IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member

ITA Nos: 333 to 335/Ahd/2023
Asst Years: 2016-17 to 2018-19

The JT.CIT (OSD) (Exemption), Circle-2, Ahmedabad **(Appellant)**	Vs	Vadodara Urban Development Authority Vuda Bhavan, L&T Circle, Karelibaug, Vadodara Gujarat 390018 **PAN: AAABV0141M** **(Respondent)**

ITA Nos: 342 to 344/Ahd/2023
Asst Years: 2016-17 to 2018-19

Vadodara Urban Development Authority Vuda Bhavan, L&T Circle, Karelibaug, Vadodara Gujarat 390018 **PAN: AAABV0141M** **(Appellant)**	Vs	The ACIT, Circle-2, (Exemption), Ahmedabad **(Respondent)**

Assessee Represented: Shri Hardik Vora, A.R.
Revenue Represented: Dr. Darsi Suman Ratnam, CIT-DR &
Shri Purushottam Kumar, Sr. D.R.

Date of hearing : 15-02-2024
Date of pronouncement : 29-02-2024

आदेश/ORDER

PER BENCH :-

These cross appeals are filed by the Revenue and the Assessee as against three separate appellate orders all dated

06.03.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A), NAFC"), arising out of the assessment orders passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2016-17 to 2018-19. Since common and identical issues are involved in all the appeals, the same are disposed of by this common order.

2. The Grounds of Appeal raised by the Revenue in ITA No. 333/Ahd/2023 for A.Y. 2016-17 reads as under:

> *(i) Whether in the facts and in the law the Ld. CIT(A) is right in holding that the proviso to section 2(15) of the Act is not applicable to the case of the assessee, ignoring the fact that the assessee is hit by the proviso to section 2(15) of the I.T. Act-1961 and therefore r.w.s.13(5) of the Act was not eligible for any deduction u/s.11 & 12 of the Act, especially of the fact that it is rendering services not at cost or nominal markup and carrying out its activity in commercial manner with profit motives ?*
>
> *(ii) Whether in the facts and in the law the Ld.CIT(A) is right in not upholding the addition of Rs.11,87,34,600/- made by the AO ?*
>
> *(iii) Whether in the facts and in the law the Ld.CIT(A) is right in not upholding the addition of Rs.36,66,427/-made on account of fixed assets and directing to allow the same u/s.11(1) of the Act after verification ?*

3. Assessment Year 2016-17 is the taken as the lead case. The brief facts of the case is that the assessee is an autonomous body which is established under section 22 of the Gujarat Town Planning and Area Development Act, 1976 and Rules thereunder carrying Planned Development areas as defined and designed by the Government of Gujarat and also infrastructural activities relating thereto such as to undertake the preparation of

development plans, monitoring and control of development of town planning as construction of Roads, bridges and carried out work in connection with supply of water, disposal of sewerage and drainage system for the benefit of public at large. The assessee Trust is registered u/s. 12AA of the Act. For the Assessment Year 2016-17, the assessee filed its Return of Income on 10.10.2016 declaring total income at NIL after claiming deduction of Rs.32,13,14,003/- under section 11 of the Act.

4. During the assessment proceedings, the AO noticed that the activities carried out by the assessee remained unchanged as that of the earlier Asst Years 2010-11 to 2014-15, wherein the activities carried out of "advancement of other General Public Utility" in the nature of Trade/Commerce/Business and therefore the provisions of Section 2(15) read with proviso 1 & 2 were held to be applicable with the facts of the assessee's case. Therefore the A.O. denied exemption u/s. 11 & 12 of the Act and the assessed the income of the assessee at Rs.40,51,98,900/- by making the following disallowances:

(a) Revenue Expenditure	Rs.	3,85,16,135/
(b) VUDA Development Charges	Rs.	68,86,980/
(c) BMC Development Charges	Rs.	1,60,89,732/-
(c) Amenities fees	Rs.	9,43,69,008/-
(d) Impact fees	Rs.	13,88,880/-
(e) Addition to Fixed Assets	Rs.	36,66,427/-

4.1. The Assessing Officer further noticed that on verification of e-filing portal, it is noticed that the assessee trust has not filed Form 10 and Form 10B electronically, before the due date of filing the Return of Income as per Rule 17(2) and 17(3) of the I.T. Rules.

Further, it was not clear whether the assessee has invested its accumulated fund u/s. 11(2) of the Act in the manner prescribed u/s. 11(5) of the Act. Therefore the Assessing Officer held that the assessee trust is not eligible to claim exemption u/s. 11(2) of the Act r.w.r. 17(2) and 17(3) of the I.T. Rules for accumulation for specific purposes amounting to Rs.174,00,00,000/- [however, only Rs.28,27,97,868/- remains to be set apart u/s 11(2) of the Act after reducing revenue expenditure of Rs.3,85,16,135/- from the gross receipts of Rs.32,13,14,003/-].

5. Aggrieved against the additions, the assessee filed an appeal before Commissioner of Income Tax (Appeals) who has taken note of the Supreme Court judgement and direction issued therein in the case of CIT -Vs- AUDA & others in Civil Appeal No 21762 of 2017 called for a remand report from the Assessing Officer

> *"... Further, it was also noticed that for the year under consideration, the total receipt of the assessee is Rs. 32,23,63,370/- whereas the activities of the assessee is Rs. 15,31,32,714/- which is more than 20% of the total receipt of the assessee.*
>
> *Provision of Section 2(15) of the Act*
>
> *"charitable purpose" includes relief of the poor, education, yoga, medical relief. preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:--*
>
> *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 cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless-*

1. such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility, and

2. the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

It is crystal clear from the above facts, the assessee has failed to prove that activities of the assessee is a charitable purpose of advancement of any other object of general public utility and involved 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 cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

5. Further, the assessee claimed that the decision of ITAT "D" Bench, Ahmedabad dated 05.02.2019 Order No: I.T.A. Nos 1692/Ahd/ 2017 for AY 2009-10, AY 2011-12, AY 2012-13, AY 2013-14 and AY 2014-15, which is of the case of the appellant itself wherein the decision was given in favour of the assessee and demand was reduced to Rs. Nil.

6. We draw your kind attention your Honour that the Revenue has gone appeal to the Jurisdictional High Court against Order No. 1.T.A. Nos 1692/Ahd/2017 dated 05.02.2019 for AY 2009-10, AY 2011-12, AY 2012-13, AY 2013-14 and AY 2014-15 which is under consideration. Further, it is mentioned here that demand was reduced to Rs. Nil is procedural process which comes out after giving effect of any decision of competent Authority/Appellate Authority/Jurisdiction High Court/Supreme Court.

7. In view of the facts and observations made above, there is no infirmity in the order of the Ld. AO and deserves to be upheld. Your Honour may decide the appeal of the assessee on merits as per your views."

6. The Ld CIT[A] called for a rejoinder from the assessee and vide letter dated 22-02-2023 the assessee submitted as follows:

"…The facts stated by the LAO in the Remand report dated 23.01.2023 are erroneous and prejudicial to the interest of the

appellant. We would further like to state that the LAO has not considered the facts stated by the appellant in the reply dated 13.01.2023 against the issue letter dated 06.01.2023 giving the reasons for why the provisions of section 2(15) of the I.T.Act 1961 is not applicable to the appellant and why the receipts of the appellant are on cost to cost basis and the motive of the appellant is not to earn any profit and the activities carried by the assessee are not in the nature of trade, commerce or business.

However we are once again producing the facts in the case of your appellant for justifying the points raised by the LAO in the remand report

01. The onus is on the assessee to prove that the receipt/income of the assessee is on cost to cost basis

We would like to state that the income/receipt part of the appellant mainly comprises of Income from Fees and Subscriptions which includes Premium Fees, Verification fees, Betterment Charges, Tender Fees, Site Plan Fees, Zone Fees and Interest Income from the GSFS Fixed deposits. INCOME TAY DEPARTME

Enactment and Object of VUDA: We would like to state that VUDA ie. the appellant is formed under section 22 of The Gujarat Town Planning & Urban Development Act 1976 by the Government of Gujarat vide Notification No. GH/P/278/of83/ BVP-1280-4384(83)/L dated 22.12.83 for the development and redevelopment as well as for augmentation of roads and allotment of lands after redevelopment in the Vadodara City and Padra and Waghodia Taluka covering 104 villages. We would further like to state that as per Act governing VUDA its mandate is to control development activities, execution of works and dispersal of sewage, provisions of such other facilities and generally engage in urban development in the areas it had jurisdiction over.

We would further like to state that the appellant is acting on behalf of the Government of Gujarat and as per the directions of the Gujarat Government wherein the rates for collection of fees and other income are suggested by the Gujarat Government and the assessee follows the directions of the Government for collection of the various fees. We would further like to state that the role of the appellant is to only execute the activity on behalf of and as per the guidelines framed by the Gujarat Government

The Fees structure decided by the VUDA are on the basis of circulars issued by the Government of Gujarat, the copies of the said circulars are attached herewith for your ready reference and kind perusal. The income of the VUDA comprise of Receipts of from various Fees, Charges, Sale of Land and other receipts like Interest, and the rates as stated hereinabove are decided by the Government The appellant is authorized by law to levy rates and charges, for the services they provide on pre determine basis and hence the assessee performs the objects of general public utility and they are not driven by profit motive

The said major receipts of the VUDA and its nomenclature are in the following forms:
1- Service and Amenities Fees

Service fees and amenities fees is collected for execution of works referred to in clause [(vi)-a) of sub-section (i) of Section 23 of the Act and for provision of other services and amenities at the rates as approved G.D.C.R. We are enclosing CPARTMENT herewith the guideline in which the rates are prescribed by the GOVERNMENT OF GUJARAT for collection of Amenities fees.

"CLAUSE VI-A of sub section (1) of Section 23 of the GTPUD Act, 1976: execute works in connection with supply of water, disposal of sewerage and provision of other services and amenities; ((vi-a) to levy and collect such fees for the execution of works referred to in clause (vi) and for provision of other services and amenities as may be prescribed by regulations,

2- Development charges and scrutiny fee-As per clause No. 26 any person who wants to develop his land or any building in development plan area he has to pay development charge and scrutiny fees at the rates approved by Government of Gujarat which is utilized for verification of development permission process and preparation of development plan. We are enclosing herewith the guideline in which the rates are prescribed by the Government of Gujarat for collection of Scrutiny fees.

3- Betterment Charge and Collection of betterment charge as per provision 79 of incremental contribution to be levied by the appropriate authority on each plot included in the Final scheme calculated in proportion to the increment which is estimated and net amount payable by the contributor/land owners which are be utilize for roads, water supply, storm water, drainage, street light etc.

4- Premium fee for regularization of unauthorized construction & premium fee for extra F.S.I.. The income of premium fee is being utilized for development of infrastructure like roads, water supply and drainage in the areas where there is no T.P. Scheme. The premium fees is collected by the appellant in the manner and the rates specified by the guidelines of the Government of Gujarat. We are enclosing herewith the guideline in which the rates are prescribed by the Government of Gujarat for collection of premium fees.

5- Income from sale of land: We would also like to state the appellant actually do not enter into transaction of land, I.e. such Land is not actually purchased by the assessee. The said land is allotted to VUDA as per the Government Policy at the time of TP schemes approved by the Government. The said land is sold subsequently for implementation of various town planning schemes and routine administrative expenses of VUDA.

6- Income from affordable housing projects. We would like to state that the Government of Gujarat has launched schemes in the name of Pradhan Mantri Awas Yojna (PMAY). Mukhya Mantri Gruh Yojna (MMGY), wherein housing flats are provided to the Economic Weaker sections of the society at affordable rates. The appellant is involved in the development of such residential and commercial projects in the Vadodara city and nearby areas. We would further like to state that in the process of development of such residential and commercial projects the land is allotted to VUDA through TP Schemes approved by the Government of Gujarat to the appellant to construct the project. The Government of Gujarat gives specific grant to the appellant which is to be utilized for the purpose of construction and development of the affordable housing projects and the grant is specific and is to be utilized for the specific purpose only. Hence VUDA is not involved in the activity of acquiring land and then constructing the houses and selling itwith the intention to making profit rather than cost of land is not considered for deriving the sale price of the residential units.

With reference to above note it is clear that VUDA is statutory body constituted under town planning Act to carry out planning, regulation & implementation of the same in its jurisdiction. The Authority is constituted not to make any profit but to carry out infrastructure work for development within its jurisdiction. So, the incomes generated through above resources are liability for VUDA and as such they are to be utilized only for the development of

infrastructure within the jurisdiction Le, the basic object and motive of the appellant is advancement of general public utility.

02. Why provisions of the section 2(15) shall not be applicable to the assessee.

Therefore, section 2(15) was amended vide Finance Act, 2008 by adding a proviso which states that the 'advancement of any other object of general public 82 utility shall not be a charitable purpose if it involves the carrying on of
(a) any activity in the nature of trade, commerce or business; or

(b) any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration, irrespective of the nature of use orapplication, or retention of the income from such activity.

As per the inserted new proviso to section 2(15) will not apply in respect of the first three limbs of section 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 incidentally involves the carrying on of commercial activities

'Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that carrying on of some activity which might result in surplus, would not disentitle the entity from the benefit of tax exemption.

We would further like to draw your kind attention towards the recent amendment made in section 10(46) of the IT. Act in Finance Bill 2023 which categorily proves that the development authorities like VUDA cannot be denied from claiming the tax exemption:

Finance Bill 2023 proposes to insert a new Section 10(46A) to exempt the income of a body or development authority, such as a board, trust, or commission (not a company), that provides public utility services and to exclude their income from the purview of

Section 10(46) of the Income Tax Act. So, clauses 5 and 7 of the Finance Bill 2023 propose to change sections 10(46). 11(7), and the nineteenth proviso in the explanation of section 10(23C), and to add a new section 10(46A) to the Income Tax Act.

The new Section 10(46A) proposes to exempt any income derived by a body or authority, board, trust, or commission, other than a company, established or constituted by or under a central or state act for one or more of the following purposes:

i) addressing and meeting the need for housing accommodations;

(ii) City, town, or village planning, development, or improvement:

(iii) Regulating, or regulating and developing, any activity for the general public's benefit; or

(iv) regulating anything that has to do with the reason it was made for the good of the general public.

With reference to the above context we would like to state the activity carried out by the appellant is in the nature of advancement of general public utility, and it is not in the nature of trade, commerce or business and hence the restriction put on the limit of receipts of the appellant is not applicable in case of your appellant

Conclusion: Based on the above facts we humbly request your good selves not to consider the remand report submitted by the Learned Assessing Officer and to delete the additions made and allow the relief as claimed by the appellant.

Should your kind office require any further information or explanation we shall be pleased to submit the same to do so."

7. We have heard rival submissions in detail and carefully considered the Written Submissions filed by both parties and given our thoughtful consideration. Hon'ble Supreme Court in the batch of case of ACIT (Exemptions) Vs. Ahmedabad Urban Development Authority and Ors. reported in 449 ITR 1 (SC) which has settled the issue by dismissing the Revenue's appeal vide Para 254(ii) of the judgment as follows:

"....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, the Hoshiarpur Improvement Trust, Bathinda Improvement Trust, Fazilka Improvement Trust Sangrur Improvement Trust Patiala Improvement Trust Jalandhar Improvement Trust Kapurthala Improvement Trust, Pathankot Improvement Trust Improvement Trust, Hansi, and the Special Leave Petitions filed against the Gujarat Maritime Board and Karnataka Water Supply and Drainage Board are rejected.

(ii) ***The revenue's appeals against Ahmedabad Urban Development Authority****, the Gujarat Housing Board, the Gandhinagar Urban Development Authority, Rajkot Urban Development Authority, Surat Urban Development Development Authority, Jamnagar Area Development Authority, and the Gujarat Industrial Development Corporation* ***are rejected.*** *Likewise, the revenue's appeals against Agra Development Trust, UP Awas Evam Vikas Parishad, Raebarel, Development Authority, Rajasthan Housing Board, Mangalore Urban Development Authority; Mathura Vrindavan Development Authority, Meerut Development Authority, Belgaum Development Authority". Moradabad Urban Development Authority, Yamuna Expressway Industrial Development Authority, Greater Noida Industrial Development Authority, New Okhla Industrial Development Authority and Karnataka Industrial Areas Development Board are rejected."*

7.1. The relevant operative portion of the Hon'ble Supreme Court judgment reads as follows:

".....D. What kinds of income or receipts may not be characterized as derived from trade, commerce, business or in relation to such activities, for a consideration

(i) <u>Statutory corporations, authorities or bodies</u>

176. It would be essential now to deal with certain kinds of receipts which GPU charities, typically statutory housing boards, regulatory authorities and corporations may be entitled to, if mandated to collect or receive. During the course of hearing, learned counsels highlighted that statutory boards, and corporations have to recover the cost of providing essential goods and services in public interest,

and also fund large scale development and maintain public property. These would entail recovering charges or fees, interest and also receiving interest for holding deposits. It was further pointed out that in some cases, income in the form of rents– having regard to the nature of the schemes which the concerned board, trust or corporation may be mandated or permitted to carry on, has to be received. For instance, in some situations, for certain kinds of properties, the boards may be permitted only to lease out their assets and receive rents.

177. The answers to these, in the opinion of this court, are that the definition ipso facto does not spell out whether certain kinds of income can be excluded. However, the reference to specific provisions enabling or mandating collection of certain rates, tariffs or costs would have to be examined. Generically, going by statutory models in enactments (under which corporations boards or trust or authority by whatsoever name, are set up), the mere fact that these bodies have to charge amounts towards supplying goods or articles, or rendering services i.e., for fees for providing typical essential services like providing water, distribution of food grains, distribution of medicines, maintenance of roads, parks etc., ought not to be characterized as "commercial receipts". The rationale for such exclusion would be that if such rates, fees, tariffs, etc., determined by statutes and collected for essential services, are included in the overall income as receipts as part of trade, commerce or business, the quantitative limit of 20% imposed by second proviso to Section 2(15) would be attracted thereby negating the essential general public utility object and thus driving up the costs to be borne by the ultimate user or consumer which is the general public. By way of illustration, if a corporation supplies essential food grains at cost, or a marginal mark up, another supplies essential medicines, and a third, water, the characterization of these, as activities in the nature of business, would be self-defeating, because the overall receipts in some given cases may exceed the quantitative limit resulting in taxation and the consequent higher consideration charged from the user or consumer.

……

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. 01.06.2011). 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 01.0.2003 - 31.05.2011, 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.

(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.

7.2. Further Hon'ble Supreme Court summarised its conclusion as follows:

" IV. <u>Summation of conclusions</u>

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. 01.04.2009), as well as the later amendments, and other related provisions of the IT Act.

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 (1) the activities of trade, commerce or business are connected ("actual carrying our..."inserted w.e.f. 01.04.2016) to the achievement of its objects of GPU: and (1) 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. 01.04.2009; then Rs. 25 lakhs w.e.f. 01.04.2012; and now 20% of total receipts of the previous year, w.e.f. 01.04.2016);*

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 2015), has not been breached. Similarly, the insertion of Section 13(5), seventeenth proviso to Section 10(23C) and third proviso to Section 143(3) (all w.r.e.f. 01.04.2009), reaffirm this interpretation and bring uniformity across the statutory provisions*

B. Authorities, corporations, or bodies established by statute

B.I. *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 01.04.2003 to 01.04.2011, 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 01-04-2011 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.*

8. In our considered view the Ld CIT[A] having taken note of the Hon'ble Supreme Court directions called for a remand report from the Assessing Officer and rejoinder received from the assessee and thereafter considering disposal/pendency of appeals by the Revenue before ITAT and High Court of Gujarat allowed the appeal in favour of the assessee by a detailed well speaking order observing as follows:

> "6.2 As regards, Ground No 1(viii) of the appeal against the addition of Rs.611,87,34,600/- made by the AO, the submissions of the appellant have been quoted above where the above action of the AO has been challenged Since there has been a recent landmark decision on the relevant issue rendered by the **Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority - Civil Appeal No 21672 of 2017 dated 19.10.2022**, which has been relied upon by the appellant the remand report was called for from the AO by NFAC on 14.11.2022 which has been reproduced in Para 5 of the order above Reminders were also issued to the AO since the remand report was not received in its stipulated time. The remand report thus received has been reproduced in Para 5.1 of this order. The said remand report was then forwarded to the appellant for rejoinder and comments. The reply dated 22.02.2023 being rejoinder to the remand has been reproduced in Para 5.2 of this order.
>
> 6.3 All the above claims made, issues involved and decisions cited have been perused. Firstly, it is noted that the appellant had relied upon the decision of the Hon'ble ITAT D Bench Ahmedabad dated 05.02.2019- in ITA No 1692/AHD/2017 for AY 2009-10, 2011-12, 2012-13, 2013-14 & 2014-15 in its own case. The same being jurisdictional ITAT decision in own case of the appellant is binding on the CIT(A). However, in view of the latest decision of Hon'ble Supreme Court on the relevant issue, remand report was called for

from AO and rejoinder was also obtained from the appellant as quoted above.

6.4 On perusal of the order of the Hon'ble ITAT in the case of the appellant as referred above, it is noted that Hon'ble ITAT had held that similar facts were involved in the decisions cited which are case of Urban Development Authority Vs ACIT of the jurisdictional Hon'ble High Court and CIT v/s GIDC and granted relief to the appellant

6.5 The appellant has claimed that facts of its case are identical to that of AUDA and hence requested to allow the appeal relying upon the decision of the Hon'ble Supreme Court in the case of AUDA (Appeal No 21672 of 2017 dated 19.10.2022).

6.6 The AO in the remand report submitted to the NFAC has not pointed out any specific point of variance between the facts of the appellant vis-à-vis the facts in the case of AUDA at all and hence facts have not been differentiated, though it was specifically asked to be clarified in this regard.

6.6 On perusal of the decision of the Hon'ble Supreme Court in the case of AUDA and others - Civil appeal No 21762/2017 it is noted in last paragraphs -254(ii) of the order - **the revenue appeals filed against Hon'ble High Court decisions in the cases of Ahmedabad Urban Development Authorities,** the Gujarat Housing Board, the Gandhinagar Urban Development Authority, Rajkot Urban Development Authority. Surat Urban Development Authorities, Jamnagar Area Development Authority and Gujarat Industrial Development Corporation **have been rejected and these orders of Jurisdictional High Courts in these cases have been upheld by the Hon'ble Supreme Court.**

6.7 It is noted that the matter is still pending before Hon'ble Gujarat High Court in the case of the appellant against the Hon'ble ITAT orders on an appeal filed by the revenue and hence the matter has not traversed further.

6.8 On perusal of the order of the AO, it is noted that AO himself has stated in Para (g) of his order Page 14-that.

> "It is pertinent here to draw the observations of Hon'ble ITAT, Ahmedabad in their order dated 19.04.2016 in the case of Ahmedabad Urban Development Authority (AUDA). The activities of the assessee are similar to that of AUDA in Ahmedabad."

6.9 However, the AO has ignored the fact that Hon'ble ITAT's order in the case of AUDA dated 19.01.2016 was quashed by the Hon'ble Gujarat High Court by their judgement date 02.05.2017 in Tax Appeal Number 423 to 425 of 2016 and Civil Application (OJ) - No 211 & 213 of 2016 (2017) 83 Taxmann.com 78 (Gujarat). It is seen that decision of Hon'ble Gujarat High Court was relied upon by the appellant before the AO, as stated on Page 10 of the assessment order, yet the AO has not dealt with this judgement in his orders, though he has himself relied upon the Hon'ble ITAT decision in AUDA case, which was quashed by the Hon'ble High Court. The same is apparently because the impugned issue was then pending in Hon'ble Supreme Court, but now this order of Hon'ble Gujarat High Court has been upheld by Hon'ble Supreme Court. **No factual difference between AUDA & VUDA case has been pointed out by the AO in the remand report as quoted above.** It is relevant to discuss the decision of Hon'ble Gujarat High Court in the case of AUDA, which has been upheld by Hon'ble SC in the following Paragraphs:

6.10 Decision of the Hon'ble Gujarat High Court dated 02.05.2017 in the case of Ahmedabad Urban Development Authority -

6.10.1 In this decision of Hon'ble Gujarat High Court, it has been held that AUDA has been constituted as Urban Development Authority under the provisions of Section 22 of the Town Planning Act of Gujarat Government. The purpose and object of constitution of the Urban Development Authority is proper development / redevelopment of Urban Area. The Hon'ble High Court noted that constitution of Urban Development Authority is subject to control of State Government. The section 23 and section 40 of the Town Panning Act have also been discussed in this case. It is noted that the appellant, Vadodara Urban Development Authority is governed by same very Act which has been analyzed by the Hon'ble High Court. The Hon'ble High Court has noted that the Town Planning Scheme prepared by Urban Development Authority is subject to sanction by the State Government for development of Urban Development area and it also provides for roads, open spaces etc. The scheme also provides for reservation of land of total area covered under the scheme for different purposes religious, historical, natural beauty, providing housing accommodation to social and economic backward classes, roads, social infrastructure and last fifteen percent is earmarked under Town Planning Scheme for sale for residential, commercial and industrial use.

6.10.2 The Hon'ble High Court has stated that Tribunal had not appreciated the object and purpose of permitting sale of residential, commercial and industrial use to the Urban Development Authority to the extent of 15%. **By analyzing various decisions and facts of the case with respect to AUDA under the provisions of Gujarat Town Planning Act, the Hon'ble High Court stated that by no stretch of imagination it can be said to be in the nature of trade, commerce or business and/or its object and purpose is profiteering. The Hon'ble High Court has categorically held that being a statutory body - Urban Development Authority being constituted to carry out objects and purpose of Town Planning Act and collecting regulatory fees for the object of the Act, no services**

are rendered to any trade, commerce or business. Hon'ble High Court has noted that whatever income is earned from auction / selling of specified numbers of plots is required to be used only for the purpose to carry out the object and purpose of Town Planning Act and to meet with expenditure while providing general utility service to the public such as electricity, road, drainage, water etc. and even the entire control is with State Government and even accounts are also subjected to audit and there is no element of profiteering at all, the activities of the assessee cannot be said to be in the nature of trade, commerce and business and therefore, proviso to Section 2(15) of the Act shall not be applicable so far as assessee is concerned and therefore, the assessee is entitled to exemption under Section 11 of the Income Tax Act.

6.10.3 It is categorically held that proviso to section 2(15) shall not apply in so far as the appellant was concerned and therefore the appellant was found entitled to exemption u/s 11 of the Act. The Hon'ble Court held that collection of fees or cess which are regulatory in nature, the proviso to section 2(15) of the Act shall not be applicable. Thus, the Hon'ble High Court has held that (Para 15.1) having regard to the facts of the case and purpose for which the appellant is established/constituted under the provisions of Gujarat Town Planning Act, the collection of fees & cess is incidental to the objects and purposes of the Act and thus case would not fall under second part of proviso to section 2(15).

6.10.4 Further, with respect to collection of cess and fees also the same being regulatory in nature, the provisions of section 2(15) was not found applicable. The relevant Para 14 & 15.2 of the judgement of the Hon'ble HC are being quoted below.

> "14. Considering the aforesaid facts and circumstances and more particularly. considering the fact that the assessee is a statutory body Urban Development Authority constituted under the provisions of the Act,

constituted to carry out the object and purpose of Town Planning Act and collects regulatory fees for the object of the Acts, no services are rendered to any particular trade, commerce or business; whatever the income is earned/received by the assessee even while selling the plots (to the extent of 15% of the total area covered under the Town Planning Scheme) is required to be used only for the purpose to carry out the object and purpose of Town Planning Act and to meet with expenditure while providing general utility service to the public such as electricity, road, drainage, water etc. and even the entire control is with State Government and even accounts are also subjected to audit and there is no element of profiteering at all, the activities of the assessee cannot be said to be in the nature of trade, commerce and business and therefore, proviso to Section 2(15) of the Act shall not be applicable so far as assessee is concerned and therefore, the assessee is entitled to exemption under Section 11 of the Income Tax Act. Therefore, the question No 1 is held to be in favour of the assessee and against the revenue.

15.2 Considering the aforesaid facts and circumstances of the case, we are of opinion that the learned Tribunal has committed a grave error in holding the activities of the assessee in the nature of trade, commerce or business and consequently holding that the proviso to Section 2(15) of the Act shall be applicable and therefore, the assessee is not entitled to exemption under Section 11 of the Act. For the reasons stated above, it is held that the proviso to Section 2(15) of the Act shall not be applicable so far as assessee- AUDA is concerned and as the activities of the assessee can be said to be providing general public utility services, the assessee is entitled to exemption under Section 11 of the Act. Both the questions are therefore, answered in favour of the assessee and against the revenue.

6.11. It is seen that in the remand report dated 20.01.2023 the AO has again referred to the proviso to section 2(15) of the Act to state that total receipts from trade, commerce or business/service rendition for the same which exceeded 20% of total receipts in the case of the appellant and reiterated the stand of the AO in the assessment order. However, as stated above, the Hon'ble High Court has clearly held that proviso to section 2(15) of the Act is not applicable in the case of AUDA. The AO has not pointed out any

difference in facts of VUDA vis-à-vis AUDA and hence it is clear that provisions of section 2(15) of the IT Act is also not applicable to VUDA. In fact through its rejoinders dated 22.02.2023 (as quoted above), the appellant has further clarified this aspect with various details based on which it is held that no adverse inference could be drawn against the appellant in the instant case

6.12. As regards the claim of the AO that onus was on the appellant to prove that receipts were on cost basis and income of the appellant was on cost basis for which full details were not submitted by the appellant, it is noted that assessment in this case was conducted u/s 143(3) of the IT Act and full compliance was made by the appellant. Such requirement of huge supporting evidences in remand report proceedings is not called for when no specific instance has been pointed out in assessment order to prove to the contrary. In fact, not only the Hon'ble Supreme Court has dismissed revenue's appeal in AUDA but also that of many Gujarat Urban Development Authorities viz. Surat, Gandhinagar, Rajkot Development Authorities etc., all of which are subjected to the same Act of Gujarat State Government and work under the Control and Rules stated therein as has been discussed in detail by the Hon'ble Gujarat High Court. In fact, Hon'ble ITAT, Ahmedabad in the case of Surat Urban Development Authority (SUDA (2020) 116 Taxmann.com.242 dated 20.02.2020) has also referred to the decision of the Hon'ble Gujarat High Court in AUDA as well as the decision of Hon'ble ITAT in case of Vadodara Urban Development Authority v/s ITO (ITA No 2751/Ahd/2014 dated 28.01.2019) to allow the appeal of SUDA. The appellant is also governed by same rules/Act and no further distinguishing facts have been highlighted by the AO. Hence, it is held that proviso to section 2(15) of the IT Act is not applicable to the case of the appellant.

6.13 The claim of the appellant that its case is covered by the decision of the Hon'ble Supreme Court in the case of AUDA is thus found correct. Further, reliance is also placed on the decision of the jurisdictional ITAT in its own case. As a result, ground No 1(viii) of appeal is allowed."

8.1. We do not find any infirmity in the order passed by Ld CIT[A], the claim of the Revenue that onus was on the assessee to prove that receipts were on cost basis and income of the assessee was on cost basis for which full details were not submitted by the assessee. But it is seen that the assessment was conducted u/s.143(3) of the Act and the assessee furnished all details before the AO. Therefore, the Ld CIT[A] held that such requirement of huge supporting evidences in remand proceedings is not called for when no specific instances has been pointed out in assessment order to prove to the contrary.

9. In fact, not only the Hon'ble Supreme Court has dismissed revenue's appeal in AUDA but also that of many other Gujarat Urban Development Authorities viz. Surat, Gandhinagar, Rajkot Development Authorities, etc., all of which are subjected to the same Act of Gujarat State Government and work under the Control and Rules stated therein as has been discussed in detail by the Hon'ble Gujarat High Court. In fact, co-ordinate Bench of this Tribunal in the case of Surat Urban Development Authority reported in (2020) 116 Taxmann.com 242 dated 20.02.2020 has also referred to the decision of the Hon'ble Gujarat High Court in AUDA as well as the decision of Hon'ble ITAT in case of Vadodara Urban Development Authority -Vs- ITO (ITA No 2751/Ahd/2014 dated 28.01.2019) to allow the appeal of SUDA. Thus the assessee is also governed by same Rules/Act and no further distinguishing facts have been highlighted by the AO in the remand proceedings further in the Grounds of Appeal raised before us with specific instances. The Revenue is also silent about the new Section

10(46A) proposes to exempt any income derived by a body or authority, board, trust, or commission, other than a company, established or constituted by or under a central or state act for one or more General Public Utility. Therefore in our considered opinion, the provision to section 2(15) of the IT Act is not applicable to the case of the assessee and therefore the Ground nos. 1 & 2 raised by the Revenue are devoid of merits and the same is liable to be dismissed.

10. Regarding Ground No.3 the Ld.CIT(A) is right in not upholding the addition of Rs.36,66,427/- made on account of fixed assets and directing to allow the same u/s.11(1) of the Act after verification. The Ld CIT[A] has clearly observed that there is no specific discussion made with respect to this issue in the assessment order made by the AO. Since the AO has denied benefit u/s 11 and section 12 of the Act to the assessee, as a consequence the addition to fixed assets being a capital expenditure stands disallowed. However, since the claim of benefit of section 11 is now allowed in favour of the assessee, the AO was directed to allow the same after verification as per law u/s 11(1) of the I.T. Act. The Revenue could not demonstrate any infirmity in the order passed by the Ld CIT[A] and therefore the same does not require any interference. Thus the Ground No.3 raised by the Revenue is devoid of merits and the same is liable to be dismissed.

11. In the result the **appeals filed by the Revenue in ITA Nos. 333 to 335/Ahd/2023 are hereby dismissed.**

ITA Nos. 342 to 344/Ahd/2023 filed by the Assessee:

12. The Grounds of Appeal raised by the Assessee in ITA No. 342/Ahd/2023 for A.Y. 2016-17 reads as under:

> *1. On the facts and circumstances of the case as well as law on the subject, the learned CIT (Appeals) has erred in confirming denial of benefit u/s 11(2) of the Act merely due to delay in filing Form 10.*
>
> *2. On the facts and circumstances of the case as well as law on the subject, the learned CIT (Appeals) has erred in confirming denial of benefit u/s 11(2) of the Act without considering that filing of Form 10 is merely a procedural formality.*
>
> *3. On the facts and circumstances of the case as well as law on the subject, the learned CIT (Appeals) has erred in partly confirming the disallowance of addition of fixed assets amounting to Rs.33,66,427/-by denying the benefit u/s 11 & 12 of the Act.*
>
> *4. It is therefore prayed that the above addition/disallowance made by the Assessing Officer may please be deleted.*

13. In support of the Grounds of Appeal Ld Counsel for the assessee relied upon various case laws that filing of From 10 is only procedural in nature and the assessee cannot be denied the benefit of section 11 for late filing of Form 10.

14. Per contra Ld CIT DR appearing for Revenue brought to attention the relevant portion of the provision prior to amendment by Finance Act, 2015 read as under:

> (2) Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub- section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous

year of the person in receipt of the income, provided the following conditions are complied with, namely;-

(a) such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(b) the money so accumulated or set apart is invested or deposited in the former modes specified in sub-section (5)

14.1. The said section was then amended by Finance Act, 2015 w.e.f. 01.04.2016 which read as under:

(2) Where eighty-five per cent of the income referred to in clause (a) of section (1) read with the Explanation to that sub-section is not applied, is not to have been applied, to charitable or religious purposes in India during the previous year but in accumulated or set apart, either in whole or in part, for application to such purposes in d such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:-

(a) such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5):

Provided that in computing the period of ten years referred to in clause (a), the end during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded:

Provided further that in respect of any income accumulated or set apart on or after the 1st day of April, 2001, the provisions of this sub-section shall have effect as if for the words on years at both the places where they occur, the words "five years had been substituted Following clauses (a), (b), (c) and proviso thereto shall be substituted for the existing clauses (a) and (b) and the first and second provisos to sub-section (2) of section 11 by the Finance Act, 2015, w.e.f. 1-4-2016:

(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms of modes specified in sub-section (5); the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year.

14.2. Thus as per the amended provision, clause (c) determines the time period for filling of statement made in Form no 10 and thus making it a requirement under the Act, which prior to the amendment was part only of Income Tax Rules. The said amendment is effective from 01.04.2016 thereby making it relevant for the Asst Year 2016-17 onwards, i.e. applicable to the present appeals.

14.3. Ld CIT DR also drawn our attention to the Apex Court judgment in the case of PCIT -Vs- M/s. Wipro Ltd. [2022] 140 taxmann.com 223 (SC), on a similar count. The issue in the present appeal is similar to the one discussed in the Wipro judgment i.e.

regarding filing of form for claiming benefit, thus the view taken by the Hon'ble Apex Court is applicable to the present subject matter.

14.3. Ld CIT DR also distinguished the case laws as relied by the assessee Counsel as follows:

1. **Trust For Reaching the Unreached Through Trustee v. CIT (Exemptions), Ahmedabad** - (2021) 126 taxmann.com 77 (Gujarat)

The issue in the captioned case though was on similar grounds to the present case, le delay in filing of Form no. 10 resulting into denial of exemption u/s 11(2) by AD but the findings of the case would not be applicable since the captioned case was of AY 2014-15 Le, prior to the amendment in Section 11(2) by Finance Act, 2015.

2. **Social Security Scheme of GICEA v. CIT (Exemptions)** - [2023] 147 taxmann.com 283 (Gujarat)

The issue in the captioned case is related to delay in filing of Form no. 10B audit report, provision of which and requirement under such provision is different than that of Form no. 10 and hence is not applicable to the present case.

3. **CIT IV v. Xavier Kelavani Mandal (P.) Ltd.** (2014) 41 taxmann.com 184 (Gujarat)

The issue in the captioned case is related to delay in filling of Form no. 10B audit report, provision of which and requirement under such provision is different than that of Form no. 10 and hence is not applicable to the present case.

4. **JCIT(OSD)(E), Cir. 1 Ahmedabad v. GEDA** - ITA No. 209/Ahd/2022

The issue in the captioned case is related to delay in filing of Form no. 10B audit report, provision of which and requirement under such provision is different than that of Form no. 10 and hence is not applicable to the present case.

5. **The ITO Ward (Exemption), Vadodara v. Shri Laxmanarayan Dev Shrishan Seva Khendra** - ITA No. 410/Ahd/2022

The issue in the captioned case is related to delay in filing of Form no. 10B audit report, provision of which and requirement under such provision is different than that of Form no. 10 and hence is not applicable to the present case.

6. **Shree Bhairav Seva Samiti v. Income-tax Officer (Exemption)** - [2023] 149 taxmann.com 478 (Mumbai - Trib.)

The issue in the captioned case is related to delay in filing of Form no. 10B audit report, provision of which and requirement under such provision is different than that of Form no. 10 and hence is not applicable to the present case.

7. **Wadia Institute of Himalayan Geology v. ACIT** [2015] 62 taxmann.com 338 (Delhi-Trib.)

The issue in the captioned case though was on similar grounds to the present case, ie, delay in filing of Form no. 10 resulting into denial of exemption u/s 11(2) by AO but the findings of the case would not be applicable since the captioned case was of AY 2007-08 i.e. prior to the amendment in Section 11(2) by Finance Act, 2015.

8. **DCIT (Exemptions) v Audyogik Shikshan Mandal** [2022] 139 taxmann.com 28 (Pune-Trib.)

The issue in the captioned case is related to delay in filing of Form no. 10B audit report, provision of which and requirement under such provision is different than that of Form no. 10 and hence is not applicable to the present case.

9. **Chandraprabhuji Maharaj Jain v. DCIT, (Exemptions), Chennai** [2019] 110 taxmann.com 11 (Madras)

The issue in the captioned case though was on similar grounds to the present case, Le, delay in filing of Form no. 10 resulting into denial of exemption u/s 11(2) by AO but the findings of the case

would not be applicable since the captioned case was of AY 2008-09 1.e. prior to the amendment in Section 11(2) by Finance Act, 2015.

10. **JCIT v. Sewa Education Trust** - [2013] 40 taxmann.com 143 (Agra-Trib.)

The issue in the captioned case though was on similar grounds to the present case, i.e. delay in filing of Form no. 10 resulting into denial of exemption u/s 11(2) by AO but the findings of the case would not be applicable since the captioned case was of AY 2006-07 1.e. prior to the amendment in Section 11(2) by Finance Act, 2015.

14.4. Thus Ld CIT DR submitted keeping in view the judgment of Hon'ble Apex Court in Wipro Ltd. and the amendment in the concerned provision, it is clear that the time period provided under the law is not directory but mandatory and the said delay can thus be not ignored or condoned and the exemption u/s 11(2) of the Act cannot be allowed to the assessee.

15. We have given our thoughtful consideration and also perused the materials on record, the Ld CIT DR is correct in his argument that filing of Form 10 is mandatory under section 11[2] of the Act after the amendment made in Finance Act, 2015. However the Hon'ble Delhi High Court considered this issue post amendment of the Act in the case of BAR COUNCIL INDIA vs. CIT (E) reported in (2024) 119 CCH 0002 Del and held as follows:

"… 7. The CBDT Circular No. 7/2018 dated 20.12.2018 records that representations had been received qua Forms No. 9A and 10 not having been filed within specified time for AY 2016-17, which was the first year of e- filing qua those forms; and that in supersession of earlier circular in that regard with a view to expedite the disposal of such representations, the CBDT authorized the Commissioners of Income Tax to admit the belated applications in Forms No. 9A and 10 in respect of AY 2016-17 where such forms were filed after expiry of

the prescribed period, in case the Commissioners were satisfied that the assessee was prevented by reasonable cause from filing the said forms within the stipulated period.

7.1 By way of further circular No. 30/2019 dated 17.12.2019, similar directions were issued by CBDT for the AY 2017-18 as well. Subsequently, by way of CBDT Circular No.03/2020 dated 03.01.2020, the Commissioners were authorized to admit the belated delay condonation applications under Section 119(2) of the Act where delay is upto 365 days.

7.2 More recently, by way of similar CBDT Circular No. 17/2022 dated 17.07.2022, the Commissioners were authorized to condone delay beyond 365 days upto 03 years in filing Forms 9A and 10 for AY 2018-19.

8. For AY 2017-18 also, the petitioner/assessee had filed a similar application seeking condonation of delay in filing Form 10, which was allowed by the Commissioner Income Tax vide order dated 26.12.2019 correctly, laying emphasis that the mandate of Section 119(2)(b) of the Act is to mitigate the genuine hardship of assessee in certain circumstances and authorization to the Commissioners to admit the belated Form 10. In the said order dated 26.12.2019, the Commissioner Income Tax condoned the delay in filing Form 10 (which was electronically filed on 05.03.2019) for AY 2017-18. Similarly for AY 2018-19 also, delay on the part of the petitioner in filing Form 10 was condoned in view of the underlying principle of the above mentioned circulars to liberally condone such delays in order to mitigate hardships of the assessees.

9. As mentioned above, the delay in filing Form 10 in the present case occurred because the amendments went unnoticed by the officials of the petitioner. The assessment year 2016-17 was the first occasion subsequent to those amendments. Therefore, we find no reason to disbelieve the explanation furnished by the petitioner to explain the delay in filing Form 10. Further, we are unable to fathom as to what benefit would accrue to the petitioner by delaying the filing of Form 10. In our opinion the discretion conferred for condoning the delay was not correctly exercised by the Commissioner Income Tax.

15.1 Similarly co-ordinate Bench of this Tribunal in the case ITO -Vs- Ramji Mandir Religious And Charitable Trust reported in (2023) 69 CCH 0288 Ahd Trib distinguished the Apex Court judgement and held as follows:

"… 9. Further, we are also an agreement for the Counsel for the assessee that the case of Wipro Limited supra was rendered on a different set of facts, wherein in the original return of income the assessee had claimed benefit under Section 10B of the Act and thereafter, a revised return of income was filed by the assessee foregoing the claim of benefit of Section 10B of the Act. However, the facts of the instant case are clearly distinguishable for the reason that in both the original return of income as well as the revised return of income, the assessee has taken a consistent stand and has claimed deduction under Section 11(2) of the Act, and further in the original return of income (which was filed within the due prescribed date), Form 10 was duly furnished by the assessee. It was only later when the assessee noticed that the claim of deduction under Section 11(2) of the Act required correction that the assessee filed revised return of income along with Form 10. Therefore, there is a marked distinction between the facts of the Wipro Ltd case supra and the instant facts. Further, observe that Ahmedabad ITAT in the case of **DCIT V. Croygas Equipments Private Ltd in ITA number 415/AHD/2020** had also held that the principal of Wipro Limited supra cannot be uniformly applied to all cases and the aforesaid decision was distinguished by the Ahmedabad Tribunal, with the following observations:

> *"6.3 Another notable issue for consideration is that recently the Hon'ble Supreme Court was confronted with the claim of benefit u/s 10B in* **Pr. CIT v. Wipro Ltd. [2022] 140 taxmann.com 223/288 Taxman 491/446 ITR 1***. The assessee furnished original return taking the benefit of section 10B and did not carry forward the loss. Thereafter, a revised return was filed foregoing the claim of deduction u/s 10B. The AO rejected the withdrawal of exemption under section 10B by holding that assessee did not furnish the necessary declaration in writing before due date of filing return of income, which was an essential requirement for not claiming the benefit of section 10B. The Hon'ble High Court decided the issue in favour of the assessee by holding that the requirement of filing the declaration was mandatory but filing it along with the return of income u/s 139(1) was a directory requirement. The matter was brought by the Revenue before the Hon'ble Supreme Court. The assessee, inter alia, relied on the judgment of the Apex Court in G.M. Knitting Industries (P.) Ltd. (supra). Their Lordships* ***held that the requirement of filing the report in support of deduction u/s 10B was not a directory but a mandatory requirement.*** *It further held that both the conditions of - filing the declaration and filing it before the time limit u/s 139(1) - were mandatory and had to be cumulatively satisfied. Rejecting the reliance on G.M. Knitting Industries (P.) Ltd. (supra), the*

Hon'ble Supreme Court held that that decision was relevant in the context of deduction provisions and not the exemption provisions as given under Chapter III of the Act.

6.3.1. In our view, the aforesaid decision would not apply to assessee's set of facts and would not preclude / prohibit the assessee from claiming deduction u/s 10AA of the Act, for the following reasons:

(i) Firstly, in the case of Wipro Limited supra, the issue for consideration before the Hon'ble Supreme Court was that in the original return of income, the assessee had claimed deduction under section 10B of the Act, whereas in the revised return filed under section 139(5) of the Act, assessee did not claim deduction under section 10B of the Act, and instead claimed benefit of carry forward of losses. It was in light of these facts that the Hon'ble Supreme Court held that on a plain reading of section 10B(8) of the Act, it is clear that where assessee claimed benefit under section 10B(8) by furnishing declaration in revised return much after due date prescribed under section 139(1), same was to be denied as requirement of furnishing declaration before AO before due date of filing original return under section 139(1) was a mandatory condition not directory. However, notably, there is no such equivalent/similar provision in section 10AA of the Act, which gives an option to the assessee to file a declaration before the due date of return of income under section 139(1) of the Act, to the effect that the provisions of this section may not be made applicable to him, for the impugned assessment year. Therefore, going by the strict language of section, the relevant statutory provisions on which the decision of Wipro was based, were on a different footing. Further, the issue for consideration in the Wipro case is also distinguishable, since in the assessee's case, it had claimed benefit of deduction u/s. 10AA in the original return of income (and only Form 56F was omitted to be e-filed alongwith return of income), whereas the issue for consideration in Wipro case supra was that once the assessee had claimed benefit of section 10B in the original return of income, whether such benefit could be foregone/withdrawn by filing declaration u/s. 10B(8) of the Act in the revised return of income filed u/s 139 (5) of the Act (and the assessee could, in turn, avail the benefit of carry forward losses in the revised return of income).

(ii) Secondly, the Hon'ble Supreme Court in the case of Wipro Limited held that section 10B of the Act is an "exemption provision" and hence, assessee claiming such exemption has to be "strictly" comply with the exemption provisions. However,

notably, the Hon'ble Supreme Court in the case of ***CIT v. Yokogawa India Ltd 391 ITR 274 (Supreme Court)****, held that section 10A of the Act is a* ***"deduction provision"*** *and not an* ***"exemption provision".*** *Therefore, apparently there seems to be a difference of opinion to whether section 10A/B provisions qualify as "Exemption" or Deduction" provisions. Therefore, since it is well-settled principle of law that deduction provisions, which have been introduced in the Statute to provide incentive to the assessee, should be construed "liberally", in our considered view, once it is not disputed that the instant set of facts, the assessee claimed the benefit of provisions under section 10AA in the return of income (which in our view is a mandatory/directory requirement), the benefit of section 10AA cannot be denied only on the ground that the assessee could not file Form 56F along with the return of income (being a procedural requirement), especially when Form 56F has been filed by the assessee at the assessment stage when such claim was being considered by the Assessing Officer.*

(iii) Besides the above, in the case of G. M. Knitting Industries (P.) Ltd. case supra, the Hon'ble Supreme Court further held that even though necessary certificate in Form 10CCB along with return of income had not been filed but same was filed ***before final order of assessment was made****, assessee was entitled to claim deduction under section 80-IB of the Act as well. Therefore, in light of the decision of Yokogawa supra (which is held that section 10A of the Act is a* ***"deduction provision"*** *not an* ***"exemption provision"****) and the decision of G. M. Knitting Industries case supra, which have been rendered on a similar facts as that of the assessee i.e.* ***claim of deduction was made in the original return of income itself,*** *in our view, the ratio laid down in the Wipro Ltd case would not disentitle assessee to claim benefit of section 10AA of the Act, since it has been rendered on a different set of facts. Therefore in our considered view, once such claim has been made in the original return of income and assessee has also furnished Form 56F during the course of assessment proceedings itself, before the assessment was finalized. The assessee should not be denied the benefit of s. 10AA of the Act. It is a well settled principle of law that if there is any ambiguity regarding interpretation of a Statutory provision, an interpretation favourable to the assessee may be taken, especially when we are dealing with Statutory provisions aimed at giving some incentive to the assessee.*

6.4 Another aspect for consideration is that whether there is sufficient compliance once assessee has filed the revised Form

*56F during the course of assessment proceedings. In the case of **M/s. ACN Info-Tech vs. ACIT ITA No. 79/Viz/2017**, instead of claiming deduction u/s. 10AA of the Act, the assessee claimed deduction u/s. 10B of the Act in the income tax return. The A.O. rejected the claim on the ground that assessee did not file form 56F along with return of income and had filed form 56G instead. The ld. A.R argued that the AO ought to have allowed the deduction u/s. 10AA since the assessee had filed form 56F during assessment proceeding which was a pure technical mistake. The Tribunal held that benefit of deduction should not be disallowed as the assessee had duly fulfilled the conditions for claiming exemption u/s. 10AA of the Act. In the case of **ITO v. Accentia Technologies 52 taxmann.com 89 (Mum)**, the Mumbai Tribunal held that deduction under section 10A cannot be denied merely because at time of filing of return, claim had mistakenly been made under section 10B of the Act. The Gujarat High Court in the case of **Zenith Processing Mills v CIT 219 ITR 721 (Guj)** held that provision of section 80J(6A) to extent it requires furnishing of auditor's report in prescribed form along with return, is directory in nature and not mandatory. Further, assessee can be permitted to produce such report at later stage when question of disallowance arises during course of assessment proceedings. In the instant case, the A.O. has denied s. 10AA benefit on account of an inadvertent error on the part of the assessee in not e- filing Form 56F along-with return of income. We are therefore of the view that there is sufficient compliance if the Form 56F has been filed during the course of assessment proceeding, since there is no material objective to be achieved by the assessee in not e-filing the same, once the same was already available with the assessee.*

6.5 In view of the above, we are of the considered view that CIT(A) has not erred in facts and in law in allowing the claim of the assessee that deduction u/s. 10AA of the Act cannot be denied simply on the ground that the assessee did not e-file form 56F along with the return of income, when the assessee furnished form 56F to the ld. Assessing Officer during the assessment proceedings when the claim of deduction u/s. 10AA of the Act was being examined by the ld. Assessing Officer."

10. Accordingly, in the light of the above facts, the judicial precedents on the subject and the foregoing discussion, we find no infirmity in order of Ld. CIT(Appeals) so as to call for any interference.

11. In the result, the appeal of the Department is dismissed."

16. Respectfully following the above judicial precedents we hereby setaside the orders passed by the lower authorities and hereby allow Ground Nos.1 & 2 filed by the assessee.

17. Regarding Ground No.3 the Ld.CIT(A) is erred in partly confirming the disallowance of addition of fixed assets amounting to Rs.36,66,427/- and directing to allow the same u/s.11(1) of the Act after verification. Since the claim of benefit of section 11 is now allowed in favour of the assessee, the AO was directed to allow the same after verification as per law u/s 11(1) of the I.T. Act. The assessee could not demonstrate any infirmity in the order passed by the Ld CIT[A] and therefore the same does not require any interference. Thus the Ground No.3 raised by the assessee is devoid of merits and the same is liable to be dismissed.

18. In the result the **appeals filed by the assessee in ITA Nos. 342 to 344/Ahd/2023 are hereby partly allowed.**

Order pronounced in the open court on 29 -02-2024

Sd/- **Sd/-**
(WASEEM AHMED) **(T.R. SENTHIL KUMAR)**
ACCOUNTANT MEMBER True Copy JUDICIAL MEMBER
Ahmedabad : Dated 29/02/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)

5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद