

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**I.T.A. Nos. 2689, 2690, 2691, 2692 & 2693 /Del/2023  
(Assessment Years : 2014-15, 2015-16, 2015-16, 2016-17 & 2017-18)**

Dy. Commissioner of  
Income Tax, Exemption-  
Circle, Ghaziabad, Uttar  
Pradesh

Vs.

Jhansi Development  
Authority,  
Commissionery Campus,  
Jhansi Railway Station  
S.O. Jhansi - Uttar  
Pradesh

**PAN: AAALJ 0068 K**

**(Appellant)**

..

**(Respondent)**

**Appellant by :** Shri G. C. Srivastava, Adv. &  
Shri Kalrav Mehrotra, Adv.  
**Respondent by :** Ms. Rishpal Bedi, CIT-D.R.

**Date of Hearing** 04.07.2024  
**Date of Pronouncement** 08.07.2024

ORDER

**PER MS. MADHUMITA ROY – JUDICIAL MEMBER :**

Bunch of appeals filed by the Revenue are directed against the orders dated 26.07.2023 & 05.08.2023 passed by the Commissioner of Income Tax (Appeals)- NFAC, Delhi under Section 250(6) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') arising out of the Assessment Order passed by the Assessing Officer 143(3) of the Act for

Assessment Years 2014-15, 2015-16, 2015-16, 2016-17 & 2017-18 respectively.

2. Since all the matters relate to the same assessee, these are heard analogously and are being disposed of by this common order.

**ITA No.2689/Del/2023 for A.Y. 2014-15**

3. The appellant is the authority engaged dominantly in the activity of development and sale of properties, filed its return of income on 30.09.2014 declaring income at Rs. Nil; the assessee declared profit of Rs.9,11,22,877.74 on total income/gross receipt of Rs.118,374,565.74 which was claimed exempt as per provisions of Section 11 and 12 of the Act. On compulsory scrutiny under Section 143(3) of the Act, the Assessing Officer finalized the assessment upon determining the total income of appellant at Rs.17,04,37,602/- by making disallowance of Rs.9,11,22,877/- on account of exemption under Section 11 of the Act, addition of Rs.7,87,64,299/- out of receipt under Infrastructure Development Fund and disallowance of Rs.5,50,426/- towards the depreciation claimed. Assessing Officer was of the opinion that the assessee was engaged in activity in the nature of trade, commerce or business in as much as one of the dominant activities of the authority is acquisition and sale of immovable properties, the receipts from which are in excess of Rs.25 lakh being the ceiling stipulated in the second proviso of Section 2(15) of the Act. Thus, the activities of the appellant either

wholly or partially are carried on with a motive for profit and in terms of the provision of section 2(15) of the Act. The nature of use or application of such profits are not relevant for the determination whether or not the authority is engaged in an activity having a “Charitable Purpose”. Mainly, on that score, the claim of the assessee was rejected and the assessment was finalized upon making addition as mentioned hereinabove which stood deleted by the First Appellant Authority in the appeal preferred by the assessee. In fact, relying upon the order passed by the ITAT in assessee’s own case, which was not produced before the Learned AO since the same was pronounced much after the assessment order, the Learned CIT(A) deleted such additions made by Assessing Officer and finalized the appeal in favour of the assessee. While doing so, Learned CIT(A) further relied upon the judgment passed by the Hon’ble Gujarat High Court in the case of Surat Urban Development Authority (SUDA) and the judgment passed by the Karnataka High Court in the case of Karnataka Industrial Development Board reported in 121 taxmann.com 88 (Karnataka). Hence, the instant appeal before us preferred by the Revenue.

4. At the time of hearing of the appeal the Learned Departmental Representative submitted before us that the impugned order is not sustainable in view of the order passed by Hon’ble Apex Court on 19.10.2022 in the case of ACIT (E) vs. Ahmedabad Urban Development Authority (AUDA) in Civil Appeal No.21762/2017 whereby and whereunder, it has been held that the profit earned by the assessee

authority is significantly higher than the nominal markup, its activities cannot be treated as charitable activity. It was further submitted that the principle of nominal markup in testing the charitable activities of the assessee authority under general utility segment not applied properly by the Learned CIT(A) as the profit earned by the assessee before us from such activity was as high as 86.18%. It was further submitted before us that the orders which were relied upon by the Learned CIT(A) in passing the order in favour of the assessee, which was so passed by the Coordinate Bench in assessee's case for A.Y. 2010-11 to 2013-14 since not found to be maintainable, MA has been filed before the Tribunal against the said orders on the ground of jurisdictional error of the Tribunal itself. Moreso, the same is pending for adjudication before the Tribunal.

5. The contention made by the Learned DR has been accepted by the Learned AR to this effect that the judgment passed by the Hon'ble Apex Court in the case of ACIT(E) vs. Ahmedabad Urban Development Authority (supra) clarified that the assessee advancing general public utility cannot engage itself in any trade, commerce or business or provides services in relation thereto for any consideration. Further guidelines have also been framed under the said judgment passed by the Apex Court to verify and examine the objects and activities of the organizations to find out whether they are in the nature of trade, commerce or business and if it is found so than it must be examined whether the quantified limit as amended time to time in proviso to Section 2(15) of the Act has been breached or not. In that view of the

matter since the verification/examination has not been carried out by the authorities below in terms of the observations and guidelines framed by the Hon'ble Apex Court in the case of Ahmedabad Urban Development Authority (supra), the Learned AR also prayed for setting aside the issue to the file of the Learned AO for examining the same and to pass the order accordingly.

6. We have heard the rival contentions made by the respective parties, we have also perused the relevant materials available on record.

7. It appears that Hon'ble Apex Court in the case of Ahmedabad Urban Development Authority (AUDA) (supra), while laying down the ratio as narrated hereinabove has been pleased to observe as follows:

**“IV. Summation of conclusions**

*253. In view of the foregoing discussion and analysis, the following conclusions are recorded regarding the interpretation of the changed definition of “charitable purpose” (w.e.f. 01.04.2009), as well as the later amendments, and other related provisions of the IT Act. A. General test under Section 2(15)*

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

*A.2. However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that (i) the activities of trade, commerce or business are connected (“actual carrying out...” inserted*

w.e.f. 01.04.2016) to the achievement of its objects of GPU; and (ii) the receipt from such business or commercial activity or service in relation thereto, does not exceed the quantified limit, as amended over the years (Rs. 10 lakhs w.e.f. 01.04.2009; then Rs. 25 lakhs w.e.f. 01.04.2012; and now 20% of total receipts of the previous year, w.e.f. 01.04.2016);

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

A.4. Section 11(4A) must be interpreted harmoniously with Section 2(15), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit or surplus or gains must, therefore, be incidental. The requirement in Section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to Section 2(15), has not been breached. Similarly, the insertion of Section 13(8), seventeenth proviso to Section 10(23C) and third proviso to Section 143(3) (all w.r.e.f. 01.04.2009), reaffirm this interpretation and bring uniformity across the statutory provisions.

#### *B. Authorities, corporations, or bodies established by statute*

B.1. The amounts or any money whatsoever charged by a statutory corporation, board or any other body set up by the state government or central governments, for achieving what are essentially ‘public functions/services’ (such as housing, industrial development, supply of water, sewage management, supply of food grain, development and town planning, etc.) may resemble trade, commercial, or business

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

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

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

*B.4. For the period 01.04.2003 to 01.04.2011, a statutory corporation could claim the benefit of Section 2(15) having regard to the judgment of this Court in the Gujarat Maritime Board case (supra). Likewise, the denial of benefit under Section 10(46) after 01.04.2011 does not preclude a statutory corporation, board, or whatever such body may be called, from claiming that it is set up for a charitable purpose and seeking exemption under Section 10(23C) or other provisions of the Act.*

### **C. Statutory regulators**

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

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

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### **H. Application of interpretation**

*H. At the cost of repetition, it may be noted that the conclusions arrived at by way of this judgment, neither precludes any of the assessees (whether statutory, or non-statutory) advancing objects of general public utility, from claiming exemption, nor the taxing authorities from denying exemption, in the future, if the receipts of the relevant year exceed the quantitative limit. The assessing authorities must on a yearly basis, scrutinize the record to discern whether the nature of the assessee's activities amount to "trade, commerce or business" based on its receipts and income (i.e., whether the amounts charged are on costbasis, or significantly higher). If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to time) in proviso to Section 2(15), has been breached, thus disentitling them to exemption.*

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

*(i) The revenue's appeals against the Improvement Trust, Moga , the Hoshiarpur Improvement Trust , Bathinda Improvement Trust , Fazilka Improvement Trust , Sangrur Improvement Trust ; Patiala Improvement Trust , Jalandhar Improvement Trust , Kapurthala Improvement Trust , Pathankot Improvement Trust, Improvement Trust, Hansi , and the Special Leave Petitions filed against the Gujarat Maritime Board and Karnataka Water Supply and Drainage Board are rejected.*

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

*(iii) The revenue's appeals against ICAI are dismissed and for the same reasons, the appeals filed by the ICAI are hereby allowed."*

8. Thus having regard to the facts and circumstances of the case and considering the submissions made by the respective parties and the guidelines and/or observations made by the Hon'ble Apex Court on the identical issue, we find it fit and proper to remit the issue to the file of Learned AO to consider the same afresh upon examining the nature of

assessee's activities and to pass a reasoned order strictly in the light of the observations made by Hon'ble Apex Court as narrated hereinabove. The Learned AO is further directed to grant an opportunity of being heard to the assessee and to consider the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. The Revenue's appeal is, therefore, allowed for statistical purposes.

9. The issue involved in all other appeals is identical to that of the issue already been dealt with by us and in the absence of any changed circumstances the same shall apply mutatis mutandis. Hence, these appeals preferred by the Revenue are also allowed for statistical purposes.

10. In the combined result, all the appeals of Revenue are allowed for statistical purposes.

**This Order pronounced in Open Court on 08/07/2024**

Sd/-  
(G. S. PANNU)  
VICE PRESIDENT

Sd/-  
(Ms. MADHUMITA ROY)  
JUDICIAL MEMBER

Dated 08/07/2024

**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI