IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI

BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITA No.2030/Del/2018
(ASSESSMENT YEAR 2014-15)

M/s Ghaziabad Development Authority Vikash Path Hapur Road Ghaziabad PAN:AAALG 0072C	Vs.	Dy. CIT (Exemption) Ghaziabad
(Appellant)		**(Respondent)**

ITA No.1886/Del/2018
(ASSESSMENT YEAR 2014-15)

Dy. CIT (Exemption) Ghaziabad	Vs.	M/s Ghaziabad Development Authority Vikash Path Hapur Road Ghaziabad PAN:AAALG 0072C
(Appellant)		**(Respondent)**

ITA No.8304/Del/2018
(ASSESSMENT YEAR 2015-16)

M/s Ghaziabad Development Authority Vikash Path Hapur Road Ghaziabad PAN:AAALG 0072C	Vs.	Addl. CIT(Exemption) Ghaziabad
(Appellant)		**(Respondent)**

Assessee by	Dr. Rakesh Gupta, Adv. & Shri Somil Agarwal, Adv.,
Respondent by	Ms. Anu Krishna Aggarwal, CIT-DR

Date of Hearing	15/06/2024
Date of Pronouncement	31/07/2024

O R D E R

PER S.RIFAUR RAHMAN, AM:

1. The aforesaid cross appeals in ITA No.2039/Del/2018 have been filed by the Assessee as well as in ITA No. 1886/Del/2018 filed by the Department against the order dated 30/10/2018 for the Assessment Year 2014-15 & 2015-16 and in ITA No.8304/Del/2018 for Assessment Year 2015-16 also filed by the Assessee.

2. At the time of hearing, the Ld. AR submitted that the assessee was issued with a defect memo indicating that there is a delay of 23 days in filing appeal and he submitted that assessee by mistake mentioned the receipt of order as 30/12/2017 which is the date of the order itself and assessee has actually received the order on 25/01/2018. In this regard, he brought to our notice a letter dated 26/03/2018 addressed to the registry. After considering the explanation of the assessee, it was noticed that assessee has mentioned the date of order as the date of receipt of the order, accordingly, the delay indicated by the registry is condoned.

3. The assessee has filed following grounds of appeal:-

"1. That having regard to the facts and circumstances of the case, Ld. AO has erred in framing the impugned assessment order without assuming jurisdiction as per law in as much as the notice issued u/s 143(2) dated 24.9.2015 was without jurisdiction since no return was filed by the assessee and thus no notice u/s 143(2) could have been issued, first notice u/s 143(2) being the jurisdictional notice was nullity in the eyes of law and therefore, Ld. CIT(A) ought to have quashed the proceedings on this ground alone.

2. That having regard to the facts and circumstances of the case return filed on 8.2.2016 by the assessee was in response to notice u/s 148 dated 20.1.2016 and therefore, the same could have not been made the basis of framing impugned assessment order and thus the said return attained finality since no order u/s 147 has been passed by the Assessing officer and therefore the impugned assessment order passed was bad in law on this ground also and therefore, Ld. CIT(A) ought to have quashed the assessment order on this ground also

3. That in any case and in any view of the matter and without prejudice to above no legal order u/s 147 could have been passed by the Ld. AO since the reopening was bad in law on following grounds:-

3(a) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing impugned assessment order and that too without assuming jurisdiction as per law and without complying with mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.

3(b) That having regard to the facts and circumstances of the case, reopening has been done without recording valid reasons with independent application of mind and without assuming jurisdiction u/s 148 as per law and in any case reasons should be factually correct and sustainable in the eyes of law on the basis of which belief about escapement of income has been formed and therefore in absence of these conditions having been complied with in this case, Ld. CIT(A) ought to have quashed the impugned assessment order.

3(c) That having regard to the facts and circumstances of the case, reopening has been done without complying with the mandatory conditions u/s 151(2) of the Income Tax Act, 1961 and without obtaining requisite satisfaction/ approval of the JCIT before issuing notice u/s 148 and as per law the JCIT was required to record his satisfaction based upon his independent application of mind and since these conditions were

not complied in this case, Ld. CIT(A) ought to have quashed the impugned assessment order.

3(d) That in any case and in any view of the matter, reopening is contrary to law and facts and not sustainable on various legal and factual grounds and Ld. CIT(A) ought to have quashed the reopening.

3(e) That in any case and in any view of the matter, the impugned assessment order and additions/disallowance made therein are contrary to law and facts and more so when no addition was made with respect to the income alleged to be escaped as per reasons recorded and therefore Ld. CIT(A) ought to have deleted all the additions made in the assessment order being without jurisdiction of the impugned proceedings.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in denying the benefit of exemption u/s 11 & 12 of the Act and that too by holding that assessee authority falls within the ambit of the proviso to section 2(15) of the Act and further erred in holding that the activities of assessee authority are commercial in nature and that too in violation of principles of natural justice.

5. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in denying the benefit of exemption u/s 11 & 12, is bad in law and against the facts and circumstances of the case.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO by holding that assessee authority falls within the ambit of Section 11(4A) and the activities of assessee authority are commercial in nature and that too in violation of principles of natural justice.

7. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in invoking the provisions of section 11(4A) which is bad in law and against the facts and circumstances of the case.

8. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in treating the loss of Rs.286,20,97,068/- as business loss of the assessee authority and has further erred in considering that the same to be charged at maximum marginal rate and that too by recording incorrect facts and findings and in violation of principles of natural justice.

9. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in treating the deficit of Rs.286,20,97,068/-

as business loss is bad in law and against the facts and circumstances of the case.

10. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs.502,58,66,588/- fully as made by Ld. AO on account of Infrastructure Development Fund and further erred in sustaining the same to the extent of Rs.360,05,72,507/- and that too by recording incorrect facts and findings and by disregarding the fact that the receipt is of capital nature as the same was kept by the assessee as a custodian and thus without observing the principles of natural justice.

11. That in any case and in any view of matter, action of Ld. CIT(A) in sustaining the addition to the extent of Rs.3,60,05,72,507/- on account of Infrastructure Development Fund, is bad in law and against the facts and circumstances of the case.

12. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B and 234C of Income Tax Act, 1961.

13. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

4. At the time of hearing, the Ld. AR submitted that legal issues raised by the assessee in grounds No.1 to 3 are not pressed technically. Considering the fact that in assessee's own case the Hon'ble ITAT and the Hon'ble Supreme Court decided the issue on merit in favour of the assessee. He filed copy of the respective orders in the form of paper book and submitted that this issue is fully covered in favour of the assessee. He submitted that the Assessing Officer has not allowed the assessee to claim the exemptions u/s 11 & 12 in the assessment order. He submitted that the issue of exemption u/s 11 has to be determined by the

Assessing Officer, therefore, this issue has go to back to the file of Assessing Officer for verification and he prayed accordingly.

5. On the other hand, the Ld. DR relied on the orders of the lower authorities. With regard to Departmental Appeal, he submitted that the Ld. CIT(A) has deleted certain additions made by the Assessing Officer and also claim of depreciation. He submitted that since, the case is going back to the Assessing Officer, proper direction may be given to redo the assessment *denovo.*

6. Considered the rival submissions and material placed on record, we observed that the Co-ordinate Bench has considered the similar issue in Assessment Year 2009-10 (ITA No.2400/Del/2014 dated 29/04/2019) in which they have considered various aspects of the issue involved in this case which is similar by the fact in the present appeal. For the sake of clarity it is reproduced below.

> *"16 Further we also find that Hon'ble Allahabad High Court has held that the objects and activities of Ghaziabad Development Authority are such that it is eligible for benefit of registration u/s 12A even after proviso to section 2(15) is taken into consideration. The proviso to section 2(15) has been considered by Hon'ble Allahabad High Court in assessee's own case in the order, therefore the judgment of jurisdictional High Court will have the primacy. The Authority GDA is creation of state of UP UP Urban Planning and Development Act, 1973where as the other improvement trusts are creation of various state laws involving similar activities. Further examination of the activities of the assessee with regard to the objectives, whether the manner in which the assessee trust was conducting its activities constituted advancement of general public utility as set out in section 2(15) and further whether the work ceased to be for charitable purpose due to the first proviso to section 2(15) which lays down that the advancement of any other object of general public utility shall not be a*

charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, irrespective of the nature of use or application, or retention of the income from such activity we find that the assessee has not brought any changes in the objectives which forces the revenue to change its earlier stand. As long as the object of general public utility is not merely a mask to hide true purpose or rendering of any service in relation thereto, and where such services are being rendered as purely incidental to or as subservient to the main objective of 'general public utility', the carrying on of bonafide activities in furtherance of such objectives of 'general public utility' cannot be hit by the proviso to s. 2(15).

17 Hence keeping in view the provisions of the act, objectives of the assessee, judgment in the case of the assessee by the Hon'ble High court of Allahabad, approvals given in the case of other town development agencies, we hold that the assessee trust is carrying out charitable activity of advancement of public utility and the business activity carried out by it are incidental to the attainment of its main object and thus the proviso to section 2(15) is not attracted in the assesses case. We therefore hold that the assessee is entitled for restoration of registration u/s 12AA of the income Tax, 1961.

Respectfully following the same, we are inclined to allow the claim of the assessee that the trust in carrying out charitable activities of advancement of public utility and the activities of business carried out by the assessee are incidental to the attainment of its main objects. Hence, they are eligible to claim exemption u/s 11 & 12 of the Act. Therefore we remit the issue relating to ground of exemption u/s 11 & 12 of the Act to the file of the Assessing Officer with the direction to assess *denovo* the allowability of section 11 and 12 after giving a proper opportunity of being heard to the assessee and allow the exemption as per law, with the above direction, we allow the grounds raised by the assessee.

7. Coming to the issue raised by the Revenue in their appeal, we observed that ground No.1 raised by the Revenue relating to deletion of additions proposed by the Assessing Officer relating to expenditure claimed by the assessee, since, we remitted the issue of determining the exemption allowable u/s 11 & 12 of the Act to the file of the Assessing Officer. This issue also remitted to the file of Assessing Officer to reassess the exemption u/s 11 & 12 of the Act.

8. Coming to the next issue of deletion the addition of Rs.1,61,81,011/- relating to depreciation as capital expenditure, this issue being a covered issue in favour of the assessee, we do not see any reason to remit this issue back to the file of the Assessing Officer. This issue is squarely settled by various Courts in favour of the assessee. Accordingly, ground No.2 raised by the Revenue is dismissed. The appeal filed by the Revenue is partly allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is allowed as per above directions and appeal preferred by the Revenue are partly allowed as per above directions.

10. With regard to appeal filed by the assessee in Assessment Year 2015-16 the facts are exactly similar to the facts of Assessment Year 2014-15, we are inclined to remit this issue of determination of exemption allowable u/s 11 & 12 to the file of Assessing Officer,

mutatis mutandis to the direction given in Assessment Year 2014-15. Therefore, we are inclined to remit this issue also back to the file of Assessing Officer. Accordingly, the appeal filed by the assessee is allowed for statistical purposes.

11. In the final result, the appeals filed by the assessee are allowed and the appeal filed by the Revenue is partly allowed as indicate above.

Order pronounced on 31st July, 2024.

Sd/-	Sd/-
(SUDHIR KUMAR)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 31/07/2024
Pk/sps
Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI