

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

Before Sh. N. K. Choudhary, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1830/Del/2017 : Asstt. Year : 2008-09

M/s Ghaziabad Development Authority, C/o M/s RRA Taxindia, D-28, South Extension, Part-I, New Delhi-110049	Vs	JCIT, Exemption Range, Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. AAALG0072C		

Assessee by : Dr. Rakesh Gupta, Adv.

Revenue by : Ms. Sapna Bhatia, CIT DR

Date of Hearing: 30.08.2022

Date of Pronouncement: 14.11.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A), Ghaziabad dated 31.01.2017.

2. Following grounds have been raised by the assessee:

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order u/s 143(3)/147 and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in framing the impugned reassessment order u/s 143(3)/147, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in denying the benefit of exemption u/s 11 & 12 of the Act and further erred in holding that assessee authority falls within the ambit of the proviso to section 2(15) read with section 13(8) of the Act, and further erred in holding that the activities of assessee authority are commercial in nature and that too in violation of principles of natural justice.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in taxing the surplus of Rs.4,48,12,14,793/- and that too by invoking section 11(4A) and further erred in denying the exemption u/s 11 & 12 as claimed by the assessee and that too by recording incorrect facts and findings and in violation of principles of natural justice, more so in the face of decision of CIT vs Jet Airways (I) Ltd. 331 ITR 236 (BHC).

5. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in taxing the surplus of Rs.4,48,12,14,793/- and denying the exemption u/s 11 & 12, is bad in law and against the facts and circumstances of the case.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making the disallowance of Rs.3,49,09,341/- on account of payment of compensation through court orders and further erred in making double disallowance in this regard and that too without providing the adequate opportunity and in violation of principles of natural justice.

7. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making the disallowance of Rs.3,49,09,341/- on account of payment of compensation through court orders, is bad in law and against the facts and circumstances of the case.

8. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making the disallowance of Rs.75,00,000/- on account of excess audit fees paid to government and further erred in making double disallowance in this regard and that too without providing the adequate opportunity and in violation of principles of natural justice.*
9. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making the disallowance of Rs.75,00,000/- on account of excess audit fees paid to government, is bad in law and against the facts and circumstances of the case.*
10. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in not granting the benefit of exemption u/s 11 & 12 and not quashing the impugned assessment order and additions made therein is illegal, bad in law, contrary to law and facts and beyond jurisdiction that too by recording incorrect facts and findings and the same are not sustainable on various legal and factual grounds.*
11. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging the interest u/s 234A, 234B, 234C and 234D of Income Tax Act, 1961."*
3. The assessee is engaged in development work constituted under Uttar Pradesh Urban Planning & Development Act, 1973. The assessee has been claiming the benefits of provisions of Section 10(20A). Section 10(20A) was omitted by Finance Act, 2002. Thus, the A.Y. 2003-04 was the first year wherein return of income had been filed by the assessee as prior to this year. The assessee filed return of income on 31.12.2010 declaring total income of Rs.4,24,09,340/-.

4. From the record, we find that the assessment u/s 143(3) was completed on 31.12.2010 determining total income of Rs.4,24,09,340/-. Further, the notice u/s 148 has been issued on the assessee on 14.07.2014 and assessment has been completed 21.03.2016.

5. The pertinent facts are as under:

- Assessment u/s 143(3) of the Income Tax Act, 1961 was completed on 31.12.2010 on the total income of Rs.4,24,09,340/- making additions to the total income on account of payment of compensation of Rs.3.49 Cr. and Rs.75 lacs on account of audit fee.
- Notice u/s 147 was issued on 14.07.2014
- The reasons recorded pertains to advance given to Hapur Pilkhuwa Development Authority of Rs.50 Cr.
- The questionnaire during the proceedings u/s 147 was issued on 14.07.2014 which dealt with the provisions of Section 2(15) & Section 11 of the Income Tax Act, 1961.
- Assessment has been completed denying the exemption u/s 11.
- No addition has been made on account of advance given to Hapur Pilkhuwa Development Authority of Rs.50 Cr.
- Additions made in the original assessment of Rs.3.49 Cr. on account of payment of compensation and Rs.75 lacs on account of audit fee have been repeated, for the sake of completeness in the order passed u/s 148 dated 21.03.2016.
- Thus, it can be found that during the reassessment proceedings, the exemption u/s 11 has been denied to the surplus income.

6. We shall deal with the appeal taking into consideration, the reasons recorded, the additions made and the judgment of Hon'ble High Court of Mumbai and Hon'ble Jurisdictional High Court.

7. In the original assessment completed u/s 143(3) dated 31.12.2010, an addition of Rs.3.49 Cr. on account of payment of compensation and an amount of Rs.75 lacs on account of payment of audit fee has been made. The reasons recorded related to advance given of Rs.50 lacs to Hapur Pilkhuwa Development Authority (HPDA) of Rs.50 cr.

8. The assessee has challenged reassessment proceedings stating that the reassessment proceedings has been initiated merely on the basis of audit objection without application of mind and without recording his own reasons. The assessee has further challenged the assessment on account of administrative jurisdiction contending that proceedings initiated by DIT-Exemption have been completed by JCIT-Exemption without jurisdiction. However examination of facts reveal that the AO has recorded satisfaction note regarding the fact that appellant claimed to have advanced a sum of Rs.50,00,00,000/- to HPDA on 29.10.2007 whereas the nature of advance was converted to loan during AY 2009-10. This is a jurisdictional ground raised by the assessee.

9. The assessee has also challenged the denial of benefit of section 11 contending that the AO has applied the amended provisions of section 2(15) which are applicable from A.Y. 2009-10 onwards. It was argued that the assessee has not been given benefit of provisions of section 11(2) inspite of appellant having filed Form 10 regarding accumulation of income in stipulated time. Examinations of facts reveal that the

assessee has filed return of income on 27.06.2009. The return of income was due on 30.09.2008. The audit in this case has been completed on 27.06.2009 i.e. beyond the due date of filing of return. The revenue held that merely filing of certificate as Form 10 does not entitle appellant to get the benefit of section 11(2). For getting benefit u/s 11 the appellant has to have valid registration u/s 12A and should have applied the income derived under property held under trust wholly for the charitable purpose. The appellant has claimed that AO should have allowed the benefit of section 11. The examination of facts reveals that initially appellant got registration u/s 12A w.e.f. 31.03.2003 which has been revoked later. However, during appellate proceedings, the assessee claimed vide letter dt. 23.12.2016 that ITAT New Delhi vide its order dated 20.09.2016 in ITA No. 455/Del/2016 directed CIT(Exemption) to grant benefit of registration u/s 12AA w.e.f. 01.04.2001.

10. Again, the Id. CIT, Ghaziabad vide order u/s 12AA(3) dated 31.03.2014 cancelled the registration of the appellant w.e.f. 01.04.2009 on account of change of definition of charitable purpose u/s 2(15). The order of the Id. CIT(E) was annulled by the order of the ITAT vide order dated 29.04.2019 in ITA No. 2400/Del/2014, considering the fact that the assessee is engaged in development of land End in accordance to the Uttar Pradesh Urban Development Act 1973. As per section 7 of the above said Act the object of authority is to promote and secure the development of the area according to the plan and for that purpose authority shall have power to acquire, hold, manage and dispose of land and other property to carry out building, engineering, mining and other operations to execute works in connection with the supply of water and

electricity to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary and expedient for the purpose of such development and for purposes incidental thereto. Provided that save as provided in this act nothing contained in this act shall be construed as authorizing the disregard by the authority of any law for the time being in force. Thus the above said act authorizes the appellant to undertake any activity to fulfill the main object of development of land in the specified area.

11. Since, the assessee is found to be eligible for exemption u/s 11 for all the years pre and post A.Y. 2008-09, by the orders of the Tribunal, we hold that action of the Assessing Officer denying the exemption u/s 11 cannot be supported.

12. With regard to the disallowance of Rs. 3,49,09,341/- on account of compensation paid through Court order and disallowance of Rs.75,00,000/- on account of audit fee which are the repeated additions from the order u/s 143(3) dated 31.12.2010, we hold that the same continue to remain as matter of adjudication in the original order passed u/s 143(3) and hence not being dealt in this order. Since, the matter has been adjudicated on merits of the issue in favour of the assessee, any adjudication the issue of reopening raised at ground no. 1, 2 & 4 becomes academic in nature and hence not resorted to.

13. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 14/11/2022.

Sd/-

(N. K. Choudhary)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 14/11/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR