

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C' NEW DELHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No. 4125/Del/2017  
Assessment Year: 2012-13**

Hapur Pilkhuwa Development Authority vs. ACIT (Exemption),  
C/o Akhilesh Kumar, Advocate, Circle, Ghaziabad.  
Chamber No. 206-207, Ansal Satyam,  
RDC Raj Nagar, Ghaziabad.  
**PAN : AAALH0051L**  
(Appellant) (Respondent)

Appellant by : Shri Akhilesh Kumar, Advocate  
Ms. Ishita Gupta, C.A.  
Respondent by: Shri S.N. Pandey, Sr. DR

Date of hearing: 01.02.2022

Date of order : .02.2022

**ORDER**

**PER KULDIP SINGH, J.M.**

Appellant, Hapur Pilkhuwa Development Authority (hereinafter referred as "the assessee") by filing present appeal sought to set aside the impugned order dated 31.03.2017 passed by Id. CIT(A), Ghaziabad on the grounds *inter alia* that –

***"1. Because, the order of Id. lower authority is bad in law and against the facts and circumstances of the case and hence is unsustainable.***

**2. Because, the Id. CIT(A) grossly erred in upholding the estimated addition of Rs. 10.99 cr. by wrongly invoking proviso to s.2(15) of the Act on the appellant Authority with apparently wrong/irrelevant findings like assessee itself admitting chargeability of income by filing return, assessee had more receipts than expenditure even after admitting that regn. u/s 12AA is granted, Object of Authority is not to earn income, loss is declared in return etc.**

**3. Because, in addition to above, the Id. CIT(A) inherently erred in holding that, the provision of s. 11(4A) of the Act are applicable and so income over expenditure is chargeable to tax once she has held applicability of proviso to s.2(15) as both the mutually exclusive provision.**

**4. Because, without prejudice to above but only as an alternative, the Id. lower authority erred in not appreciating that assessee had maintained sufficient separate accounts for above activities and further failed to appreciate that even Id. AO himself calculated separate surplus in said activities on the basis of said accounts hence order upholding rejection of exemption u/s 11-12 even after invoking 11(4A) for said activities is illegal.**

**5. Because, the Id. CIT(A) grossly erred in upholding the addition of Rs. 14.158 cr., being the residual amount of opg. Bal. of infrastructure fund related to earlier years, in as much as expenditure against the current years receipt is even more and authorities below failed to consider the same.**

**6. Because, in addition to above, the Id. CIT(A) failed to appreciate that amount of infrastructure fund is belonging to state and which was only on capital a/c credited to B/s etc and not belonging to assessee of which assessee is only a custodian.**

**7. Because, the order of Id. commissioner of income tax (appeals) in sustaining above additions is against the principle of consistency in as much as that since inception neither activities are considered as business nor fund is considered as income of assessee.**

**8. Because, the Id. commissioner of income tax (appeals) has defeated the order of jurisdictional high court in assessee's own case**

***beside other binding rulings on the both the issues which tantamount to contempt and is against the article 141 of the constitution.***

***9. Because without prejudice to above but only as an alternative, on merits, the Id. lower authority has erred in upholding the estimated addition/other addition without any material/basis and even after accepting accounts etc. arbitrarily and without any application of mind.***

***10. Because, in addition to above, the Id. lower authority further erred in not appreciating the fact that in any eventuality all the additions are covered within the utilized limit 85% of its income for 'charitable purposes' even before considering the excess utilization of earlier years.***

***11. Because, in addition to above, the Id. lower authority grossly erred in not adjudicating the additional ground about the allowance of benefit of the excess utilization of earlier years which has been allow3d in earlier years by CIT(A) and accepted by revenue.”***

2. Briefly stated, facts necessary for adjudication of the controversy at hand, are that the assessee is an Authority constituted under the Uttar Pradesh Urban Planning and Development Act, 1973 (for short “the Act”) to promote and secure the development of areas according to plan and for that purpose, the assessee-authority is empowered to acquire, hold, manage and dispose land and other properties, to carry out building activities, engineering, mining and other operations, to execute works in connection with the supply of electricity and water, to dispose of sewage and to provide and

maintain other services and amenities and generally to do anything necessary or expedient for the purpose of such development. Assessee Authority was initially exempt under section 10(20A) of the Act till 1<sup>st</sup> April, 2003, but w.e.f. 31.03.2003, the aforesaid Act has been omitted in the statute and the Income of the Assessee Authority was subjected to tax.

3. Registration sought for by the assessee u/s. 12A of the Act was denied by the Id. CIT but allowed by the Tribunal. However, the Tribunal's order is lying challenged before the Hon'ble High Court and as such no benefit of exemption is allowed to the assessee-authority. Assessee-authority claimed that its prima facie activity, appearing to fall within the ambit of proviso to section 2(15) make it ineligible for claiming exemption u/s. 11 of the Act. However, Assessee Authority claimed that it is not working for profit and there is no correlation between the receipt and expenditure incurred by it in various development activities and since it has no profit, there is no question of taxing the same. Lower Revenue Authority, declining the contention of the assessee, invoked the provisions of section 2(15) of

the Act and proceeded to hold that assessee is not entitled for registration u/s. 12A of the Act being engaged in the activities in the nature of trade, commerce or business, inasmuch as one of the dominant activities of the Assessee-Authority is acquisition and sale of immovable property, the receipt of which are in excess of Rs.25,00,000/-, being the ceiling stipulated in second proviso of section 2(15) of the Act.

4. Assessing Officer during the assessment proceedings noticed that the assessee has not credited as income an amount of Rs.14,15,88,504/- and earmarked the same as amount relating to infrastructure fund. Learned lower authority made the addition of Rs.14,15,88,504/- being the residual amount of operating balance of infrastructure fund relevant to earlier years, inasmuch as an expenditure against the current year's receipts by declining the contention raised by the assessee and the fact that the amount of infrastructure fund is belonging to State and it was only on capital account credited to the balance sheet and was never belonging to the

assessee, proceeded to frame the assessment for A.Y. 2012-13 at the total income of Rs.17,43,55,995/-.

5. Assessee Authority carried the matter before the Id. CIT(A) by way of filing appeal, who has upheld the assessment framed by the Assessing Officer by dismissing the appeal. Feeling aggrieved, assessee has come up before the Tribunal by way of the present appeal.

6. We have heard the Id. Representatives of the parties to the appeal, perused the orders passed by the Id. Lower Revenue Authorities in the light of the facts and circumstances and law applicable thereto. Our ground-wise findings are as under :

**Grounds Nos. 1, 2, 3 & 4:**

7. Issue raised by way of filing aforesaid grounds by the Assessee-Authority is :-

***“as to whether Id. CIT(A) has erred in withdrawing the exemption u/s. 11 of the Act to the assessee by invoking the provisions contained in section 2(15) of the Act.”***

8. At the very outset, Id. AR for the assessee contended that this issue is covered in favour of the assessee by virtue of the order passed by the Tribunal in assessee's own case for A.Y. 2009-10 to 2011-12 and also covered by the decision rendered by Hon'ble High Court of Allahabad in assessee's own case (ITA No. 657 of 2007). Learned AR for the assessee also laid emphasis on the principle of consistency, as this issue for the earlier years has been successively decided in favour of the assessee. This factual position has not been controverted by Id. DR for the Revenue, but he has supported the order passed by Id. CIT(A).

9. We have perused the order dated 06.06.2018 passed by the coordinate Bench of the Tribunal in assessee's own case for the assessment years 2009-10 to 2011-12 in ITA No. 1384 to 1386/2016, which is on identical issue. Coordinate Bench of Tribunal by relying upon the decision dated 21.04.2017 rendered by Hon'ble Allahabad High Court in the case of CIT vs. Yamuna Expressway Industrial Development Authority and another decision dated 04.01.2018 rendered by coordinate Bench of Tribunal in the case of Moradabad

Development Authority vs. ACIT(Exemption) in ITA No. 4631 & 4632/Del/2017, decided the issue in favour of the assessee by returning following findings :

***“3. We have heard both the sides and perused the relevant material on record. The Hon’ble Jurisdictional High Court in CIT vs. Yamuna Expressway Industrial Development Authority, vide judgment delivered on 21.4.201, has decided similar issue in assessee’s favour. The Delhi Bench of the Tribunal in Moradabad Development Authority vs. ACIT (Exemption), vide order dated 4.1.2018 in ITA No. 4631 and 4632/Del/2017, dealt with the case of an Authority working in the same way as the assessee in question and held that the benefit of exemption under section 11 cannot be denied. In reaching this conclusion, the Tribunal considered the relevant judgments on the point and eventually held that the case is covered by the judgment of Hon’ble Jurisdictional High Court in the case of Yamuna Expressway Industrial Development Authority (supra). A copy of such order has been placed on record in which the relevant discussion has been made from pages 2 to 7 of the order. Since the facts and circumstances of the instant case are mutatis mutandis similar to those as considered and decided by the Hon’ble Jurisdictional High Court in the case of Yamuna Expressway Industrial Development Authority (supra) and the Tribunal in Moradabad Development Authority (supra), we uphold the impugned order in deciding this issue in assessee’s favour. This ground is not allowed.”***

10. In view of what has been discussed above and following the decision rendered by Hon’ble High Court in assessee’s own case and decision rendered by coordinate Bench of Tribunal, we are of the considered view that now the issue is no longer *res integra*, as it has already been held that “there is no good reasons for holding that

Statutory bodies could not be treated as charitable within the meaning of section 2(15) of the Act, as its object is to provide shelter to the homeless people”.

11. So there being no material/evidence on record supporting the case of the Revenue to reach the conclusion that the assessee was conducting its affairs on commercial lines with the profit earning motive and as such the proviso to section 2(15) of the Act is not attracted in this case and the assessee was entitled to exemption provided u/s. 11 of the Act. Moreover, no cogent reason or distinguishable facts have been brought on record by the Revenue if the year under consideration is different from earlier years, i.e., A.Yrs. 2009-10 to 2011-12, which have already been decided in favour of the assessee. So, in these circumstances, the Revenue authorities are required to follow the “principle of consistency”, as has been laid down by Hon’ble Supreme Court in the case of Radhasoami Satsang vs. CIT (1992) 193 ITR 321 (SC). Consequently, grounds Nos. 1 to 4 are decided in favour of the assessee.

**Grounds Nos. 5 to 10:**

12. While challenging the impugned addition of Rs.14,15,88,504/- made by Assessing Officer, Id. AR for the assessee contended that this issue has also been decided in favour of the assessee by the Hon'ble High Court of Allahabad. He has further contended that there is no material on record to appreciate that during the year under consideration, expenditure was more than the receipts. This factual position has not been controverted by the Id. DR for the Revenue, but he has supported the order passed by the Id. CIT(A).

13. Undisputedly, the expenditure made by the assessee-authority during the year under consideration was not more than the receipt, as is evident from the income & expenditure account for the period ending 31.03.2012, available at page 6 & 7 of the paper book. Ld. AR for the assessee taken us to para 32 of the order passed by Hon'ble High Court of Allahabad available at page No. 141/144 of the paper book, wherein the identical issue has been decided in favour of the assessee by returning following findings :

***“32. From the record, it also appears that the “authority” had been maintaining infrastructure development and reserve fund***

*IDRF as per the notification dated 15<sup>th</sup> January, 1998, the money transferred to this funds is to be utilized for the purpose of project as specified by the committee having constituted by the State Government under the said notification and the same could not be treated to be belonging to the “authority” or the receipt of taxable nature in its hands. For this reason also, it appears that the funds are utilized for general utility.”*

So, when the issue under consideration has already been decided by the Hon’ble High Court in favour of the assessee, by holding that infrastructure fund, development and reserve fund IDRF as per Notification dated 15.01.1998 belongs to State and the assessee-authority is a mere custodian, the same cannot be taxed in its hand. Even otherwise, the same has been utilized for general utility. So, in view of the matter, grounds Nos. 5 to 10 are also decided in favour of the assessee.

**Ground No. 11 :**

14. Learned CIT(A) has not allowed the benefit of excess utilization of earlier years, claimed by the assessee by raising additional ground. Ld. AR for the assessee contended that this issue is also covered in favour of the assessee by the order passed by coordinate Bench of Tribunal in assessee’s own cases for the assessment years 2009-10 to 2011-12. This factual position has also not been controverted by the

ld. DR for the Revenue, but he has supported the order passed by the ld. CIT(A).

15. We have perused the order dated 06.06.2018 (supra) passed by coordinate Bench of Tribunal in assessee's own case for A.Ys. 2009-10 to 2011-12 available at page No. 131 to 140 of the paper book, which is qua identical issue, by returning following findings :

***“6. The last ground is against the direction of the learned CIT(A) in allowing the set off and carry forward of deficit of earlier years to the current/next years. The Assessing Officer, without any discussion in the assessment order, did not allow the benefit of set off and carry forward of deficit of earlier years. The learned CIT(A), relying on certain decisions, directed the Assessing Officer to re-compute the income/loss after allowing necessary set off and carry forward.***

***7. Having heard both the sides and perused the relevant material on record, we find that this issue is no more res Integra in view of several decisions discussed by the learned CIT(A) in the impugned order including the judgment of the Hon'ble Bombay High Court in CIT vs. Institute of Banking Personnel Selection 2003 264 HO (Bombay) in which it has been held that : Income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by the trust for charitable and religious purposes in the earlier years against the income earned by the trust in the subsequent year will have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year in which adjustment has been made having regard to the benevolent provisions contained in s. 11 of the Act and that such adjustment will have to be excluded from the income of the trust under s. 11(1)(a) of***

***the Act. In reaching this conclusion, the Hon'ble High Court drew support from the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Shri Plot Swetamber Murti Pujuk Jain Mandal (1995) 211 ITR 293 (Guj). No contrary decision has been brought to our notice by the Id. DR. Respectfully following the precedent, we uphold the impugned order on this issue."***

Since the issue in controversy has already been decided by coordinate Bench of Tribunal in favour of the assessee in A.Y.2009-10 to 2011-12 on the basis of principle laid down by Hon'ble Bombay High Court in the case of CIT vs. Shri Plot Swetamber Murti Pujuk Jain Mandal (1995) 211 ITR 293 (Guj) "that income derived from the trust property has also got computed on commercial principles and if commercial principles are applied, then the adjustment of the expenses incurred by the trust for charitable and religious purposes in the earlier year against income earned by the trust in the subsequent year will have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year", and as such, the assessee is entitled for benefit of excess utilization of earlier years. Moreover, such benefit has already been granted to the assessee in earlier years at the level of Id. CIT(A) which has been accepted by the Revenue. So,

“rule of consistency” is also applicable to this issue. Consequently, we decide ground No. 11 in favour of the assessee.

14. In view of what has been discussed above, appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on this the 4<sup>th</sup> day of February, 2021.

Sd/-

**(G.S. PANNU)**  
**PRESIDENT**

Dated: 04/02/2022

‘aks’

sd/-

**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

Assistant Registrar  
ITAT New Delhi