

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 2037/Del/2013

Meerut Development Authority, Vikash Marg, Civil Lines, Meerut,	Vs.	Commissioner Of Income Tax, Ayakar Bhawan, Bhainsali Ground, Meerut
(Appellant)		(Respondent)
PAN: AAALM0124D		

Assessee by :	Shri Kapil Goel, Adv
Revenue by:	Shri Subhra Jyoti Chakraborty, CIT DR
Date of Hearing	03/10/2023
Date of pronouncement	20.12.2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 2037/Del/2013 arises out of the order of the Commissioner of Income Tax, Meerut [hereinafter referred to as 'Id. CIT(A), in short] dated 11.03.2013 passed u/s 12AA(3) of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal:-

"1. Because the impugned order dt. 11.03.2013 passed by the Ld. Commissioner of Income Tax, Meerut (herein after referred as Ld. CIT) cancelling the registration u/s 12AA(3) is wholly illegal and void in the eyes of law. The Ld. CIT failed to appreciate that the power to cancel the registration u/s 12AA (3) was brought on the statute w.e.f. 01.06.2010 prospectively and as such the cancellation made w.e.f. 01.04.2009 is invalid and illegal in the eyes of law

2. Because the Ld. CIT grossly erred both in law and on facts while exercising the power u/s 12AA(3) without bringing an iota of fact leading to establish that the activities of the appellant are not genuine or are not been carried in accordance with objects of the appellant trust.

3. *Because the Ld. CIT grossly erred both in law and on facts while holding the appellant as not engaged in any charitable activity within the meaning of section 2(15) of the Act. Ld. CIT failed to appreciate that section 2(15) has no application on the facts & circumstances*
 4. *Because the impugned order u/s 12AA(3) passed by the Ld. CIT in the case of appellant is patently invalid, contrary to the provision of law, contrary to all canons of natural justice and is void ab-initio.*
 5. *Because the impugned order u/s 12AA(3) passed by Ld. CIT is patently invalid in view of specific guidelines and Circular No. 1/2011 dt. 06.04.2011 issued by Central Board of Direct Taxes. The findings of Ld. CIT, in holding "the objection of Ld. Counsel of the appellant that the section was enacted w.e.f. 01.06.2010 is incorrect on facts, is not tenable and cannot be accepted", are wholly illegal & invalid.*
 6. *Because the impugned order u/s 12AA (3) passed by Ld. CIT is wholly illegal and is based on irrelevant consideration. Ld. CIT has altogether failed to appreciate series of authoritative Judicial pronouncements.*
 7. *Because the Ld. CIT grossly erred both in law and on facts while accepting the observations of Hon'ble ITAT in its own case on the one hand and challenging the same before Hon'ble High Court of Judicature at Allahabad on the other hand. The impugned order passed without withdrawing the appeal filed by the department is wholly illegal.*
 8. *Because the Ld. CIT grossly erred both in law & on facts while holding the activities of the appellant at par with that of a private developer or a builder. L.d. CIT failed to appreciate that the objects & activities of the appellant exclusively relates to planned development of City and are strictly in accordance with Uttar Pradesh Urban Planning and Development Act, 1973.*
 9. *Because the Ld. CIT grossly erred to apply the findings of Hon'ble ITAT, Chandigarh in there judgment dt. 01.06.2006. The impugned registration u/s 12A was granted on 31.05.2007 and as such Ld. CIT must have applied his mind at the time of granting the registration on the face of judgment of Hon'ble ITAT, Chandigarh. Ld. CIT further failed to appreciate that ignoring judicial precedence of jurisdictional bench is wholly illegal in the eyes of law.*
 10. *Because the order is against the law & facts."*
3. We have heard the rival submissions and perused the materials available on record. The assessee was granted registration u/s 12AA of the Act vide order of Id Commissioner of Income Tax, Meerut dated 31.05.2007. We find that the Id CIT, Meerut had sought to withdraw the registration granted u/s 12AA of the Act by invoking the section 12AA(3) of the Act with retrospective effect from

01.04.2009 on the ground that the assessee has been earning huge profits both in terms of quantum and percentage and there is nothing on record to suggest that huge profits earned by the authority are incidental to its performance of charitable activities. Further the Id CIT, Meerut noted that the purpose of the assessee was to carry out any activity for profit and that earning of profit was its real object which is evident from the fact that it had purchased a land at a very low price and sold the same at a huge price to the general public. The Id CIT observed that this activity cannot be construed as mere incidental earning of profit for the sake of doing charity work but it is clear case of earning huge profits without being engaged in any activity which could be termed as charity under the definition of charitable purpose u/s 2(15) of the Act. Accordingly, the Id CIT concluded that the assessee had engaged in commercial activity in the nature of trade and not engaged in the charitable activity within the meaning of section 2(15) of the Act. With these observations, the registration granted u/s 12AA of the Act has been withdrawn vide order passed u/s 12AA(3) of the Act dated 11.03.2013 with retrospective effect from 01.04.2009.

4. Aggrieved, the assessee is in appeal before us. Before we proceed to address the issue, it would be relevant to address the background of this appeal. Against the order passed by the Id CIT, Meerut u/s 12AA(3) of the Act dated 11.03.2013 cancelling the registration of the assessee with retrospective effect from 01.04.2009, the assessee preferred an appeal before this Tribunal and this Tribunal in ITA No. 2037/Del/2013 dated 27.08.2013 reversed the decision of Id. CIT, Meerut and allowed the restoration of registration to the assessee. The revenue carried the matter to Hon'ble Allahabad High Court and the Hon'ble High Court in ITA No. 48/2014 dated 07.12.2017 set aside the issue of registration cancellation to this Tribunal to decide afresh by applying the logic

and reasoning of other decision given by Hon'ble Allahabad High Court in the case of ACIT Vs. Agra Development Authority in ITA No. 134/2013 dated 07.12.2017 reported in 407 ITR 562. Pursuant to this order of Hon'ble Allahabad High Court vide order dated 07.12.2017 passed in the case of the assessee, the present appeal before this Tribunal comes into force.

5. In the mean time, the assessee (Meerut Development Authority) case and Agra Development Authority and batches of matters with Ahmedabad Urban Development Authority came before the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of ACIT(E) Vs. Ahmedabad Urban Development Authority reported in 449 ITR 1/ 143 taxmann.com 278 dated 19.10.2022 had rejected the revenue's Special Leave Petition (SLP) and had confirmed the charitable status of assessee u/s 2(15) of the Act as falling under the limb of general public utility. It is pertinent to note that the assessee's case and the case of Agra Development Authority were also part of the batch matters that were decided by the Hon'ble Supreme Court on 19.10.2022. The relevant appeal No. of the assessee is CA No.226/2019 and CA No. 10114/2018. This fact is also duly confirmed by the Id AO in his letter addressed to Office of the Id CIT DR- E Bench of ITAT dated 20.02.2022.

6. It is not in dispute that the assessee falls under the definition of charitable purpose u/s 2(15) of the Act under the limb 'advancement of any other object of general public utility'. Pursuant to the aforesaid decision of Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority reported in 449 ITR 1, we hold that the activities carried out by the assessee would be charitable activity u/s 2(15) of the Act and in any case, the registration cannot be cancelled u/s 12AA(3) of the Act with retrospective effect from 01.04.2009. Even if the gross receipts of

the assessee exceeds the threshold limit prescribed in the proviso u/s 2(15) of the Act, still there is no need for cancellation of the registration u/s 12AA(3) of the Act. For that particular year alone, the assessee's activities would not to be construed as charitable activities and assessee would be subjected to tax as a normal business assessee. This fact is duly clarified by the CBDT No. 21/2016 dated 27.05.2016. In view of the aforesaid observations, we are inclined to allow ground raised by the assessee before us.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20/12/2023.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 20/12/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi