

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI RATHOD KAMLESH JAYANTBHAI, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No. 174 & 63/RPR/2019
निर्धारण वर्ष / Assessment Year(s) : 2012-13 & 2013-14

Naya Raipur Development Authority
Prayavas Bhawan, North Block,
Sector 19, Naya Raipur Marg,
Naya Raipur, Atal Nagar(C.G.)
Pin-492 002.

PAN : AAALC0225H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax (Exemption)
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : S/shri S.R Rao & Rajesh Kumar
Chawda, AR's.

Revenue by : Shri P.K. Mishra, CIT-DR

सुनवाई की तारीख / Date of Hearing : 09.06.2022

घोषणा की तारीख / Date of Pronouncement : 02.09.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee are directed against the respective orders passed by the CIT(Appeals)-II, Raipur dated 14.03.2019 and 02.08.2019, which in turn arises from the orders passed by the A.O under Sec.143(3) of the Income-Tax Act, 1961 (for short 'the Act') dated 28.03.2015 and 30.12.2016 for assessment years 2012-13 and 2013-14, respectively. As the issues involved in the present appeals are inextricably interlinked or in fact interwoven, therefore, the same are being disposed off by way of a consolidated order. We shall take up the appeal filed by the assessee for AY 2012-13 in ITA No. 174/Rpr/2019 as the lead matter and the order therein passed shall mutatis mutandis apply for disposing off the appeal for the AY 2013-14 in ITA No. 69/Rpr/2019. The impugned order passed by the CIT Appeals) has been assailed before us on the following grounds:

"1. That the learned Commissioner (Appeals) has grossly erred misdirected himself, in law and on the facts of the case,, to hold that .

the assessee trust has been carrying out its activities on commercial lines and is will not get exemption under section 11 of the Income tax Act, 1961.

2. That the learned Commissioner (Appeals)-was not justified in upholding the addition of Rs.16,32,67,550/- as made by the learned assessing officer, by treating the surplus as profit on commercial lines.

3. That the authorities below have grossly erred in not appreciating that 'profit earning' was never the motive of the assessee trust, even when registration under section 12A was granted by the learned CIT, Raipur.

4. That the appellant craves leave to add, to alter, to withdraw, to amend the above ground of appeal before or at the time of the hearing of the appeal."

2. Succinctly stated, the assessee, viz. Naya Raipur Development Authority ("NRDA", for short) is a statutory authority created through Notification dated 08th January, 2022 issued by State Government of Chhattisgarh under Chattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973, with the objects, viz. i). to prepare the development plan for the special area; ii). to implement the development plan after its approval by the State Government; and iii). for the purposes of implementation of the plan to acquire, hold, develop, manage and dispose off lands and other property. The assessee is registered as a charitable

institution u/s.12AA of the Act on the ground of being engaged in objects of general public utility.

3. The assessee had filed its return of income for the assessment year 2012-13 on 25.03.2014 in the status of a charitable institution, declaring an income of Rs. Nil. Case of the assessee was thereafter selected for scrutiny assessment u/s.143(2) of the Act.

4. During the course of the assessment proceedings the A.O called upon the assessee to explain as to how it was entitled to claim itself as a charitable institution on the ground that it was engaged in any other objects of general public utility. Also the assessee was called upon to put forth an explanation that as to how its income was not hit by the “proviso” to Sec. 2(15) of the Act. In reply, it was submitted by the assessee that it was constituted as a Special Area Development Authority by the State Government of Chattisgarh under Section 65 of the Chattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (23 of 1973) for the development of the Special Area constituted under Section 64 of

the said Act. It was therein submitted that as per Section 68 of the Act, the functions of NRDA was to prepare the development plan for the special area and implement the same after its approval by the State Government. It was submitted by the assessee that in order to facilitate the implementation of the aforesaid plan it would acquire, hold, develop, manage and dispose off lands and other properties. Rebutting the observation of the AO that as to why its activities being in the nature of business activities would not be hit by the “proviso” to Sec. 2(15) of the Act, it was submitted by the assessee that in order to capture any activity under the said proviso (supra) the activity has to be either in the nature of trade, commerce or business or that of rendering of any services in relation to any trade, commerce or business for a fee or cess or any other consideration. It was the claim of the assessee that the element of profit was the sole essential ingredient for categorizing any activity as trade, commerce or business. It was, thus, the claim of the assessee that if the element pf profit was missing in any activity, then, the

same could not be brought within the realm of trade, commerce or business. It was submitted by the assessee that as there was no element or motive of profit involved in the entire gamut of activities that were carried out by it, therefore, the same would not fall within the sweep of business activities. It was the claim of the assessee that as it was a development authority constituted by the State Government of Chattisgarh under Section 65 of the Chattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (23 of 1973) for the development of the Special Area under a specific Act with a specified object which could be précised as development of urban infrastructure. It was submitted by the assessee that its various activities, viz. acquisition, development, construction and allotment of land and properties, providing infrastructure facilities, providing water, sewer, maintaining greens were purely incidental and subservient to its main objective of city development with no element or motive of profit being involved and the incidental income therein generated was re-cycled for attaining its objective, therefore, the same could not

be brought within the meaning of trade, commerce or business or that of services rendered in relation to any trade, commerce or business for fee and cess or any other consideration, and thus, would not be hit by the “proviso” to section 2(15) of the Act. Also, it was stated by the assessee that as and when it would be dissolved all of its assets and liabilities would either go back to the State Government or its representative agency. For the sake of clarity the reply of the assessee as can be gathered from the assessment order is culled out as under:

"In this query, your honour has assumed that the activities of the assessee Authority are in the nature of business for certain consideration, hence it was required to explain (a) why under first proviso to sec. 2(15) the Act, the work of the assessee may not be regarded as business activities and (b) its status of charitable institution on the basis of works for general public utility be not disallowed and taxed as per law and further (c) how the works of the assessee could be called as activity of general public utility.

Before submitting clause-wise reply to this query, the assessee seeks permission to re-order sequence of the clauses and prefers to address clause (c) at the outset through detailed note enclosed. The first proviso to sec. 2(15) reads as under:-

"Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business or, any activity of rendering any service in relation to any trade, commerce or business, for a fee or cess or any other consideration, irrespective of the nature of use or application or retention of the income from such activity"

In brief the submissions made in the note are that in order to capture any activity under the above proviso the activity has to be in the nature of trade,

commerce or business or rendering of any service in relation to any trade, commerce or business for a fee or cess or any other consideration. The element of profit is sole essential ingredient for categorizing any activity as trade, commerce or business. It is the lifeblood of business. If it is absent in any activity, such activity cannot be brought into the ambit of above terms through any amount of inferences, assumptions or arguments. There is no element or motive of profit, involved in the entire gamut of activities conducted by the authority. The incidental income is re-cycled for running and administration and for attaining the objectives. And whenever it is dissolved, all assets and liabilities are to go back to the Govt. or its representative agency. There is no provision for credit or withdrawal of surplus or declaration of dividend on the funds infused by the State Govt. Under these circumstances, the activities of the assessee need necessarily to be called as activity of general public utility.

Recently the Hon'ble Income-tax Appellate Tribunal, Delhi Bench had an occasion to adjudicate an identical issue in the case of Haridwar Development Authority vs. CIT in IT Appeal No.3056/Del/2012 & 3013/Del/ 2013. The Hon'ble ITAT has considered various orders of the Hon'ble Tribunal in the cases of several Urban Development Authorities that were constituted under Acts of the respective State Governments. In para 7.9 of the order, the Hon'ble Tribunal has also considered the issue of applicability of the provisos. Relevant extract of the order is reproduced below for ready reference.

Now we will examine the proviso to section 2(15) with reference to above broad scheme of the Act. From the above it is evident that the main object of the assessee is development of the area as per the mandate of U.P. Urban Planning & Development Act, 1973. The activity undertaken by the Authority comes within the object of general public utility but it cannot be concluded that it involves the carrying on of any activity in the nature of trade, commerce or business. Unless the activity undertaken by the assessee comes within the ambit of trade, commerce or business, the proviso would not get attract.

Hon'ble Supreme Court in the case of CIT vs. Gujarat Maritime Board 295 ITR 561 has held that where the assessee was under a legal obligation to apply its income which was directly and substantially from the business held under trust for the development of minor ports in the State of Gujarat, then it does not involve any profit motive and assessee was entitled for registration u/s 12A (emphasis supplied). The Hon'ble Supreme Court pointed out that the income earned by the Port was deployed for the development of minor ports in the state of Gujarat. Hon'ble Supreme Court took note of the fact that u/s 73 of the Gujarat Maritime Board Act 1981, all moneys received by or on behalf of the Board were to be credited to a fund called the general

account of the minor ports and under section 74, detailed guidelines as noted at page 564 of the report, were there. The mode of dealing with deficit or surplus was contemplated u/s 75 of the said Act. Considering all these sections, the Hon'ble Supreme Court held that there could not be said to be any profit 21 ITA 3056/D/ 12, 3013/D/ 13 & 6058/D/ 12 Haridwar Development Authority motive. Unless there was a profit motive, it cannot be said that an entity was carrying on any trade, commerce or business."

(a) In this case admittedly, the instant authority is creation of Govt. under specific Act and for specified objects, which can be precised as development of 'urban infrastructure'

(b) It is pertinent to submit here that as per object of the Income-tax Act regarding advancing eligible advantage to general public utility purposes, in sec. 11(3) (ixa), while dealing with unapplied surplus under sub-sec.2(b) of sec. 11, it is provided that even deposits or investments in bonds of public companies with object of carrying the business of providing long term finance for urban infrastructure in India are construed as application of income. In other words, when deposits made with a public company engaged in providing long term finance are eligible for exemption u/s.11, there cannot be any ambiguity regarding nature of activity of the entity which is directly engaged in the ultimate object of planning and development of urban infrastructure.

(c) In view of above facts and circumstances, the clauses set-out above as (a) and (b) become irrelevant. Accordingly, it is submitted that no adverse inference is called for in this matter."

5. However, the aforesaid explanation of the assessee did not find favour with the A.O. It was observed by the AO that it was the claim of the assessee before him that as its activities were not backed by any profit motive, therefore, the same neither being in the nature of trade or commerce; nor in the nature of business activities, thus, would not be hit by the "proviso" to section 2(15) of the Act. Rebutting the aforesaid claim of the assessee, the AO

was of the view that as to what was contemplated in the “proviso” to section 2(15) was “...in the nature of trade or commerce or business”, meaning thereby that it is alike trade, commerce or business. It was observed by the A.O that even though there may not be any profit earning motive as claimed by the assessee, but the very fact that it was deriving income from buying, developing and giving plots on lease rent; and also earning interest income on its deposits, therefore, its activities being in the nature of business activities were clearly hit by the “proviso” to section 2(15) of the Act. Observing that the gross receipts of the assessee during the year under consideration i.e AY 2012-13 exceeded Rs.25 lacs, the AO was of the view that the same would not fall within the exception that was carved out in the “proviso” to section 2(15) of the Act. Accordingly, the A.O holding the activities of the assessee as not charitable in nature, thus, declined its claim of exemption u/s.11 of the Act and vide his order u/s.143(3), dated 28.03.2015 brought to tax the net surplus of

Rs.16,32,67,551/-. For the sake of clarity the observations of the

AO are culled out as under:

"The aforesaid detailed argument of the assessee supported by cited case laws has been carefully considered. From the above argument, resorted on the findings held by Hon'ble Supreme Court and Hon'ble ITAT, the assessee has tried to justify that its work is not for profit and hence it is neither trade nor commerce nor business and hence its case is not hit by the proviso of section 2(15) and thus entitled to claim itself exempt from tax u/s 11 of the Act. Here I would like to underline the phrase " in the NATURE of trade, commerce or business " meaning thereby that it is alike trade , commerce or business. Element of profit is not necessary for it. Even though there is no profit earning motive as claimed by the assessee, the nature is of trade, commerce or business. Since the assessee Authority derives income from buying, developing and giving plots of land on lease rent as also to earn in interest income on its deposits, hence, the activities of the assessee are clearly hit by the proviso of section 2(15) i.e. it can't be regarded as a charitable institution. As the gross receipt of the assessee has exceeded Rs.25,00,000/-, the second proviso of section 2(15) is not applicable in its case. The argument that the assessee is a statutory body constituted by the state govt. does not alter the very nature of activity of the assessee which is obviously in the nature of business."

6. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success. It was observed by the CIT(Appeals) that as the assessee had been carrying out its activities on commercial lines, and its gross receipts during the year under consideration were more than that contemplated in the "proviso" to section 2(15) of the Act, therefore, the A.O had rightly concluded that the assessee's income would not be eligible for exemption u/s.11 of the Act.

7. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter before us.

8. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

9. At the very outset of the hearing of the appeal, it was submitted by the Ld. Authorized Representative (for short 'AR') for the assessee that the issue involved in the present appeal was squarely covered by the order passed by this Tribunal in the case of Dy. CIT 1(1), Raipur (C.G.) Vs. Raipur Development Authority in ITA No.212/RPR/2014, dated 16.04.2018 for assessment year 2011-12 and in the case of Raipur Development Authority Vs. Dy. Commissioner of Income Tax (Exemption) in ITA Nos. 77 & 78/RPR/2018, dated 17.01.2019 for the assessment year(s) 2012-13 & 2013-14. Our attention was drawn by the Ld. AR to

the aforesaid orders copies of which had been placed on record. It was submitted by the Ld. AR that the Tribunal in its aforesaid orders had categorically observed that the “proviso” to section 2(15) of the Act would not be applicable in the case of the assessee before them i.e a development authority. Apart from that, it was submitted by the Ld. AR that though the CIT(Exemption), Bhopal had after taking cognizance of the fact that the assessee during the year under consideration i.e AY 2012-13 by carrying out commercial activities had received a gross amount of Rs. 25,50,88,791/-, thus, initiated proceedings for cancelling the registration that was granted to it u/s.12A of the Act, but he had thereafter vide his order passed u/s 12AA(3) of the Act, dated 29.01.2021 dropped such proceedings with an observation that the aforesaid receipt of Rs. 25,50,88,791/- (supra) was not in the nature of a business receipt. It was averred by the ld. AR that now when the CIT(Exemption), Bhopal had himself admitted that the amount received by the assessee was not in the nature of business receipts, therefore, the observation of the AO that the

amount received by the assessee during the year was in the nature of business receipt being in contradiction of the same could not be sustained and was on the said count too liable to be vacated.

10. Per contra, the ld. Departmental Representative (“DR”, for short) relied on the orders of the lower authorities. It was submitted by the ld. DR that as the assessee during the year under consideration was carrying out business activities i.e buying, developing and giving plots on lease rent; and also earning interest income on its deposits, therefore, the lower authorities had rightly held the same as not being in the nature of charitable activities within the meaning of Sec. 2(15) of the Act.

11. We have heard the ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. After deliberating at length on the issue in hand in the backdrop of the contentions

advanced by the ld. Authorized Representatives, we find substance in the claim of the ld. AR that the issues involved in the present appeal of the assessee are squarely covered by the orders passed by the Tribunal while disposing off the appeals in the case of an identically placed development authority i.e Raipur Development Authority, viz. in the case of Dy. CIT 1(1), Raipur (C.G.) Vs. Raipur Development Authority in ITA No.212/RPR/2014, dated 16.04.2018 for assessment year 2011-12 AND in the case of Raipur Development Authority Vs. Dy. Commissioner of Income Tax (Exemption) in ITA Nos. 77 & 78/RPR/2018, dated 17.01.2019 for the assessment year(s) 2012-13 & 2013-14. On a perusal of the aforesaid orders, it transpires that the tribunal had categorically observed that the “proviso” to section 2(15) of the Act would not be applicable in the case of the assessee before them i.e a development authority. For the sake of clarity the observations recorded by the Tribunal while disposing off the appeal of the revenue in the case of Dy. CIT 1(1), Raipur (C.G.) Vs. Raipur Development Authority in ITA

No.212/RPR/2014, dated 16.04.2018 for assessment year 2011-

12 are culled out as under:

"10. The bone of contention is the applicability of the proviso to Section 2(15) of the Act. Section 2(15) as it stood in the statute after the repeal of the 1922 Act read as under:-

Section 2(15) - "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity of profit.

This provision remained unchanged till its amendment by the Finance Act, 1983 and with effect from 1.4.1984 "not involving the carrying on of any activity of profit" was omitted.

The Section remained unchanged till it was amended by the Finance Act, 2008 w.e.f 1.4.2009. This means that till the amendment brought by the Finance Act, 2008 the Revenue was convinced that the assessee-trust was not carrying out any commercial activity in the garb of charitable purpose. The activities of the trust were genuine and were for the charitable purpose.

11. All that has to be decided now is whether the activities of the assessee constitutes carrying on of any activity in the nature of trade, commerce or business to come within the purview of the proviso to Section 2(15) of the Act.

12. The Hon'ble Supreme Court in the case of the assessee GIDC in 227 ITR 414 had the occasion to consider the objects of the GIDC qua the claim of exemption u/s. 10(20A) of the Act. The relevant observations of the Hon'ble Supreme Court reads as under:-

7. The Division Bench of the High Court while agreeing that 'industrial activity is one of the facets of general development' adopted a reasoning that since development of an area would require roads, buildings, sanitation, parks, sports, educational institutions and several other amenities 'a city or town or village could be well developed without any industry'. The Division Bench posed a question and answered it in the following manner:

"The question, therefore, is whether when a particular Corporation is established for the purpose of developing or establishing industries in any particular area, can anyone say that it is for the purpose of planning, developing or improving a particular city, town or village or a particular area ? One may establish an industry in a given area. That area for the purpose of industry may develop. But it does not necessarily mean that particular area develops by that industry alone.

There may be advantages and disadvantages. On the one hand, because there are industrial activities in the area, some trade and commerce may grow, but that does not necessarily mean that it would develop that particular area. It may also create pollution and several other problems. Apart from that, the question which is required to be considered is as to whether the purpose of the corporation or the object of the corporation is to develop any city, any town or any particular area. The answer would be in the negative."

8. The Gujarat Act was enacted 'to make special provision for securing the orderly establishment of industries in industrial areas and industrial estates in the State of Gujarat, and to assist generally in the organization thereof, and for that purpose to establish an Industrial Development Corporation and for purposes connected with the matters aforesaid' as can be discerned from the preamble thereof.

9. Section 2(g) of the Act defines 'industrial area' as any area declared to be an industrial area by the State Government by notification in the Official Gazette which is to be developed and where industries are to be accommodated. Section 2(h) defines 'industrial estate' as any site selected by the State Government where the Corporation builds factories and other buildings and makes them available for any industries or class of industries. Section 13 of the Gujarat Act enumerates the functions of the Corporation and they contain, inter alia, 'to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Gujarat'.

10. We have no doubt that a proper planning is absolutely necessary for creation of an industrial area. Inside roads, sub-roads, buildings, sanitation, parks and other amenities have also to be provided in a planned industrial area as per the modern concept of any industrial complex. Even educational institutions may have to be provided in such complex. Therefore, development of industrial area would have its direct impact on the development or improvement of

that part of the city or town or village where such area is located. Delinking industrial area from the scope of development of any area is thus, without any practical sense.

11. In this context, a reference to the Maharashtra Industrial Development Act, 1962, which is almost analogous to the Gujarat Act, is of some use. While examining issues relating to the validity of the Maharashtra Act, a Division Bench of this Court has said in *Shri Ramtanu Co-operative Housing Society Ltd .v. State of Maharashtra* [1970] 3 SCC 323 :

"The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing building, allotting buildings, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also/that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of ~the sole purpose of establishment, growth and development of industries. The Corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of the work of the Corporation."

12. The scheme of the Gujarat Act, as is seen from a survey of the relevant provisions referred to above, would indicate that the Corporation set up thereunder is to chalk out plans for development of industrial area and industrial estate in different places which may locate in cities or towns or villages. Such schemes would normally involve planning and development of such areas.

13. The word 'development' in section 10(20A) should be understood in its wide sense. There is no warrant to exclude all development programmers relating to any industry from the purview of the word 'development' in the said sub-section. There is no indication in the Act that development envisaged therein should confine to non-industrial activities. Development of a place can be accelerated through varieties of schemes and establishment of industries is one of the modes of developing an area.

One of the reasons for incorporating a specific provision of exemption from income-tax such as section 10(20A) is to protect public bodies created under law for achieving the purpose of developing urban or rural areas for public good.

When the object is such, an interpretation which would preserve it should be accepted even if the provision is capable of more than one interpretation. That principle of interpretation is very much applicable to fiscal statutes also, [vide *State of Tamil Nadu v. M.K. Kandaswami* 1976 (1) SCR 38]. This Court has reiterated the said principle in *Calcutta Jute Manufacturing Co. v. CTO JT* 1997(5) SC 690.

15. The position is, therefore, clear that the authorities constituted by law for facilitating all kinds of development of cities, towns and villages for public purposes shall not be subjected to the liability to pay income-tax. The Division Bench of the High Court seems to have interpreted the exemption clause too rigidly and narrowly which resulted in the anomaly of bringing authorities like the appellant-corporation within the tentacles of the income-tax liability while the authorities dealing with the housing schemes which provide houses to private individuals would stand outside the taxing sphere.

16. In the/ result, we allow these appeals, 'set aside the judgment under challenge. The answer to the question will, therefore, be in favour of the assessee and against the revenue.

13. The constitutional validity of the Maharashtra Act was challenged before the Hon'ble Supreme Court by a writ and the Hon'ble Apex Court dismissed the writ petition. The relevant observations of the Hon'ble Supreme Court reads as under:-

3. The true character, scope and intent of the Act is to be ascertained "with reference to the purposes and the provisions of the Act. The Act is one to make a special provision for securing the orderly establishment in industrial areas and industrial estates of industries in the State of Maharashtra, and to assist generally in the organisation thereof, and for that purpose to establish an Industrial Development Corporation, and for purposes connected with the matters aforesaid.

4. The Corporation is established for the purpose of securing and assisting the rapid and orderly establishment and organisation of industries in industrial areas and industrial estates in the State of Maharashtra. The Corporation consists of 8 members two of whom are nominated by the State Government of whom one shall be the Financial Adviser to the Corporation, one member nominated by the State Electricity Board, one member

nominated by the Housing Board and three members nominated by the State Government, from amongst persons appearing to Government to be qualified as having had experience of, and having shown capacity in industry or trade or finance or who are in the opinion of the Government capable of representing the interest of persons engaged or employed therein, and the Chief Executive Officer of the Corporation, who shall be the Secretary of the Corporation.

7. We have referred to these expressions, "industrial area", "industrial estate", "development" and "amenity" in order to appreciate the general powers of the Corporation to discharge the functions of the Corporation in regard to the establishment, growth and development of industries in the State. These powers are to acquire and hold property, movable and immovable for the performance of any of its activities, and to lease, sell, exchange or otherwise transfer any property held by the Corporation on such conditions as may be deemed proper by the Corporation and also to purchase by agreement or to take on lease or under any form of tenancy any land, to erect such buildings and to execute such other works as may be necessary for the purpose of carrying out its duties and functions, to provide or cause to be provided amenities and common facilities in industrial estates and industrial areas and construct and maintain or cause to be maintained works and buildings therefore, to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings to construct buildings for the housing of the employees of such industries, to allot factory sheds or such buildings or parts of buildings, including residential tenements to suitable persons in the industrial estates established or developed by the Corporation and to do such other things and perform such acts as it may think necessary or expedient for the proper conduct of its functions, and the carrying into effect the purposes of this Act.

8. Broadly stated the functions and powers of the Corporation are to develop industrial areas and industrial estates by providing amenities of road, supply of water or electricity, street lighting, drainage, sewerage, conservancy and other conveniences, secondly to construct works and buildings, factory sheds and thirdly, to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings and to allot factory sheds, buildings, residential tenements to suitable persons in industrial estates established or developed by the Corporation and to lease, sell, exchange or otherwise transfer any property held by the Corporation on such conditions as may be deemed proper by the Corporation.

9. The development of industrial areas and industrial estates is intended to serve two objects. In the first place, there is to be an orderly establishment and growth of industries in the Bombay Poona sector. The second object is to secure dispersal of industries from the congested areas of the Bombay

Poona sector to the underdeveloped parts of the State. The industrial areas are broadly classified into two categories, namely, first, those meant for engineering and other industries which are not obnoxious and secondly those meant for chemical industries. The establishment and growth of industries in the State is inextricably bound up with availability of land. Available land is limited. Such limited supply leads to speculation in land. Power is therefore required for compulsory acquisition of land to achieve the purposes of the Act. At the same time, land owners are not to be deprived of the legitimate benefit of reasonable increase in land values in a developing economy.

11. The principal functions of the Corporation in regard to the establishment, growth and development of industries in the State are first to establish and manage industrial estates at selected places and secondly to develop industrial areas selected by the State Government. When industrial areas are selected the necessity of acquisition of land in those areas is apparent. The Act, therefore, contemplates that the State Government may acquire land by publishing a notice specifying the particular purpose for which such land is required. Before the publication of the notice, the owner of the land is given an opportunity to show cause as to why the land should not be acquired. After considering the cause shown by the owner the State Government may pass such orders as it deems fit. When a notice is published for acquisition of land, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances. Where the land has been acquired for the Corporation or any local authority, the State Government shall, after it has taken possession of the land, transfer the land to the Corporation or that local authority, for the purposes for which the land has been acquired subject to such terms and conditions which the State Government may deem fit to impose. We have already noticed that for the purpose of the Act, namely, the establishment and development of industries the State the Corporation will establish industrial estates and develop industrial areas.

12. Apart from establishing industrial estates and developing industrial areas the Corporation may dispose of any land acquired by the State Government and transfer to the Corporation without undertaking or carrying out any development thereof or transfer such land after undertaking or carrying out any development as it thinks fit. These powers of the Corporation with respect to the disposal of land are to be exercised so far as practicable, that where the Corporation proposes to dispose of by sale any such land without any development having been undertaken or carried out thereon, the Corporation shall offer the land in the first instance to the persons from whom it was acquired if they desire to purchase it subject to such requirements as to its development and use as the Corporation may think fit to impose. Again, the persons who are residing or carrying on business or other activities on any such land shall, if they desire to obtain accommodation on land belonging

to the Corporation and are willing to comply with any requirements of the Corporation as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.

16. The petitioners contended that the Corporation was a trading one. The reasons given were that the Corporation could sell property, namely, transfer land that the Corporation had borrowing powers ; and that the Corporation was entitled to moneys by way of rents and profits. Reliance was placed on the report of the Corporation and in particular on the income and expenditure of the Corporation to show that it was making profits. These features of transfer of land or borrowing of moneys or receipt of rents and profits will by themselves neither be the indicia nor the decisive attributes of the trading character of the Corporation. Ordinarily, a Corporation is established by shareholders with their capital. The shareholders have their Directors for the regulation and management of the Corporation. Such a Corporation set up by the shareholders carries on business and is intended for making profits. When profits are earned by such a Corporation they are distributed to shareholders by way of dividends or kept in reserve funds. In the present case, these attributes of a trading corporation Corporation are absent. The Corporation is established by the Act for carrying out the purposes" of the Act. The purposes of the Act are development . of industries in the State. The Corporation consists of nominees of the State Government, State Electricity Board and the Housing Board. The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing buildings, allotting buildings, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of sole purpose of establishment, growth and development of industries.

18. The Corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of work of the Corporation. The fund of the Corporation consists of moneys received from the State Government, all fees, costs and charges received by the Corporation, all moneys received by the Corporation from the disposal of lands, buildings and other properties and all moneys received by the Corporation by way of rents and profits or in any other manner. The Corporation shall have the authority to spend such sums out of the general funds of the Corporation or from reserve and other funds. The Corporation is

to make provision for reserve and other specially denominated funds as the State Government may direct. The Corporation accepts deposits from persons, authorities or institutions to whom allotment or sale of land, buildings, or sheds is made or is likely to be made in furtherance of the object of the Act. A budget is prepared showing the estimated receipts and expenditure. The accounts of the Corporation are audited by an auditor appointed by the State Government. These provisions in regard to the finance of the Corporation indicate the real role of the Corporation, viz., the agency of the Government in carrying out the purpose and object of the Act which is the development of industries. If in the ultimate analysis there is excess of income over expenditure that will not establish the trading character of the Corporation. There are various departments of the Government which may have excess of income over expenditure.

19. There are two provisions of the Act which are not to be found in any trading Corporation. In the first place, the sums payable by any person to the Corporation are recoverable by it under this Act as an arrear of land revenue on the application of the Corporation. 'Secondly on dissolution of the Corporation the assets vest in and the liabilities become enforceable against the State Government.

20. The underlying concept of a trading Corporation is buying and selling. There is no aspect of buying or selling by the Corporation in the present case. The Corporation carries out the purposes of the Act, namely, development of industries in the State. The construction of buildings, the establishment of industries by letting buildings on hire or sale, the acquisition and transfer of land in relation to establishment of industrial estate or development of industrial areas and of setting up of industries cannot be said to be dealing in land or buildings for the obvious reason that the State is carrying out the objects of the Act with the Corporation as an agent in setting up industries in the State. The Act aims at building an industrial town and the Corporation carries out the objects of the Act. The hard core of a trading Corporation is its commercial character. Commerce connotes transactions of purchase and sale of commodities, dealing in goods. The forms of business transactions may be varied but the real character is buying and selling. The true character of the Corporation in the present case is to act as an architectural agent of the development and growth of industrial towns by establishing and developing industrial estates and industrial areas. We are of opinion that the Corporation is not a trading one.

14. In the light of the aforementioned judicial decisions of the Hon'ble Supreme Court, it is settled that the assessee is not a trading corporation. Let us now consider the various aspect of the impugned provision.

"General means pertaining to whole class,

"Public" means the body of people at large including any class of the public,
"Utility" means usefulness.

Therefore, the advancement of any object of benefit to the public or a section of the public as distinguished from individual and group of individuals would be a charitable purpose. An object of public utility need not be an object in which the whole of the public is interested. It is sufficient if well defined section of the public benefits by the objects which means that the expression "object of general public utility" is not restricted to objects beneficial to the whole mankind. An object beneficial to a section of the public is an object of general public utility. In the case of CIT Vs Swastik Trading Co. Ltd. 113 ITR 852, the Hon'ble Gujarat High Court has held that establishing and maintaining Gaushalas and Panjrapole constitutes charitable purpose.

16. The Hon'ble Finance Minister while presenting the Finance Act 2008 in his budget speech stated as follows:

"Charitable purpose includes relief of the poor, education, medical relief and any other objects of general public utility. These activities are tax exempt as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purpose would also fall under "charitable purpose". Obviously, this was not the intention of the Parliament and hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.

18. The CBDT Circular No. 11/2008 dt. 19.12.2008 has explained the implications arising from the amendment brought to the provisions of Sec 2(15) of the Act. The CBDT clarifies that the newly inserted proviso to Sec. 2(15) will not apply in respect of the first three limbs of Sec. 2(15) i.e. relief of the poor, education or medical relief. Consequently where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute charitable purpose, even if it is incidentally involves the carrying on of commercial activity. The Board further clarified that " the newly inserted proviso to Sec. 2(15) will apply only to entities whose purpose is advancement of any other object of general public utility i.e. 4th limb of the definition of the charitable purpose contained in Sec. 2(15). The Circular further clarified "in the final analysis, whether the assessee has for its objects the advancement of any other object or general public utility is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of general public utility will be only a mask or device to hide the true purpose which is trade commerce or business or the rendering of any service in relation to trade,

commerce or business. Each case would therefore be decided on its own facts and no generalization is possible.

19. Thus, even the CBDT does not lay down any guidelines for determining whether the entity is carrying on any commercial activity. Each case would therefore to be decided on its own facts and as the CBDT has clarified generalization is not possible.

15. In the case of Sole Trustee, Loka Shikshana Trust vs. CIT 101 ITR 234, the Hon'ble Justice J. Baig speaking for the Apex Court thus said that:

"If the profits must necessarily feed a charitable purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity".

16. The test for carrying on of any activity in the nature of trade, commerce or business as mentioned in the first proviso to Sec. 2(15) would be satisfied if profit making is not the real object. The Hon'ble Delhi High Court in the case of ICAI Vs Director General of Income Tax (Exem) 347 ITR 99 had the occasion to consider the grievance of the ICAI which was denied exemption u/s. 10(23C)(iv) of the Act because in the opinion of the DGIT (Exem.) the institute was holding coaching classes and therefore was not an educational institution, consequently the institute was covered under the last limb of charitable purpose i.e. advance of any other object of general public utility in the light of the amendment brought o Sec. 2(15) of the Act as the institute was charging fees for conducting coaching clauses and making huge money in a systematic and organized manner. Considering the facts in the light of the amended provisions of Sec. 2(15), the Hon'ble Delhi High Court held that the order denying the exemption was not valid.

17. After considering the entire facts in totality, in the light of the decisions discussed hereinabove and also drawing support from the speech of the Hon'ble Finance Minister and subsequent clarifications issued by the CBDT within the frame work of the amended provisions of Sec. 2(15) of the Act, in our considered view, there was no material which may suggest that the assessee was conducting its affairs solely on commercial lines with a motive to earn profit. There is also no material brought on record which could suggest that the appellant company deviated from its objects for which it has been constituted. In our humble opinion and understanding of law, the proviso to Sec. 2(15) of the Act is not applicable on the facts of the case.

18. Accordingly, we uphold the order of the First Appellate Authority. Appeal dismissed.

19. Before parting, the revenue relied upon another amendment in the Act by way of introduction of section 13(8) which came through Finance Act of 2012 with retrospective effect from 01.04.2009 which provided that the benefit of Section 11 or Section 12 would not be available if the receipts from the activity in the nature of trade or business exceeded the threshold provided for in the proviso to Section 2(15) of the Act. Section 13 (8) of the Act reads as under:-

[(8)"Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous."]

20. A perusal of the aforementioned section shows that it would be applicable if the provisions of the first proviso to clause (15) of Section 2 become applicable. However, we have held that the first proviso to Section 2(15) is not applicable in the case of the assessee on the facts of the case."

Also, as observed by us hereinabove, once again this tribunal in the case of Raipur Development Authority Vs. Dy. Commissioner of Income Tax (Exemption) in ITA Nos. 77 & 78/RPR/2018, dated 17.01.2019 for the assessment year(s) 2012-13 & 2013-14, following its earlier order that was passed in the case of the said assessee in ITA No.212/RPR/2014, dated 16.04.2018 for assessment year 2011-12, had allowed the respective appeals of the assessee before them. At this stage, we may herein observe that the ld. DR on being confronted with the fact that the issues involved in the present appeal of the assessee were squarely

covered by the aforesaid orders passed by the Tribunal while disposing off the appeals in the case of Raipur Development Authority i.e in ITA No.212/RPR/2014, dated 16.04.2018 for assessment year 2011-12 AND ITA Nos. 77 & 78/RPR/2018, dated 17.01.2019 for the assessment year(s) 2012-13 & 2013-14, could not rebut the same. Nothing material was submitted by the ld. DR to impress upon us that the facts involved in the aforementioned appeals were distinguishable as against those involved in the case of the assessee before us.

12. Concurring with the view taken by the tribunal in the aforesaid orders passed while disposing off the appeals in the case of Raipur Development Authority involving identical facts, viz. (i). ITA No.212/RPR/2014, dated 16.04.2018 for assessment year 2011-12; and (ii). ITA No.212/RPR/2014, dated 16.04.2018 for assessment year 2011-12, we are of the considered view that the assessee before us which is placed on a similar footing, viz. NRDA, a Town and Country Development Authority constituted by the State Government of Chhattisgarh under Section 65 of

Chhattisgarh Nagar Tatha Gram Nivesh Adhinyam, 1973 vide notification no. 10/HED/2002 dated 08th January, 2002 r.w the Government notification no. 1385/1274/32/2002, dated 07th July, 2006 with its objects defined under Section 38(2) of Chhattisgarh Nagar Tatha Gram Nivesh Adhinyam, 1973, functions for a public purpose i.e development of the city of Naya Raipur on the basis of a self-sustaining model with no reliance or support from State Government or from any other agency. The revenue and surplus generated in the course of the multi-facet activities of the assessee, viz. acquisition, development, construction and allotment of land and properties, providing infrastructure facilities, providing water, sewer, maintain greens etc. which are purely incidental and subservient to the attainment of its primary objective i.e development of Naya Raipur City compensates the subsidies and rebates allowed to economically weaker section and lower income group/people and for meeting out the expenditure incurred on no-revenue generating activities like providing basic infrastructure activities

etc. Also the fact that there is a strict restriction on the assessee, viz. NRDA under the Chattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 for using any part of the revenue generated for any object other than as specified in the Act i.e for any purpose other than the development of Naya Raipur City, therein further supports the claim of the assessee that as its activities are purely for public purpose with no profit motive, therefore, the same could by no means be brought within the meaning of trade, commerce or business as contemplated in Sec. 2(15) of the Act. As stated by the ld. AR, and rightly so, as the term “business” must be understood in a commercial sense as involving an activity designed to earn profit, therefore, as the activities of the assessee before us are with a non-profit motive, the same, thus, could not have been brought within the realm of activities in the nature of business. Ostensibly, Section 55 and 56 of the Chattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 which carves out the definition of public purpose for which the assessee

had been set up under the aegis of the State Government, reads

as under :

Section 55 :- Town Development Scheme; Public Purpose – Land needed for the purpose of town development scheme shall be deemed to be a land needed for a public purpose for within the meaning of the Land Acquisition Act, 1894 (No.1 of 1894); AND

Section 56 :- Acquisition of land for Town and Country Development Authority – The town and Country Development Authority may at any time after the date of publication of the final town development scheme under Section 50 but not later than three years therefrom, proceed to acquire by agreement the land required for the implementation of the scheme and, on its failure so to acquire, the State Government may, at the request of the Town and Country Development Authority, proceed to acquire such land under the provisions of the Land Acquisition Act, 1894 (No.1 of 1894) and on the payment of compensation awarded under the Act and any other charges incurred by the State Government in connection with the acquisition, the land shall vest in the Town and Country Development Authority subject to such terms and conditions as may be prescribed. [Provided that the said agreement may contain such conditions and executed in such manner as may be prescribed].

On the basis of our aforesaid deliberations as regards the nature of activities of the assessee before us, viz. NRDA; and also drawing support from the aforesaid orders of the tribunal in the case of Raipur Development Authority wherein identical facts were involved, viz. (i). ITA No.212/RPR/2014, dated 16.04.2018 for assessment year 2011-12; and (ii). ITA No.212/RPR/2014, dated 16.04.2018 for assessment year 2011-12, we are persuaded to subscribe to the contention of the ld. AR that as the

assessee before us, viz. NRDA, a Town and Country Development Authority constituted by the State Government of Chattisgarh under Section 65 of Chattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973, functions for a public purpose i.e advancement of any other object of general public utility, and its activities which beyond any doubt are purely for public purpose having no profit motive, thus, could not have been brought within the meaning of trade, commerce or business and thus, would not be hit by the “proviso” to Sec. 2(15) of the Act. On the basis of our aforesaid deliberations we are of the considered view that as the assessee before us, viz. NRDA, a Town and Country Development Authority functions for a public purpose i.e development of the city of Naya Raipur, therefore, the same clearly falls within the sweep of “...advancement of any other object of general public utility” as contemplated in Sec. 2(15) of the Act. Also, in terms of our observations recorded hereinabove the activities of the assessee cannot be given the color as that of business activities.

13. Before parting, we may herein observe that the claim of the assessee that no part of its receipts for the year under consideration i.e AY 2012-13 could have held as amounts garnered from any business activities carried out by it is fortified by the view taken by the CIT(Exemption), Bhopal, who though had initiated proceedings for withdrawing the registration of the assessee for the reason that it had in its return of income for AY 2012-13 shown other income of Rs. 25,50,88,791/-, which initially he was of the view were receipts from carrying out activities in the nature of trade, commerce or business and thus, in violation of the "1st proviso" of Sec. 2(15) of the Act, but had thereafter vide his order passed under Sec. 12AA(3) of the Act, dated 29.01.2021 dropped the proceedings with a categorical observation that on verification it was found the aforesaid amount of Rs. 25,50,88,791/- (supra) did not emanate as business receipt but in fact was credited on account of a grant received from the State Government as well as interest income from banks. Accordingly, on the basis of the aforesaid admitted

fact which proves beyond doubt that the amounts received by the assessee during the year were not “business receipts”, therefore, the triggering of the “proviso” of Sec. 2(15) was on the said count also uncalled for in the hands of the assessee. For the sake of clarity the order passed by the CIT(Exemption), Bhopal, dated 29.01.2021 is culled out as under:

“PAN: AAALC0225H Dated:29/01/2021 DIN & Order No. : ITBA/COM/17/202/0-21/1030175669(1)

Order U/s 12AA(3) of the IT Act

The assessee is registered U/s 12A of the Act vide registration no. F.no. CIT/Rpr/Rech/12(a)/48/09-10 dated 07.05.2009 wef 01.04.2008. A show cause notice dated 22.08.2014 was issued to the assessee U/s 12AA(3) of the act for withdrawal of registration certificate on the ground that the assessee has shown other income at Rs. 25,50,88,791/- in his ITR for AY 2012-13, which is violation of the 1st proviso to section 2(15) of the Act and the amount shown in ITR is a receipt of activity in the nature of trade, commerce or business.

It has been verified that other income of Rs. 25,50,88,791/- does not emanate as business receipt rather this sum has been credited on account of grant from the state Government as well as interest income from banks. Further there has been no change in the objects and activities of the assessee.

Considering the reply of the assessee and the guidelines issued by the Board vide Circular No. 21/2016 dated 27.05.2016 in this behalf the proceedings U/s 12AA(3) is hereby dropped.

Abhay Kumar Singh
CIT (Exemption), Bhopal.”

(emphasis supplied by us)

14. We, thus, in terms of our aforesaid observations are of the considered view that neither the activities of the assessee before

us, viz. NRDA could be held as business activities nor the amounts received by it during the year under consideration be dubbed as business receipts. Accordingly, being of the view that the activities of the assessee being in the nature of charitable activities would not be hit by the “proviso” to Sec. 2(15) of the Act, we in terms of our aforesaid observations set-aside the order of the CIT(Appeals) and direct the AO to allow exemption of the surplus of Rs. 16,32,67,550/- as claimed by the assessee under Section 11 of the Act. The **Grounds of appeal Nos. 1 to 3** are allowed in terms of our aforesaid observations.

15. The **Ground of appeal no 4** being general is dismissed as not pressed.

ITA No. 63/RPR/2019
AY 2013-14

16. We shall now take up the appeal of the assessee for the AY 2013-14. The assessee has assailed the impugned order passed by the CIT(Appeals) on the following grounds before us:

“1. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred in confirming the addition of Rs.22,11,78,500/- made by the Id. Assessing Officer treating surplus as

business income disregarding the fact that the appellant has been granted registration u/s.12AA of the Income-tax Act, 1961 and it is in operation.

2. In fact and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred in upholding the action of Id. Assessing Officer that the appellant is not involved in any charitable activity to qualify for exemption u/s.11 of the Income tax Act, 1961.

3. The appeal order is bad in law and on facts.

4. The appellant reserves the right to add, amend, alter and omit all or any of the grounds of appeal.”

17. Succinctly stated, the assessee had filed its return of income for the assessment year 2013-14 on 10.03.2015 in the status of an AOP(trust), declaring an income of Rs. Nil. Case of the assessee was thereafter selected for scrutiny assessment u/s.143(2) of the Act.

18. During the course of the assessment proceedings, the A.O called upon the assessee to explain as to how it was entitled to claim itself as a charitable institution on the ground that it was engaged in any other objects of general public utility. Also the assessee was called upon to put forth an explanation that as to how its income was not hit by the “first proviso” to Sec. 2(15) of the Act. As the reply filed by the assessee did not find favour with the AO, therefore, he declined its claim for exemption under Sec.

11 of the surplus shown in the Income & Expenditure account amounting to Rs. 22,11,78,500/-. Accordingly, the AO vide his order passed under Sec. 143(3), dated 30.03.2016 assessed the income of the assessee at Rs. 22,11,78,500/-.

19. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals), but without any success.

20. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter before us. Ld. Authorized representatives for both the parties submitted that the facts and the issues involved in the present appeal of the assessee remained the same as were there before us in its appeal for the immediately preceding year i.e AY 2012-13 in ITA No. 174/RPR/2019.

21. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to

drive home their respective contentions. Admittedly, the facts and the issue involved in the present appeal of the assessee remains the same as were there before us in its appeal for the immediately preceding year i.e AY 2012-13 in ITA No. 174/RPR/2019. Accordingly, to the extent the issues involved in the present appeal remains the same as were there before us in the assessee's appeal for AY 2012-13 in ITA No. 174/RPR/2019, the order therein passed shall apply mutatis mutandis for disposing off the present appeal of the assessee i.e ITA No. 63/RPR/2019 for AY 2013-14.

22. At the same time it transpires that the AO while framing the assessment for the year under consideration i.e AY 2013-14 had further supported or in fact supplemented the declining of the assessee's claim for exemption of its surplus under Sec. 11 of the Act, for the reason that as the activities of the assessee were not for general public but only for a part of the public who were capable of purchasing the plots, flats and other assets constructed by the assessee, therefore, in the absence of the

general public being benefited, the said activities could not be brought within the scope and gamut of “..advancement of any other object of general public utility”, Page 7 of assessment order.

23. We have given a thoughtful consideration to the aforesaid observation of the AO and are unable to persuade ourselves to subscribe to the same. It was observed by the AO that as the activities of the assessee were not for general public but only for a part of the public who were capable of purchasing the plots, flats and other assets constructed by the assessee, therefore, in the absence of the general public being benefited the said activities could not be held to have been carried out for advancement of any other object of general public utility. At the first blush the said observation of the AO appeared to be very convincing, but we are afraid that the same is not sustainable in law. As observed by the **Hon’ble Supreme Court** in the case of **Ahmedabad Rana Caste Association Vs. CIT (1971) ITR 82 ITR 704 (SC)**, the High Court in the case before them had rightly observed that an object beneficial to a section of the public is an

object of general public utility. It was further observed by the Hon'ble Apex Court that in order to serve a charitable purpose it was not necessary that the object should be to benefit the whole of mankind or all persons in a particular country or State, and it would be sufficient if the intention to benefit a section of the public as distinguished from a specified individual was present. In the backdrop of the aforesaid observations of the Hon'ble Apex Court, we are of the considered view, that as the present assessee before us, viz. NRDA, a Town and Country Development Authority had been constituted as a Special Area Development Authority by the State Government of Chattisgarh with the predominant objective of development of the Naya Raipur City, therefore, it can safely be held to be for the benefit of a particular section of the public and not for any specified individual. Accordingly, the view taken by the AO that as the assessee was set up for providing facilities to a limited group of people and not for the benefit of the general public at large, therefore, it could not be held to have been

set up for advancement of any other object of general public utility cannot be sustained and is hereby vacated.

24. We, thus, in terms of our aforesaid observations herein conclude that as the activities of the assessee being in the nature of charitable activities would not be hit by the “proviso” to Sec. 2(15) of the Act, therefore, set-aside the order of the CIT(Appeals) and direct the AO to allow exemption of the surplus of Rs. 22,11,78,500/- as claimed by the assessee under Section 11 of the Act. The **Grounds of appeal Nos. 1 & 2** are allowed in terms of our aforesaid observations.

25. The **Grounds of appeal nos. 3 & 4** being general are dismissed as not pressed.

26. Resultantly, the appeal of the assessee is allowed in terms of our aforesaid observations.

27. In result, both the appeals of the assessee i.e ITA No. 174/RPR/2019 and ITA No. 63/RPR/2019 for AY 2012-13 and AY 2013-14 are allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
RATHOD KAMLESH JAYANTBHAI
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 02nd September, 2022

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (C.G)
4. The Pr. CIT-II, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	10.08.2022	Sr.PS/PS
2	Draft placed before author		Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		