IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1765/MUM/2023
(Assessment Year: 2013-14)

Deputy Commissioner of Income Tax, (Exemption)-2(1), Mumbai,
Room No. 608, 6th Floor,
MTNL Building, Cumballa Hill,
Mumbai - 400026 ..... **Appellant**

Maharashtra Energy Development Agency,
1012-A, 10th Floor, Embassy Centre,
Nariman Point, Mumbai – 400021
[PAN: AAATM5324M] Vs ..... **Respondent**

CO No. 88/MUM/2023
(Arising out of ITA No. 1765/Mum/2023)
(Assessment Year: 2013-14)

Maharashtra Energy Development Agency,
1012-A, 10th Floor, Embassy Centre,
Nariman Point, Mumbai – 400021
[PAN: AAATM5324M] ..... **Appellant**

Deputy Commissioner of Income Tax, (Exemption)-2(1), Mumbai,
Room No. 608, 6th Floor,
MTNL Building, Cumballa Hill,
Mumbai - 400026 Vs ..... **Respondent**

ITA No. 1767/MUM/2023
(Assessment Year: 2014-15)

Deputy Commissioner of Income Tax, (Exemption)-2(1), Mumbai,
Room No. 608, 6th Floor,
MTNL Building, Cumballa Hill,
Mumbai - 400026 ..... **Appellant**

Maharashtra Energy Development Agency,
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..... **Appellant**

Deputy Commissioner of Income Tax, (Exemption)-2(1), Mumbai,
Room No. 608, 6th Floor,
MTNL Building, Cumballa Hill,
Mumbai - 400026

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee	:	Shri Kishore Phadke Shri Vijay Kote Shri Hiraman Botre
the Respondent/Department	:	Smt. Sanyogita Nagpal

Date

Conclusion of hearing	:	25.04.2024
Pronouncement of order	:	27.06.2024

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. The present batch of appeals preferred by Revenue and cross-objections preferred by the Assessee pertain to Assessment Years 2013-14 and 2014-15. Since identical grounds/cross-objections arising from identical factual matrix were raised the appeals/cross-objections were heard together and are being disposed by way of a common order. At the joint request of the parties, we would take up appeal/cross-objection for Assessment Year 2013-14 as the lead matters.

Assessment Year 2013-14

2. The appeal filed by the Revenue *[ITA No. 1765/Mum/2023]* and

Cross-Objection filed by the Assessee *[CO.88/Mum/2023]* pertaining to Assessment Year 2013-14 arise from the order of Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] passed on 20.03.2023, which in turn arose from the Order, dated 29/03/2016, passed under Section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'].

3. The Revenue has raised following grounds of appeal in ITA No. 1765/Mum/2023:

> *"1. Whether on the facts and circumstances of the case and in law the Ld.CIT(A) erred in not appreciating the fact that the cancellation of registration and denial of exemption are independent actions under the provisions of the Act and exemption for a particular assessment year can be denied even when registration u/s 10(23C)(iv) is still continuing?*
>
> *2. Whether on the facts and circumstances of the case and in law the Ld.CIT(A) erred in not appreciating that the exemption u/s 10(23C) (iv) of the Act can be denied for a particular assessment year if the mandate of sec 10(23C)(iv) has not been followed by the assessee trust even though the registration continues?*
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> *3. Whether on the facts and circumstances of the case and in law the Ld.CIT(A) erred in not appreciating the fact that once the exemption u/s 10(23C)(iv) of the Act is denied to the assessee, the benefit of accumulation can only be allowed in accordance with section 11 of the Act and to the extent mentioned in form 10 filed by the assessee trust as per the resolution passed by the trustees?*
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> *4. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred not appreciating the fact that once the benefit of section 10(23C)(iv) of the Act is denied then as per provisions of section 11 of the Act the carry forward of accumulation of Rs. 51,60,68,588/-requires the assessee to file form 10 for A.Y -2013-14 and the assessee has filed form 10 only for Rs. 27,24,18,159/- and this sum was correctly allowed as accumulation by the Assessing Officer"*

3.1. The Assessee has raised following grounds of cross objections in

CO No. 88/Mum/2023:

"1. The learned CIT(A) as well as the learned AO (i.e. "IT Authorities") erred in law and on facts by rejecting the claim of the respondent that, MEDA is an extended arm of the Government and as such, ought not to be taxes as such.

2. The IT Authorities erred in law and on facts by since they failed to appreciate the fact that the 'Development Fund' was in nature of 'Corpus Fund of MEDA' and as such, is out of the ken of taxation of ITA, 1961.

3. The learned IT Authorities erred in law and on facts in considering the incremental closing balance of Rs. 48,98,95,210/- in the Development Fund Account as income. The learned IT Authorities further erred on facts in not appreciating that out of the said amount of Rs. 48,98,95,210/-, amount of Rs. 36,50,22,710/- was a mere transfer entry from the Green Cess Fund account and thus not new receipt in reality.

4. The learned IT Authorities erred in law and on facts in treating net increase of Rs. 61,94,98,432/- in the fund balances as income of the respondent, without appreciating the corresponding overriding title / specified liability attached to such funds. The learned IT Authorities ought to have appreciated that various funds are parked with the respondent by the Maharashtra Government for their specified application, and as such, these funds are received by the respondent merely as a custodian/trustee, and hence, such funds are not income of the respondent.

4. We have given thoughtful consideration to the submission made by both the sides, perused the material on record and examined the position in law.

4.1 The relevant facts, as emanating from the record and supported by the submission made during the course of the hearing, are as follows:

4.2 Maharashtra Energy Development Agency *[hereinafter referred to as '**MEDA**' or 'the **Assessee**']* is the assessee in the present case. MEDA was formed in the year 1985 by the Government of

Maharashtra. The relevant extract of Government Resolution, dated 16/07/1985, granting sanction for setting up of MEDA reads as under:

"Preamble:-

In view of the growing pressure on the existing non-renewable sources of energy viz: fossil fuels like coal and oil, and their rapid depletion, the massive deforestation to meet the growing requirements of fuel wood, timber wood etc. utmost importance is being given to exploring the development of alternative sources of energy, such as solar energy, wind energy, biogas, biomass and hydel energy etc. Maharashtra State has already made a beginning in the development of alternative sources of energy, with the implementation of projects being sponsored by the Department of Non-Conventional Sources of Energy, Government of India, and the Integrated Rural Energy Programme in selected areas for integrated development of energy sources, conventional as well as non-conventional. Since, however, these programmes are being implemented by different Departments in the State, there is no coordinated approach and institutional arrangement. The question of setting up of an independent agency was, therefore, under the consideration of Government.

RESOLUTION:

Government is pleased to accord sanction to the setting up of an Agency by name Maharashtra Energy Development Agency (MEDA) to be registered under the Societies Registration Act 1860 as a Government Society for development of non-conventional and renewable energy sources in the State. The objects of the Maharashtra Energy Development Agency are given in the Annexure.

2. *The headquarters of the Maharashtra Energy Development Agency will be in Bombay.*

3. The Maharashtra Energy Development Agency will have Governing Body consisting of not more than 12 members appointed by the State Government. Government is pleased to appoint the following members on the first Governing Body:

xx xx

The Member Secretary who will be an officer from the State Government will also act as the full-time Director of the Agency. The organizational structure, staffing pattern, appointment of staff and their service conditions will be determined by the Governing Body.

4. The funds provided for non-conventional and renewable sources of energy programmes and Integrated Rural Energy Programme in the Seventh Five Year Plan will be kept at the disposal of the Agency. Orders sanctioning funds for the year 1985-86 will be issued in due course. Maharashtra Energy Development Agency will also receive grants/ assistance from the D.N.E.S./Government of India for implementation of its projects and programmes of non- conventional energy sources.

5. The Industries, Energy and Labour Department shall be the Administrative Department of the Maharashtra Energy Development Agency for the present. The present Integrated Rural Energy Programme Cell in the Energy Wing should be continued for looking after the administrative work of the Agency." (Emphasis Supplied)

4.3 It is clear that the Assessee/MEDA was constituted as a society registered under Societies Registration Act, 1860 for the development of Non-Conventional Renewable Energy Sources. Subsequently, the Assessee was granted registration as a Public Trust under the Bombay Public Trust Act, 1950. The Assessee was also granted registration under Section 12A of the Act vide

registration certificate, dated 03/11/1987. Thereafter, vide order dated 29/11/2007, the Assessee was granted approval under Section 10(23C)(iv) of the Act from Assessment Year 2007-08. It is admitted position that all the aforesaid registrations/approvals were validly held by the Assessee during the Assessment Years 2013-14 and 2014-15.

5. For Assessment Year 2013-14, the Assessee filed return of income on 28/09/2013, after claiming exemption under Section 10(23C)(iv) of the Act. For the Assessment Year 2013-14, the Assessee had filed Statement of Computation of Income showing net surplus of INR 41.19 Crores after reducing expenses of INR 51.84 Crores from the disclosed income/receipts of INR 93.03 Crores. After allocating INR 1.39 Crores, being 15% of the receipts of INR 93.03 Crores, as the maximum permitted accumulation, the Assessee arrived at a surplus of INR 27.24 Crores which was accumulated for the objects as per Resolution, dated 02/11/2013, passed by the Governing Body of the Assessee. The Assessee also filed Form 10 and claimed that no surplus was liable to tax in the hands of the Assessee during the relevant previous year as per the provisions contained in Section 10(23C)(iv) of the Act.

5.1. The case of the Assessee/MEDA was selected for scrutiny. The Assessing Officer completed the assessment under Section 143(3) of the Act vide Assessment Order, dated 29/03/2016, at the assessed income of INR 104.49 Crores. The additions/disallowances made by the Assessing Officer along with the relevant observation/finding as follows:

<u>Rejection of claim of exemption under Section 10(23C)(iv) of the Act</u>

5.1.1. The Assessee was not entitled to claim exemption under

Section 10(23C)(iv) of the Act

Addition of INR 48.98 Crores pertaining to Development Fund

5.1.2. The receipts credited to the Development Fund Account were not in the nature of voluntary contributions or donations and therefore, the same could not be treated as Corpus donations referred to in Section 11(d) of the Act. Thus, the Assessing Officer brought to tax aggregate receipts of INR 48.98 Crores *[Closing balance of INR 194.52 Crores less Opening Balance of INR 145.53 Crores]* credited to the Development Fund Account during the relevant previous year.

Addition of INR 61.94 Crores pertaining to receipts credited to Fund/Liability Account

5.1.3. The Assessing Officer observed that the Assessee had received certain payments which were not credited to the Income & Expenditure Account as income and were, instead, credited to the fund/despot/liability accounts reflected in the liability side of the balance sheet. The Assessing Officer was of the view that the aforesaid receipts should be treated as income of the Assessee. Therefore, taking the difference between the closing and opening balance of the fund/deposit/liability account, the Assessing Officer computed the amount credited during the relevant previous year and treated the same as the income of the Assessee. Further, the Assessing Officer noted that the Assessee was following cash system of accounting and the liability/obligations attached to the aforesaid receipts were not discharged during the relevant previous year. Therefore, the Assessing Officer concluded that the Assessee was not entitled to claim

deduction in respect of the same. Accordingly, the Assessing Officer made aggregate addition of INR 61.94 Crores consisting of the following:

Ledger Account Head	Grouped Under	Opening Balance	Closing Balance (INR)	Difference
Development Fund	Other Earmarked Funds	145,53,49,157	1,94,52,44,367	48,98,95,210
LIB E C Act 2001	Other Liabilities	46.968	2,19,60,190	2,19,13,222
LIB Energy Con 2012	Other Liabilities	0	2,00,00,000	2,00,00,000
LIB Infrastructure Road Maintenance	Other Liabilities	229,645,500	31,81,75,500	8,85,30,000
Infrastructure Fund Road	Other Liabilities	12,450,570	11,610,570	(8,40,000)
				61,94,98,432

Addition of INR 52.27 Crores on account of non-utilization of accumulation pertaining to Financial Year 2010-11 and 2011-12

5.1.4. The Assessing Officer observed that Assessee had claimed carry forward of accumulated income of INR 79.08 Crores. However, since the Assessee has filed Form 10, dated 02/07/2014 (along with Resolution passed on meeting held on 02/11/2013) for accumulating and setting aside amount of INR 27.24 Crores, the Assessing Officer concluded that the Assessee was only entitled to carry forward of accumulated income of INR 27.24 Crores. Further, the Assessing Officer observed that Accumulation of INR 17.31 Crores pertaining to Financial Year 2010-11 and INR 34.28 Crores pertaining to Financial Year 2011-12

were not utilized. Therefore, the Assessing Officer made an addition of INR 52.27 Crores being aggregate unutilized amount pertaining to Financial Year 2010-11 (INR 17.31 Crores) and 2011-12 (INR 34.28 Crores).

Rejection of the claim of the Assessee that income of the Assessee/MEDA exempt from tax in terms of Article 12 read with Article 289 of the Constitution

5.1.5. The Assessing Officer rejected the contention of the Assessee that Assessee/MEDA is an agent of the Government of Maharashtra by placing reliance on the judgment of Hon'ble Supreme Court in the case of Andhra Pradesh State Road Transport Corporation Vs. ITO: 52 ITR 524 (SC).

5.2. Being aggrieved, the Assessee/MEDA preferred appeal before the CIT(A) against the Assessment Order, dated 28/03/2016. The CIT(A) vide order, dated 20/03/2023, partly allowed the appeal of the Assessee. The summary of findings/observation of the CIT(A) are as under:

5.2.1. The CIT(A) took note of the fact that approval granted to the Assessee under Section 10(23C)(iv) of the Act vide order dated 29/11/2007, passed by the Chief Commissioner of Income Tax, Mumbai had not been revoked or cancelled. The Assessing Officer had not provided any reasons for rejecting the Assessee's claim for exemption under Section 10(23C)(iv) of the Act. Therefore, the CIT(A) concluded that the Assessee was entitled to claim exemption under Section 10(23C)(iv) of the Act. The Assessee was permitted to utlised the amount accumulated within a period of five years. The aforesaid period of five years available for utilization of

the accumulation pertain to Financial Year 2010-11 (INR 17.31 Crores) and Financial Year 2011-12 (INR 34.28 Crores) had not lapsed. Further, the requirement of filing Resolution passed by the Governing Body and Form 10 specifying the purpose of accumulation was not necessary for the purpose of claiming the benefit of accumulation in terms of Section 10(23C)(iv) of the Act. Therefore, the Assessee was entitled to carry forward the aggregate unutilized/accumulated amount of INR 52.27 Crores and no addition on this account was warranted. Thus, the CIT(A) deleted the addition of INR 52.27 Crores made by the Assessing Officer.

5.2.2. As regards the addition of INR 21,91,322/- made by the Assessing Officer in relation to amount received under the provisions of LIB E C Act, 2001, the CIT(A) corrected the computational error committed by the Assessing Officer by adopting the figure of Opening Balance as INR 46,968/- instead of INR 45,41,476/- and deleted the excess addition of INR 44,94,508/-.

5.2.3. However, the CIT(A) confirmed the following additions made by the Assessing Officer and declined to grant any relief in relation to the same.

Ledger A/c head	Grouped Under	Opening Balance (INR)	Closing Balance (INR)	Difference (INR)
Development Fund	Other Earmarked Funds	145,53,49,157	1,94,52,44,367	48,98,95,210
LIB E C Act 2001	Other Liabilities	45,41,476	2,19,60,190	1,74,18,714
LIB Energy Con 2012	Other Liabilities	0	20,000,000	200,00,000

LIB Infrastructure Road Maintenance	Other Liabilities	229,645,500	318,175,500	8,85,30,000
Infrastructure Fund Road	Other Liabilities	12,450,570	11,610,570	(840,000)
				61,50,03,924

5.2.4. The CIT(A) also agreed with the Assessing Officer and rejected the contention of the Assessee that the Assessee/MEDA falls outside the ken of taxation being an agent of the Government.

5.3. Both, the Revenue as well as the Assessee/MEDA are now before the Tribunal against the above order passed by the CIT(A). The Revenue has preferred appeal on the grounds reproduced in paragraph 3 above while the Assessee has filed Cross Objection raising grounds in paragraph 3.1 above.

Appeal by Revenue [ITA No 1765/Mum/2023]

6 We would first take up the grounds raised by the Revenue in its appeal.

6.1. All the grounds raised by the Revenue pertain to the order of CIT(A) granting the benefit of provisions contained in Section 10(23C)(iv) of the Act to the Assessee. We have considered the rival submission on this issue, perused the material on record and analysed the position in law.

6.2. It is admitted position that the approval granted by the Chief Commissioner of Income Tax, Mumbai under Section 10(23C)(iv) of the Act was valid during the relevant previous year and had not been withdrawn. During the regular scrutiny assessment proceedings for the Assessment Years 2009-10 to 2011-12 the Assessing Officer had allowed claim for exemption under Section

10(23C)(iv) of the Act. We note that there is no challenge by the Revenue as regards the nature of activities conducted by the Assessee/MEDA. The Assessing Officer had accepted that the activities carried out by the Assessee/MEDA are charitable in nature and has granted the benefit of Section 11/12 to the Assessee. However, for the Assessment Year 2013-14, the Assessing Officer took a contrary view and denied claim for exemption under Section 10(23C)(iv) of the Act. The CIT(A) overturned the decision and allowed the aforesaid claim. On perusal of the Assessment Order we find that in paragraph 6 the Assessing Officer has rejected the Assessee's Claim for exemption under Section 10(23C) of the Act. Though it has been stated therein that 'as discussed hereunder:', there is no discussion on Section 10(23C) of the Act. The Assessing Officer has thereafter examined the alternative claim of exemption under Section 11 of the Act and has proceeded compute the income accordingly. We concur with the CIT(A) that no reasoning has been provided by the Assessing Officer for denying exemption claimed by the Assessee/MEDA under Section 10(23C)(iv) of the Act. In view of the aforesaid, we do not find any infirmity in the order passed by the CIT(A) in overturning the decision of the Assessing Officer and granting the benefit of exemption under Section 10(23C)(iv) of the Act to the Assessee. Accordingly, **Ground No. 1** & **2** raised by the Revenue are dismissed.

6.3. We also concur with the CIT(A) that in terms of Section 10(23C)(iv) of the Act the accumulated funds could have been utilized by the Assessee any time within a period of five years. AS observed by the CIT(A), assessee registered under Section 10(23C) must spend at least 85% of total income in order to claim full exemption. Such assessee is allowed to retain up to 15% of total income without any conditions. In case the income applied

falls short of the said 85%, such assessee can accumulate excess income for application in subsequent year(s) not exceeding five years. Since the aforesaid period of five years for utilizing the accumulation of INR 17.31 Crores and INR 34.28 Crores pertaining to Financial Years 2010-11 and 2011-12 had not expired, the CIT(A) was justified in deleting the addition of INR 52.27 Crores made by the Assessing Officer while computing income for the Assessment Year 2013-14.

6.4. Further, in our view, the CIT(A) was also correct in concluding that prior to Assessment Year 2023-24, an assessee entitled to exemption under Section 10(23C) of the Act was not required to file separate Form and specify the purposes of accumulation in case accumulation was in excess of 15%. We have already confirmed the order of CIT(A) granting the benefit of exemption under Section 10(23C) of the Act to the Assessee. Thus, the requirement of filing Form 10 along with the Resolution specifying the purpose of accumulation [as required under Section 11(2) of the Act] did not apply to the Assessee. Accordingly, **Ground No. 3** and **4** raised by the Revenue are dismissed.

Cross Objections by Assessee [CO No. 88/Mum/2023]

7 We would now take up the grounds raised by the Assessee by way of Cross Objections. We have considered the rival submission in relation to the Cross-Objections, perused the material on record and analysed the position in law.

Cross Objection No. 2, 3 & 4

8 We would first take up Cross Objection No. 2, 3 & 4 raised by the Assessee in relation to computation of income and exemption under Section 10(23C)(iv) of the Act. The main contention of the Assessee was that the funds under consideration could not be

treated as income of the Assessee as the same were no in the nature of amount received by the Assessee for application towards its objects.

8.1. On perusal of the record it is clear that as per the Maharashtra State Energy Conservation Fund Rules, 2013 framed under the Energy Conservation Act, 2001, the Assessee has been appointed as the authority to administer the Maharashtra State Energy Conservation Fund. Further, on perusal of paper-book II filed by the Assessee we find that Maharashtra Electricity Regulatory Commission, vide order dated 01/07/2010, has designated the Assessee as a State Agency to undertake functions as envisaged in MERC (Renewable Purchase Obligation) and shall function as State Agency to give REC Accreditations. The Assessee has also been functioning as a state agency for implementation of government schemes such as PM KUSUM Scheme. The Assessee has been appointed as state nodal agency or state designated authority for the implementation of various schemes. It was submitted by the Learned Authorised Representative for the Assessee that the funds and financial support received by the Assessee under the government policy cannot be considered as income of the Assessee. In this regard reliance was placed on the reasons specified in submission, dated 25/02/2016, filed before the CIT(A) during the appellate proceedings the relevant extract of which reads as under:

> *"6.3. 2nd Contention – Incorrect treatment of funds as Income related grounds*
>
> *xx xx*
>
> *6.3.2. Explanation for non-classification of various Funds as Income*
>
> *xx xx*
>
> ***Reason A** - Corpus Fund*

The Development fund (as so recognized in current year) is, in fact, CORPUS fund. MEDA vide a specific Government GR has renamed the erstwhile CORPUS fund as DEVELOPMENT FUND since year 2001. The requisite minutes of the meeting of the GB along with the related Free English Translation of the same are enclosed herewith and marked as Annexure-8. Further, a perusal of the said minutes of the 37th General Body meeting dated 06/09/2000, it transpires, that MEDA has been directed to utilize only the interest earned out of the said fund in order to carry out Research & Development activities and incur other related expenses. It transpires, principal balance of the fund is not to be used per se as per specific government direction. As such, on a true characterization principle, the said fund is nothing but a CORPUS per se. As per the provisions of ITA, 1961, a CORPUS fund ought not to be considered as a stream of taxable revenue / income for a charity. As such it was submitted that, the said fund is in nature of a Corpus Fund and hence has been disclosed under the liabilities side of the balance sheet.

***Reason-B**-Pass-through entity*

Mere custodian of Funds - It is submitted that MEDA is only a custodian of various funds/sums collected, as MEDA only has the powers to formulate various policies. However, the final decision of disbursement of funds / sums collected towards approved projects can only be made after the approvals of the State Government. Hence, it is submitted that the said funds / sums collected are only parked with MEDA for some specific purpose and thus, in reality, the said money does not belongs to MEDA, but MEDA only acts as a pass through entity. As such, the various funds/sums collected cannot be treated as revenue/income of MEDA.

Over-riding title-MEDA collects / receives sums with some pre-defined manner of application. Hence, all money is to be spent only as per the various schemes of the state government. As such, all sums are merely parked with MEDA till the specific directions of spending the funds are received. Considering the above it is

submitted that, MEDA is merely a trustee of funds and all funds carry a pre-defined overriding title specifying the manner of application of the same. Considering the above, the various funds/sums collected cannot be treated as revenue/income of MEDA.

***Reason-C**-Mere liability since end use only at behest of Government*

It MEDA receives / collects various sums on behalf of the state government in accordance with the various circulars / notifications issued. The said sums can only be spent after the approval of the specified authority or only once specific directions are received to that extent. As such, MEDA cannot spend the funds / sums collected on its own.

***Reason-D**-Refund obligation*

As per stipulations of Government in some of the funds/grants, there exist specific stipulations that, firstly, the funds / grants are to be used following conspicuous directions of the government sanctioning authorities. Secondly, it is also provided that unused funds/grants are to be returned back to the Government account. As such, MEDA never assumes any occasion to use such funds in it's own right. Hence, the said funds, since carry a refund obligation, are not equivalent to income".(Emphasis Supplied)

8.2. It is pertinent to mention here that above submission were relied upon by the Learned Authorised Representative to firstly support the submission that the increase in funds during the relevant previous year should not be treated as income of the Assessee available for application towards its objects. Secondly, the aforesaid submissions were also relied upon to support the contention that the Assessee is an instrumentality of State of Maharashtra working as its agent discharging state function. For now, we would consider and deal with the above submission of the Assessee to examine whether the funds received during the

relevant previous year would constitute income of the Assessee available for application during the relevant previous year.

8.3. Having perused the various documents placed before us as part of the paper-book we conclude that the Assessee was function in a dual capacity. Firstly, as a charitable organization and Secondly, as designated authority for administration of funds received in terms of policies of government of Maharashtra. Thus, in respect of funds received by the Assessee in its capacity as designated authority/administrator, the Assessee had a limited role to discharge as an aggregator and/or administrator of funds. While doing so the Assessee was bound to follow the procedures laid down for application and disbursal of funds. Therefore, the same cannot be considered as income of the Assessee available for application for the objects until and unless the applicable policy/rules so provide. Whereas, in respect of grants, funds, financial support, fee, charges and other income received by the Assessee (including financial support for implementation of various schemes which are in line with its objects), the Assessee had discretion to take a decision in relation to assessment of the fund requirement and/or disbursal of funds. The fact that the financial support was provided for a pre-defined object does not lead to the conclusion that the Assessee did not have right to use the funds given the fact that pre-defined objects were same as the main objects of the Assessee. The fact that in some cases the Assessee was required to provide a utilization certificate did not take away the aforesaid discretion of the Assessee to utilize/disburse the funds. In our view, such receipts were in the nature of income available for application for the objects of the Assessee. Keeping in view of the aforesaid, we proceed to examine the nature of various funds under consideration received by the Assessee.

8.4. At this point it would be pertinent to refer to the document on '*Modalities for Setting–Up Non-Conventional Energy Projects in Maharashtra State as per Government of Maharashtra's New Policy 2008 for Energy Generation'* placed on record by the Assessee as part of paper-book-I. Annexure A attached thereto deals with Modalities of Wind Energy Projects. On perusal of the same we find that as per Clause 11, for obtaining Infrastructure Clearance from the Assessee, the developer/project owner are required to pay/deposit (a) application fee of INR 5000/- per MW, (b) Infrastructure processing fee INR 3 lakh per MW, (c) Security Deposit of INR 5 lakh per MW and (d) Road Repair Charges of INR 2 lakh per MW. As per Clause 18 on Infrastructure Processing Fee and Security Deposits developer/project owner had 9 months from the date of Infrastructure Clearance to commission the project failing which the Security Deposit was to be forfeited by way of conversion for use as Development Fund. In addition, as per the scheme the developer/project owners were also required to contribute to Green Energy Fund. Thus, we find that the Assessee was receiving various funds under this scheme.

Development Fund (INR 12,48,72,500/-), Infrastructure Road Maintenance Fund & Green Cess Fund

8.5. It has been stated in the submission filed by the Assessee that the Assessee has provided following treatment to the funds received in terms of the aforesaid policy:

(a) Amount of INR 12,48,72,500/- collected at the rate of INR 3 Lakh per MW of installed capacity collected from developers/project owners has been credited to the Development Fund Account

(b) Amount of INR 8,85,30,000/- collected at the rate of INR 2 Lakh per MW of installed capacity collected from

developers/project owners has been credited to the Infrastructure Road Maintenance Fund Account

(c) Though no amount has been credited to the Green Cess Fund Account during the relevant previous year, INR 36,50,22,710/- accumulated over the past years has been transferred to the Development Fund Account.

In our view the above amounts were received by the Assessee in its capacity as designated authority or administrator and the same cannot be regarded as income on the Assessee available for application during the relevant previous year. It would be pertinent to note that during the relevant previous year, there has been movement of funds amounting to INR 36,50,22,710/- from Green Cess Fund to Development Fund. We would consider the impact/consequences of the aforesaid movement while dealing with the nature of Development Fund.

EC Fund 2001

8.6. We note that amount of INR 2,19,13,222/-, reflected under the head 'EC Fund 2001', was received by the Assessee from Bureau of Energy Efficiency (BEE). On perusal of documents placed on record we find that the BEE was allocated funds by the Ministry of Power, Government of India for strengthening the various State Development Authorities [SDAs] (which included the Assessee). This was in the nature of financial support extended to the Assessee. In our view, the Assessee was at liberty to utilize the same for the stated purpose of capacity building as designated state development authority and therefore, had discretion to apply the same for its objects. Accordingly, we hold that the Assessing Officer and CIT(A) were correct in treating the aforesaid amount as income of the Assessee available for application towards the object of the Assessee during the relevant previous year.

Energy Conservation Fund 2012

8.7. We note that the Assessee had also received INR 2,00,00,000/- as part of State Energy Conservation Fund specifically earmarked as 'Revolving Investment Fund' in terms of Energy Conservation Act, 2001. On perusal of the documents placed on record, we find that the aforesaid amount has been received by the Assessee as an authority administering the funds, and the same cannot be treated as income of the Assessee.

Development Fund

8.8. This takes us to the Development Fund which has been claimed by the Assessee to be in the nature of Corpus Fund. We have already concluded that INR 12,48,72,500/- collected at the rate of INR 3 Lakh per MW of installed capacity from developers/project owners and credited to the Development Fund Account cannot be regarded as income of the Assessee. As regards the balance, on perusal of the Ledger Account for the Development placed on record we find that fee and charges have been credited to the said account which are clearly in the nature of income of the Assessee. It would be pertinent to refer to resolution dated 07/07/2000 passed by the Governing Body of the Assessee in its 37th General Body Meeting, on which reliance was placed on behalf of the Assessee, which reads as under:

> *"Point No.14- Regarding change in the name of Corpus Fund to Development Fund & its utilization*
>
> *The point of creating the Corpus Fund was sanctioned in MEDA 36th Governing Body meeting which was held on 3rd May, 2000. In order to facilitate the administrative & audit procedures, it is proposed to rename the Corpus Fund as Development Fund. Also, it is proposed to take Rs.2 lakh per machine as development fund from project promoters/developers. Tender registration fee, sale of guidelines books, registration charges for power generation projects, fund to be received from sale of electricity through*

demonstration wind energy projects, interest on deposits, development fund to be received from wind energy projects etc. shall be deposited as Development Fund The collection of development fund has been started & as per GB directives (March. 2001), GB may give sanction to use some funds from the capital fund for immediate works to be carried out (as interest is not deposited).

After March, 2001, MEDA will not use the capital fund & only interest will be utilized for various development schemes. The operation & maintenance for approach roads which are developed for wind energy projects, to install newly developed renewable energy projects, for research & development in this sector & to deploy new technology projects, human resource development of MEDA & their training in India & foreign countries, the additional expenditure to be incurred after implementation of 5th pay commission after 5 years to MEDA' employee, for implementation of employee welfare scheme & for the purchase of immovable & movable property for official use of MEDA, above interest amount may be utilized. Guiding principles are mentioned in Annexure 10. This amount shall not be utilized for releasing subsidy to the pre installed projects.

Director General, MEDA conferred with the powers to sanction upto Rs.10 lakh for the above said activities. For the expenditure greater than Rs. 10 lakh. Governing Body approval is necessary. In line with this, it is proposed, to sanction to rename Corpus Fund as Development Fund, to utilize the Development Fund on above said activities & to confer the powers to sanction upto Rs.10 lakh to Director General, MEDA to the Governing Body." (Emphasis Supplied)

8.9. On perusal of the above it emerges that the creation of Corpus Fund was sanctioned by the Governing Body of the Assessee held on 03/05/2000. Subsequently, the name of Corpus Fund was changed to Development Fund. There was a proposal to receive an

amount of INR 2,00,000/- per machine as corpus/development fund from the project owners/developers. It was resolved that tender registration fee, sale of guidelines books, registration charges for power generation projects, fund to be received from sale of electricity through demonstration wind energy projects, interest on deposits, development fund to be received from wind energy projects would be deposited as Development Fund. It was also resolved that only the interest accruing on the aforesaid Development Fund shall be used for various development schemes after March 2001. The aforesaid resolution has been stated to be a 'government resolution' at some places in the submission filed by the Assessee which is factually incorrect as the aforesaid resolution has been passed by the governing body and not by the Government of Maharashtra. From the above it is clear that the aforesaid amounts/receipts *(except amount of INR 2,00,000/- per machine to be collected as corpus/development fund)* were to credited to Development Fund account as per the decision taken by the Governing Body. The payer of the tender registration fee, registration charges etc. did not intend to make any payment towards the corpus, and therefore, the same cannot be regarded as a contribution towards the corpus. In our view, the decision of the Assessee to treat some of the receipts as payments towards corpus would not change the nature of receipt from income to corpus donations. We note that the Rule 22 of the Rules governing the Assessee/MEDA placed on record by the Assessee, specifically provides that the funds of the Assessee shall, inter alia, consist of service charges, maintenance charges, consultancy fee and all other income arising or accruing in pursuance of the objects of the Assessee. Thus, Rule 22 also supports our view that the service charges, consultant fee and other charges/fee of similar nature collected by the Assessee would constitute income to be applied for the objects of the Assessee. We note that in the Income &

Expenditure Account, the Assessee has disclosed the interest, grants and 'Income From Other Sources' aggregating to INR 93,03,89,888/-. 'Schedule N' forming part of the Financial Statements giving details of 'Income from Other Sources' reads as under:

SCHEDULE N

INCOME FROM OTHER SOURCES	Amount (INR)	Amount (INR)
REGISTRATION FEE & PROCESSING FEE	3,30,14,000	
OTHER INCOME (CONSUTANCY AND PENALTY REC.TEN)	2,79,60,217	
VDURG/G'GANI/C'WAID/C'WADI II/MOTHA MSEB	5,45,25,510	
PESHWE ENERGY PARK	-	
ACCREDITATION FEES AND CHARGES	78,89,000	
WIND ZONE PROCESSING FEE/TRANSFER CLEARANCE	4,20,59,250	
APPLICATION FEES FOR WIND FARM PROJECT	30,36,750	
Total Schedule N		**16,84,84,727**

8.10. Therefore, fee, charges and income credited to the Development Fund Account shall be treated as income available for application to the Assessee during the relevant previous year. Accordingly, the Assessing Officer is directed to examine the ledger account to identify the fee, charges and income received during the relevant previous year which were credited to the Development Fund Account and treat the same as income of the Assessee. While doing so the Assessing Officer shall after taking into consideration the fee/charges/income already credited to the Income & Expenditure Account to avoid double taxation of same income. As regards, amount of INR 2,00,000/- per machine which was proposed to be collected for development fund is concerned, the same can be regarded as payments towards corpus having been received as such. Accordingly, subject to fulfillment of other

applicable conditions, we direct the Assessing Officer to treat the same as corpus donations.

8.11. As regards, the transfer of Green Cess Fund no addition has been made by the Assessing Officer since there was no increase in the balance. However, amount of Green Cess Fund transferred to the Development Fund Account was brought to tax as part of the Development Fund. In our view the Green Cess Fund, being similar in nature to the Infrastructure Road Maintenance Fund received by the Assessee, would not be treated as income of the Assessee. However, in the context of security deposits we have also noted hereinabove that, as per government policy, the security deposits could be forfeited by the Assessee for use as development fund. In our view, on forfeiture the Assessee gets control over the funds and discretion to use the same as any other income towards its object. Therefore, in the year of forfeiture the same should constitute income of the Assessee. On parity of reasoning, the transfer of Green Cess Fund to Development Fund Account would amount to receipt of income for the Assessee during the relevant previous year provided there is change in the attached conditions which permit the Assessee use the funds for its objects. In the case funds stand released from connected obligation and the Assessee has liberty to use the same towards its objects, then the same would be treated as income available for application in the year of transfer. On the other hand in case the Assessee continues to have limited right of administration of such funds, the same would continue to be in the nature of funds available for administration with the Assessee and cannot be regarded as income available for application. Accordingly, we direct the Assessing Officer to examine the applicable policy/government resolutions and the reason on account of which Green Cess Fund was transferred to Development Fund after

giving the Assessee opportunity of being heard. The Assessee would be at liberty to provide such documents/details are it may deem fit to support the contention that there is no change in the nature of Green Cess Fund though transferred to Development Fund Account. At the same time the Assessing Officer would also be at liberty to call for such information/detail as it deems necessary for adjudication of this issue. It is clarified that we have already concluded that the Assessee would be entitled to claim exemption under Section 10(23C) of the Act and therefore, subject to fulfillment of application conditions, the Assessee would be entitled to claim exemption under Section 10(23C) of the Act in respect of income, if any, determined by the Assessee.

8.12. In terms of above, **Cross Objection No. 2**, **3** & **4** raised by the Assessee are partly allowed.

Cross Objection No. 1

9 We would next take up Cross Objection No. 1 raised by the Assessee.

9.1. It was contended on behalf of the Assessee that the authorities below had failed to appreciate that:

(a) MEDA was an extended arm of the Government of Maharashtra and fell outside the ken of taxation. In this regard it was submitted that MEDA is an agent of Government of Maharashtra (as is clear from the name itself) created for the purpose of discharging function of State. MEDA is akin to Government of Maharashtra and should be regarded as 'State' in terms of Article 12 of Constitution of India.

(b) MEDA function under the control of the State Government. At

present, all 12 members on the governing board of MEDA are government officials/ministers. When MEDA was set up, Industries, Energy & Labour Department was to function as administrative department of MEDA. MEDA gets majority funding and financial support from the government. The aforesaid funds are deployed as per government directions. Funds received/collected by MEDA are spent on the basis of directions given in respective government resolutions. MEDA has been appointed as nodal agency with the specific purpose of development of renewable energy and facilitating energy conservation in the State of Maharashtra. MEDA acts as a pass through entity and a custodian of funds. MEDA is nothing but extended arm of the State. The objective of MEDA is promoting preservation of environment and to benefit society. MEDA does not carry out any trading or business activity or any operations connected therewith. Hence, income of MEDA is exempt under Article 289 of the Constitution.

9.2. In support of the above submission, the Learned Authorised Representative for the Assessee placed reliance upon the Supplementary Submission, dated 15/02/2018, & 14/03/2023 filed before the CIT(A), Government Resolution (dated 16/07/1985) according sanction for setting up of MEDA, and upon the following judgments/decisions:

- Ajay Hasia Etc vs Khalid Mujib Sehravardi & Ors.1981 AIR 487 (SC)

- Shri Ramtanu Co-Operative vs State Of Maharashtra & Ors-1970 AIR 1771 (SC) Mumbai Metropolitan Region Development Authority vs DDIT - (2015) 273 CTR 0317 (Bombay HC)

- DCIT vs Maharashtra Labour Welfare Board-137/MUM/2023 (Mum ITAT) City and Industrial

Development Corporation of Maharashtra Ltd. Vs ACIT-25 taxmann.com 333 (Mum) (ITAT)

- Adityapur Industrial Area Development Authority vs Union of India : (2006) 283 ITR 97

- Andhra Pradesh State Road Transport Corpn. Vs ITO-52 ITR 524 (SC)

9.3. Per Contra, the Learned Departmental Representative made following submissions:

"2. The assessee trust's claim for exemption from Union taxation on the ground that it is an extended arm of the Government cannot be sustained on account of the following reasons:

2.1 As per the assessee trust's website https://www.mahaurja.com/meda, the assessee has been registered as a society under Societies Registration Act, 1860 (in 1985) and Bombay Public Trust, 1950 (in 1987). The Resolution dated 16th July, 1985 for setting-up the assessee accords sanction to the assessee to be set up as Government Society under the Societies Registration Act, 1860. For income tax purposes, it possesses an unique PAN, it is registered as Trust with DIT(Exemptions), Mumbai u/s 12A of the Income Tax Act, 1961 and it has been accorded approval u/s 10(23C) (iv) of the Act by the CCIT, Mumbai. Thus, undoubtedly, the assessee trust has its own separate legal personality, distinct from the State.

2.2 It is pertinent to mention here that as per the above-stated Resolution, the Administrative Department of the assessee trust is the Industries, Energy and Labour Department. This clearly shows that there was no intention of the State to transfer the functions of the department to the assessee nor the business of the assessee is carried on by the State departmentally. Further, the said Resolution nowhere provides expressly or by necessary implication that the

income derived by the assessee from its business activities would be the income of the State.

2.3 On perusal of the Memorandum of Association, Articles of Association, 1985 and bye-laws governing the assessee, it is seen that the assessee trust functions in an autonomous manner. It carries on its own business activities in the area of non-conventional and renewable energy, resulting in profit and loss. It maintains separate books of accounts. It prepares its own budget. It raises its own funds for attainment of its objectives through subscriptions, donations, grants, gifts, borrowings, contributions and assistance from State and Central Government, banks and private institutions and individuals. It makes investment of surplus funds and earns interest thereon. It floats tenders for execution of work and enters into contracts. It sues and is liable to be sued in the courts of law. It enjoys ownership of several immovable properties in state of Maharashtra. It appoints its own Public Information Officer and Appellate authority for discharge of functions under the Right to Information Act, 2005.

2.3.1 The founding documents show that the assessee trust is run by the Director in an autonomous manner under the aegis of the Governing Body. The Governing Body enjoys extensive powers of general superintendence, direction and control of the affairs of the assessee. This body not only consists of the political representatives and state bureaucrats, but also private individuals who are nominated by the government for their expertise on the subject. Rule no 12 of the Rules lays down the constitution of the Governing Body. Rule no 15 of the Rules lays down the powers of the Governing Body. Rule no 16 of the Rules gives the procedure for carrying out proceedings of the Governing Body. All the members of the body have equal vote for taking decisions in the meetings. The Director, who is the Chief Executive Officer of the

assessee, has wide powers to run the organization which have been delegated by the Governing Body as per Rule no 17 of the Rules. As per Rule 25, every member of the Governing Body shall have the right of inspection of accounts and registers and proceedings of the meetings maintained by the assessee. As per Rule 29, all property belonging to the assessee shall be deemed to be vested in the Governing Body. As per Rule 30, the assessee may sue or be sued in the name of the Director or any other office-bearer authorized by the Governing Body. This implies that the State of Maharashtra is not a party to the dispute in the legal proceedings involving the assessee trust.

2.3.2. Thus, the over-all functioning of the assessee trust does not display existence of deep and pervasive state control.

2.4 It is also seen from the Balance Sheet and Profit & Loss account of AY 2013-14 that the assessee trust has various sources of income such as interest from banks and investments (Rs 44.19 crores), grants received from state government (Rs 20.12 crores), grants received from Central government (Rs 9.68 crores), beneficiary share received (Rs 2.19 crores) and income from other sources (Rs 16.84 crores). Thus, the assessee has various independent sources of income and is not wholly dependent on the governmental funds or state assistance for carrying out its business activities. In fact, it has its own fund known as Development Fund and the interest earned out of it is used to incur various expenses (Schedule- K4 of P&L account).

2.5 Furthermore, the assessee trust has not been able to point out a single provision in its founding documents and bye-laws which show that the government of Maharashtra is controlling/ running the business of the assessee and hence

can claim the income to be its own. There are no provisions which state that:

- the assessee trust enjoys monopoly in carrying out business in the area of renewable and non-conventional energy, which is State conferred or State protected,

- the prior approval of the State is required at every step of decision- making by the assessee trust, particularly with respect to disbursement of funds and sanction of expenditure,

- the State can review the working and progress of the assessee trust and in case it is not found to be functioning properly, the State can take over its administration and assets,

- on supersession, the assets of the assessee trust are vested in the State Government and liabilities become enforceable against the State Government.

2.5.1 It is vehemently argued that lack of explicit provisions to the above effect undermines the claim of the assessee trust to be an extended arm of the State. It can be safely concluded that the assessee trust was never intended to be an instrumentality of the State, but an independent entity set up to actively promote growth and usage of non-conventional and renewable energy in the state of Maharashtra.

2.6 Reliance is also placed on the following case laws to support the

Revenue's contention:

i) Andhra Pradesh State Road Transport Corpn.v. Income-tax Officer 1.

Bihar State Road Transport Corpn. 2. North Bengal State Transport Corpn. And 3. Calcutta State Transport Corpn. [1964] 52 ITR 524 (SC)

ii) Adityapur Industrial Area Development Authority v. Union of India [2006] 153 Taxman 107 (SC)

iii) Vidarbha Housing Board v. ITO [1973] 92 ITR 430 (Bom)

iv) Mussoorie Dehradun Development Authority v Additional Commissioner of Income-tax [2022] 140 taxmann.com192 (Uttarakhand)

v) Vidarbha Irrigation Development Corporation v. Additional Commissioner of Income-tax [2005] 93 ITD184 (NAG.)

vi) Baddi Barotiwala Nalagarh Development Authority v. Deputy Commissioner of Income-tax, Circle Parwanoo [2017] 78 taxmann.com 162 (Chandigarh - Trib.)

vii) Bangalore Metro Rail Corporation Ltd. v. Deputy Commissioner of Income-tax [2023] 149 taxmann.com 207 (Bangalore - Trib.)"

9.4. In rejoinder, the Learned Authorised Representative for the Appellant reiterating the submission already made, and in addition submitted that MEDA does not carry out any activity in the nature of trade or business and does not indulge in quid-pro-quo. The form or constitution of the entity - trust, society or company etc. is not relevant. The decisive test is the activity in pith and substance. Passive interest income earned by MEDA is a natural fall out of keeping funds in the prescribed modes. The Assessee was not established for earning interest income. In any case, even the interest income is applied for the charitable objects. Further, the immovable properties purchased by MEDA are essential for its activities.

9.5. We have given thoughtful consideration to the rival submission and perused the material on record including the order passed by the authorities below and judicial precedents cited during the course of hearing.

9.6. During the course of hearing both sides had made detailed submission on the factual aspect dealing with the activities of the Assessee/MEDA, its control, management, the source of funding and utilization. While the Learned Authorised Representative for Appellant relied upon the same to support the submission that the Assessee/MEDA falls within the Definition of 'State' as defined in Article 12 of the Constitution of India [for short 'the Constitution']. On the other hand, the Learned Departmental Representative relied upon the aforesaid aspects to counter the submission made by the Learned Authorised Representative for Appellant and to establish that the Assessee/MEDA did not constitute 'State' within the meaning of Article 12 of the Constitution. For the sake of arguments, for now, we proceed on the assumption that the Assessee/MEDA qualified as State in terms of Article 12 of the Constitution – a position disputed by the Revenue.

9.7. The contention advanced on behalf of the Assessee is that the Assessee/MEDA is 'State' as defined in Article 12 of the Constitution and therefore, the Assessee/MEDA is entitled to take shelter of Article 289 of the Constitution to claim exemption from union taxation in the form of income tax. We have given thoughtful consideration to the aforesaid submissions advanced by the Ld. Authorised Representative for the Assessee and have perused the various judicial precedents cited in support of the contention.

9.8. Part III of the Constitution (Article 12 to 35), inter alia, contains the Fundamental Rights guaranteed by the Constitution which can be enforced against the 'State'. Article 12 of the Constitution defines the term 'State' as under:

> *"Article 12:* ***In this Part****, unless the context otherwise requires, "the State'' includes the Government and Parliament of India and*

the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." (Emphasis Supplied)

9.9. On perusal of Article 12 it can be seen that the definition of 'State' as contained in Article 12 starts phrase '*In this part*'. Meaning thereby, that the definition of 'State' as contained in Article 12 is to be applied for the Part III of the Constitution. Natural corollary being, that unless otherwise specifically provided the definition of term 'State' as defined in Article 12 of the Constitution cannot be imported into or read into other parts of the Constitution.

9.10. During the course of hearing, judgments of the Apex Court were cited on behalf of the Assessee. On perusal of the same we find that the Hon'ble Supreme Court had adopted wider interpretation to the term 'State' as defined in Article 12 of the Constitution with the object of protecting the fundamental rights contained in Part III of the Constitution. In most of the cases, the persons whose fundamental rights were infringed had approached the Hon'ble Supreme Court and urged that the Union/State Government could not avoid its duty/obligation by merely creating an agency or a separate legal entity to discharge state/public functions. The aforesaid contention was accepted by the Hon'ble Supreme Court in the aforesaid cases. In this regard, the Hon'ble Supreme Court had, in the case of **Ajay Hasia Etc. Vs. Khalid Mujib Sehravardi & Ors. Etc : 1981 AIR 487 (SC)**, made following observations:

"While considering this question it is necessary to bear in mind that an authority falling within the expression "other authorities" is, by reason of its inclusion within the definition of 'State' in Article 12, subject to the same constitutional limitations as the Government and is equally bound by the basic obligation to obey the constitutional mandate of the Fundamental Rights enshrined in Part

III of the Constitution. We must therefore give such an interpretation to the expression "other authorities" as will not stultify the operation and reach of the fundamental rights by enabling the Government to its obligation in relation to the Fundamental Rights by setting up an authority to act as its instrumentality or agency for carrying out its functions. Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. Now it is obvious that the Government may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. In the early days when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the frame work of civil service was not sufficient to handle the new tasks which were often specialised and highly technical in character and which called for flexibility of approach and quick decision making. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handing these new problems. It was in these circumstances and with a view to supplying this administrative need that the corporation came into being as the third arm of the Government and over the years it has been increasingly utilised by the Government for setting, up and running public enterprises and carrying out other public functions. Today with increasing assumption by the Government of commercial ventures and economic projects, the corporation has become an effective legal contrivance in the hands of the Government for carrying out its activities, for it is found that this legal facility of corporate instrument provides considerable flexibility and elasticity and facilitates proper and efficient

management with professional skills and on business principles and it is blissfully free from "departmental rigidity, slow motion procedure and hierarchy of officers". The Government in many of its commercial ventures and public enterprises is resorting to more and more frequently to this resourceful legal contrivance of a corporation because it has many practical advantages and at the same time does not involve the slightest diminution in its ownership and control of the undertaking. In such cases "the true owner is the State, the real operator is the State and the effective controllorate is the State and accountability for its actions to the community and to Parliament is of the State." It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. Now it is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. If the Government acting through its officers is subject to certain constitutional limitations, it must follow a fortiorari that the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations. If such a corporation were to be free from the basic obligation to obey the Fundamental Rights, it would lead to considerable erosion of the efficiency of the Fundamental Rights, for in that event the Government would be enabled to over-ride the Fundamental Rights by adopting the

stratagem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it. The Fundamental Rights would then be reduced to little more than an idle dream or a promise of unreality. It must be remembered that the Fundamental Rights are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental Rights. ***The constitutional philosophy of a democratic socialist republic requires the Government to undertake a multitude of socioeconomic operations and the Government, having regard to the practical advantages of functioning through the legal device of a corporation, embarks on myriad commercial and economic activities by resorting to the instrumentality or agency of a corporation, but this contrivance of carrying on such activities through a corporation cannot exonerate the Government from implicit obedience to the Fundamental Rights. To use the corporate methodology is not to liberate the Government from its basic obligation to respect the Fundamental Rights and not to over-ride them. The mantle of a corporation may be adopted in order to free the Government from the inevitable constraints of red-tapism and slow motion but by doing so, the Government cannot be allowed to play truant with the basic human rights. Otherwise it would be the easiest thing for the government to assign to a plurality of corporations almost every State business such as Post and Telegraph, TV and Radio, Rail***

Road and Telephones-in short every economic activity-and there by cheat the people of India out of the Fundamental Rights guaranteed to them. That would be a mockery of the Constitution and nothing short of treachery and breach of faith with the people of India, because, though apparently the corporation will be carrying out these functions, it will in truth and reality be the Government which will be controlling the corporation and carrying out these functions through the instrumentality or agency of the corporation. We cannot by a process of judicial construction allow the Fundamental Rights to be rendered futile and meaningless and thereby wipe out Chapter III from the Constitution. *That would be contrary to the constitutional faith of the post- Menaka Gandhi era. It is the Fundamental Rights which along with the Directive Principles constitute the life force of the Constitution and they must be quickened into effective action by meaningful and purposive interpretation. If a corporation is found to be a mere agency or surrogate of the Government, "in fact owned by the Government, in truth controlled by the government and in effect an incarnation of the government," the court must not allow the enforcement of Fundamental Rights to be frustrated by taking the view that it is not the government and therefore not subject to the constitutional limitations. We are clearly of the view that where a corporation is an instrumentality or agency of the government, it must be held to be an 'authority' within the meaning of Art. 12 and hence subject to the same basic obligation to obey the Fundamental Rights as the government." (Emphasis Supplied)*

9.11. On perusal of the above it becomes clear that a corporation, being an instrumentality or agency of the Government, must be subjected to the same constitutional limitations as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. However, this does not imply that such corporation would also enjoy the power or rights same as that of the Government. While it is one thing to say that

separate legal entity acting under the control of the State would bear the same obligation/duty as a State to enforce the fundamental rights guaranteed by the Constitution, it is entirely different thing to contend that the separate legal entity would be entitled to rights and privileges of a State. The contention advanced on behalf of the Assessee/MEDA is to this effect as the Assessee/MEDA is seeking exemption from income tax by invoking provisions of Article 289 of the Constitution claiming to be a 'State' in terms of Article 12 of the Constitution. We do not find any merit in the aforesaid contention in view of the following.

9.12. Article 289 falling in Chapter – XII of the Constitution provides that property and income of 'State' shall be exempt from Union taxation. The terms 'State' as used in Article 289 does not have the same meaning as 'State' defined in Article 12 of the Constitution. Perusal of Article 12 of the Constitution shows that the definition of terms 'State' contained therein was for the purpose of Part III of the Constitution only. Perusal of Article 36 (falling in Part IV of the Constitution dealing with Directive Principles of State Policy) shows that the definition of term 'State' as used in Part III of the Constitution has been specifically imported into Part IV of the Constitution. We note that there is no article in Part XII of the Constitution corresponding to Article 36 in Part IV of the Constitution which imports the definition of term 'State' as used in Part III to Part XII of the Constitution. It would be pertinent to note that Part V and Part VI of the Constitution deal with the concept of 'Union' and 'State', respectively, in a detailed manner. Part XI deals with the relationship between the Union and the State. Article 289 falls in Chapter 1 of Part XII of the Constitution. On perusal of various articles contained in Chapter 1 of Part XII of the Constitution it becomes clear that the term 'State' has been used in contradiction with the term 'Union'.

Therefore, the definition of term 'State' given in Article 12 of the Constitution cannot be imported into Part XII of the Constitution. Taking into consideration the aforesaid, the Hon'ble Supreme Court had, in the case of **Ajay Hasia Etc. Vs. Khalid Mujib Sehravardi & Ors. Etc : 1981 AIR 487 (SC)**, held as under:

> *"These observations of the court in the International Airport Authority's case (supra) have our full approval.*
>
> *The tests for determining as to when a corporation can be said to be a instrumentality or agency of Government may now be called out from the judgment in the International Airport Authority's case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority's case as follows*
>
> *(1) "One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government."*
>
> *(2) "Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character."*
>
> *(3) "It may also be a relevant factor.....whether the corporation enjoys monopoly status which is the State conferred or State protected."*

(4) "Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality."

(5) "If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government."

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government." If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority's case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12.

We find that the same view has been taken by Chinnappa Reddy, J. in a subsequent decision of this court in the U. P. Warehousing Corporation v. Vijay Narain and the observations made by the learned Judge in that case strongly reinforced the view we are taking particularly in the matrix of our constitutional system.

We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government Company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency

of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article

12. ***It is also necessary to add that merely because a juristic entity may be an "authority" and therefore "State" within the meaning of Article 12, it may not be elevated to the position of "State" for the purpose of Articles 309, 310 and 311 which find a place in Part XIV. The definition of "State" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is limited in its application only to Part III and by virtue of Article 36, to Part IV: it does not extend to the other provisions of the Constitution and hence a juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution.*** *That is why the decisions of this Court in S. L. Aggarwal v. Hindustan Steel Ltd. and other cases involving the applicability of Article 311 have no relevance to the issue before us." (Emphasis Supplied)*

9.13. Thus, in view of the above, it can be concluded that even if the Assessee/MEDA is considered, for the sake of arguments, to be a 'State' as defined in Article 12 of the Constitution, the same would not elevate the Assessee/MEDA to the position of 'State' for the purpose of Article 289 of the Constitution. Therefore, the issue whether the Assessee/MEDA is 'State' in terms of Article 12 of the constitution, having being rendered academic, does not require adjudication in our view and is, therefore, left open.

9.14. The next issue that arises for consideration is whether the receipts/funds of the Assessee/MEDA can be treated as 'income of State'. In this regard it would be pertinent to take into consideration the conduct of the Assessee/MEDA since its incorporation. The Assessee/MEDA was established in 1987; obtained permanent account number and has been filing income tax returns since then. As per material on record, the returns filed for the Assessment Year 2009-10 to 2011-12 were selected for scrutiny and regular assessment was framed. The aforesaid contention was raised for the first time during the assessment proceedings for the Assessment Year 2013-14 only. We note that during the course of hearing, it was contended by the Assessee/MEDA that it was acting as agent of the State of Maharashtra receiving and disbursing funds like a pass through entity as per State directives and policy. We have, while dealing with Cross Objections 2 to 4 raised by the Assessee, examined the nature of receipts/funds and have already held that receipts/funds received by the Appellant/MEDA for limited purpose of administration would not be treated as income of the Assessee/MEDA. On perusal of the material on record, we are of the view that it cannot be said that all the income/receipts of the Assessee are received in its capacity as custodian or trustee. Thus, the Assessee cannot claim benefit of Article 289 of the Constitution at entity level in respect of its entire income/funds received during the relevant previous year. Further, in any case, the contention of the Assessee/MEDA that it is acting as an agent of State of Maharashtra is not supported by any statutory or contractual provision. While the Assessee/MEDA has been appointed as nodal agency or designated state authority or authorized authority, none of the government resolutions placed on record, give the Assessee/MEDA the status of 'agent' of State of Maharashtra and/or make Government of Maharashtra

responsible as a principal for the acts of the Assessee/MEDA.

9.15. Thus, in view of the above, we hold that the Assessee/MEDA cannot take shelter of exemption under Article 289(1) of the Constitution. Accordingly, Ground No. 1 raised by the Assessee is dismissed as being without merit.

9.16. Before parting we would like to observe that the judgment in the case of Ajay Hasia Etc. Vs. Khalid Mujib Sehravardi & Ors. Etc: 1981 AIR 487 (SC), was rendered by the 3 member bench. No judgment to the contrary passed by a co-ordinate bench or a larger bench has been placed before us. Further, the cases cited on behalf of the Assessee turned on the specific facts of that particular case and provisions contained in the statutes under which the corporations were formed. In this regard, it would be pertinent to refer to the following observations made by the Hon'ble Supreme Court in the case of **Adityapur Industrial Area Development Authority Vs. Union of India : (2006) 283 ITR 97:**

> *"Considerable reliance was placed on the principles laid down in the aforesaid decision by learned counsel appearing for the Union of India. He submitted that having regard to the provisions of the Act under which the appellant/Authority is established, the same conclusion may be reached. In particular, emphasizing the fact that as in Andhra Pradesh Road Transport Corporation case, so in the instant case as well, Section 17 of the Act provides that upon dissolution of the appellant/Authority, the properties, funds and dues realizable by the Authority along with its liabilities shall devolve upon the State Government. Impliedly, therefore, such properties, funds and dues vest in the Authority till its dissolution, and only thereafter it vests in the State Government. He also referred to various other provisions of the Act and submitted that there was nothing in the Act which attempted to lift the veil from the face of the Corporation. Even though the Authority was created*

under an Act of the Legislature, it was still an Authority which had a distinct personality of its own, having perpetual succession and a common seal, with powers to acquire, hold and dispose of property, and to contract, and could sue and be sued in its own name. Shri Venugopal, on the other hand, tried to distinguish the judgment on the ground that the Andhra Pradesh Road Transport Corporation is being run on business lines, and a Corporation that runs on business lines is distinguishable and different from a Corporation which is not run on those lines. ***Even if such a distinction is drawn, that will not have the effect of making the income of the Corporation the income of the State Government having regard to the other features noticed above****.*

Shri Venugopal then relied upon two decisions of this Court reported in 1970 (3) SCC 323 Shri Ramtanu Co-operative Housing Society Ltd. and Anr. Vs. State of Maharashtra and Ors. and (1997) 7 SCC 339 New Delhi Municipal Council Vs. State of Punjab and Ors. ***In Shri Ramtanu Co- operative Housing Society; the question which arises for consideration in the instant appeal did not arise at all.*** *The question was whether the State of Maharashtra was competent to enact the Maharashtra Industrial Development Act, 1961 and whether the impugned Legislation fell within Entry 43 List I of the Seventh Schedule of the Constitution, so that only the Parliament was empowered to enact such Legislation and not the State of Maharashtra. In that context, this Court considered the true character scope and intent of the Act by reference to the purposes and the provisions of the Act. Having considered the various provisions of the Act including those relating to the functions and powers of the Corporation, this Court concluded that in pith and substance the Act was meant for the establishment, growth and organization of industries, acquisition of land in that behalf and carrying out the purposes of the Act by setting up the Corporation as one of the limbs or agencies of the Government. It held that even though the Corporation received*

moneys from disposal of lands, buildings and other properties and also received rents and profits, such receipts arose not out of any business or trade but out of sole purpose of establishment, growth and development of industries. The Corporation was not a trading Corporation, as it was not involved in buying or selling activity. The true character of the Corporation was to act as an architectural agent of the development and growth of industrial towns by establishing and developing industrial estates and industrial areas. It, therefore, negative the argument that the Corporation being a trading one, the impugned Legislation fell within Entry 43 of List I of the Seventh Schedule.

This decision does not help the appellant because even if it is held that the appellant/ Authority is not a trading Authority, yet that does not answer the question whether the income of the Authority is the income of the State so as to attract Clause (1) of Article 289.

Similarly, the decision in New Delhi Municipal Council Vs. State of Punjab and Ors. (supra) does not advance the case of the appellant. It was held that the property/ municipal taxes levied by the New Delhi Municipal Council under the relevant Act constituted Union taxation within the meaning of Clause (1) of Article 289 of the Constitution of India*. The levy of property taxes under the aforesaid enactments on lands or buildings belonging to the State Government was invalid and incompetent by virtue of the mandate contained in Clause (1) of Article 289. However, if any land or building is used or occupied for the purpose of any trade or business, meaning thereby a trade or business carried on with profit motive, by or on behalf of the State Government, such land or building shall be subject to the levy of the property taxes levied by the said enactments. In other words, State property exempted under Clause (1) means such property as is used for the purpose of the Government and not for the purpose of trade or business. That was a case where the question arose in relation to the levy of property tax on lands and*

buildings owned by the State Governments which was "property of the State Government". In the instant case, we are concerned with the income of the appellant/ Authority and the same principles apply. ***The exemption can be claimed only if the income can be said to be the income of the State Government. In the facts of this case, it is not possible to hold that the income of the appellant/ Authority is the income of the State Government.***

Learned counsel for the Union of India also relied upon two decisions reported in (1999) 6 SCC 74 Food Corporation of India Vs. Municipal Committee, Jalalabad and Anr. and (1999) 6 SCC 78 Board of Trustees for the Visakhapatnam Port Trust Vs. State of A.P. and Ors. and submitted that this Court has consistently taken the view that a Corporation having the attributes of a Company must be held to be distinct from the Central Government, and not eligible for exemption from taxation under Article 285. The High Court also in its impugned judgment and order has referred to several decisions of this Court wherein this Court dealing with cases arising under Article 285 of the Constitution of India, which exempts properties of the Union from State taxation, took a similar view. We may usefully refer to the cases reported in: AIR 1999 SC 2573 Food Corporation of India Vs. Municipal Committee, Jalalabad & Anr., (1995) 5 SCC 251 Municipal Commissioner of Dum Dum Municipality and Ors. Vs. Indian Tourism Development Corporation and Ors., 1994 Supp (3) SCC 316 Central Warehousing Corporation Vs. Municipal Corporation and AIR 1982 SC 697 Western Coalfields Ltd. Vs. Special Area Development Authority, Korba and Anr. and Bharat Aluminium Company Ltd. Vs. Special Area Development Authority, Korba and Ors.

Having considered all aspects of the matter we hold that the High Court is right in concluding that the appellant/ Authority could not claim exemption from Union taxation under Article 289 (1) of the Constitution of India. The impugned notice issued by the Income Tax Authorities was, therefore, valid and legal and could not be

successfully challenged in the writ petition. Accordingly, this appeal is dismissed but without any order as to costs." (Emphasis Supplied)

Thus, the judgments of the Hon'ble Supreme Court cited in behalf of the Assessee do not advance the case of the Assessee. During the course of hearing, it was contended on behalf of the Assessee/MEDA that Assessee was not carrying on any trading activity and therefore, the Assessee was entitled to claim benefit of exemption under Section 289(1) of the Constitution. On perusal of the above extract of the judgment, it is clear that the aforesaid contention was rejected by the Hon'ble Supreme Court holding that even if it was held that the assessee in that case was not a trading authority, yet the same would not answer the question whether the 'income of the authority' is 'income of the State' and the exemption under Article 289(1) of the Constitution could be claimed only if the income could be said to be income of the State. We have already concluded herein above, that it cannot be said that the income earned by the Assessee/MEDA is the income of the State and therefore, in the present case the provisions of Article 289(1) of the Act cannot be attracted.

Assessment Year 2014-15

12 We would next take up appeal and cross-objection for the Assessment Year 2014-15. The appeal filed by the Revenue *[ITA No. 1767/Mum/2023]* and Cross-Objection filed by the Assessee *[CO.89/Mum/2023]* pertaining to Assessment Year 2014-15 arise from the order of Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] passed on 20/03/2023, which in turn arose from the Order, dated 23/11/2016, passed under Section 143(3) of the Act as rectified by the order, dated 23/12/2017, passed under

Section 154/155 of the Act.

13 The Revenue has raised following grounds of appeal in ITA No. 1767/Mum/2023:

1. Whether on the facts and circumstances of the case and in law the Ld.CIT(A) erred in not appreciating the fact that the cancellation of registration and denial of exemption are independent actions under the provisions of the Act and exemption for a particular assessment year can be denied even when registration u/s 10(23C)(iv) is still continuing?

2. Whether on the facts and circumstances of the case and in law the Ld.CIT(A) erred in not appreciating that the exemption u/s 10(23C)(iv) of the Act can be denied for a particular assessment year if the mandate of sec 10(23C)(iv) has not been followed by the assessee trust even though the registration continues?

3. Whether on the facts and circumstances of the case and in law the Ld.CIT(A) erred in not appreciating the fact that once the exemption u/s 10(23C)(iv) of the Act is denied to the assessee, the benefit of accumulation can only be allowed in accordance with section 11 of the Act and to the extent mentioned in form 10 filed by the assessee trust as per the resolution passed by the trustees?

13.1. The Assessee has raised following grounds of cross objections in CO No. 89/Mum/2023:

"1. The learned CIT(A) as well as the learned AO (i.e. "IT Authorities") erred in law and on facts by rejecting the claim of the respondent that, MEDA is an extended arm of the Government and as such, ought not to be taxes as such.

2. The learned IT authorities erred in law and on facts by not granting exemption u/s 11 r.w.s. 12A of the ITA, 1961 to the appellant even when no adverse findings w.r.t. the same had been made by the erstwhile AO.

3. The IT Authorities erred in law and on facts by since they failed to appreciate the fact that the 'Development Fund' was in nature of 'Corpus Fund of MEDA' and as such, is out of the ken of taxation of ITA, 1961.

4. The learned IT Authorities erred in law and on facts in treating net increase of Rs. 55,91,63,118/- in the fund balances as income of the respondent, without appreciating the corresponding overriding title / specified liability attached to such funds. The learned IT Authorities ought to have appreciated that various funds are parked with the respondent by the Maharashtra Government for their specified application, and as such, these funds are received by the respondent merely as a custodian/ trustee, and hence, such funds are not income of the respondent."

Appeal by Revenue (ITA No. 1767/Mum/2023

14. The relevant facts in brief are that the assessment for Assessment Year 2014-15 was completed under section 143(3) on 23/11/2016. The claim under Section 11 of the Act was rejected by the Assessing Officer. The Assessing Officer made certain additions/disallowances. However, the assessed income of the Assessee was computed at 'Nil' after allowing exemption of INR 125,57,53,934/- under Section 10(23C)(iv) of the Act. Subsequently, the aforesaid assessment order was rectified vide rectification order, dated 23/12/2017, passed under Section 154 of the Act. The Assessing Officer computed the taxable income of the Assessee at INR 125,57,53,934/- after rejecting the claim for exemption under Section 10(23C)(iv) of the Act.

14.1 The Assessee preferred appeal challenging the validity of order dated 23/12/2017, passed under Section 154 of the Act before the Commissioner of Income Tax (Appeals)-4, Mumbai which was dismissed vide order, dated 06/02/2019, on the ground that the grievance raised therein did not arise from the order passed under Section 154 of the Act. Therefore, the Assessee filed appeal before CIT(A) against the Assessment Order passed under Section 143(3) of the Act. The CIT(A) condoned the delay in filing the appeal and granted partial relief vide order, dated 20/03/2023. The summary of findings/observation of the CIT(A) are as under:

14.1.1. The CIT(A) took note of the fact that approval granted to the Assessee under Section 10(23C)(iv) of the Act had not been revoked or cancelled. The Assessing Officer had not provided any reasons for rejecting the Assessee's claim for exemption under Section 10(23C)(iv) of the Act. Therefore, the CIT(A) concluded that the Assessee was entitled to claim exemption under Section 10(23C)(iv) of the Act. The Assessee was permitted to utlised the amount accumulated within a period of five years.

14.1.2. The CIT(A) confirmed the following additions made by the Assessing Officer and declined to grant any relief in relation to the same holding that the Assessing Officer was correct in concluding that the aforesaid amounts were in the nature of income.

Ledger A/c head	**Grouped Under**	**Addition/ Disallowances**
Development Fund	Other Earmarked Funds	29,94,21,000/-
LIB EC Act 2001	Other Liabilities	40,63,508/-
LIB Energy Con 2012	Other Liabilities	5,55,78,356/-
LIB Infrastructure Road Maintenance	Other Liabilities	20,01,00,254/-
	Total	55,91,63,118/-

14.1.3. The CIT(A) concluded that there was no need to file Form 10 specifying the purpose of accumulation. However, the accumulated funds should be utilized for the objects within a period of five years. Therefore, the Assessee would be entitled for exemption under Section 10(23C) of the Act in respect of the addition of INR 55,91,63,118/- to the income of the Assessee and the same would not lead to any tax liability for the

Assessment Year 2014-15.

14.1.4. The CIT(A) agreed with the Assessing Officer and rejected the contention of the Assessee that the Assessee/MEDA falls outside the ken of taxation being an agent of the Government.

15 Both, the Revenue as well as the Assessee/MEDA are now before the Tribunal against the above order passed by the CIT(A). The Revenue has preferred appeal on the grounds reproduced in paragraph 13 above while the Assessee has filed Cross Objection raising grounds in paragraph 13.1 above.

16 Both the sides agreed that the grounds raised in appeal for Assessment Year 2014-15 are identical to those raised in Assessment Year 2013-14. Since there is no change in facts and circumstances in the case, both the sides has agreed that our findings/adjudication in relation to grounds of appeal raised in Assessment Year 2013-14 shall apply mutatis mutandis to the corresponding grounds raised in appeal for Assessment Year 2014-15.

Appeal by Revenue (ITA No. 1767/Mum/2023

17 All the grounds raised in appeal by the Revenue pertain to the order of CIT(A) granting the benefit of provisions contained in Section 10(23C)(iv) of the Act to the Assessee. We have, hereinabove, upheld the order of CIT(A) for the Assessment Year 2013-14 granting benefit of exemption under Section 10(23C)(iv) of the Act to the Assessee. Admittedly, there is no change in the facts and circumstances of the case and both the sides have adopted the arguments/submission made for the Assessment Year 2013-14. Accordingly, adopting the reasoning given in paragraph 6 to 6.4 above, Ground No. 1 to 3 raised by the Revenue are

dismissed.

Cross Objections by Assessee [CO No. 89/Mum/2023]

18 We would now take up the grounds raised by the Assessee by way of Cross Objections.

Cross Objection No. 3 & 4

19 We would first take up Cross Objection No. 3 & 4 raised by the Assessee in relation to computation of income and exemption under Section 10(23C)(iv) of the Act. The main contention of the Assessee was that the funds under consideration could not be treated as income of the Assessee as the same were not in the nature of amount received by the Assessee for application towards its objects. Admittedly, issues raised in Cross Objection No. 3 and 4 raised in the present appeal are identical to the issues raised in Ground No. 2, 3 and 4 raised in appeal for the Assessment Year 2013-14. Accordingly, in view of our finding/adjudication in paragraph 8 to 8.12 above, we hold that:

Development Fund (INR 29,94,21,000/-)

(a) the Amount collected at the rate of INR 3 Lakh per MW of installed capacity from developers/project owners which has been credited to the Development Fund Account shall not be treated as income of the Assessee/MEDA. On the other hand the fee, charges and income credited to the Development Fund Account shall be treated as income available for application to the Assessee during the relevant previous year. Accordingly, the Assessing Officer is directed to examine the ledger account to identify the fee, charges and income received during the relevant previous year which were credited to the Development Fund Account and

treat the same as income of the Assessee. While doing so the Assessing Officer shall after taking into consideration the fee/charges/income already credited to the Income & Expenditure Account to avoid double taxation of same income. As regards, amount of INR 2,00,000/- per machine which was proposed to be collected for development fund is concerned, the same can, on verification by the Assessing Officer, be regarded as payments towards corpus having been received as such. Accordingly, subject to fulfillment of other applicable conditions, we direct the Assessing Officer to treat the same as corpus donations.

Infrastructure Road Maintenance Fund (INR 20,01,00,254/-)

(b) the Amount collected at the rate of INR 2/3 Lakh per MW of installed capacity from developers/project owners which has been credited to the Infrastructure Road Maintenance Fund Account shall not be treated as income of the Assessee/MEDA.

EC Fund 2001 (INR 40,63,508/-)

(c) the Assessing Officer and CIT(A) were correct in treating INR 40,63,508/- as income of the Assessee available for application towards the object of the Assessee during the relevant previous year.

Energy Conservation Fund 2012 (INR 5,55,78,356/-)

(d) out of INR 5,55,78,356/- any amount received as part of State Energy Conservation Fund specifically earmarked as 'Revolving Investment Fund' in terms of Energy Conservation Act, 2001 shall not be treated as income of the Assessee. Further, any amount received by the

Assessee as an authority administering the funds shall also not be treated as the income of the Assessee/MEDA. As regards balance grant, if any, received by the Assessee is concerned the same shall be regarded as income of the Assessee. Accordingly, the Assessing Officer is directed to verify the nature of payments credited to the Energy Conservation Fund 2012 and compute the income accordingly.

19.1. Accordingly, in terms of the above, adopting the reasoning given in paragraph 8 to 8.12 above, in terms of the above Cross Objection No. 3 and 4 raised by the Assessee are partly allowed.

Cross Objection No. 1

20 We would next take up Cross Objection No. 1 raised by the Assessee. Adopting the reasoning/adjudication given in paragraph 9 to 9.16 above while dismissing identical cross-objections raised by the Assessee for the Assessment Year 2013-14, we dismiss Cross-Objection No. 1 raised by the Assessee for the Assessment Year 2014-15 holding that the Assessee is not entitled to claim exemption in terms of Article 289(1) of the Constitution.

Cross Objection No. 2

21 Cross Objection No. 2 raised by the Assessee pertains to the alternative claim for exemption under Section 11 of the Act raised by the Assessee. Since we have sustained the order of the CIT(A) holding that the Assessee/MEDA is entitled to claim exemption under Section 10(23C)(iv) of the Act while dismissing the appeal of the Revenue, Cross-Objection No. 2 raised by the Assessee is dismissed as being infructuous.

22 In result, appeal preferred by the Revenue for the Assessment

Year 2012-13 and Assessment Year 2014-15 are dismissed and the Cross-Objections preferred by the Assessee for the Assessment Year 2012-13 and Assessment Year 2014-15 are partly allowed.

Order pronounced on 27.06.2024.

Sd/-	***Sd/-***
(Om Prakash Kant)	**(Rahul Chaudhary)**
Accountant Member	**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 27.06.2024
Alindra, PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai