in (165 Taxman 533).

(b) The appellant vide its submissions has also rebutted the finding of the AO who relied on the judgment of the Hon'ble Allahabad High Court in appellants case dated 26-11-2002 cited under citation (129 TAXMAN 527) wherein the Hon'ble Court has held that the exploitation of forest is a commercial activity.

(c) In this regard, I have gone through the submission of the appellant and the background in which the Hon'ble Court has pronounced its ruling dated 26/11/2002 cited under citation (129 TAXMAN 527). The subject ruling was pronounced by the Hon'ble Allahabad High Court with respect to the appellant's contention that its income is eligible for exemption under Section

11 of the Act if the benefit of Section 10(20) of the Act is not available to it. In the course of deciding the matter the Hon'ble High Court has stated that the exploitation of forest is to be said considered as a commercial in nature. It is undisputed fact that for the said year in appeal before the Hon'ble High Court the appellant was not having a registration under 12A of the Act. In appeal, the Hon'ble Supreme Court also in the appellant's own case reported under (165 Taxman 533) has that for availing the benefits of section 11 of the Act that the registration under section 12A is the prerequisite. This appeal before the Hon'ble Supreme Court was in form of an SLP preferred by the Appellant against order of the Hon'ble Allahabad High court dated 26.11.2002. Since the appeal for deciding the grant of registration under Section 12A of the Act was pending before the Tribunal, the Hon'ble Supreme Court has further held that Tribunal is required to consider appeal without getting influenced by the decision of the Hon'ble High Court. The relevant clause of the Judgment is reproduced below:

> *"14. In view of the dismissal of these appeals, the appeals filed by the revenue also stand dismissed. However, in order to protect the interest of the assessee as well as the revenue, we direct the Tribunal, before whom the appeals are pending against the order passed by the Commissioner rejecting the application filed under section 12A of the Act, to take up the matter on priority basis and decide the same as expeditiously as possible without being influenced by any of the findings recorded by the High Court in the impugned order."*

(d) In this context the Hon'ble Tribunal at Lucknow vide its order dated 16.01.2003 while granting exemption to the Appellant under Section 12A has categorically gave its findings as summarised and reproduced in the paragraph 5.1(d) of this order that the activities of the appellant are charitable and not being conducted on any commercial lines with respect to exploitation of forests. The subject finding of the Hon'ble ITAT vide its order dated 16.01.2009 has attained finality pursuant to dismissal of the appeal preferred by the Department both by at Hon'ble Jurisdictional Allahabad High Court in case no ITA No 70 of 2009 bearing date 12-05-2010 and Hon'ble Supreme Court in SLP No CC 2590/2011 bearing date 12-05-2011 (refer to the

contents of the orders as reproduced above in para 5.1(e) of this order). The AO cannot travel beyond his powers to open an issue which has been duly decided in favour of the appellant and with the facts remaining identical at the time of pronouncement by Hon'ble ITAT as well as the time of assessment proceedings. Consequent to the findings of the Hon'ble ITAT Lucknow and its examination of the fact that the Appellant is not doing commercial activity and which is upheld by the Hon'ble Higher Judiciary at a later date (in this case after the Hon'ble High Courts order dated 26-11-2002), the said findings of Hon'ble ITAT as duly attained finality would prevail.

(e) I find merits in the arguments of the appellant on the basis of the Judgment of the Hon'ble High Court Of Madras in Seshasayee Paper & Boards Ltd. v. Inspecting Assistant Commissioner (24 TAXMAN 604) and the decision of the Hon'ble Mumbai High Court in the case of Murlidhar Bhagwandas v. Commissioner of Income-tax (284 ITR 548). The same has been discussed in detail in Ground 3 above.

(f) In view of the above discussion and judgments of the Hon'ble Courts as elaborated above, I hold that the AO has erred in not applying the findings of order of Hon'ble Supreme Court (reported in 165 Tax Mann533). The AO has simply proceeded to rely upon the order of Hon'ble High Court dated 26.11.2002 and denied the exemption claimed u/s 11 of the Act. The order of Hon'ble ITAT in appellant's case was passed on 16.01.2009 (i.e. much after the Hon'ble High Courts order dated 26.11.2002). The Hon'ble ITAT vide the said order held that the activities of the appellant are charitable in nature. The said order was passed by Hon'ble ITAT on direction of Hon'ble Apex Court that application filed u/s 12A be taken up on priority and be decided expeditiously without being influenced by any of the findings recorded by the Hon'ble High Court in the impugned order. In view of these facts and judgments, the grounds of appeal No. 5 and 6 are allowed."

The said findings of learned CIT(A) are crystal clear and do not require any interference. Therefore, Ground No. 1 & 2 of the Revenue's appeal are dismissed.

7. Now coming to ground No. 3 & 5 of the appeal by which the Revenue has agitated that the assessee was granted 12A registration for preservation, supervision and development of forest and not for the exploitation of forest produce. We find that learned CIT(A) has dealt this issue in para 5.1 of his order and has held as under:

"5.1 After examining the assessment order and the written submissions of the appellant the grounds of appeal are discussed and decided as under:-

Grounds of appeal No. 1

a) The Ground 1 relates to findings of the AO that the activities of the appellant partly classify as charitable and partly as commercial and do not fall within the Expression "Charitable Purpose".
b) In light of the findings of the AO, it becomes imperative to understand that working of the appellant and whether the same classifies to be charitable in nature for the purposes of Section 2(15) of the Act. The appellant has placed before me the copy of the enactment under which it was incorporated. Section 14 of the said enactment provides the following:

"Section 14.: Function of the Corporation

Subject to the provisions of this Act, -and to any general or special directions of the State Government, the functions of the Corporation shall be following, namely:

(a)to undertake removal and disposal of trees and exploitation of forest resources entrusted to it by the State Government;
(b)to prepare projects relating to forestry within the State;
(c)to undertake research programmes relating to forest and forest products and render technical advice to State Government matters relating to forestry;

(d)to manage, maintain and develop such forests as are transferred or entrusted to it by the State Government;
(e)to perform such functions as the State Government may from time to time require.

c) On perusal of the Section for which the appellant was incorporated, it is seen that the very primary purpose for its incorporation was "to undertake removal and disposal of trees and exploitation of forest resources entrusted to it by the State Government". The modus operandi being adopted for removal trees and the exploitation of produce has been diagrammatically explained by the appellant in his submissions put forth before me. It is also to be seen that the activities of the appellant are being done under a defined working plan of the Central Government and the state Government which is duly monitored. The activities undertaken by the appellant are also in line with the findings of the Hon'ble Supreme Court in the case of Vijay Bahadur (2 SCC 365) decided on 23-03-1982, (as reproduced above) and the same cannot be said to be on commercial lines as the same is banned by the Hon'ble Supreme Court. The activities under taken by the appellant are moreover guided by the Forest Policy and can be said to be for the preservation of the environment. The books of accounts of the appellant are placed before the State Legislature as well as audited by the CAG where in no such qualification has been brought out that the appellant is engaged in any sort of activity which can be construed to be against its objects as well as conducted on commercial lines

d) I also find much force in the arguments placed before me in holding out that the activities as undertaken by the appellant pertaining to removal and disposal of trees and exploitation of forest resources has been held to be in the nature of preservation of environment by the Hon'ble ITAT Lucknow in appellants own case vide findings contained under para no 24 to para 29 of its order in I.T.A No 512 /LUC/2007 decided on 16-01.2009 in the course of granting registration under 12A of the Act. The extracts of the said para's are reproduced below :

> *" 24. Hearing the rival submissions, we are of the view that the appeal of the assessee is to be allowed. From the arguments advanced and also from the objects of the assessee, it is clear that Corporation was constituted by the Legislative mandate of the state of by U.P. Forest Corporation Act 1974 and the State has entrusted forest resources to U.P. Forest Corporation as per Section 14(a)*

with reference to the objects enshrined in the preamble "for better preservation, supervision and development of forests and better exploitation of forest produce within the state and for matters connected therewith". In the decision relied upon by the assessee in the case of M.C. Mehta Vs Kamal Nath (supra), it was held that State is the Trustee of all the natural resources which are meant for public use and enjoyment. The state as a trustee is a under a legal obligation to protect the natural resources which includes forest. The state is not merely interested in realizing revenue but is equally interested in preservation and development of forests. It cannot knowingly enter into contracts with bidders who must have at the back of their minds the opportunity of gamble of illicit felling of trees. In the second place, the Corporation is a wholly Government owned Corporation dedicated to the better preservation and development of forests and better exploitation afforest produce. The profits of the Corporation are in truth the profit of the state itself. The state by establishing this Corporation does not intend to enter into a commercial activity. The activity is only furtherance of the object of the establishment of the Corporation itself. The prime aim of establishment of the Corporation is environment stability and maintenance of ecological balance. The revision of economical benefit, if any, is only supporting to the principles of the above aim. It is not the prime object and therefore it is difficult to hold that assessee's activities are for commercial exploitation of forest which will disentitle the assessee to obtain registration. Assessee is not treating forest just as a source of revenue.

25. The submission of the assessee to the effect that National Commission on Agriculture bought out its interim report on produce of various tress in August 1972 in which it recommended establishment of Forest Corporation for the purpose of attracting institutional finance for the development schemes of forestry and in pursuance of these recommendations 11 States formed Forest Corporation and in pursuance to the above report, U.P. Forest Corporation was constituted through ordinance on 25.11.1974 cannot be overruled. This

Corporation is almost similar to the one established by the Andhra Pradesh Forest Development Corporation Limited. We have already noted hereinabove that the Corporation was established for better preservation, supervision and development of forests and better exploitation of forest produce within the state and for matters with it and not for any commercial activity true and simple if at all. Clause 17 deals with Finance, Accounts and audit of the Corporation reads as under makes it clear that the funds could only be utilised by the Corporation in the discharging of its function and not for any other purposes:

> *17.(1). The Corporation shall have its own fund which shall be a local fund and to which shall be credited all money received by or on behalf of the Corporation.*
> *(2). The fund shall be applied towards meeting expense incurred by the Corporation in the discharge of its functions under this Act and for no other purposes.*
> *(3). The Money of the Fund shall be kept in the State Bank of India or in the Uttar Pradesh Co-operative Bank or nay Scheduled Bank."*

26. The above makes it clear that one of the objections of the C.I.T. that discretion is given to utilise funds for commercial purpose cannot be held as entirely correct. The accounts are to be audited by the Govt. agent and the reports are to be each year tabled before each house of legislature

27. It is also clear that the Corporation was asked by the State Govt. to check illegal felling of the trees and provide gainful employment to the Tribals living in and around forest. The exploitation of the forest was confined to removal and disposal of fallen, dried and diseased trees. The felling of growing trees, it is stated is strictly prohibited. "Commercial Exploitation" which was one of the reasons cited by the C.I.T. not to grant registration, appears to be superfluous. The role and status of the Corporation is given at page 6 of the paper book-I, vide

which the assessee explain the synopsis of the charitable purposes of the Corporation. SI No 8 at page 6 of the paper book-l makes it clear that there was a protracted litigation in the a case in the year 1980 between the State of U.P. and private Contractors who was highest bidder not getting the award of contract due to apprehension of the work being detrimental of the forestry. Ultimately the issues was decided in favour' of the Govt by the Hon'ble Supreme Court of India. It says that the case reported in 2 SCC 365 in the case of State of U.P. V Vijay Bahadur Singh, the Hon'ble Supreme Court of India held as under:-

> *"In the first place..... The State is not merely interested in realizing revenue but is equally interested in the preservation and development of forests. It cannot knowingly enter into contracts with bidders who must have, at the back of their minds the opportunity or the gamble of illicit felling of trees. In the second place the Corporation is a wholly Government owned Corporation dedicated to the better preservation and development afforests and the better exploitation of forest produce. The profits of the Corporation are in truth the profits of the Slate itself." The Hon'ble Court upheld the Contention of the State for allowing the exploitation of the private contractors to the detriment of national interest in preservation of Forests"*

28 The extract from the annual report for the period 1.10.1975 to 30.09.1976 relevant for assessment year 1977-78 has been recorded at page 7 of the paper book-l which reads as under:

"Note: "5. Profit, however, is not the only criterion by which the performance of a public sector undertaking has to be judged. A very important yardstick is the fulfillment of the social obligations cast upon it within the broad perspective of the country's planning policy and objectives. The Corporation is engaged in taking over progressively the felling and transport operation of tress

from private contractors. The labour engaged by the bigger contractors, the so called "Maldars", in the hills has been held in bondage for years and grossly exploited in a variety of ways. They had a stronghold on them and in the initial phases of the Corporation's working in the hills, it was difficult to loosen these bonds of Slavery. It is to the credit of some of the dedicated social workers of the areas and the staff of the Corporation that the fetters are breaking down and freed labour are coming over to the Corporation in ever increasing numbers. The Corporation has ensured minimum wages, wholesome rations, medical facilities, recreation and adult literacy classes to the labour engaged by it. Stress is being laid on the Formation of labour cooperatives and encouraging them in everyway possible. Local youth is being recruited and trained in modern logging methods, use of improved hand tools, mechanical hand saws, so that gradually a revolution could be ushered in the methods of felling, extraction and transport, as has been practiced by their fathers and forefathers for well over a century." (Extracts from Annual Report of the Period 1.10.1975 -30.09.1976 relevant to assessment year 1977-78)"

29. The reading of the above makes it clear that exploitation of the forest is not for any commercial purpose but for preservation. Hence, we are of the View that the Objections given by the C.I.T. to overlook the claim of the registration is incorrect"

e) Further the observations / decisions of the above Hon'ble ITAT Order in ITA 512/LUC/ 2007 has attained finality pursuant to dismissal of the appeal preferred by the Department both by Hon'ble Jurisdictional Allahabad High Court in ITA No 70 of 2009 bearing date 12-05-2010 and Hon'ble Supreme Court in SLP No CC 2590/2011 bearing date 12-05-2011. The orders of the Higher Judicial Authorities are reproduced below:

Hon'ble Jurisdictional Allahabad High Court in case no ITA No 70 of 2009 bearing date 12-05-2010

"Present appeal under Section 260A of the Income-Tax Act has been preferred raising o question whether U.P. Forest is liable

for grant of certificate under Section 12-A of the Income-Tax Act 1961 ?
It is has been admitted at bar that Hon'ble Supreme Court while dealing with the same issue in a case reported in (2008) 297 ITR 1 U.P. Forest Corporation Vs. Deputy Commissioner of Income-lax, settled that U.P. Forest Corporation is eligible for grant of certificate under Section 12-A of the Income-Tax Act, 1961.

In view of the law settled by the Hon'ble Supreme Court there appears to be no justification to admit the appeal on the same issue. So far as condonation of delay is concerned once delay has been condoned there appears to be more justification to admit the appeal on the same issue, Being concluded by finding of fact no substantial question of law involved to entertain the appeal under Section 260 A of the Income Tax Act.

Accordingly, appeal is dismissed in limine."

Hon'ble Supreme Court in SLP No CC 2590/2011 bearing date 12-05-2011

"This petition was called on for hearing today.
.....
Upon hearing Counsel, the Court made the following ORDER Delay Condoned. The special leave petition is dismissed"

f) Further my attention has also been drawn towards the finding of the Hon'ble ITAT, Lucknow in appellants own case reported under ITA No.785/Luc/05 and decided on March 6, 2009 wherein the Hon'ble ITAT has allowed the exemption to the appellant for AY 2002-03 after recording its findings under para 5 of the ruling. The same is reproduced below:

> *"After hearing the ld. AR and the Id DR and respectfully following the above order of the Tribunal, we hold that assessee is a charitable institute entitled to registration u/s 12A as well as exemption in accordance with Section 11 and 13. Therefore, this issue is decided in favour of the assessee"*

g) It was also brought to my knowledge that the subject order of the ITAT on this finding has not been challenged before the Hon'ble Allahabad High Court and the same therefore has been accepted by the department and attains finality to this extent.

h) It would be right to hold that the activities undertaken by the appellant are in the nature of preservation of environment. The above stated order of the Hon'ble ITAT dated 16.01.2009 as outlined in para 5.1(d) as duly upheld by the Higher Judicial authorities is binding on the authorities below as held by the Hon'ble Jurisdictional Allahabad High Court in the Case of N. N. Agarwal v. CIT [1991] 189 ITR 769 wherein it has been held that "Indeed, the orders of the Tribunal and the High Court are binding upon the Assessing officer and since he acts in a quasi judicial capacity, the discipline of such functioning demands that he should follow the decision of the Tribunal or the High Court, as the case may be. He cannot ignore merely on the ground that the Tribunal's order is the subject matter of revision in the High Court or the High Court's decision is under appeal before the Supreme Court. Permitting him to take such a view would introduce judicial indiscipline, which is not called for even in such cases. It would lead to a chaotic situation". Similarly the Order of Hon'ble ITAT dated 06.03.2009 for A.Y. 2002-03 in appellants case too has attained finality.

i)Accordingly I hold that once the activities of appellant are held to be in the nature of "Preservation of environment" therefore these activities are held to be Charitable in Nature and the same cannot be categorized partly as charitable and partly as non-charitable as they are covered within the objects for which it was incorporated and is functioning on those lines."

We do not find any infirmity in the order of learned CIT(A), therefore, ground No. 3 & 5 are also dismissed.

4.2 The activities of the assessee remained same and there is no change and therefore, following the judicial precedent in the case of the assessee itself, the activities being undertaken by the assessee are held to be charitable in nature. As regards the arguments of Learned D. R. that in earlier years the assessee had claimed exemption under the head 'objects of general public utility' whereas in the years under consideration the assessee had claimed exemption under the head 'preservation of environment' (including watersheds, forest and wildlife) we find that the specific clause would always prevail over the general clause. The amendment to section 2(15) was made

with effect from 01/04/2009 whereby preservation of environment was included as a specific object u/s 2(15) of the Act and since the activities of the assessee fell in the specific category therefore, learned CIT(A) has rightly considered the same. The findings of learned CIT(A) in this respect are contained in para K to R, which for the sake of completeness are reproduced below:

k) Further the AO's contentions with respect to the earlier claim of exemption under the expression "advancement of any other general public utility" whereas presently under the expression "preservation of environment", it is a settled jurisprudence that the "Specific" clause would always prevail over the General clauses. It is to be seen that by way of amendment to Section 2(15) the legislature incorporated two major changes, at the one hand it included "Preservation of Environment "(including watershed's, forests and wildlife)" as one of the charitable activity and on the other hand denied benefit of exemption to those who are doing commercial activities in the nature of trade, business of commerce buy virtue of falling under the expression "advancement of any other general public utility general". Post amendment of section 2(150 and the inclusion of the specific clause "Preservation of Environment (including watershed's, forests and wildlife) as a charitable activity makes the appellant govern by the specific clause of "Preservation of Environment (including watershed's forests and wildlife) and not "advancement of any other general public utility.

i) The above finding also hold good in light of the findings of the Hon'ble Supreme Court Judgment in the case of J. K. Cotton Spinning & Weaving Vs The State of Uttar Pradesh & Ors on 12 December, 1960 (1961 AIR 1170) which has been relied by the appellant and the same is being reproduced below:

"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs form the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In Pretty v. Solly (1) (quoted in Craies on Statute law at p. 205, 5th Edition) Romilly,

M.R. mentioned the rule thus: "The rule is, that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment (1) (1859) 26 beav. 606, 610.must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply". The rule has been applied as between different provisions of the same statute in numerous cases some of which only need be mentioned: De Winton v. Brecon (1), Churchill v. Crease (2), United States v. Chase (3) and Carrol v. Greenwich Ins. CO. (4).

Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the genera provision applies only to such cases which are not covered by the special provision, we must hold that case laws. 5(a) has no application in a case where the special provisions of case laws. 23 are applicable"

m) Even the above contention of appellant that specific clause prevails over the general clause is also supported by the Hon'ble Supreme Court in the case of Commercial Tax Officer vs Binani Cement Ltd. & Anr (CIVIL APPEAL No. 336 of 2003) pronounced on 19 February, 2014 and the same is extracted below:

42. Having noticed the aforesaid, it could be concluded that the rule of statutory construction that the specific governs the general is not an absolute rule but is merely a strong indication of statutory meaning that can be overcome by textual indications that point in the other direction. This rule is particularly applicable where the legislature has enacted comprehensive scheme and has deliberately targeted specific problems with specific solutions. A subject specific provision relating to a specific, defined and descriptable subject is regarded as an exception to and would prevail over a general provision relating to a board subject.

n) Further, even if for the sake of argument it is held that "appellant is under the expression general public utility as held by the Assessing Officer, then in such a scenario the Hon'ble Punjab & Haryana High Court in the case of The Tribune [I.T.

Act 62-2015] has interpreted the concept of general public utility post amendment in section 2(15) of the Act in the year 2009. In the instant case the Tribune was held to be conducting a charitable activity by way of printing newspaper and the same was held to be an activity in the nature of general public utility by the Privy Council. However post amendment, Assessing Officer questioned the claim of exemption on the pretext that the Tribune is doing a commercial activity by way of selling newspaper. In the instant case the Hon'ble court of Punjab & Haryana has held the following:

"38. The question in this appeal which pertains to the assessment year 2009-10 is the effect of the amendment ot section 2 (15) introduced on 19.12.2008 which came into force with effect from the financial year 01.04.2009.

39. It is necessary to compare section 2(15) as it stood under the 1961 Act and as interpreted by the Supreme Court in Surat Art Silk's case ((supra)), on the one hand and Section 2 (15) as it was amended with effect from 01.04.2009 on the other. As we observed earlier the Supreme Court held that the concluding the crucial words "not involving the carrying on of any activity for profit" go with the words "object of public utility" and not with "advancement". In our view the proviso introduced by the 2009 amendment does not change this position. The opening words of the proviso "provided that the advancement of any other object of general public utility" were also a part of section 2(15) as it originally stood. The words that follow in the proviso "shall not be a charitable purpose, if it involves the carrying of any activity in the nature of trade, commerce or business…..etc." replaced the words in the original Section 2(15) "not involving the carrying on of any activity for profit". On a parity of the reasoning in Surat Art Silk case, the words in the proviso that follow the opening words "Provided that the advancement of any other object of general public utility" equally apply to the "object of general public utility" and not to the word "advancement".

The plain language of the proviso does not convey an intention to the contrary. In fact, the legislature could have continued the opening part of the amended section 2(15) with the words "not involving" instead of the words "provided that the advancement of any other object of general public utility shall no be a

charitable purpose if it involves" in the proviso. Either way the amendment would have been the same. In that event there could have been no doubt whatsoever that the legislature did not seek to set at naught the effect of the judgment of the Supreme Court in this regard in Surat Art silk's case ((supra)). The introduction of the proviso does not indicate such an intention either.

40. If the legislature intended the latter part of the proviso to apply to the word "advancement" as well and not merely to the words "object of general public utility", it would have worded the amendment entirely differently. The proviso would have expressly been made applicable to the advancement as well as to the object of general public utility. That the legislature did not do so is an indication that it accepted the interpretation of the Supreme Court of section 2(15) as it originally stood and retained the effect of the section in that regard in the 2009 amendment. The ration of the judgment in Surat Art silk's case ((supra)), in this regard, therefore, remains the same."

o) During the course of appellate proceedings, the Learned A. R. also brought to my knowledge that the department has accepted the claim of the appellant under Section 11 of the Act by way for granting exemption to it by the Assessing Officer concerned. The details of the same are tabulated below:

Asstt Year	*Date of Order*	*Section under which passed*	*Order*
1990-91	*29.12.2009*	*Section 254 read with Section 143(3)*	*Hon'ble' I.T.A.T., vide its order dated 16.01.2009 in I.T. Act No. 512/LUC/2007, has granted registration to the assesse u/s 12A of the Income-Tax Act, 1961. The assesse vide its written reply dated 29.12.2009 has claimed that in view of the said decision of the Hon'ble'ble I.T.A.T., its entire income is exempt u/s 11 of the Income –Tax Act, 1961, After a careful considerations of the material on record and in compliance with the I.T.A.T.'s directions, exemption claimed by the assessee u/s 11 is allowed and the returned income is accepted*
1995-1996	*29.12.2009*	*Section 254 read with*	*Hon'ble I.T.A.T., vide its order dated 16.01.2009 in ITA No S12/LUC/2007, has*

		Section 143(3)	*granted registration to the assessee u/s 12A of the Income l-Tax Act, 1961. The assessee vide its written reply dated 29.12.2009 has claimed that in view of the said decision of the Hon'ble I.T.A.T., its entire income is exempt u/s 11 of the income- Tax Act, 1961. After a careful considerations of the material on record and in compliance with the I.T.A.T.'s directions, exemption claimed by the assessee u/s 11 is allowed and the returned income is accepted*
1997-1998	*29.12.2009*	*Section 254 read with Section 143(3)*	*Hon'ble I.T.A.T., vide its order dated 16.01.2009 in I.T. Act No 512/LUC/2007, has granted registration to the assessee u/s 12A of the Income-Tax Act, 1961. The assessee vide its written reply dated 29.12.2009 has claimed that in view of the said decision of the Hon'ble I.T.A.T., its entire income is exempt u/s 11 of the Income –Tax Act, 1961, After a careful considerations of the material on record and in compliance with the I.T.A.T.'s directions, exemption claimed by the assessee u/s 11 is allowed and the returned income is accepted*
1998-1999	*29.12.2009*	*Section 254 read with Section 143(3)*	*Hon'ble I.T.A.T., vide its order dated 16.01.2009 in ITA No 512/LUC/2007, has granted registration to the assessee u/s 12A of the Income –Tax Act, 1961. The assessee vide its written reply dated 29.12.2009 has claimed that in view of the said decision of the Hon'ble I.T.A.T., its entire income is exempt u/s 11 of the Income –Tax Act, 1961, After a careful considerations of the material on record and in compliance with the I.T.A.T.'s directions, exemption claimed by the assessee u/s 11 is allowed and the returned income is accepted*
199-2000	*29.12.2009*	*Section 254 read with Section 143(3)*	*Hon'ble I.T.A.T., vide its order dated 16.01.2009 in ITA No 512/LUC/2007, has granted registration to the assessee u/s 12A of the Income –Tax Act, 1961. The assessee vide its written reply dated 29.12.2009 has claimed that in view of the said decision of the Hon'ble I.T.A.T., its entire income is exempt u/s 11 of the Income-Tax Act, 1961, After a careful considerations of the material on record and in compliance with the I.T.A.T.'s directions, exemption claimed by the*

			assessee u/s 11 is allowed and the returned income is accepted

4.3 The above findings of learned CIT(A) are quite exhaustive which are correct also and we do not find any infirmity in the same. In view of the above, ground No. 1,2,3,7 & 8 in assessment year 2009-10 are dismissed and similarly ground No. 1 to 3 and 5 to 7 in rest of the appeals are dismissed.

5. Now coming to ground No. 4 regarding prior period expenses, we find that this issue has also been decided in favour of the assessee for assessment years 02-03 to 08-09 by the Tribunal vide order dated 13/12/2018. The findings of the Tribunal are contained in para 8 onwards, which for the sake of completeness are reproduced below:

"8. Now coming to ground No. 4 & 6 which relate to deletion of addition which the Assessing Officer had made on account of prior period expenses. We find that this issue has also been dealt by learned CIT(A) exhaustively and after relying on number of case laws and keeping in view the facts and circumstances of the case, the learned CIT(A) has allowed relief to the assessee by holding as under:

"5.7 Ground of appeal No. 8

(a)This ground of appeal relates to disallowance of expenses amounting to Rs 6,63,812 by the AO for the reason that these expenses pertain to prior period and were accordingly disallowed as prior period expenses. The AO in the assessment order has pinpointed out that the appellant should have made a provision in its accounts for that year in which the purchase price/royalty was to be paid. The AO further stated that the appellant is following mercantile system of accounting, therefore, these expenses were disallowed.

(b) In this regard the appellant has submitted that the said amount of Rs 6,63,812 cannot be considered as a Prior period expenses in light of the fact that such amount is only determinable and crystallized after the close of the Financial Year i.e. the said expenses had not crystallized at the close of the relevant Financial Year.

(c) During the course of appellate proceedings it was submitted that the basis -of determining this expense is a certain percentage which is decided In the Committee meeting held after close of the Financial Year. Therefore, the said amount is crystallized in the subsequent F.Y. in which it is determinable. The appellant in his replies has given a thrust on the time period when these expense are crystallized and thereafter only the same can be recorded in the books of accounts. The appellant contended that unless and until these expenses are not known to the appellant the provision of the said expenses cannot be made in the books of accounts.

(d)In this regard, the appellant has placed a strong reliance that the expenses can only be booked in books of accounts once they are crystallized. Reliance in this regard was placed on the following judgments of Hon'ble High courts including Hon'ble jurisdictional High Court

i)The Hon'ble Gujarat High Court in the case of Saurashtra Cement & Chemical Industries Ltd. v. CIT (213 ITR 523) held that merely because an expense related to a transaction of an earlier year does not become a liability payable in the earlier year unless it can be said that the liability was determined and crystallized in the year in question.
ii) The Hon'ble Rajasthan High Court in the case of Addl. CIT v. Farasol Ltd.(163 ITR 364) held that the assessee entered into a contract with Oil and Natural Gas Commission in February, 1964. The operation started in December 1964. The assessee claimed deduction of expenses for the period 10-9-1964 to 31-12-1965 after the communication of approval in the assessment year 1966-67. The Hon'ble High Court held that the expenditure incurred in earlier years can be allowed as a deduction in the assessment year 1966-67 as it crystallized only when approval was received.

iv)The Hon'ble High Court of Gujrat in the case of Commissioner of Income-tax State Forest Development (163 TAXMAN 547) wherein the Hon'ble High Court while deciding a similar issue held that Royalty is to be allowed on actual payment and such deduction would be allowed only after its payment. In the present matter, though the liability to pay the royalty was in

relation to the assessment years 1981-82 and 1982-83, the liability to pay the royalty was finalised on 2-1-1985, and, therefore, section 43B of the Act would apply with full force if the royalty is paid in the said assessment year.

(v)The Allahabad High Court in the case of Commissioner of Income-tax v. Amrit Banaspati Co. Ltd (59 ITR 388) with respect to payment of dearness allowance wherein the Hon'ble Court has held that the claim to deduction, therefore, was only admissible in the year when the liability under the award was finally determined.

vi) Similar findings have also been given in the following Judgments of Hon'ble High Court:

- *Hon'ble High Court Of Delhi In the case of Commissioner of Income-tax, New Delhi v. Shri Ram Pistons & Rings Ltd(174 TAXMAN 147)*
- *Hon'ble High Court Of Delhi in the case of Commissioner of Income-tax v. Triveni Engg. & Industries Ltd. (196 TAXMAN 94)*

(e) The undersigned has gone through the written submissions of the appellant and the above cited judgments and on perusal it is evident that the expenses can only be booked when the same are known to the appellant and for that matter its crystallization and determination of expenses is necessary. The key words are 'determined' and 'crystallized'. The appellant was certain of the expenses to be paid only when it was decided/finalised by the Committee of the Government of Uttar Pradesh after the close of the earlier year. The contention of the appellant is supported by the judgment of the Hon'ble Gujarat High Court in the case of Saurashtra Cement & Chemical Industries Ltd. v. CIT (213 ITR 523) where it has been categorically held that merely because an expense related to a transaction of an earlier year does not become a liability payable in the earlier year unless it can be said that the liability was determined and crystallized in the year in question.

(f)The appellants contention is duly supported by judgments of Hon'ble High Courts as outlined in para 5.7(d) above and the fact that the amount in question were determined and crystallized only after the close of an earlier FY. The said amount crystallized in F.Y. 2001-02. Thus, the action of the AO

in holding and disallowing these expenses as prior period expenses cannot be upheld.

(g)Further, it was also contended that the appellant is a Corporation which is an AOP(Trust) and the tax rates for the appellant remain constant for this assessment year and earlier/subsequent AY's. Accordingly, the appellant's claim of these items in a subsequent assessment year due to crystallization can by no means represent a device to evade or minimize corresponding tax liability. Reliance in this regard is placed on the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Vishnu Industrial Gases ITR No. 229/1988) wherein the Hon'ble Delhi High Court followed the ruling of the Hon'ble Mumbai High Court in the case of Nagri Mills Co. Ltd. [1958] 33 ITR 681.

Relevant Extracts of the judgment in the case of Nagri Mills Co. Ltd (supra) are reproduced below:

> *"We have often wondered why the Income tax authorities, in a matter such as this where the deduction is obviously a permissible deduction under the income tax Act, raise disputes as to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may be material when the rate of tax-chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate, and whether the deduction In respect of bonus was granted in the assessment year 1952-53 or in the assessment year corresponding to the accounting year 1952. That is in the assessment year 1953-54, should be a matter of no consequence to the Department', and one should have thought that the Department would not fritter away our energies in fighting matters of this kind. But, obviously, judging from the references that come up to us every now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other."*

(h) In light of the written submissions of the appellant and judgments cited it is to be seen that there being no change in

rate of taxes, the amount incurred under the said head has to be allowed in the AY under consideration as the said expenses were determined and crystallized during the AY under consideration.

Accordingly, the disallowance made by the AO under the head Prior Period expenses is hereby deleted. The said expenses are allowed for the reason that these expenses were determined and crystallized only during the AY under consideration. Ground of appeal No. 8 is allowed."

Finding no infirmity in the order of learned CIT(A), these grounds of appeal of the Revenue are also dismissed."

5.1 Following the above findings of the Tribunal in the case of the assessee itself, we dismiss ground No. 4 in all appeals.

5. Respectfully following the aforesaid order of the Tribunal in assessee's own case, we do not find any infirmity in the order of learned CIT(A) and dismiss the grounds of appeal taken by the Revenue."

5. It is thus seen that by virtue of the aforesaid Tribunal order dated 26/07/2019, passed in I.T.A. No.649/Lkw/2019, for assessment year 2015-16, in the assessee's own case, the position with regard to the activities of the assessee falling within "Preservation of environment (including watersheds, forest and wildlife)" as inserted in Section 2(15) of the Act w.e.f. 01.04.2009, has duly been taken into consideration and the matter has been decided in favour of the assessee on due appreciation of the same. Vide order dated 16/01/2009, the Tribunal had originally allowed registration to the assessee. In the said order dated 16/01/2009, the Tribunal held that the activities of the assessee pertaining to removal and disposal of trees was for the preservation of the environment. While holding so, the Assessing Officer's finding that the activities of the assessee do not fall within the expression "Preservation of environment (including watersheds, forest and wildlife)" as inserted in Section 2(15) of the Act w.e.f. 01.04.2009, was reversed. The said order dated 16/01/2009, passed by the Tribunal, was upheld by Allahabad Hon'ble High Court vide order dated 12/05/2010 and ultimately by

Hon'ble Supreme Court vide order dated 12/05/2011, as submitted on behalf of the assessee and not rebutted by the Department. It was in keeping with these orders that the CIT(A) has held the activities of the assessee to be falling within the expression "Preservation of environment (including watersheds, forest and wildlife)" as inserted in Section 2(15) of the Act w.e.f. 01.04.2009. It is also noteworthy that vide order dated 13/12/2018, the Tribunal decided the matter in favour of the assessee, for assessment year 2002-03 to 2004-05, 2007-08 & 2008-2009.

6. In view of the above, there is no merit found in the grievance of the Department wherein it has been contended that the activities of the assessee do not fall within the expression "Preservation of environment (including watersheds, forest and wildlife)" as inserted in Section 2(15) of the Act w.e.f. 01.04.2009; and that the activities of the assessee are commercial and in the nature of trade, commerce or business, hit by the provisions of the first proviso to section 2(15) of the I.T. Act.

7. In the result, the appeal of the Revenue stands dismissed.

(Order pronounced in the open court on 22/09/2021)

Sd/.	**Sd/.**
(A. D. JAIN)	**(T. S. KAPOOR)**
Vice President	**Accountant Member**

Dated:22/09/2021
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar