IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No. 307/Asr/2018
Assessment Year: 2014-15

M/s Improvement Trust Fazilka Railway Road, Fazilka. [PAN: -AAALI0094G] **(Appellant)**	Vs.	Dy. CIT (Exemptions), Chandigarh. **(Respondent)**

Appellant by	None
Respondent by	Sh. Amit Jain, CIT. DR.

Date of Hearing	22.08.2023
Date of Pronouncement	20.09.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the ld. Commissioner of Income Tax (Appeals), Bathinda, (in brevity 'the CIT (A)') order passed u/s 250 (6) of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2014-15. The impugned order was emanated from the order of the ld. Dy. Commissioner of Income Tax, Circle-1 (Exemption), (in brevity the ld. AO) order passed u/s 143(3) of the Act.

2. The assessee has taken the following grounds:

"1. On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred by holding that, since proviso to section 2(15) is applicable, section 13(8) gets invoked and as a result of section 13(8), the assessee appellant looses all the benefits of sections 11 and 12 of the Act on the basis of judgments of various benches of Hon'ble ITAT ignoring the judgment of Hon'ble Jurisdictional High Court in the similar cases of other Improvement trust. As such addition made of Rs 9,09,41,639/- is unjustified and uncalled for. The same be deleted.

2. On the facts & in the circumstancesofthe case and in law, the Ld.Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 9,09,41,639/- by not allowing the benefit of sections 11 and 12 of the Income Tax Act, whereas as per the explanations furnished and material placed on record, the assessee appellant is duly entitled for the same.

3. On the facts & inthecircumstancesof thecase and in law, theLd.Commissioner of Income Tax (Appeals) has erred in confirming the addition made by the assessing officer on the basis of original audit report ignoring the revised audit report whereas as per explanation furnished and other material placed on record, the original audit report prepared is not correct. Accordingly,

revised audit report has been filed giving true state of affairs of correct income. As such addition made is unjustified and uncalled for. The same be deleted.

4. On the facts & in the circumstancesofthe case and in law, the Ld.Commissioner of Income Tax (Appeals) has erred in confirming the addition made by the assessing officer, by ignoring the revised audit report by holding that the revised audit report is not fully supported by the figures or discrepancies as pointed out. Whereas the assessee appellant has duly explained each and every entry of the original and the revised audit report during the assessment proceedings as well as at the time of appellate proceedings. As such addition made is unjustified and uncalled for. The same be deleted.

5. On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 3,00,00,000/- by holding that expenditure incurred on beautification of city and construction of Hockey Stadium not allowable u/s 28 to 44 of the Income Tax Act completely ignoring the fact that expenditure incurred is as per objects of the trusts as envisaged by the Govt, of Punjab. Therefore is an allowable expenditure.

6. On the facts & in the circumstances ofthecase and in law, the Ld.Commissioner of Income Tax (Appeals) has erred by confirming the addition of Rs 6,09,41,639/- instead of loss of Rs 38,76,965 as per revised return filed, supported by the books of accounts maintained as prescribed by the Govt, of Punjab.

7. On the facts & in the circumstances ofthecase and in law, the Ld.Commissioner of Income Tax (Appeals) has erred by confirming the additionmade by the assessing officer after taking the receipts on theaccrual/mercantile method of accounting and expenditure on cash basis andignoring the revised audit report giving true & correct state of affairs of income. As such addition made is unjustified and uncalled for. The same be deleted.

8. That the appellant craves leave to add oramend any grounds of appeal beforethe appeal is finally heard ordisposed of."

3. Brief fact of the case is that the assessee is an Urban Cooperative Development Authority which is called General Public Utility (GPU). The assessee claimed the exemption u/s 11 and 12 of the Act. Accordingly, after depreciation the income amount of Rs.6,09,41,640/- was claimed as exempt u/s

11 of the Act. So, the total income of the assessee was Nil. The assessment was framed u/s 143(3). In the assessment the assessee was rejected for claimed of exemption u/s 11 and 12 by invoking section 13(8) as there is no application of section 2(15) in the activity of the assessee. In assessment the addition was made amount to Rs. 3 crore for payment towards public utility and amount to Rs.1.5 crore towards Municipal Community. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the observation of the ld. AO. Only, the ground related addition amount to Rs.1.5 crore for payment to Municipal Community was allowed and other grounds of appeal before the ld. CIT(A) were upheld and the appeal was partly allowed. The ld. CIT(A) in observation rejected the assessee's activities in relation to section 2(15) and the exemption section 11 and 12 was duly rejected. Being aggrieved the assessee filed an appeal before us.

4. When the appeal was called for hearing, no one appeared on behalf of assessee to represent his case. There is no application for seeking adjournment either. On perusal of record, we find that the hearing is scheduledon 22/08/2023. Previously the dates were fixed number of times. We find from the record that on dated 12/05/2023 the case was adjourned on written request of ld. AR for assessee. In view of the above and considering the nature of dispute, we

proceed to dispose the appeal*ex-parte qua* the assessee after hearing the learnedDR and on the basis of material available on the record.

5. The ld. CIT-DR, Mr. Amit Jain by showing his good gesture and by wisdom mentioned before the bench that the appeal of the assessee is squarely covered with the order of Hon'ble Supreme Court in the case of **ACIT (Exemption) vs. Ahmedabad Urban Development Authority (2022) 143 taxmann.com 278 (SC)**. The bench appreciated the honest-gesture of the ld. CIT-DR.

6. We heard the submission of the ld. CIT-DR,considering the orders of the revenue authorities and perused the documents available in the record. The assessee is an Urban Development Society, and the assessee is developing land provided by the municipal community with the motive for development of Fazilka City after development the land has to be sold, so, in such circumstance, the profit has to be computed on based on two methods only, i.e. percentage completion method or the project completion method. The assessee is purely the urban development concern and claimed exemption u/s 11 and 12. As per the revenue the application of section 2(15) in case of urban development company, (GPU) is well settled by the recent case of Hon'ble Supreme Court in **Ahmadabad Urban Development** Authority (supra). The relevant paragraphs are duly reproduced as below:

186. *In Shri Ramtanu Cooperative Housing Society (supra) no doubt, this court did not have to decide whether the Maharashtra Industrial Development Corporation was entitled to tax exemption. However, it examined the provisions of the Act, and the ratio, that such industrial development corporations are not engaged in trading, is binding. Like in that case, here too, the concerned state Acts (Gujarat Industrial Development Act, 1962 and the Karnataka Industrial Areas Development Act, 1966) tasked the boards with planning and development of industrial areas. Their personnel are appointed under the enactments and are deemed to be public servants. The state government is empowered to acquire land, in exercise of eminent domain power, for their purposes; their audits are by the Accountant General of the concerned state, or auditors appointed by the state. They are authorized by law, to levy rates and charges, for the services they provide, on pre-determined basis. In the light of these provisions, clearly, these boards and authorities perform objects of general public utility; and they are not driven by profit motive.*

187. *There is a two-fold distinction between the now-deleted section 10(20A) and the newly added section 10(46) (w.e.f. 1-6-2011). Firstly, that the erstwhile section 10(20A) applied to a limited class of undertaking i.e., the bodies, or corporations, constituted by or under any law-confined to the planning and development of housing infrastructure. However, the newly added section 10(46) is wider in comparison and the activities of any body or authority or board constituted by or under any central or State Act with "the object of regulating or administering any activity for the benefit of the general public", has broader import. In a sense, the newly added section 10(46), resembles a GPU category charity classified under section 2(15). The second distinction is that section 10(20A) did not bar any board, or corporations, etc. from indulging*

in commercial activities. However, sub-clause (b) of section 10(46) imposes such a bar, and the concerned body cannot claim tax exemption if it engages in commercial activity.

188. *The manner in which GPU charities has been dealt with under the definition clause, i.e., section 2(15), indicates that even though trading or commercial activity or service in relation to trade, commerce or business appears to be barred - nevertheless the ban is lifted somewhat by the proviso which enables such activities to be carried out if they are intrinsically part of the activity of achieving the object of general public utility. Furthermore, in the case of GPU charities there is a quantified limit of the overall receipts, which is permissible from such commercial activity. In the case of local authorities and corporations covered by section 10(46) no such activities are seemingly permitted.*

189. *As was observed in the earlier part of this judgment - while considering whether for the period 1.0.2003 - 31-5-2011, statutory boards, corporations, etc. could have lawfully claimed to be GPU charities, this court has observed that the nature of such corporations is not to generate profit but to make available goods and other services for the benefit of public weal. If such corporations (falling within the description of section 10(46)) applied to the Central Government for exemption, the treatment of their receipts, should be no different than how such receipts can and should have been treated for the purposes of determining whether they are GPU charities, during the period when section 10(46) was not in existence. Furthermore, this court is of the opinion that having regard to the observations in Gujarat Maritime Board case (supra), the denial of exemption under one category cannot debar such corporations from claiming income exempt status under another category."*

6.1 Further, the revenue has already agitated the issue before the Hon'ble Supreme Court in the case of assessee's own case also and which was duly dismissed by the Hon'ble Supreme Court. The assessee is eligible for exemption section 11 and 12 and as per the guideline of the Hon'ble Apex Court in the relevant paragraph is duly reproduced as below:

253. *In view of the foregoing discussion and analysis, the following conclusions are recorded regarding the interpretation of the changed definition of "charitable purpose" (w.e.f. 1-4-2009), as well as the later amendments, and other related provisions of the IT Act.*

A. General test under section 2(15)

A.1. It is clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration ("cess, or fee, or any other consideration");

A.2. However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that (i) the activities of trade, commerce or business are connected ("actual carrying out…" inserted w.e.f. 1-4-2016) to the achievement of its objects of GPU; and (ii) the receipt from such business or commercial activity or service in relation thereto, does not exceed the quantified limit, as amended over the years (Rs. 10 lakhs w.e.f. 1-4-2009; then Rs. 25 lakhs w.e.f. 1-4-2012; and now 20% of total receipts of the previous year, w.e.f. 1-4-2016);

A.3. Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be considered to be "trade, commerce, or business" or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business". In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.

A.4. Section 11(4A) must be interpreted harmoniously with section 2(15), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit or surplus or gains must, therefore, be incidental. The requirement in section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to section 2(15), has not been breached. Similarly, the insertion of section 13(8), seventeenth proviso to section 10(23C) and third proviso to section 143(3) (all w.r.e.f. 1-4-2009), reaffirm this interpretation and bring uniformity across the statutory provisions.

B. Authorities, corporations, or bodies established by statute

B.1. The amounts or any money whatsoever charged by a statutory corporation, board or any other body set up by the state government or central governments, for achieving what are essentially 'public functions/services' (such as housing, industrial development, supply of water, sewage management, supply of food

grain, development and town planning, etc.) may resemble trade, commercial, or business activities. However, since their objects are essential for advancement of public purposes/functions (and are accordingly restrained by way of statutory provisions), such receipts are prima facie to be excluded from the mischief of business or commercial receipts. This is in line with the larger bench judgments of this court in Ramtanu Cooperative Housing Society and NDMC (supra).

B.2. However, at the same time, in every case, the assessing authorities would have to apply their minds and scrutinize the records, to determine if, and to what extent, the consideration or amounts charged are significantly higher than the cost and a nominal mark-up. If such is the case, then the receipts would indicate that the activities are in fact in the nature of "trade, commerce or business" and as a result, would have to comply with the quantified limit (as amended from time to time) in the proviso to section 2(15) of the IT Act.

B.3. In clause (b) of section 10(46) of the IT Act, "commercial" has the same meaning as "trade, commerce, business" in section 2(15) of the IT Act. Therefore, sums charged by such notified body, authority, Board, Trust or Commission (by whatever name called) will require similar consideration - i.e., whether it is at cost with a nominal mark-up or significantly higher, to determine if it falls within the mischief of "commercial activity". However, in the case of such notified bodies, there is no quantified limit in section 10(46). Therefore, the Central Government would have to decide on a case-by-case basis whether and to what extent, exemption can be awarded to bodies that are notified under section 10(46).

B.4. For the period 1-4-2003 to 1-4-2011, a statutory corporation could claim the benefit of section 2(15) having regard to the judgment of this Court in the

Gujarat Maritime Board case (supra). Likewise, the denial of benefit under section 10(46) after 1-4-2011 does not preclude a statutory corporation, board, or whatever such body may be called, from claiming that it is set up for a charitable purpose and seeking exemption under section 10(23C) or other provisions of the Act.

C. Statutory regulators

C.1. The income and receipts of statutory regulatory bodies which are for instance, tasked with exclusive duties of prescribing curriculum, disciplining professionals and prescribing standards of professional conduct, are prima facie not business or commercial receipts. However, this is subject to the caveat that if the assessing authorities discern that certain kinds of activities carried out by such regulatory body involved charging of fees that are significantly higher than the cost incurred (with a nominal mark-up) or providing other facilities or services such as admission forms, coaching classes, registration processing fees, etc., at markedly higher prices, those would constitute commercial or business receipts. In that event, the overall quantitative limit prescribed in the proviso to section 2(15) (as amended from time to time) has to be complied with, if the regulatory body is to be considered as one with 'charitable purpose' eligible for exemption under the IT Act.

C.2. Like statutory authorities which regulate professions, statutory bodies which certify products (such as seeds) based on standards for qualification, etc. will also be treated similarly.

D. Trade promotion bodies

Bodies involved in trade promotion (such as AEPC), or set up with the objects of purely advocating for, coordinating and assisting trading organisations, can

be said to be involved in advancement of objects of general public utility. However, if such organisations provide additional services such as courses meant to skill personnel, providing private rental spaces in fairs or trade shows, consulting services, etc. then income or receipts from such activities, would be business or commercial in nature. In that event, the claim for tax exemption would have to be again subjected to the rigors of the proviso to section 2(15) of the IT Act.

E. Non-statutory bodies

E.1. In the present batch of cases, non-statutory bodies performing public functions, such as ERNET and NIXI are engaged in important public purposes. The materials on record show that fees or consideration charged by them for the purposes provided are nominal. In the circumstances, it is held that the said two assessees are driven by charitable purposes. However, the claims of such non-statutory organisations performing public functions, will have to be ascertained on a yearly basis, and the tax authorities must discern from the records, whether the fees charged are nominally above the cost, or have been increased to much higher levels.

E.2. It is held that though GS1 India is in fact, involved in advancement of general public utility, its services are for the benefit of trade and business, from which they receive significantly high receipts. In the circumstances, its claim for exemption cannot succeed having regard to amended section 2(15). However, the Court does not rule out any future claim made and being independently assessed, if GS1 is able to satisfy that what it provides to its customers is charged on cost-basis with at the most, a nominal markup.

F. Sports associations

So far as the state cricket associations are concerned (Saurashtra, Gujarat, Rajasthan, Baroda, and Rajkot), this Court is of the opinion that the matter requires further scrutiny, in light of the discussion in paragraphs 228-238 of the judgment. Accordingly, a direction is issued that the AO shall adjudicate the matter afresh after issuing notice to the concerned assessees and examining the relevant material indicated in the previous paragraphs of this judgment. Furthermore, if any consequential order needs to be issued, the same shall be done and resulting actions, including assessment orders shall be passed in accordance with the law under relevant provisions of the IT Act.

G. Private Trusts

So far as the appeal by assessee-Tribune Trust is concerned, it has been held that despite advancing general public utility, the Trust cannot benefit from exemption offered to entities covered by section 2(15) as the records reveal that income received from advertisements, constituted business or commercial receipts. Consequently, the limit prescribed in the proviso to section 2(15) has to be adhered to for the Trust's claim of being as a charity eligible for exemption, to succeed. Therefore, despite differing reasoning, this court has held that the impugned judgment of the High Court does not call for interference.

H. Application of interpretation

H. At the cost of repetition, it may be noted that the conclusions arrived at by way of this judgment, neither precludes any of the assessees (whether statutory, or non-statutory) advancing objects of general public utility, from claiming exemption, nor the taxing authorities from denying exemption, in the future, if the receipts of the relevant year exceed the quantitative limit. The assessing authorities must on a yearly basis, scrutinize the record to discern whether the

nature of the assessee's activities amount to "trade, commerce or business" based on its receipts and income (i.e., whether the amounts charged are on cost-basis, or significantly higher). If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to time) in proviso to section 2(15), has been breached, thus disentitling them to exemption.

254. *In accordance with the foregoing discussion, and summary of conclusions, the numerous appeals are disposed of as follows:*

(i) The revenue's appeals against the Improvement Trust, Moga[61], the Hoshiarpur Improvement Trust[62], Bathinda Improvement Trust[63], Fazilka Improvement Trust[64], Sangrur Improvement Trust[65]; Patiala Improvement Trust[66], Jalandhar Improvement Trust[67], Kapurthala Improvement Trust[68], Pathankot Improvement Trust[69], Improvement Trust, Hansi[70], and the Special Leave Petitions filed against the Gujarat VC Maritime Board[71] and Karnataka Water Supply and Drainage Board[72] are rejected."

6.2 The issue was not agitated before the ld. CIT(A) as because the order of the Hon'ble Apex Court was in letter position. The observation of the ld. CIT(A) in relevant paragraphis reproduced as below: -

> *"The legal preposition that can be summarized is that 'even though the activity of appellant are charitable falling under the category " advancement, of any other object of general public utility, provisos to section 2(15) are applicable as the appellant is carrying out activities in the nature of trade, commerce or*

business and receipts from such trade/commerce/business exceeds the prescribed limit. Since the provisos to section 2(15) is "applicable, section 13(8) gets invoked. As a result of section 13(8) the appellant losses all the benefits u/s 11 and 12 of the act as was rightly concluded by the Assessing Officer. In view of the above discussions, the Assessing Officer was right in withdrawing the benefit of sec 11 & 12 to the appellant. Since all the grounds relate to section 11 & 12, same are therefore dismissed."

The observation of the revenue is dismissed. As the assessee is eligible for exemptionu/s 2(15) of the Actrelated to its activities. We respectfully relied on the order of **Ahmedabad Urban Development Authority**(supra) that the activities of assessee is eligible for Section 2(15) of the Act. The Legal Ground of the assessee is adjudicated in favour of the assessee.

Accordingly, the appeal of the assessee Ground No-1 is allowed.

6.3. Related Ground No-2 to 7, are factual and the above-mentioned issues are agitated first time before the Bench in view of the order of the Hon'ble Apex Court. The application of order of **Ahmedabad Urban Development Authority**(supra) is discussed first time by the bench with presence of ld. CIT-DR. The ld. CIT-DR has accepted the view of the tribunal. We remit back the

Ground no- 2 to 7 to the file of the ld. CIT(A) by considering the order of the Hon'ble Apex Court and the discussion of the Bench as indicatedabove.

Accordingly, the appeal of the assessee Ground No-2 to 7 are allowed for statistical purpose. The appeal of the assessee Ground No-8 is general in nature.

7. In the result, the appeal of the assessee bearing **ITA No. 307/Asr/2018** is partly allowed for statistical purposes.

Order pronounced in the open court on 20.09.2023

Sd/-	**Sd/-**
(Dr. M. L. Meena)	**(ANIKESH BANERJEE)**
Accountant Member	**Judicial Member**

AKV

Copy of the order forwarded to:
(1)The Appellant
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