

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
196/Hyd/22	2013-14	Deputy Commissioner of Income Tax, Exemptions Circle, Hyderabad	M/s. Hyderabad Metropolitan Development Authority, [PAN: AAALH0058D]
203/Hyd/22	2016-17		
204/Hyd/22	2017-18		
197/Hyd/22	2013-14	M/s. Hyderabad Metropolitan Development Authority, [PAN: AAALH0058D]	Assistant Commissioner of Income Tax, Exemptions Circle-1(1), Hyderabad
207/Hyd/22	2016-17		
208/Hyd/22	2017-18		

निर्धारिती द्वारा / Assessee by: Shri Kiran Manohar, AR
राजस्व द्वारा / Revenue by: Shri Jeevan Lal Lavidiya, CIT-DR

सुनवाई की तारीख/Date of hearing: 19/01/2023
घोषणा की तारीख/Pronouncement on: 24/01/2023

आदेश / ORDER

PER BENCH:

Aggrieved by the orders passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Learned CIT(A)"), in the case of M/s. Hyderabad Metropolitan

Development Authority (“the assessee”) for the assessment years 2013-14, 2016-17 & 2017-18, both assessee and Revenue preferred these appeals. For the sake of convenience, we dispose of these appeals by way of this common order.

2. Assessee, a local authority, is an urban development authority constituted under the Andhra Pradesh Urban Areas (Development) Act, 1975, for the purpose of development of urban areas. Assessee received certain amounts towards Layout Regulation Scheme (LRS), Building Penalisation Scheme (BPS) and development charges as provided under the GOMS No. 902, dated 31/12/2007, the GOMS No. 901, dated 31/12/2017 and GOMS No. 51, dated 5/2/1996 followed by two other GOs. During the scrutiny of the return of income filed by the assessee for the assessment years 2013-14, 2016-17 and 2017-18, learned Assessing Officer proposed to bring the entire receipts to tax. Assessee contended that such amounts do not exclusively belong to the assessee, since the Government directed the assessee to accept the applications for the regularization of the unplanned urban areas and the unauthorised constructions and deviations in the constructions of building, while directing further that such amounts shall be kept in a separate account to be utilised only for specified purposes. According to the assessee, the assessee has no control over the utilisation of these funds except in accordance with the directions issued by the Government from time to time and all these funds were put in escrow account. Out of the development charges, according to the assessee, 15% thereof constitutes the development charges collected towards administration and other maintenance expenditure of the assessee whereas the balance 85% has to be utilised for the development of infrastructure facility in urban areas.

3. Learned Assessing Officer, however, brushed aside the contentions of the assessee by stating that merely because the amount is kept in escrow account, the receipt does not lose its character and inasmuch as the assessee has been claiming all the expenditure on improvement of

amenities are providing services has application of income, the assessee shall be deemed to be owning the amounts. On this premise, learned Assessing Officer brought the entire receipts relating to the LRS, BPS and development charges to tax.

4. Assessee preferred appeals before the learned CIT(A), and reiterated the submissions by placing reliance on the decision of the Delhi Bench of the Tribunal in the case of ITO vs. MMTC 3 ITD 466, and DTTDC reported in 54 TTJ 316.

5. Learned CIT(A) by way of impugned order, while following the decision of the Co-ordinate Bench of this Tribunal in the case of Kakatiya Urban Development Authority passed on 23/09/2019 upheld the addition made by the learned Assessing Officer on account of collection towards development charges, but however, directed that the receipts and expenditure statement and its schedules should be checked and the ledger of the development expenses have to be verified for allowing the expenditure. Insofar as the BPS and LRS are concerned, learned CIT(A) examined the issue in the light of the relevant GOs and the decision of the Tribunal in the case of Kakatiya Urban Development Authority, dated 23/09/2019 and reached a conclusion that the entire receipts on account of these two schemes can never be income of the assessee and depend upon the amount of money collected from the urban and panchayat areas, apart from the fact that the monies so received on account of these cannot be freely utilised by the assessee and, therefore, such monies have to be excluded from the gross receipts. Lastly learned CIT(A) dealt with the claim of the assessee that the excess expenditure incurred in the earlier year for working out the amount of utilisation for the year under consideration, has to be considered.

6. On an analysis of the provisions under section 10(23C) of the Act and section 11 of the Act as amended by Finance Act, 2021, learned CIT(A) returned a finding that the excess of application of expenditure or income

is allowable to be carried forward and set off against the income in future year in which the corpus fund is replenished or loan is repaid. But in this particular case there is no loan outstanding and there is no replenishment to the corpus fund. Learned CIT(A), accordingly held that the excess of expenditure in the earlier years cannot be set off for the year under consideration.

7. Aggrieved by the action of the learned CIT(A) in deleting the disallowance of expenditure in respect of the development charges, and also the additions made on account of the LRS and BPS, Revenue preferred ITA Nos. 196, 203 & 204/Hyd/2022; whereas aggrieved by the findings of the learned CIT(A) in upholding the addition on account of development charges collected and also in not allowing the excess of expenditure incurred in the earlier years in this year, assessee filed ITA Nos. 197, 207 & 208/Hyd/2022.

8. It is the submission made on behalf of the Revenue that the approach of the learned CIT(A) in upholding the findings of the learned Assessing Officer that 100% receipts on account of development charges have to be considered in the hands of the assessee as income and at the same time allowing the expenditure, not incurred for the development charges but incurred for the purpose of complying with the directions issued by the Government from time to time is contradictory and therefore, the deletion of the disallowance of expenditure incurred by the assessee not for the development charges, but only to comply with the Government directions is bad under law.

9. Ld. DR further argued that the receipts on account of the LRS and BPS are part and parcel of the income of the assessee inasmuch as the assessee received the same and there is no scope in the objects of the assessee authority to follow the directions of the Government in spending the income thereby, by following the directions of the Government issued from time to time. When the assessee is not bound by its bylaws to

facilitate the policies of the Government, whether or not such spending is a charitable, mere compliance with the directions of the Government will not take away the character of the receipts to be reckoned to compute the income. According to the Id. DR, the learned CIT(A) misdirected himself in this approach.

10. In the alternative, Ld. DR submitted that it is incumbent upon the learned CIT(A) to verify the objects of the assessee, the way to carry them out, nature of receipts and expenditure, any excess amount is generated in that process over and above the expenditure so as to attract the provisions under section 2 (15) of the Act as laid down by the Hon'ble Apex Court in detail in the case of the ACIT (Exemptions) vs. Ahmedabad Urban Development Authority 449 ITR 0001 (SC). He further submitted that, as a matter of fact, under similar circumstances a Co-ordinate Bench of this Tribunal followed the same in the case of Kakatiya Urban Development Authority vs. ACIT in ITA No. 1722 to 1726/Hyd/ 2019 and batch to set aside the impugned orders and to restore the issue to the file of the learned Assessing Officer with a direction to examine the activities of the assessee de novo and to decide the issue in accordance with law laid down by the Hon'ble Apex Court in the case of Ahmedabad Urban Development Authority (supra) and Kakatiya Urban Development Authority decided by the Co-ordinate Bench by order dated 26/12/2022.

11. Per contra, Id. AR, though argued in support of the contentions of the assessee advanced before the authorities below, but ultimately submitted that the matters are squarely covered by the decision of the Hon'ble Apex Court in the case of the Ahmedabad Urban Development Authority (supra) and also the Kakatiya Urban Development Authority decided by the Co-ordinate Bench by order dated 26/12/2022. He accordingly submitted that when the Government imposes certain responsibilities on the assessee as to the fixation of the rates and the manner of utilization of the funds leaving only a part of such funds in the hands of the assessee for utilization for their administrative expenses, it

cannot be said that the assessee is the owner of the entire funds so as to bring them to tax. He submitted that it would be in the fitness of things to direct the learned Assessing Officer to follow the decision of the Hon'ble Apex Court in the case of Ahmedabad Urban Development Authority (supra) to reach a just conclusion.

12. We have gone through the record in the light of the submissions made on either side. There is no dispute as to the facts involved in this matter. Assessee is an urban development authority originally created by the Andhra Pradesh Urban Areas (Development) Act, 1975 and renamed by the Hyderabad Metropolitan Development Act, 2008. It is functioning under the instructions of the Government issued from time to time. Insofar as the dispute in this matter is concerned, the assessee has been collecting prescribed amounts under GOMS No. 901 and 902 dated 31/12/2007 towards BPS and LRS apart from the development charges. Under GOMS No. 439 dated 13/06/2007, out of the total development charges collected by the assessee, only 15% thereof was allowed to the assessee to utilize for its expenses and the balance has been taken to the Development Charges Reserve Account. So also, out of the amounts collected towards BPS, the assessee is entitled only to 30% of the amounts collected.

13. Assessee was treated as local authority upto the assessment year 2002-03, but subsequently, by virtue of amendment to section 10(20) of the Act, the exemption that was available earlier was taken away and the assessee became taxable entity but, the assessee has been claiming exemption under section 11 of the Act by filing application for registration under section 12AA of the Act.

14. According to the learned Assessing Officer inasmuch as the assessee has been claiming deduction of the funds utilized for the purposes directed by the Government from time to time, it cannot be said that the assessee is not the owner of such funds. Learned CIT(A) though granted relief to

the assessee to some extent in respect of the BPS and LRS, he did not grant any relief to the assessee in respect of the development charges, and it is also evident the learned CIT(A) did not enter into the objectives of the assessee vis-a-vis the controlling instrument or the functioning of the assessee as to whether it constitutes any commercial functions.

15. This aspect has been dealt with by the Hon'ble Apex Court in the case of Ahmedabad Urban Development Authority (supra) where the authority enjoying the exemption under section 10(20) of the Act prior to amendment by Finance Act, 2002 but, subsequently, ceased to be a local authority due to the amendment. Hon'ble Apex Court held that mere fact that such authorities have to charge amounts for the goods or services they provide, they cannot be characterized as commercial receipts and if the entire receipts are reckoned for the purpose of the quantitative limit of 20% imposed by the 2nd proviso to section 2(15) of the Act it would negate the object of the Essential Public Utility. Hon'ble Apex Court dealt with this issue in detail and reached a conclusion that even if some of the activities of the authority generate some income, so long as they are intrinsically part of the activity of achieving the object of general public utility, the limit under the 2nd proviso to Section 2(15) of the Act has to be lifted. Hon'ble Apex Court summarized the relevant discussion in the following observation:

(b) Summary in relation to statutory authorities/corporations

190. In light of the above discussion, this court is of the opinion that:

(i) The fact that bodies which carry on statutory functions whose income was eligible to be considered for exemption under Section 10(20A) ceased to enjoy that benefit after deletion of that provision w.e.f. 01.04.2003, does not ipso facto preclude their claim for consideration for benefit as GPU category charities, under Section 11 read with Section 2(15) of the Act.

(ii) Statutory Corporations, Boards, Authorities, Commissions, etc. (by whatsoever names called) in the housing development, town planning, industrial development sectors are involved in the

advancement of objects of general public utility, therefore are entitled to be considered as charities in the GPU categories.

(iii) Such statutory corporations, boards, trusts authorities, etc. may be involved in promoting public objects and also in the course of their pursuing their objects, involved or engaged in activities in the nature of trade, commerce or business.

(iv) The determinative tests to consider when determining whether such statutory bodies, boards, authorities, corporations, autonomous or self-governing government sponsored bodies, are GPU category charities:

(a) Does the state or central law, or the memorandum of association, constitution, etc. advance any GPU object, such as development of housing, town planning, development of industrial areas, or regulation of any activity in the general public interest, supply of essential goods or services - such as water supply, sewage service, distributing medicines, of food grains (PDS entities), etc.;

(b) While carrying on of such activities to achieve such objects (which are to be discerned from the objects and policy of the enactment; or in terms of the controlling instrument, such as memorandum of association etc.), the purpose for which such public GPU charity, is set-up - whether for furthering the development or a charitable object or for carrying on trade, business or commerce or service in relation to such trade, etc.;

(c) Rendition of service or providing any article or goods, by such boards, authority, corporation, etc., on cost or nominal mark-up basis would ipso facto not be activities in the nature of business, trade or commerce or service in relation to such business, trade or commerce;

(d) where the controlling instrument, particularly a statute imposes certain responsibilities or duties upon the concerned body, such as fixation of rates on pre-determined statutory basis, or based on formulae regulated by law, or rules having the force of law, setting apart amenities for the purposes of development, charging fixed rates towards supply of water, providing sewage services, providing food-grains, medicines, and/or retaining monies in deposits or government securities and drawing interest therefrom or charging lease rent, ground rent, etc., per se, recovery of such charges, fee, interest, etc. cannot be characterized as "fee, cess or other consideration" for engaging in activities in the nature of

trade, commerce, or business, or for providing service in relation in relation thereto;

(e) Does the statute or controlling instrument set out the policy or scheme, for how the goods and services are to be distributed; in what proportion the surpluses, or profits, can be permissively garnered; are there are limits within which plots, rates or costs are to be worked out; whether the function in which the body is engaged in, is normally something a government or state is expected to engage in, having regard to provisions of the Constitution and the enacted laws, and the observations of this court in NDMC; whether in case surplus or gains accrue, the corporation, body or authority is permitted to distribute it, and if so, only to the government or state; the extent to which the state or its instrumentalities have control over the corporation or its bodies, and whether it is subject to directions by the concerned government, etc.;

(f) As long as the concerned statutory body, corporation, authority, etc. while actually furthering a GPU object, carries out activities that entail some trade, commerce or business, which generates profit (i.e., amounts that are significantly higher than the cost), and the quantum of such receipts are within the prescribed limit (20% as mandated by the second proviso to Section 2(15)) – the concerned statutory or government organisations can be characterized as GPU charities. It goes without saying that the other conditions imposed by the seventh proviso to Section 10(23C) and by Section 11 have to necessarily be fulfilled.

(v) As a consequence, it is necessary in each case, having regard to the first proviso and seventeenth proviso (the latter introduced in 2012, w.r.e.f 01.04.2009) to Section 10(23C), that the authority considering granting exemption, takes into account the objects of the enactment or instrument concerned, its underlying policy, and the nature of the functions, and activities, of the entity claiming to be a GPU charity. If in the course of its functioning it collects fees, or any consideration that merely cover its expenditure (including administrative and other costs plus a small proportion for provision) - such amounts are not consideration towards trade, commerce or business, or service in relation thereto. However, amounts which are significantly higher than recovery of costs, have to be treated as receipts from trade, commerce or business. It is for those amounts, that the quantitative limit in proviso (ii) to Section 2(15) applies, and for which separate books of account will have to be maintained under other provisions of the IT Act.

16. Both the counsel prayed that factual verification at the end of the learned Assessing Officer is necessary for compliance with the above view of the Hon'ble Apex Court and as a matter of fact a similar view was taken by a Co-ordinate Bench of the Tribunal in the case of Kakatiya Urban Development Authority vs. ACIT in ITA Nos. 1722 to 1726/Hyd/2019 and batch, dated 26/12/2022. In this set of facts, while respectfully following the decision of the Hon'ble Apex Court, followed by the Co-ordinate Bench of the Tribunal in the case of Kakatiya Urban Development Authority (supra), we set aside the impugned order and restore the issue to the file of the learned Assessing Officer to take a fresh view following the above directions of the Hon'ble Apex Court, after affording an opportunity to the assessee.

17. In the result, all these appeals are, therefore, treated as allowed for statistical purposes.

Order pronounced in the open court on this the 24th day of January, 2023.

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 24/01/2023

TNMM

Copy forwarded to:

1. Dy. Commissioner of Income Tax, Exemptions Circle, Hyderabad.
2. Asst. Commissioner of Income Tax, Exemptions Circle-1(1), Hyderabad.
3. M/s.Hyderabad Metropolitan Development Authority, 4th Floor,
Swarna Jayanthi Complex, Ameerpet, Hyderabad.
4. CIT(A)-NFAC, Delhi.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

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ITAT, HYDERABAD