IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER

ITA Nos.87,88 & 89/Alld/2020
AYs. 2014-15 to 2016-17

Allahabad Development Authority, 7th & 8th Floor, Indira Bhawan, Civil Lines, Allahabad, U.P.		ACIT (Exemption), Lucknow
PAN:AAALA0144P		
(Appellant)		(Respondent)

Assessee by:	Sh. Ashish Bansal, Advocate
Revenue by:	Sh. Amalendu Nath Mishra, CIT DR
Date of hearing:	29.11.2024
Date of pronouncement:	31.01.2025

O R D E R

PER SHRI. NIKHIL CHOUDHARY, A.M.:

These three appeals, all filed by the assessee, bearing ITA Nos. 87, 88 & 89/Alld/2020 for the Assessment Years 2014-15 to 2016-17, respectively, are directed against the separate appellate orders dated 19.02.2020, 20.02.2020 & 20.02.2020, respectively passed by the learned Commissioner of Income Tax (Appeal), Allahabad, (hereinafter called the "CIT(A)") in Appeal Nos. CIT(A), Allahabad / 10463/2016-17, CIT(A), Allahabad / 10228/2017-18 and CIT(A), Allahabad / 10332/2018-19, respectively for the assessment years 2014-15, 2015- 16 and 2016-17. The appellate proceedings had arisen before the learned CIT(A), from separate assessment orders under section 143(3) of the Income Tax Act, 1961 dated 27.12.2016 for the assessment year 2014-15, 14.12.2017 for the assessment year 2015-16 and 26.12.2018 for the assessment year 2016-17, passed by the Assistant / Deputy Commissioner of Income Tax, (Exemption), Lucknow

(hereinafter referred to as the "ld. AO"). These three appeals were heard in open court through physical hearing mode.

2. Since, all these three appeals involve many common issues, these three appeals were heard together and are being disposed of by this common order.

3. The grounds of appeal raised by the assessee in memo of appeal filed with the Income Tax Appellate Tribunal, Allahabad (hereinafter called "the Tribunal") for the assessment year 2014-15 read as under:-

"1. BECAUSE the learned CIT(A) erred in law and on facts in confirming the income of the appellant at Rs. 19,52,31,111/- (Rs.19.52 Crores rounded up) as made up of following:-

Particulars	*(Rs.)*
Total income as per return shown by the assessee	*Nil*
Net profit shown in Income & Expenditure account (as exemption u/s 11 is denied)	*6,54,93,137/-*
Grants and Funds received	*12,97,37,974/-*
	19,52,31,111/-

and in subjecting the same to taxation.

2. BECAUSE the learned CIT(A) erred in law and on facts in sustaining the denial of exemption under section 11 read with section 12 of the Act for the reason that the same is hit by first proviso to section 2(15) of the Act and other reasons and subjecting the income as computed by him at Rs.19,52,31,111/-, to taxation.

3. BECAUSE the CIT(A) erred both on facts and in law in distinguishing the following series of judgments which fully cover the issue of eligibility of exemption under section 11 and non applicability of provision to section 2(15):-

a) judgment and order dated 10.11.2006, the objects for attainment of which the appellant/Authority had come into existence, had already been adjudged to be the

objects of the 'general public utility' in the appellant's/Authority's own case in ITA No.390(Alld)/2006 by the Hon'ble ITAT;

b) this judgment was based on the decision of a Coordinate Bench i.e. ITAT, Lucknow in a bunch of appeals, rendered vide order dated 25.07.2005;

c) this judgment of the Lucknow Bench of ITAT had since been approved by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow vide judgment and order dated 16.09.2013 in the appeals preferred by the revenue;

d) the said judgment and order dated 16.09.2013, the Hon'ble High Court had specifically dealt with the applicability of the amended provision of section 2(15) effective from the assessment year 2009-10;

e) the judgment and order dated 16.09.2013 (supra) had attained finality as the revenue did not challenge the same by taking the matter before the Hon'ble High Court; and

f) since then, the judgment of the Allahabad Bench of ITAT in ITA No.390(Alld)2016 as has been referred to (a) above, has also has been approved by the Hon'ble Allahabad High Court vide judgment and order dated 29.08.2016 in the appeal filed by the revenue under section 260A of the Act

4. BECAUSE the learned CIT(A) erred both on facts and in law in following the judgment and order dated 07.11.2013 passed by the Hon'ble Jammu & Kashmir High Court in the case of Jammu & Kashmir Development Authority vs. Union of India (against which SLP has been rejected vide order dated 21.07.2014) as it is not applicable in the instant case, owing to dissimilarity of facts.

5. BECAUSE the learned CIT(A) erred both on facts and an in law is confirming the addition of Rs.12,97,37,974/- under the various funds & grants received which had not been routed through the Income and Expenditure Account and, could not have been added to the surplus as per Income and Expenditure Account as the appellant did not have any right, title or interest of its own in the said sum and the same had not accrued to or received by it as income.

6. BECAUSE the appellant had acted merely as nodal agency and the amount in question received under the various funds & grants represented allocation made out of different heads, for being used for specified purposes, to be decided by the Committee (formed by the State Government itself) and no part of the same could have been treated to be the income of the appellant so as to subject the same to taxation in its hands.

7. BECAUSE the order of the CIT(A) is generally bad both on facts and in law.

8. BECAUSE the assessee reserves the right to rescind or add or delete any ground of appeal."

4. The grounds of appeal raised for the assessment year 2015-16 read as under:-

"1. BECAUSE the learned CIT(A) erred in law and on facts in confirming the income of the appellant at Rs. 24,99,43,047/- (Rs.24.99 Crores rounded up) as made up of following:-

Particulars	*(Rs.)*
Total income as per return shown by the assessee	*Nil*
Net profit shown in Income & Expenditure account (as exemption u/s 11 is denied)	*1,49,06,902/-*
Grants and Funds received	*23,50,36,145/-*
Assessed Income	*24,99,43,047/-*

and in subjecting the same to taxation.

2. BECAUSE the learned CIT(A) erred in law and on facts in sustaining the denial of exemption under section 11 read with section 12 of the Act for the reason that the same is hit by first proviso to section 2(15) of the Act and other reasons and subjecting assessed income of Rs.24,99,43,047/- to taxation.

3. BECAUSE the CIT(A) erred both on facts and in law in distinguishing the following series of judgments which fully cover the issue of eligibility of exemption under section 11 and non applicability of provision to section 2(15) :-

a) judgment and order dated 10.11.2006, the objects for attainment of which the appellant/Authority had come into existence, had already been adjudged to be the objects of the 'general public utility' in the appellant's/Authority's own case in ITA No.390(Alld)/2006 by the Hon'ble ITAT;

b) this judgment was based on the decision of a Coordinate Bench i.e. ITAT, Lucknow in a bunch of appeals, rendered vide order dated 25.07.2005;

c) this judgment of the Lucknow Bench of ITAT had since been approved by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow vide judgment and order dated 16.09.2013 in the appeals preferred by the revenue;

d) the said judgment and order dated 16.09.2013, the Hon'ble High Court had specifically dealt with the applicability of the amended provision of section 2(15) effective from the assessment year 2009-10;

e) the judgment and order dated 16.09.2013 (supra) had attained finality as the revenue did not challenge the same by taking the matter before the Hon'ble High Court; and

f) since then, the judgment of the Allahabad Bench of ITAT in ITA No.390(Alld)2016 as has been referred to (a) above, has also has been

approved by the Hon'ble Allahabad High Court vide judgment and order dated 29.08.2016 in the appeal filed by the revenue under section 260A of the Act.

4. BECAUSE the learned CIT(A) erred both on facts and in law in following the judgment and order dated 07.11.2013 passed by the Hon'ble Jammu & Kashmir High Court in the case of Jammu & Kashmir Development Authority vs. Union of India (against which SLP has been rejected vide order dated 21.07.2014) as it is not applicable in the instant case, owing to dissimilarity of facts.

5. BECAUSE the learned CIT(A) erred both on facts and an in law is confirming the addition of Rs.23,50,36,145/- under the various funds & grants received which had not been routed through the Income and Expenditure Account and could not have been added to the surplus as per Income and Expenditure Account as the appellant did not have any right, title or interest of its own in the said sum and the same had not accrued to or received by it as income.

6. BECAUSE the appellant had acted merely as nodal agency and the amount in question received under the various funds & grants represented allocation made out of different heads, for being used for specified purposes, to be decided by the Committee (formed by the State Government itself) and no part of the same could have been treated to be the income of the appellant so as to subject the same to taxation in its hands.

7. BECAUSE the order of the CIT(A) is generally bad both on facts and in law.

8. BECAUSE the assessee reserves the right to rescind or add or delete any ground of appeal."

5. The grounds of appeal raised by the assessee in the memo of appeal filed with the ITAT, Allahabad for the assessment year 2016-17 read as under:-

(1) Because the CIT(A) erred both on facts and in law in distinguishing the binding decision of the Hon'ble Allahabad High Court in the case of the assessee itself appeal no.320 of 2007 and listed as no. (4) Case decided by the Hon'ble High Court amongst 8 appeals of different Development Authorities and thereby denying exemption of section 11.

(2) Because the CIT(A) erred both on facts and in law in confirming denial of exemption u/s section 11.

(3) Because the CIT(A) erred both on facts and in law in confirming the addition of net excess of income over expenditure of Rs.3,00,11,855/ under the head Income from business or profession.

(4) Because the CIT(A) erred both on facts and in law in sustaining the addition of Rs.36,68,20,842/- for Grants and Funds received.

(5) Because the order of the CIT(A) is generally bad both on facts and in law.

(6) Because the assessee reserves the right to rescind or add or delete any ground of appeal."

6. Since assessment year 2014-15 is the first assessment year and the issues involved are common to all the assessment years, appeal for the assessment year 2014-15 is taken as a lead case. Thereafter only unique issues pertaining to other assessment years would be discussed separately and our decision in respect of all these issues would apply to all three assessment years in question.

7. The brief facts of the case (for A.Y. 2014-15) are that the assessee filed a return of income on 30.03.2015 declaring Nil income. The case of the assessee was selected for scrutiny under section 143(3) and statutory notices under section 143(2) / 142(1) of the Income Tax Act, 1961 were issued by the learned AO from time to time. The main question that was addressed by the Assessing Officer, was with regard to the claim of the assessee for grant of exemption under sections 11, 12 and 13 of the Income Tax Act, 1961. The assessee is registered under section 12A of the 1961 Act. It is a State Government body constituted by an Act of State Government and is engaged in the business of development and sale of land for residential and commercial purposes. The object of the authority as defined under section 7 of "The Uttar Pradesh Urban Planning & Development Act, 1973" (hereinafter known as the UPUPDA 1973) under which it is constituted are "*to promote and secure the development of the development area according to a plan and for that purpose to have the power to acquire, hold, manage and dispose of land and other property; to carry out building, engineering; mining and other operations; to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or incur expenditure for such purposes and for purposes incidental thereto"*. The learned AO observed that in the Uttar Pradesh Urban Planning & Development Act, 1973 words like charity or charitable, poor, economically weaker, subsidy / subsidized, assistance, upliftment were not mentioned. From this he concluded that a perusal of the said Act showed that it was never intended by the State Government, that the Allahabad Development Authority be a charitable organization, in that it was formed with the sole objective of ensuring the development of Allahabad in accordance with a plan. The AO also quoted from section 58 of the UPUPDA, 1973 to demonstrate that on dissolution of Allahabad Development Authority, all the properties, funds and dues which were vested, or realizable by

the authority, would vest in or be realizable by the State Government and he opined, that it was the discretion of the State Government to apply it for any purpose it may deem fit. He expressed the apprehension that the funds generated during the so-called charitable purpose period, may later be utilized for the purposes of business. Therefore, the transfer was not an irrevocable transfer, which was meant exclusively for charitable purposes. The AO observed that the transfers of assets are revocable and sections 11 and 12 of the Income Tax Act, 1961 would not apply. The ld. AO further observed that for the creation of a valid trust, transfer of assets for charitable purposes should be irrevocable, which condition was not being fulfilled in the case of Allahabad Development Authority. The AO also observed that the assessee was neither in the field of education, nor in the field of medical relief of poor and held that, at the most, after seeing the objects and activities carried out by the assessee, it could be considered that the assessee was falling within the scope of, "general public utility" as per section 2(15) of the Income Tax Act, 1961.

7.1 From a perusal of financial statement for the assessment year 2014-15, the learned AO concluded that the activities of the authority were in the nature of trade / commerce / business and the aggregate value of the receipts from such activities were in excess of Rs. 25,00,000/-. Therefore, he proposed to apply the provisions of the first proviso to section 2(15) and accordingly, asked the assessee to explain as to why the claim of exemption under section 11 of the Income Tax Act, 1961 should not be disallowed and additions/disallowances be made to be income of the assessee and why the assessee may not be assessed accordingly. In response it was submitted that its activities of the assessee authority were of a charitable nature and the first proviso to section 2(15) was not applicable in its case.

7.2 The AO was not satisfied with the reply submitted by the assessee. He observed that on 27.04.2014, the Hon'ble Supreme Court had rejected the SLP of the assessee authority in the case of M/s Jammu Development Authority, in which case, the CIT, by order under section 12AA(3) of the Act, had withdrawn the registration under section 12AA of the Act, which had been earlier granted to the authority. Aggrieved with such withdrawal, the assessee had filed an appeal before the Hon'ble ITAT, Amritsar Bench. In their judgment dated 14.06.2012, the Tribunal had dismissed the appeal of the assessee and upheld the order of the learned CIT

Jammu. The AO pointed out that the learned Tribunal had further elaborated in their order that that after the insertion of these provisos to section 2(15) of the Income tax Act , the advancement of any other object of general public utility could not be considered "charitable purpose" if it involved the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration, irrespective of the nature of use or application or retention of income from such activity. Therefore, it had held that any institution / trust / society which was involved in such activities and receiving aggregate value of more than Rs. 10,00,000/- from such activities, would not be eligible to continue with registration under section 12A. The Hon'ble Tribunal had further held that the activities of the assessee were aimed at earning profit, as it was carrying out an activity in the nature of trade, commerce or business and that profit making by the assessee was not merely incidental or bye product of its activities. It had held that there was no real object of the assessee and there was no spending of income exclusively for the purposes of charitable activities and there was no obligation on the part of the assessee to spent on charitable purposes only. The Hon Tribunal had also concurred with the view of the AO and CIT(A), that on the dissolution of the authority, all properties, funds, dues and liabilities would vest in the Government and there was no restriction on how the same were to be utilized by the Department. It had also pointed out that there were other objects like sale and purchase, which made the authority a commercial organization. It therefore, held that the objects pursued by the assessee could not be said to be charitable in nature.

7.3 The Ld AO also referred to an earlier order by the ITAT, Amritsar Bench in the case of Jalandhar Development Authority, in which the Hon'ble ITAT had held that a charitable institution provides services for charitable purposes free of cost and not for a gain, but the Jalandhar Development Authority was performing activities similar to big colonizers / developers who were earning a huge profit. The Hon'ble Tribunal held that the assessee authority had turned into a huge profit-making agency and that even for creating / developing institutions of public importance, the assessee was charging the cost of it from the public at large and from the coffers of the Government. It further observed that the development of facilities by the authority were merely a means of attracting people for purchase of plots and

the costs for development of the facilities were hidden in the costs of the plots. It further opined that similar development / infrastructure / facilities were also provided by private developers these days and were incidental to the commercial activity as they were not only a basic requirement but a tool to attract investors, wherein the hidden cost of those facilities were already included The Hon'ble ITAT had observed that the objects of the assessee, though claimed to be charitable, were actually of a purely commercial nature where a profit motive was involved because the assessee was acquiring land at very low prices and selling the same land on much higher rates and earning a profit therefrom. It highlighted the new trend of auctioning plots by way of bidding and charging of interest on belated payments, to state that no charity was involved in such activities but rather the assessee had converted itself into a big businessman. Therefore, it held that the application of registration under section 12A had rightly been rejected in the case of M/s Jalandhar Development Authority.

7.4 The Assessing Officer also quoted further from the order of the Hon'ble ITAT in the case of M/s Jammu Development Authority where the Tribunal had analyzed the provisions relating to the distribution of assets of the authority in the light of the decision of the Hon'ble Supreme Court in the case of CIT vs. Surat Art Silk Cloth Manufacturers Association (1997) 121 ITR and CIT vs. Andhra Pradesh State Road Transport Corporation (1986) 159 ITR 1 and pointed out that the Hon'ble ITAT had held that since there was no restriction as to the utilization of left over properties for charitable purposes, the authority had failed the test laid down by the Hon'ble Supreme Court in the above cases and therefore, it could not be termed as a charitable organizations within the meaning of section 2(15) of the Act.

7.5 The AO pointed out that the appeals before the Hon High Court and the SLP filed before the Hon Supreme Court by the Jammu Development Authority had been dismissed and therefore, relying upon the aforesaid findings rendered by the ITAT in the aforesaid two cases namely M/s Jammu Development Authority and M/s Jalandhar Development Authority, the AO concluded that it was clear that the activities of the Allahabad Development Authority could not be said to be charitable in nature. He held that the assessee authority was involved in the activities of trade/commerce/business and as such was hit by the provisions of the first proviso to section 2(15) of the Act w.e.f. 1.04.2009. Hence, he rejected the assessee's claim of exemption under section 11 of the Act and assessed its income under the head, 'Profits & Gains from

business and profession'. The net profit disclosed by the assessee of Rs. 6,54,93,137/- was added to the total income of the assessee and penalty proceedings under section 271(1)(c) were initiated.

7.6 Moving on the AO further observed that certain funds and grants shown under the head under Schedule 3 of the balance-sheet were not being added to the total income of the assessee. He, therefore, asked the assessee to show cause as to why the same should not be added to its total income. The AO records that the assessee filed a written submission on 30.11.2016, which was not acceptable. However, he did not state in his order as to what the contents of the said reply were. Be that as it may, he recorded the fact the assessee had directly transferred the amounts to the balance-sheet, which was against normal accounting principles. Therefore, since he had already rejected the claim for exemption under section 11, hence he held that the receipts of funds and grants was to be treated as the income of the assessee and was to be added to the total income of the assessee. Accordingly, an amount of Rs. 12,97,37,924/- was added to the total income of the assessee on this account and penalty proceedings were separately initiated in respect of this addition also.

7.7 In his order for the assessment year 2015-16, the learned Assessing Officer also drew reference to a U.P. Government order dated 7.12.1999, in which there were reservations of 2% to the employees of the Development Authorities in respect of the allotment of residential and commercial properties. He held that the employees of the development authorities also include persons specified in section 13(3) of the Income Tax Act, 1961. Hence, he held that exemption under section 11 was not allowable to the assessee, for this reason also. Reproducing the order dated 17.12.1999, in his assessment order, he also observed that the development authorities was giving a 10% discount on the present value of the property allotted to the employees of the development authority. Since, it was his view, that the employees of the assessee were persons covered under section 13(3) of the Income Tax Act, 1961, he concluded that the activities of the assessee could not be said to be charitable in nature, because of such concessions allowed to the employees. Accordingly, he decided to deny the exemption under section 11, on this ground also.

8. Aggrieved with the said assessment order, the assessee filed an appeal before the learned CIT(A), Allahabad on 27.12.2016. Before the learned CIT(A), it was submitted that the

assessee authority was constituted under the U.P. Urban Planning & Development Act, 1973 vide Notification No. 2852/XXVII-2-21(D.A.)-72 dated 19.08.1974. It submitted that like other development authorities constituted under the said act, the Allahabad Development Authority was also an institution that had been set up with the main objective of, "undertaking development of the specified 'development areas' in and around the city of Allahabad and to provide for infrastructure and services of general public utility". It was submitted that the objects of the authority had been defined in section 7 of the Uttar Pradesh Urban Planning & Development Act, 1973. It was further submitted that said act (i.e. U.P.U.P.D.A) had been divided into XIII Chapters out of which Chapter No. III-A, IV, V and VI contained the provisions which enabled the authority to carry out civil survey, prepare master plan for the development area assigned to it, to amend the master plan and zonal development plan, to develop the land in the development area and to acquire and dispose of land for the purposes of development under the said act. It was further submitted that the assessee was considered, a. 'Local Authority' under section 10(20) of the Act and its income was exempt from taxation under the Income Tax Act up to the assessment year 2002-03 and it was not even required to file a return. It was submitted that subsequently, the ld. CIT had rejected the application for registration under section 12A of the Act, by holding that the authority had been acting like a, 'trader' earning profit from buying land and building etc., on commercial lines. Aggrieved by this order dated 18.03.2005, the authority had filed an appeal before the Income Tax Appellate Tribunal Allahabad. It was further submitted that prior to the hearing of the appeal of the Allahabad Development Authority, appeal on similar issues have come up for consideration before the Tribunal in the cases of U.P. Awas Evam Vikas Parishad (ITA No. 690/Luc/2003), Lucknow Development Authority (ITA No. 680/Luc/2003) and Kanpur Development Authority (ITA No. 696/Luc/2003). The Hon'ble ITAT Lucknow Bench, in terms of its consolidated order dated 25.07.2005, passed in the above-mentioned cases held that the said, 'authorities go fully to meet the requirement of registration as the objects of the institutions covered the public at large and thus could be considered as, 'objects of general public utility' as meant in section 2(15) of the Act. On the issue of profit earning which had been raised by ld. CIT in the proceeding under section 12A, the Hon'ble ITAT relying upon the decision in the case of Surat Silk Cloth Manufacturer Association (1980) 121 ITR 1 had laid down, that the objects of the

Lucknow Development Authority (LDA) were objects for advancement of the objects of the 'general public utility', as envisaged under section 2(15) of the Act and it accordingly held that Lucknow Development Authority was eligible for registration under section 12AA of the Act. It was submitted that following the above referred judgment and order dated 25.07.2005 by the Lucknow Bench of the Hon'ble ITAT, the appellant authority claim for registration under section 12AA was also upheld by the Hon'ble ITAT Allahabad Bench vide its order dated 10.11.2006. It was further submitted that the Tribunal's order dated 25.07.2005 rendered in the case of Lucknow Development Authority (and other authorities) had been challenged by the Revenue before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, by filing of appeals under section 260A of the Act. It was pointed out that during the course of hearing, it was contended on behalf of the Revenue, that in view of the amendment in section 2(15) of the Act w.e.f. 1.04.2009, the LDA could no longer held to be an authority established for advancement of other objects, 'general public utility' and therefore, it was not eligible for registration under section 12AA of the Act. The Hon'ble High Court, vide its order dated 16.09.2013, reported as CIT vs. Lucknow Development Authority (2014) 98 DTR (All) 183, had held, that for the applicability of the proviso to section 2(15) the activities of the trust should be carried out on commercial lines with an intention to make profit and where the trust is carrying out its activities on non-commercial lines, with no motive to earn profits for the fulfillment of its aims and objectives, which are charitable in nature and in the process earns some profits, the same would not be hit by the proviso to section 2(15). It held that aims and objects of the Lucknow Development Authority were admittedly charitable in nature. The assessee contended that the judgment, so delivered by the Hon'ble Jurisdictional High Court had not been challenged by the Revenue before the Hon'ble Supreme Court and thus the view as expressed by the Hon'ble High Court on the issue of applicability of amended provisions of section 2 (15) of the Act had also attained finality. The assessee further pointed out that aggrieved by the order of the ITAT dated 10.11.2006, in its own case, the Revenue had preferred an appeal before the Hon'ble Allahabad High Court in ITA No. 657 of 2007. The appeal so filed by the Revenue had been decided by the Hon'ble High Court vide its judgment dated 29.08.2016, wherein the Hon'ble Court had concurred with the judgment and order dated 16.09.2013, delivered by the Hon'ble Lucknow Bench in the case of Lucknow Development Authority and Ors. Quoting from the said order of

the Hon'ble High Court in the case of M/s Lucknow Development Authority and Ors (supra), the assessee authority submitted that the findings and observations in the aforesaid judgment were squarely applicable to its case also. It therefore, submitted that from whichever angle the matter was examined, it is only on account of mis-conception of law as well as facts, that the ACIT had rejected the appellant's claim for exemption under section 11 r.w.s. 12 of the Act, and subjected the appellant authority to an income of Rs. 19.52 Crores and a demand of Rs. 8,02,37,128/-.

8.1 In its submission for the assessment year 2016-17, in Appeal No. CIT(A)/Allahabad/10332/2018-19, the assessee additionally drew reference to the fact that the Circular dated 15.01.1998 on the basis of which the transfers to the infrastructure fund was done, was binding on all development authorities under the U.P.U.P.D.A., 1973 including Lucknow, Allahabad, Agra, Varanasi, Kanpur, Raebareli, Bareilly and Ghaziabad etc,. It was further submitted that while adjudicating on the taxability of transfers to the infrastructure funds, the Allahabad High Court in the case of Lucknow Development Authority in its order dated 16.09.2013 had observed in para 29 of the said order, '29', reads as under:-

> *" 29. From the record, it also appears that the "Authority" had been maintaining infrastructure, development and reserve fund IDRF as per the notification dated 15.01.1998, the money transferred to this funds is to be utilized for the purpose of project as specified by the committed having constituted by the State Government under the said notification and the same could not be treated to be belonging to the "Authority" or the receipt is taxable nature in its hands. For this reason also, it appears that the funds are utilized for general utility."*

The assessee submitted that the proposed addition to the infrastructure fund was not maintainable as the issue had already been decided by the Hon'ble Allahabad High Court. It also pointed out that with regard to shelter fees and F.A.R., fund, similar circulars dated 5.12.2013 and 10.11.2013 existed, which mandated for transfers for these funds and for the ways in which the funds were to subsequently be used. Therefore, the situation with regard to these funds was identical to the infrastructure fund and drawing inference from the decision of the Hon'ble Allahabad High Court, this amount too could not be added to the income of the assessee.

8.2 On the issue of the addition of Rs. 12,97,37,974/- so received, as funds and grants by

the assessee and directly taken by it to its balance-sheet, without routing it through the income and expenditure account, the assessee submitted, in its appeal to the Ld CIT(A) for the AY 2014-15, that such fund was in the process of being created as per Government Order and the same was liable to be utilized in the manner laid down in the related Government Order itself i.e. it was to be utilized only for the purposes as spelt out and specified by the State Government and the appellant authority had merely acted as a, 'nodal agency' that had no right, title or interest of its own in the said fund. It was a case where the receipts in question stood diverted by an, 'overriding title' in view of the principles laid down by the Hon'ble Apex Court in the case of Provat Kumar Mitter vs. CIT, 1961 41 ITR 624. It was further submitted that following the said decision, the Allahabad High Court in the case of Jit & Pal X-Rays Pvt. Ltd (2004) 267 ITR 370, had held that where the obligation to pay an amount was attached to the very source of the income, it was not a case of mere applicable of income but it was a case of diversion of income by an overriding charge. It was submitted that as per the 'Granter', the fund so received by the appellant were to be utilized in a specified manner and the same partook the character of a grant. It was, therefore, argued that the said sum, although collected by the appellant authority, stood diverted through overriding title in favour of the original, 'Granter' only and was meant for being utilized as per the policy of the 'Granter'. Therefore, the same could not have been subjected to taxation in the hands of the appellant. The amounts in the account represented the amounts received from various agencies, State Government, Central Government etc., for carrying out implementing of specific work on their behalf like i. Construction of primary schools ii. Implementing facilities at forthcoming Kumbh Mela. No monetary benefit accrued to the appellant authority for such work. The balance left in the account after completion of the specific object / project, was refunded back to the funding agency. Therefore, it was case where the receipts stood diverted by an overriding title. It was further argued that the same being of capital nature, could not be treated as an income earned during the year by the appellant. Therefore, the sum of Rs. 12.97 Crores could not be treated to the income of the appellant authority, much less taxed in its hands.

8.3 The learned CIT(A) did not agree with the submissions of the assessee. He pointed out that in the objects of the authority, as defined in section 7 of the U.P. Urban & Planning Development Act, 1973 (U.P.U.P.D.A.), there was no mention of doing any charitable work of

any kind for poor or economically weaker sections, giving of any subsidy or any subsidized assistance. He, therefore, concluded that the Allahabad Development Authority was formed with the sole objective of infrastructure development of Allahabad and not to be a charitable organization. The ld. CIT(A) noted the AO's conclusion, that the activities of the appellant of the assessee were in the nature of trade and commerce as it had generated income from the activities of disposing of the plots, flats, shops and commercial complexes with the definite motive of profit and not of charitable purpose. He observed that the AO had invoked section 2(15) accordingly, as the earning of profit was not incidental to the activities of the assessee but were in fact the predominant purpose. He also noted that the AO's observation that there was no application of income exclusively for the purposes of charitable activities. The ld. CIT(A) also considered the AO's observation regarding section 58 of the U.P.U.P.D.A., 1973, wherein the AO had observed that upon dissolution of the Board, the fund and other property vested in the Board would vest in the State Government, which may apply it for any purpose that it deems fit, which would be violative of section 11(1) r.w.s. 60, 61 and 63 of the I.T. Act. The ld. CIT(A) also took note of the AO's contention, that the assessee did not fall under the fourth limb of the definition of charitable purposes as contained in section 2(15) of the Act, in view of the decisions of the ITAT in the case of M/s Jalandhar Development Authority vs. CIT-2, Jalandhar and the case of M/s Jammu Development Authority vs. CIT. The learned CIT(A) also observed from the assessment order for the assessment year 2015-16, that the AO had brought on record an order dated 17.12.1999 by the U.P. Government, vide a which reservation of 2% was granted to the employees of the development authorities in respect of allotment of residential and commercial properties. He also noted, that the AO had observed that the authority was giving a 10% discount of the market value of the property allotted to the employees of the development authority on the allotment of the property and the AO had concluded that these discounts and reservations on allotment gave undue preferential treatment to the employees who were specified persons in section 13(3) of the Income Tax Act, thereby violating section 13(3) of the Income Tax Act. The learned CIT(A) held that since the order of the U.P. Government dated 17.12.1999 applied to assessment year 2014-15 as well and the facts of the case was similar, he was taking cognizance of this order while deciding the appeal of AY 2014-15, since it was purely a matter of fact, that was already in the knowledge of the appellant. The

Ld CIT(A) observed that after insertion of the proviso to section 2(15) w.e.f. 1.04.2009, certain bodies that had hitherto been treated as, 'charitable trust' on the ground of objects of general public utility, would not be treated so if they were carrying on an any activity in the nature of trade; commerce and business or any activity of rendering services in relation to any trade; commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application or retention of income from such activity. The learned CIT(A) noted that till the financial year 2002-03, the income of such authorities was exempt under section 10(20A) of the Act but after the omission of section 10(20A) of the Act w.e.f. 1.04.2003, the explanation, 'local authority' was defined to include only the authorities enumerated in the explanation to section 10(20) i.e. Panchayat, Municipal Committee, District Board and Cantonment Board. Authorities constituted under any other law for the purpose of dealing with and satisfying the need for housing accommodation or for the purposes of planning, development or improvement of cities, towns and villages were omitted and the benefit conferred by erstwhile section 10(20A) on such authorities were taken away. Thereafter, after insertion of the said proviso, any institution carrying on of any activity in the nature of trade, commerce or business would not be regarded to be a charitable organization.

8.4. The ld. CIT(A), thereafter proceeded to reproduce paragraphs from the judgments of the Hon'ble ITAT Amritsar Bench in the cases of M/s Jalandhar Authority and M/s Jammu Development Authority and further from the judgment of the Hon'ble High Court of Jammu & Kashmir in the case of M/s Jammu Development Authority, to point out that it was on the basis of the aforesaid judgments, that the AO had held that the assessee could not be said to be charitable in nature as it was involved in the activities which were hit by the provisos to section 2(15) of the Act w.e.f. 1.04.2009. Thereafter, he discussed the history of the assessee's case wherein he pointed out that following the abolition of section 10(20A) and insertion of explanation in section 10(20) by the Finance Act, 2002 w.e.f. 1.04.2003, the assessee was advised to seek registration under section 12A of the Act. However, its application was rejected by the ld. CIT, Allahabad by holding that the assessee was earning profit from the buying and selling of commercial land, building etc., on commercial lines. Aggrieved by the order dated 18.03.2005, refusing to register the assessee under section 12AA of the Act, the assessee had filed an appeal

before the ITAT, Allahabad Bench. Following the judgment and order dated 25.07.2005 passed by the ITAT Lucknow Bench in the case of Lucknow Development Authority, the assessee's claim for registration under section 12AA was granted vide Tribunal's order dated 10.11.2006. The Tribunal's order dated 25.07.2005 rendered in the case of Lucknow Development Authority (and other authorities) was challenged by the Revenue before the Lucknow Bench of the Allahabad High Court under section 260A of the Act. However, the Hon'ble ITAT High Court upheld the view taken by the ITAT, Lucknow and dismissed the Department appeal. The ld. CIT(A) noted the arguments of the assessee that the judgment so delivered by the Hon'ble Allahabad High Court, Lucknow Bench, after interpretation of the objects of the regulatory statute, had not been challenged by the Revenue before the Hon'ble Supreme Court and hence the said view expressed by the Hon'ble High Court, on the issue of applicability of amended provisions of section 2(15) of the Act, had also attained finality. He also took note of the fact that in the assessee's own case, the order of the ITAT Allahabad Bench dated 10.11.2006 had been confirmed by the Hon'ble Allahabad High Court vide their order dated 29.08.2016, in which the Hon'ble High Court had followed their earlier order dated 16.09.2013 in respect of Lucknow Development Authority. However, he observed that the Department had preferred an appeal against this order before the Hon'ble Supreme Court that still pending for adjudication. The ld. CIT(A) stated that after perusing the facts of the case and the case laws relied upon by the AO and the appellant, he could not find any evidence brought on record by the appellant to prove that any activity of charitable nature was either done during the year under consideration or any claim had been made that the appellant was a charitable organization. He noted that all that had been claimed was that the objects of the organization were mainly for providing services of, 'general public utility' which is covered by the definition of charitable activities under the Income Tax Act and hence exemption should be granted. The ld. CIT(A) then pointed out that on comparing the facts of the case for the year under consideration with the facts of the case on the basis of which the Hon'ble High Court had dismissed the appeal of the Revenue in the case of the appellant, it was apparent that the order passed by the jurisdictional High Court was based on a completely different set of facts, while the order passed by the ITAT Amritsar Bench in the case of M/s Jammu Development Authority, was directly on the facts of the case under consideration. The ld. CIT(A) reproduced the order of the Hon'ble Allahabad High Court, Lucknow Bench in the

case of CIT (1) vs. Lucknow Development Authority in ITA No. 149/2009 dated 16.09.2013 and held that a perusal of the order of the Hon'ble High Court showed that the said judgment had been given primarily on the basis of three very important assumptions or facts placed before them i. the object of the 'Authority' is to provide shelter to the homeless people and there is no objectionable material to treat these institutions as non-charitable, as has been brought on record by the AO. Ii. There is no material / evidence brought on record by the Revenue which may suggest that the assessee was conducting its affairs on commercial lines with a motive to earn profit or has deviated from its objects as detailed in the trust deed of the assessee. iii. There is no material on record to prove that section 60 to 63 had been violated. However, he pointed out , that in the same judgment of Hon'ble High Court had laid down the law that the benefit of section 11 was not absolute or conclusive. It was subject to the controls of section 60 to 63. If it was found, by keeping in view the provisions of section 60 to 63, that it is not so includable, then such income did not qualify for any relief. The ld. CIT(A) then pointed out that a perusal of assessment order showed that the AO had specifically brought on record those objects of the assessee authority, that were different from the objects relied upon by the Hon'ble Allahabad High Court while deciding the case in earlier year ie.'to provide shelter to the homeless people'. Secondly, he held that the AO had brought on record enough material to show that the assessee was conducting its affairs on commercial lines with a motive to only earn profits. He had also by relying on different objects of the assessee, as defined in U.P.U.P.D.A., 1973, brought on record the fact that there was no specific object of doing any charitable work of any kind for poor or economically weaker sections, no specific object for providing subsidy or subsidized assistance to any poorer or weaker sections of society. He noted that the assessee was generating income from the activities of disposing of the plots, flats, shops and commercial complexes with the definite motive of profit and not of charitable purpose which was the primary requirement of section 2(15) of the Act. The ld. CIT(A) observed that the AO had held that profit making by the appellant was not merely incidental or a bye product of the activity of the appellant but was its main predominant purpose and that there was no application of the income for any charitable purpose under the terms of the object. The ld. CIT(A) noted that the AO had considered section of the U.P.U.P.D.A., 1973 and observed that on dissolution of a Board, the fund and other property vested in the Board, shall vest in the State Government and

it was the discretion of the State Government to apply it for any purpose it deems fit and there was no mention of the fact that these funds would be utilized for any charitable purpose. Observing that these funds could be utilized for the purposes of any business or commercial activities, the AO had held that a condition was violative of section 11(1) r.w.s. 60, 61 and 63 and therefore, since the transfer of assets was revocable, therefore, section 11 and 12 of the I.T. Act do not apply in the appellant's case. He also observed that the order dated 17.12.1999 by the U.P. Government providing reservation of 2% for the employees of development authorities in respect of allotment of residential and commercial properties and 10% discount on the present value of the property allotted to the employees of the development authority, was a very important fact to be considered while the deciding the issue of exemption to be granted under section 11, as these employees were persons specified under section 13(3) of the Income Tax Act, 1961. Hence, this order violated section 13(3) of the Income Tax Act, 1961. The ld. CIT(A) pointed out that all these facts were not present before the Hon'ble Allahabad High Court while it was deciding the case of Lucknow Development Authority or the assessee's own case in earlier years, on which the assessee had heavily relied. Therefore, he held that judgment of the Hon'ble Allahabad High Court in the case of both the Lucknow Development Authority and the assessee was given on a completely different set of facts and therefore, could not have a binding force. He further held that it was well known that a decision was an authority for what it decided and not for what could be logically deduced therefrom. He, therefore, held that the judgment in the Lucknow Development Authority case was not an authority for the interpretation of the provisions of section 11(1) viz a viz section 13(3) of the Income Tax Act, 1961, under the facts and circumstances of the case under consideration. The learned CIT(A) also pointed out that all the judgments relied upon by the assessee, showed that the Departmental cases based on the decision in the case of M/s Jammu Development Authority, were dismissed for two reasons, firstly that the issue before the Hon'ble Jammu & Kashmir High Court was the cancellation of registration under section 12AA(3) of the Act and not the denial of exemption as was prevailing in all the cases and secondly that a summary dismissal of SLP in the case of Jammu Development Authority cannot be construed as a declaration of law by the Hon'ble Supreme Court under article 141 of the Constitution. He pointed out that in the present case, the assessee's registration had been cancelled by the Commissioner under section 12AA by the order dated

18.03.2005, therefore all the cases relied upon by the assessee lost their relevance and the case of Jammu Development Authority squarely applied to the case under consideration. He, therefore, proceeded to adjudicate the issue in line with the decision taken by the Hon'ble Jammu & Kashmir High Court in the case of Jammu Development Authority (supra). He held that the objects of the assessee may appear to be of general public utility for development of the area, but the purchase and sale of land and property made the appellant a commercial organization whose dominant object was not charity. There was no restriction on how income of the assessee could be utilized. He, therefore, held that the assessee was a commercial organization just like any other business firm engaged in the real estate business. He also observed that in the present case, usage or application of funds was missing. All surplus funds generated by the assessee through its various activities were to be ploughed back to fulfill the financial requirement for their future projects and schemes and the activities were aimed for earning profit only. The ld. CIT(A) held that if the primary or dominant purpose of a trust or institution was a charitable, the other objects which may not be charitable but may be merely ancillary or incidental to the primary or dominant purpose, would not prevent the trust or institution from being a valid charity. However, in the case of the assessee, the dominant object of the assessee was not charity but commercial activity carried on with profit motive which was evident from the object clause. He noticed that there was nothing in the object clause regarding application of any income of the assessee for charitable purposes including relief to the poor, education or medical relief or the advancement of any other object of general public utility. He observed that the major thrust of the assessee was that ADA is of general public utility as it satisfied the need for infrastructure requirement for the people of Allahabad and it is also doing planning and development of cities, towns and villages, but this argument was not sustainable because a charitable institution provides services for charitable purposes free of cost and not for a gain. He opined that similar activities were performed by big colonizers and developers who were earning a huge profit. If registration was granted then it would open a Pandora's box and anybody could claim the exemption from tax. Analysis of the objects of the assessee showed that it had turned it to a huge profit-making agency which it is taking money from the general public. Therefore, he held that the objects pursued by the appellant cannot be said to be charitable. The ld. CIT(A) then applied the tests laid by the Hon'ble Supreme Court in the case of Additional CIT vs.

Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR and CIT vs. Andhra Pradesh State Road Transport Corporation (1986) 159 ITR 1 and observed that in the case of the appellant being wound up or dissolved, the Government had exclusive right over the properties left over, with no restriction as regards the utilization of the leftover property for charitable purposes. Thus, he held that the assessee had failed the test laid down by the Hon'ble Supreme Court, that no part of the property could be distributed amongst the members in any form or utilized for their benefit either during its operational existence or in its winding up or dissolution and that the amounts handed over to the State Government should not become a part of General Revenue of the State, but were impressed with an obligation that it should be utilized only for the purpose for which it was interested. The ld. CIT(A), thereafter quoted from the decision of the Hon'ble Lucknow Bench in the case of Kanpur Development Authority vs. ACIT (ITA No. 332 & 333/Lkw/2013) on the subject of betterment charges, wherein the Hon'ble ITAT had held that the levy of such charges was an example of money lenders charging compound interest at high interest rates on amounts lent out from the poor people of the society. He quoted further from the decision of ITAT Lucknow Bench in the case of Kanpur Development Authority, wherein the Hon'ble ITAT had expressed the view, that the activity carried on by the assessee should be considered a business activity and would be hit by the proviso of section 2(15) of the Act and therefore, it no more remained an organization being an established for charitable purpose after the insertion of this proviso. In this judgment, the Hon'ble Lucknow Bench had also drawn attention to sub section 8 of section 13, inserted by the Finance Act, 2012, which laid down that nothing contained in section 11 and 12 would operate so as to exclude any income from the total income of the previous year of the person in receipt thereof, if the provisions of the first proviso to Clause 15 of section 2 become applicable in the case of the person in the said previous year and pointed out, that in view of this, the AO while making the assessment should not give benefit to the assessee under section 11 or section 12 from A.Y. 2009-10 even if the registration under section 12A is granted and it is subsequently found that in view of the proviso to section 2(15), the assessee can no more be regarded to have been created for charitable purposes. The Lucknow Bench had also observed that the order of the Allahabad High Court in the case of Lucknow Development Authority vs. CIT pertained to assessment years 2003-04 to 2006-07 and not to assessment years 2009-10 i.e. after insertion of the proviso of section 2(15). It also

analyzed the questions of law before the Hon'ble High Court and quoting from the decision of the Hon'ble Supreme Court in the case of CIT vs. Sun Engineering Pvt. Ltd. 198 ITR 197, wherein the Hon'ble Supreme Court had held that the judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court, it concluded that since the decision of the Hon'ble Allahabad High Court did not relate to the impugned assessment year, therefore, the decision would not assist the assessee. It also held that the said decision related to the registration sought under section 12A of the Act but the present case did not relate to registration under section 12A. From this judgment of the Hon'ble Lucknow Bench of the ITAT, the ld. CIT(A) held that the issue had been decided by distinguishing the judgment of the Hon'ble Allahabad High Court in the case of Lucknow Development Authority. Similarly in the case of Allahabad Development Authority, as the facts of the case were squarely covered by the judgments of the Hon'ble Jammu & Kashmir High Court and the Hon'ble ITAT Amritsar Bench in the case of M/s Jammu Development Authority, the ld. CIT(A) held that it was only the judgment available on the issue and therefore, had to be relied upon in the absence of any contrary judgment. The ld. CIT(A) also looked at the provisions of section 13 and pointed out exemption under section 11 would not be available in cases of violation of the provisions of section 13 of the Act. As per section 13(1)(c), where a part of the income of a charitable or religious trust / institution is used or applied directly or indirectly for the benefit of the settler, founder or certain other specified person under section 13(3) of the Act, exemption under section 11 would not be allowed. He pointed out that the assessee had given undue reservations and discount to the employees and officers of the authority who were the 'Managers' of the activities of the assessee's objects. He referred to the judgment of the Hon'ble Delhi High Court in the case of DIT vs. Maruti Centre for Excellence 2008 taxman 236 (Delhi), wherein it was held that the benefits of section 11 of the Act ceases even when registration under section 12A of the Act is available to the assessee, if the benefits are allowed directly or indirectly to the persons referred to in section 13(1) r.w.s. 13(3) of the Act. The ld. CIT(A) held that what the law postulates and requires, is that no benefit directly or indirectly must accrue to a person mentioned in section 13(3) by application of income for use of property of a charitable institution. Thus, giving 2% preference and 10% discount to employees, who are managers of the appellant from the market value of the properties being sold to them and

charging a profit from the general public for the same property cannot be said to be an activity of, 'general public utility'. He referred to the judgment of the Hon'ble Patna High Court in Buddha Vikas Samiti vs. CIT 199 taxman 395 (Patna), wherein it had been held that since registration of an organization as a charitable institution under the provisions of section 12A leads to exemption from payment of tax, therefore, such an organization will have to measure up to the strict parameters laid down under the Act to continue enjoying the benefit of exemption, failing which it may deprived of his registration as a charitable institution and benefit of exemption from payment of income tax. In that case where the assessee had utilized the form and organization of the trust, to confer benefits on members of the family who were trustees, the Court held that the strict parameters laid down in the Act had not been adhered to and the appellant had also violated the objectives of the trust. The ld. CIT(A) observed that in the present case, the benefits of reservation in allocation of property and discounts in payments have not been advanced for any purpose which is even remotely connected to the objects of the trust, on the other hand, the income of the trust had been utilized for the benefit of persons mentioned in sub section 3 section 13. The ld. CIT(A) also drew reference to the judgment of the Hon'ble Supreme Court in the case of Noida Entrepreneurs Association vs. Noida & Ors in W.P. (Civil) No. 150 of 1997, on 9th May, 2011, wherein examining the misuse of powers by the CEO / Office of Vikas Pradhikaran, the Hon'ble Supreme Court had held that the state or public authority which holds the property for the public or which has been assigned the duty of grant of largesse etc., acts as a trustee and therefore has to act fairly and reasonably. All such powers vested in him are meant to be exercised for public good and promoting the public interest and state actions are required to be non-arbitrary and justified on the touch stone of Article 14 of the Constitution. The Court went on to hold that every action of the State or its instrumentalities should neither be suggestive of discrimination or even give an impression of buyers, favoritism or nepotism. It, therefore, held that power had to be exercised by strictly adhering to the statutory provisions and to the factual situation of the case and any decision taken in an arbitrary manner contradicted the principle of legitimate expectation. Thus, the power must be exercised *bonafidely* for the purpose for which it was conferred and none another. On the basis of such reasoning, the Hon'ble Supreme Court had held the exercise of powers by certain respondents by favouring themselves and certain contractors to be a colourable exercise of

power.

9. The ld. CIT(A), thereafter, went on to examine the procedure for registration of trusts under section 12A or section 12AA and pointed out that at the time of granting of registration, the ld. Commissioner of Income Tax is only required to satisfy himself regarding the objects of the trust and genuineness of the activities of the trust, but not to examine the application of income. He pointed out that in the case under consideration, the assessee's only evidence in support of its submission of being a charitable organization, was the order under section 12A which had been initially denied by the ld. CIT(Exemption) but granted later by higher courts. The ld. CIT(A) argued, that if the CIT(Exemption) did not get to see the application of income while deciding the application for granting of exemption under section 12A, then such an order could not be the basis for a future claim and it was seen from the records that there was neither any evidence nor any claim by the appellant, that there were either a charitable organization or in fact doing any activities that were charitable in nature. He pointed out that after the amendment to section 2(15), the principles of general public utility had been removed from the definition of charity, if the assessee was conducting any business or trade. Thus, if general public utility was imparted with a profit motive, to hold that the same were charitable purpose would not be correct. The ld. CIT(A) reiterated that even if the registration was granted by the ld. CIT(A), then too, the AO was empowered to look into and the appellant had to prove that during the year under consideration, it undertook activities that were charitable in nature. The question of accessibility to such tax or exemption would therefore have to be determined each year and until the appellant was able to satisfy the AO that it fulfilled the conditions for exemption in a particular assessment year, it could not claim exemption as a rule. He went to state that there was no evidence brought on records that the appellant had undertaken any philanthropy during the year. Therefore, the claim of exemption could not be allowed for this year by only relying upon a judgment of a preceding year. He went on to state that the objects of the authority make it a commercial organization, with an aim of earning profit from activities in the nature of trade, commerce and business. Profit making was not merely incidental but the main object of the authority. There was no object of the appellant authority for doing any charitable work as there was no spending of income exclusively for the purpose of charitable activities and there was no

obligation on the part of the appellant to spend on, 'charitable purpose' only. Furthermore, he concluded by stating, that as per U.P.U.P.D.A., 1973, section 58 on dissolution of the authority all properties and funds vests with the State Government which had complete freedom and no restriction on the manner of their utilization. He further held that as the authority was in clear violation of section 13(3) of the Income Tax Act, 1961 by virtue of providing reservation of 2% and discount of 10% for the employees of the appellant in respect of allotment of residential land and commercial properties, he was of the opinion that the Allahabad Development Authority was not entitled for exemption under section 11 of the Income Tax Act and he, therefore, upheld the action of the AO in denying this exemption on the basis of the judgment of the Hon'ble Jammu & Kashmir, High Court in the case of M/s Jammu Development Authority (supra).

10. With regard to the addition of Rs. 12,97,37,974/- received as funds and grants which the assessee had directly taken to the balance-sheet without routing it through the income and expenditure account, the ld. CIT(A) held that the receipts on accounts of various funds were part of various trading receipts of the appellant. He held that it was of no consequence if these funds that were received by the assessee were tied up for specific purpose, as it was a well settled legal proposition that the utilization of a receipt does not alter its nature as income. He further held that it could not be said that the assessee did not have any control over these receipts. He noted the assessee's submission that the Government Order talks about creating a dedicated source of funds for infrastructure development and said sub modalities for the source of such funds. He held that a perusal of the order showed that there was no clause in the order stating that the funds needed to be returned to the State Government on completion of the project and that the assessee was only a custodian. He reproduced a chart showing this summary of utilization of such funds, which showed that the unutilized funds were retained by the assessee for consecutive years and utilized subsequently as and when required. He held that assessee receives these funds for furthering its objects and utilized them as per his own administrative and functional guidelines. With regard to the claim of the assessee of such funds being diverted by 'overriding title', The ld. CIT(A) held that the receipts were not getting diverted at source but rather being given to the assessee for specific infrastructure project. Thus, where the assessee

applied funds to discharge and obligation, after the fund had reached in its hands, it would be an application of income and this would result taxability of such income in the hands of the assessee. When it was only a third person becoming entitled to receive the amount under an obligation of the assessee, even before he could lay a claim to receive it as his income, that would be a diversion of income by overriding title, but when after the receipt of the income, the same is passed on to a third person in discharge of the obligation of the assessee, it would be a case of application of income and not diversion of income as held in CIT vs. Sunil J. Kinariwala (2003) 259 ITR 10 (SC). The ld. CIT(A) also referred to the decision of the Hon'ble Supreme Court in CIT vs. Sitaldas Tirathaldas 41 ITR 367 (SC), wherein the Hon'ble Supreme Court had held that the true test was whether the amount sought to be deducted in truth never reached the assessee as his income. The Hon'ble Court had held that there was a different between an amount which a person was obliged to apply out of his income and an amount, which by the nature of the obligation could not be said to be a part of the income of the assessee and held that where the obligation income was diverted before it reached the assessee it was deductible, but where the income was required to be applied to discharge an obligation after such income had reached the assessee, it remained the income of the assessee. Quoting from the aforesaid case, the ld. CIT(A) pointed out that the assessee had received all the amounts and was required to apply it for the development of specific infrastructural projects, that were the main object of the appellant. He therefore, concluded that the agency giving the authority the funds were their customers, on whose behalf the assessee was executing a specific project. He further pointed out that the assessee had retained the funds in a mixed pool and used them for other projects being executed by the assessee. These funds were not returned, as were being claimed by the appellant on completion of certain projects like 'Kashiram Samagrah Vikas Yojna, or other deposits 'for works'' or Kumbh Mela funds". In view of the above, he confirmed the action of the AO in bringing this income to tax. Similarly in the assessment years 2015-16 and 2016-17, following a similar line of reasoning, the ld. CIT(A) dismissed the appeals of the assessee and upheld the decision of the Assessing Officer to deny the exemption under section 11, and to tax the amount taken directly to the balance-sheet under the infrastructure fund and to determine the income of the assessee authority at Rs. 24,99,43,047/- for the assessment year 2015-16 and Rs. 39,68,32,697/- for the assessment year 2016-17.

11. The assessee is aggrieved at the denial of exemption under section 11 of the Act and the confirmation of the additions made by the ld. CIT(A). Accordingly, it is in appeal before us with the grounds of appeal cited earlier in this order. Shri. Ashish Bansal, Advocate (hereinafter referred to as 'the ld. AR') submitted that the assessee came into existence as a result of the Uttar Pradesh Urban (Planning and Development) Act, 1973 for the attainment of objects as specified in such statute and defined under section 7 of that Act, as per Notification No.2852/XXXVII-2-21(D.A.)-72 dated 19.8.1974. It was submitted that other Development Authorities with similar objects had also come into existence, which included the Lucknow Development Authority (hereinafter referred to as 'LDA', as a result of Notifications issued under the same statute i.e. U.P.U.P.D.A., 1973 .It was submitted that in the case of 'LDA' such objects as contained in section 7 of the U.P.U.P.D.A., had been recognized and held to be, 'general public utility', within the meaning of section 2(15) of the Income Tax Act, 1961 by the ITAT Lucknow Bench vide its order dated 25.7.2005 (ITA No. 686/Luc/2003). Following such judgment, the Allahabad Bench of the ITAT vide its order dated 10.11.2006 in ITA No. 390/Alld/2006 had granted registration to the Allahabad Development Authority under section 12AA of the Act. It was submitted, that initially the assessee's claim for registration under section 12A, had been rejected by the ld. CIT(A) vide his order dated 18.03.2005, on the grounds that the assessee's activities were in the nature of business activities like a trader, earning profit from buying and selling of land, building etc. However, the Hon'ble ITAT Allahabad Bench, following the decision of the Hon'ble ITAT Lucknow Bench, had not agreed with the ld. CIT(A) and held that the assessee was eligible for registration under section 12A of the Act, as the objects of the appellant authority were objects of, 'general public utility'. It was further submitted that in case of any deviation from the objects for which the registration had been granted, the ld. CIT(Exemption) had the authority to cancel the registration, by invoking sub section 3 of section 12AA of the Act. However, in the case of the assessee, sub section 3 had not been invoked, which meant that there was no change and or deviation in the objects for which the authority had been notified under section 4 of U.P.U.P.D.A. 1973 and the assessee authority was genuinely carrying on the activities in pursuance of the objects, on the basis of which it had been held to be eligible for registration under section 12AA of the Act and on the basis of which the registration had actually been granted to it. It was further submitted that against the order of the Income

Tax Appellate Tribunal in the case of LDA, the Revenue had preferred appeals before the Lucknow Bench of the Allahabad High Court and the Hon'ble High Court was pleased to uphold the claim for registration, vide judgment and order dated 16.09.2013 in the case of Lucknow Development Authority vs. CIT (2013) 98 DTR 183. It was submitted that while doing so, the Hon'ble High Court had taken due note of the plea as had been raised by the Revenue about the amendment in section 2(15) of the Act, particularly the proviso inserted in section 2(15). The ld. AR further submitted that against this judgment there was no appeal before the Hon'ble Supreme Court by filing SLP or otherwise. Thus, the said judgment had attained finality, so far as a nature of objects contained in the U.P.U.P.D.A, 1973 were concerned and in pursuance of which, the assessee had been granted registration under section 12AA of the Act. It was also submitted that against the ITAT Allahabad Bench order dated 10.11.2006, the Revenue had preferred an appeal under section 260A before the Hon'ble Allahabad High Court, which had since been dismissed along with a Bunch of appeals filed other authorities by the Hon'ble High Court, vide its judgment and order dated 29.08.2016, in which the lead case was captioned as CIT vs. Hapur Development Authority & Others in ITA No. 657 of 2007, wherein following the earlier judgment and order dated 16.09.2013 in the case of LDA, the Hon'ble High Court held that the findings and observations in the aforesaid judgment were squarely applicable to the case in hand also. The ld. AR quoted from the said judgment and order dated 29.08.2016. The ld. AR further argued that the Hon'ble High Court had been consistent in holding that the objects of the authority were, 'objects for advancement of general public utility' and that the assessee and other authorities had been carrying out the obligations mandated by the said statute. It was submitted that merely selling some objects on profit, would not amount to carrying on any business, trade or commerce and therefore, its case for exemption would not be affected even by the proviso to section 2(15) of the Act. The ld. AR also drew reference to the said judgment and orders of the Hon'ble High Court of Lucknow Bench dated 16.9.2013, in which he quoted from paragraph 31 of the said order to show that the Hon'ble Court had held that there was no material / evidence brought on record by the Revenue which may suggest that the assessee was conducting its affairs on commercial lines with a motive to earn profit or had deviated from its objects as mandated by law. The ld. AR also quoted from the judgment of the Delhi Bench of the ITAT in the case of Moradabad Development Authority (ITA No.

3005/Del/2013 for the assessment year 2009-10 dated 10.06.2016, in which the Hon'ble Delhi Bench had held that the judgment of the Hon'ble Supreme Court in the case of Safdarjung Enclave Educational Society vs. Municipal Corporation Delhi (1992) 3 SCC 390 were not applicable in the case of the assessee, as the charitable purpose and objects were never changed at any time in the case of the assessee. The Hon'ble ITAT had further held that the Delhi High Court decision in the case of India Trade Promotion Organization did not apply to that assessee's case, because the object of town planner has been held to be charitable at the time of registration under section 12A, which was very much in existence and even the Board Circulars were not applicable to the assessee in that case, since there was no change in the charitable purpose while doing the activity of development by the assessee. Therefore, it followed the judgment of the Hon'ble Allahabad High Court in the case of CIT vs. Lucknow Development Authority (supra). The ld. AR has submitted that the said order had since been affirmed by the Hon'ble Allahabad High Court vide judgment and order dated 3.05.2017. It was submitted that while deciding the same, the Hon'ble High Court had referred to and re-affirmed its view in earlier decision in the case of CIT(Exemption) vs. Yamuna Expressway Industrial Development Authority in ITA No. 107/2016 dated 21.04.2017, wherein it had observed and held that the attempt of the ld. CIT(Exemption) to equate the industrial development authorities with private builders and developers was thoroughly misconceived and showed an immature approach and misapplication to the issue in question. The Ld AR pointed out that the Hon'ble High Court had held, that a body or institution which is functioning for advancement of objects of general public utility and its activities, are not in the nature of trade, business or commerce and also not share profit making, such an institution is entitled to claim itself to be constituted for 'charitable purposes' and seek registration under section 12A(1) of the Act. The ld. AR submitted that ever since assessment year 2003-04, the assessee authority had been enjoying exemption from income tax by virtue of its being acting as a local authority under section 10(20) of the Act. It had been filed returns after claiming exemption under section 12AA and such exemption had been duly granted to it, after considering the objects for which the appellant authority had been notified. As there was no change in the facts of the case, such an authority could not have been treated to be engaged in any trade, commerce or related to business activity and that too within the meaning of provision of section 2(15). It was submitted

that in the financial year 2013-14, it had maintained books of accounts on a day-to-day basis for the activities carried by it and on the basis of such books of accounts, its annual accounts had been prepared audited and an audit report furnished in form 10-B, as prescribed under the Income Tax Rules. Thereafter, it had furnished its return under section 139 on 30.03.2015 showing nil income. It was submitted that the said return was complete in all respects, and supported by the audit report in the prescribed format. However, the Assessing Officer without expressing any opinion or recording any reasons as per clause ii of section 143(2) issued notice dated 28.09.2015 to the assessee and after overruling submissions of the assessee to the notices sent by him, passed an order under section 143(3) on 27.12.2016 when its income had been assessed at Rs. 19,51,31,111/-. After treating surplus revealed by income and expenditure account and adding sums that had been received by the assessee by way of grants and funds, to its income. Accordingly, the assessee had been subjected to tax creating a demand of Rs. 8.02 Crores. The ld. AR submitted that the ld. Assessing Officer had committed a grave, 'judicial impropriety' by not following the decision of Hon'ble High Court in its own case vide order dated 29.08.2016 and the earlier judgment dated 16.09.2013, in the case of LDA, by denying the claim for exemption under section 11. It was submitted that the first proviso to section 2(15) had been invoked by the ld. AO for the purposes of denying benefit of exemption, even though the same had been specifically held to be not applicable by the aforesaid Court judgments. It was reiterated that the registration granted to it under section 12AA of the Act continued to be in force and there was no change in the activities of the assessee. In such circumstances, he argued that the ld. AO could not have invoked the proviso to section 2(15) of exemption to the assessee. He also submitted that the ld. AO had indulged in a review of the objects of the appellant authority in violation of the law of the land as it had been declared by the Hon'ble Supreme Court in the case of the ACIT vs. Surat City Gymkhana (2008) 300 ITR 214 while dismissing the appeal of the Revenue that the Income Tax Appellate Tribunal was justified in law in holding that registration under section 12A was a fate accompli to hold the Assessing Officer back from further probe into the objects of the trust. The ld. AR also questioned the judgment of the ld. Assessing Officer in relying upon the decision of the Hon'ble Jammu & Kashmir High Court in the case of Jammu Development Authority, in preference to the binding judgments delivered by the jurisdictional High Court vide their judgments and order dated

16.09.2013, 29.08.2016, 21.04.2017 and 3.05.2017. It was submitted that the dismissal of the SLP by the Hon'ble Supreme Court against the judgment of the Hon'ble Jammu & Kashmir High Court did not mean and was not equivalent to a decision of the Hon'ble Supreme Court on the merits of the case. In furtherance of this argument, the ld. AR relied upon the decision of the Hon'ble Supreme Court in the case of M/s Rup Diamonds & Others vs. Union of India & Ors AIR 1989 (SC) 674. The ld. AR also invited our attention to the judgment of the Delhi Bench of the ITAT in the case of Moradabad Development Authority in ITA No. 4631, 4632/Del/2017 dated 4.01.2018 wherein the Hon'ble ITAT had observed that where the assessee had been allowed exemption under section 11 of the Act consistently in the past, either by the AO himself or by virtue of the orders of the Tribunal as affirmed by the Hon'ble High Court, the settled position ought not to have been ordinarily disturbed by harping on the dismissal of the SLP against the judgment of the Hon'ble Jammu & Kashmir High Court in Jammu Development Authority. The Hon'ble Tribunal had held that firstly the issue before the Hon'ble Jammu & Kashmir High Court was cancellation of registration by the ld. CIT under section 12AA (3) of the Act and not denial of exemption, as was prevailing in the case of Moradabad Development Authority. Secondly, it held that it was a settled legal position that summary dismissal of the SLP cannot be construed as a declaration of law by the Hon'ble Supreme Court under Article 141 of the Constitution. Thus, the mere dismissal of the SLP by the Hon'ble Supreme Court cannot be construed as having the effect of elocution of law by the Hon'ble Supreme Court on this subject against the assessee. In the circumstances, the ITAT held that the view point of the Department that the mandate of the Hon'ble Jurisdictional High Court on the issue had seized its binding force and hence preference should be given to the judgment of the Hon'ble Jammu & Kashmir High Court, could not be countenanced. The Ld AR pointed out that the Hon'ble Tribunal had held that the decision taken by the jurisdictional High Court in several cases, including that of the assessee, held the field and accordingly the benefit of exemption under section 11 could not be denied. The ld. AR further submitted that the assessment order passed by the Assessing Officer suffered from perversity, where he had observed that the appellant authority did not fulfill the test laid down by the Hon'ble Supreme Court in the case of CIT vs. Andhra Pradesh State Road Transport Corporation (1986) 159 ITR 1 SC. In such case, the Court had observed that, 'the amount handed over to the State Government does not become a part of the general revenues of the

State, but is impressed with an obligation that it should be only for the purpose for which it is entrusted, namely, road development. It is not, and cannot be disputed that road development is an object of 'general public utility'. The ld. AR submitted that the AO had misinterpreted section 58 of U.P.U.P.D.A., 1973 as he had read only sub section 2 Clause (a) but did not read Clause (d) thereof. He took us through the entire section and drew particular emphasis to Clause (d) wherein it was stated,

> "d. for the purpose of carrying out any development which has not been fully carried out by the Authority and for the purpose of realizing properties, funds, dues referred to in Clause (a) the functions of the authority shall be discharged by the State Government."

Thus, it was submitted that the appellant authority fully met the test laid down by the Hon'ble Supreme Court in the case of CIT vs. APSRTC (supra). The ld. AR further submitted that the assessment order was completely unenforceable in the eye of law for the reason that receipts amounting to Rs.12,97,37,974/-, which had been added back to the income of the assessee, did not belong to the appellant authority. The ld. AO had failed to appreciate that this fund was regulated by Instruction No. 152/9/AA-1-1998 dated 15.01.1998 and the said fund stood diverted in favour of others by an 'overriding title'. It was further submitted that the issue of taxability of such receipts stood covered in favour of the appellant authority as per the judgment and order passed by the Hon'ble Allahabad High Court in the case of Jit & Pal X-Rays Pvt. Ltd (supra) wherein their Lordships had observed that where the obligation to pay the amount was attached to the very source of the income, it was not a case of mere application of income but was a case of diversion of income by overriding charge. It was further submitted, that in any case, the issue of addition of Rs.12.97 Crores on account of, 'infrastructure fund' was specifically covered in favour of the assessee as per the judgment of the Delhi Bench of the Hon'ble ITAT in the case of CIT vs. Saharanpur Development Authority in ITA No. 02/Del/2008 dated 23.12.2008. It was submitted that Saharanpur Development Authority was a similar authority notified under section 4 of the same enactment i.e. U.P.U.P.D.A. 1973. It was also submitted that the Hon'ble Allahabad High Court in the case of Lucknow Development Authority in its order and judgment dated 16.09.2013 had recorded the following comments which is as under: -

"*From the record, it also appears that the "Authority" had been maintaining infrastructure, development and reserve fund IDRF as per the notification dated 15.01.1998, the money transferred to this fund is to be utilized for the purpose of project as specified by the committed having constituted by the State Government under the said notification and the same could not be treated to be belonging to the "Authority" or the receipt is taxable nature in its hands. For this reason also, it appears that the funds are utilized for general utility."*

Thus, the denial of the authorities claimed for exemption was contrary to the judgment and order dated 16.09.2013 as delivered by the Lucknow Bench of the Jurisdictional High Court and fully covered the appellant's own case vide its judgments in the cases of i. Yamuna Expressway Industrial Authority ii. Moradabad Development Authority (supra).

12. The ld. AR also submitted that the amended section 2(15) of the Act did not have blanket application but its applicability would vary from case to case depending on the facts of each case. He invited our attention to CBDT Circular No. 11 of 2008 dated 9.12.2008 read with subsequent Circular No. 1 of 2009 dated 27.03.2009, wherein the Board had pointed out that whether the assessee had for its object, the advancement of any other object of 'general public utility', was a question of fact and was to be decided on its own facts and no generalization was possible. The ld. AR submitted that the Hon'ble Allahabad High Court in the judgment and order dated 16.09.2013, had specifically held that the amended section 2(15) was not applicable in case of an authority constituted under the U.P.U.P.D.A., 1973 and the appellant authority was one such authority. He took us through the contents of para 29 of the said order wherein the Hon'ble High Court had held that where the trust was carrying out its activities on non-commercial lines with no motive to earn profits, for the fulfillments of its aims and objectives which were charitable in nature and in the process earns some profits, it would not be hit by the proviso to section 2(15). The Hon'ble High Court had further held that the aims and objects of the assessee trust, 'admittedly charitable in nature'. The ld. AR thereafter assailed the dismissal of the appeal by the ld. CIT(A) vide his order dated 19.02.2020. He submitted that a perusal of the appellate order would show that the ld. CIT(A) has applied the term, 'charitable purposes' as envisaged in section 2(15) in a very narrow conspectus. He submitted that the term charitable purpose did not rule out any surplus arising out of activities of the trust / institution but it simply meant that the surplus could again be re-utilized for the objects of an institution.

The view taken by the ld. CIT(A) was not only contrary to the observations made / findings given by the ITAT in its order dated 25.07.2005 in the case of Lucknow Development Authority, but also against the letter and spirit of the Hon'ble Supreme Court decision in the case of Aditanar Educational Institution vs. ACIT (1997) 224 ITR 310. The ld. AR submitted that the view of the ld. CIT(A) that the appellant authority had been engaged in the business of trade and commerce and development of real estate had been categorically discarded by the ITAT Lucknow Bench in the case of LDA, which had recorded a finding that the LDA had been engaged in the activities of, 'general public utility' thereby fulfilling the objects of the U.P.U.P.D.A., 1973 promulgated by the State Government. The ld. AR submitted that the ld. CIT(A) too had misconstrued and misapplied the provisions of section 58 of the U.P.U.P.D.A., 1973 by omitting to consider sub clause (d) of the said section which specifically pointed out that the funds upon dissolution of the authority would vest in the hands of the State Government for the purposes of continuing the development work which had not been fully completed by the authority. Similarly, on the issue of the invoking of provisions of section 13(3) of the Act for the reason, that some employees and officers had been given various benefits, it was submitted that such benefit had been allowed to the persons concerned as a matter of policy adopted by the State Government and was a welfare measure for the public at large. Thus, the denial of claim for exemption on that ground was wholly unjust, misconceived and unlawful. On the issue of addition of, 'receipts of funds and grants' to the income of the appellant authority, the ld. AR submitted that the ld. CIT(Appeal's) observation that the surplus arising out of receipts under the infrastructure and other funds had been held to be utilized and being carried forward from year to year, it was clarified that the infrastructure and other funds were invariably being used for long term projects wherein the gestation period was very long and until the completion of infrastructure projects, the funds allotted for such projects or unutilized part thereof were to necessarily remain with the assessee and was only on completion of such projects that the surplus if any, had to be reverted back to the State Government. Therefore, at no point of time could the appellant authority be said to have any right, title or interest in such receipts. It had been holding such receipts / unutilized portion thereof, merely as a trust for rendering the account for the State Government. He reiterated that all the receipts under the infrastructure and other funds stood diverted and continued to stand in favour of the State Government and view to the

contrary as has been taken by the appellate authority is contrary to the various judicial pronouncement cited by him.

13. The ld. AR, thereafter, pointed out that the issue relating to allowance of exemption under section 2(15) to the development authority as also non taxability of receipts of grants and funds for infrastructure and development had been decided by the Coordinate Bench of this Tribunal in Circuit Bench Varanasi in the case of Varanasi Development Authority vs. ACIT, Circle-3, Varanasi in ITA Nos. 264 265, 266 & 267/Alld/2017 relating to assessment years 2011-12, 2012-13, 2013-14 and 2014-15 wherein the Hon'ble ITAT had followed its earlier judgment dated 10.03.2022 in the case of Lucknow Development Authority vs. ACIT (Exemption) in ITA No. 185 & 186/Lkw/20119 for assessment year 2013-14. ITA No. 163 & 164/Lkw/2019 for assessment year 2014-15 and 2015-16 and ITA No. 439/Lkw/2019 for assessment year 2016-17. The ld. AR took us through the relevant portions of that judgment wherein the Hon'ble Tribunal had observed that while holding that the Lucknow Development Authority was entitled for exemption under section 11 of the 1961 Act being engaged in charitable activities by pursuing objects of advancement of 'general public utility', it had dealt with the judgment and order passed by the ITAT Amritsar Bench in the case of Jammu Development Authority. It had also dealt with the appellate order passed by the Lucknow Tribunal in the case of Kanpur Development Authority which had since been recalled by the Lucknow Tribunal and subsequently decided in favour of the tax payer. The Hon'ble Circuit Bench Varanasi had expressed its agreement with the above decision of the Lucknow Bench, to grant exemption under section 11 of the 1961 Act to the Lucknow Development Authority and proceeded to analyze the relevant statute to determine whether the Varanasi Development Authority could be considered to be similarly placed to the Lucknow Development Authority, so far as its constitution, activities and other relevant facts were concerned, with a view that if so thence can similar benefits be extended to that assessee with reference to its claim for exemption under section 11 of the Act. After a detailed examination of the provisions of U.P.U.P.D.A., 1973, the Varanasi Circuit Bench held that the Varanasi Development Authority like the Lucknow Development Authority was also constituted under the provisions of the 1973 State Act and its activities were Para Materia with the activities of the LDA. Thus, it held that in view of the activities carried out by that assessee and the ratio of various decisions relied upon by in

its order, that the assessee was engaged in the advancement of object of, 'general public utility', the predominant object being town planning and development of development area in its jurisdiction in a planned manner with no profit motive while the sale of properties etc., were ancillary objects to its predominant object and the assessee was not engaged to any business, trade and commerce. Accordingly, it had held the Varanasi Development Authority to be a charitable entity under section 2(15) of the Act and eligible for exemption under section 11 of the Act. With regard to the many questions raised by the ld. AO and the ld. CIT(A) in their orders, the ld. AR took us through specific portions of the order of the Circuit Bench, Varanasi, wherein the Tribunal had recorded the following findings. i. The fundamental and predominant objects of constituting these authorities by the State Government was to have planned, regulated and integrated development of the development area according to plan and not otherwise. The purpose was therefore to have plan development rather than making profits. ii. The funds of the authority were to be applied towards meeting the expenses incurred by the authority in the administration of this Act (U.P.U.P.D.A., 1973) and for no other purpose. iii. On the issue of betterment charges, it was held that, if any development scheme is carried out by the authority in any development area which has led to increase in value of properties in that area, there are costs associated with the implementation of that particular development scheme which is to be incurred by the authority and if the said costs are recouped from the property owners of that area, it will not make the authority a commercial enterprise existing for profits, even if some surplus is generated on that count, as section 20(2) of the 1973 Act, mandate that the funds of the authority are to be applied towards meeting the expenses of the authority in the administration of that Act and for no other purpose. iv. The contention of the Revenue that the assessee was a commercial enterprise which had undertaken various civil construction work on behalf of State Government departments was without merit, because it would always be open to the State Government to entrust civil construction work to a specialized body which is equipped with all specialized personnel, material, equivalent, no how etc., to carry out these civil constructions but that did not mean that the assessee who's predominant object was to tackle a problem of town planning and urban development in a planned manner, would lose its charitable character of advance and objects of, 'general public utility'. V. The Revenue had not brought any incriminating material to prove that expenses from

the infrastructure fund were not incurred by the assessee for infrastructure development of area within its jurisdiction. The amounts had been transferred to the infrastructure development fund as per Government Order No.152/9/A-1-1998 and subsequent GOs and the Hon'ble Allahabad High Court in the case of CIT vs. Lucknow Development Authority 2013 38 taxman.com 246 (Allahabad) at paragraph 29 had held that the same could not be treated as belonging to the authority or receipt being taxable in nature in the hands of the authority.

14. Finally, the ld. AR invited our attention to the judgment of the Hon'ble Supreme Court in ACIT (Exemptions) vs. Ahmedabad Development Authority & Others reported in (2022) 449 ITR 1 (SC) wherein the issue regarding, 'object to general public utility' viz a viz., 'development authority' had been decided. He drew our attention to para 141 of the order of the Hon'ble Supreme Court in which the Hon'ble Court had held that the mere sale or lease of Government property did not imply trade or business but the crucial or determinative element in the venture was whether the performance of a function was actuated by profit motive. The ld. AR then invited our attention to paragraph 144 of the said order of the Hon'ble Supreme Court, wherein the Hon'ble Court had held, 'fee, cess and any other consideration' had to receive a purposive interpretation in the present context. It further held that if fee or cess or such consideration is collected for the purpose of an activity, by a State Department or entity, which is set up by a statute, its mandate to collect such amounts cannot be treated as consideration towards or business. The ld. AR also our attention to the observations of the Hon'ble Supreme Court with regard to the statutory bodies like itself, wherein the Hon'ble Court had stated, '*likewise, statutory boards and authorities, who are under mandate to develop housing, industrial and other states, including development of residential housing at reasonable or subsidized costs, which might entail charging higher amounts from some sections of the beneficiaries, to cross-subsidize the main activity, cannot be characterized as engaging in business. The character of being, 'State', and such corporations or bodies set up under specific law (whether by States or the Centre) would, therefore, not mean that the amounts are, 'fee' or, 'cess' to provide some commercial business service. In each case, at the same time, the mere nomenclature of the consideration, being a, 'fee' or, 'cess', is not conclusive. If the fee or cess, or other consideration is to provide an essential service, in larger public interest, such as water cess or sewage cess or fee, such consideration, received by a statutory body, would not be*

considered, 'trade, commerce or business' or service in relation to those. He thereafter read out from para 176 of the said order relating to statutory corporations, authorities or bodies wherein the Hon'ble Supreme Court had held as under: -

> *"The Hon'ble Supreme Court after considering the arguments that statutory Boards and Corporations have to recover the cost of providing essential goods and services in public interest and also fund large scale development / maintenance of public property which entailed recovery of charges or fees, interest and interest for holding deposits held in para 177 that, 'the mere fact that these body have to charge amounts towards supplying goods and articles, or rendering services i.e. for fees for providing typical essential services like providing water, distribution of food grains, distribution of medicines, maintenance of roads, parks etc., ought not to be characterized, 'commercial receipts'. The rational for such exclusion would be that if such rates, fees, tariffs, etc., determined by statutes and collected for essential services are included in the overall income as receipts as part of trade, commerce or business, the quantitative limit of 20% imposed by the second proviso to section 2(15) would be attracted thereby negating the essential general public utility object and thus driving up the cost to be borne by the ultimate user or consumer which is the general public."*

15. The ld. AR thereafter, invited our attention to the summary in relation to statutory authorities / corporations contained in para 190 of the judgment of the Hon'ble Court in which the Hon'ble Court has held as under: -

> *"190. In light of the above discussion, this court is of the opinion that:*
>
> *(i) The fact that bodies which carry on statutory functions whose income was eligible to be considered for exemption under Section 10(20A) ceased to enjoy that benefit after deletion of that provision w.e.f. 01.04.2003, does not ipso facto preclude their claim for consideration for benefit as GPU category charities, under Section 11 read with Section 2(15) of the Act.*
> *(ii) Statutory Corporations, Boards, Authorities, Commissions, etc. (by whatsoever names called) in the housing development, town planning, industrial development sectors are involved in the advancement of objects of general public utility, therefore are entitled to be considered as charities in the GPU categories.*
> *(iii) Such statutory corporations, boards, trusts authorities, etc. may be involved in promoting public objects and also in the course of their pursuing their objects, involved or engaged in activities in the nature of trade, commerce or business.*
> *(iv) The determinative tests to consider when determining whether such*

statutory bodies, boards, authorities, corporations, autonomous or self-governing government sponsored bodies, are GPU category charities:

(a) Does the state or central law, or the memorandum of association, constitution, etc. advance any GPU object, such as development of housing, town planning, development of industrial areas, or regulation of any activity in the general public interest, supply of essential goods or services such as water supply, sewage service, distributing medicines, of food grains (PDS entities), etc.;

(b) While carrying on of such activities to achieve such objects (which are to be discerned from the objects and policy of the enactment; or in terms of the controlling instrument, such as memorandum of association etc.), the purpose for which such public GPU charity, is set- up whether for furthering the development or a charitable object or for carrying on trade, business or commerce or service in relation to such trade, etc.;

(c) Rendition of service or providing any article or goods, by such boards, authority, corporation, etc., on cost or nominal mark-up basis would ipso facto not be activities in the nature of business, trade or commerce or service in relation to such business, trade or commerce;

(d) where the controlling instrument, particularly a statute imposes certain responsibilities or duties upon the concerned body, such as fixation of rates on pre-determined statutory basis, or based on formulae regulated by law, or rules having the force of law, setting apart amenities for the purposes of development, charging fixed rates towards supply of water, providing sewage services, providing food- grains, medicines, and/or retaining monies in deposits or government securities and drawing interest therefrom or charging lease rent, ground rent, etc., per se, recovery of such charges, fee, interest, etc. cannot be characterized as "fee, cess or other consideration" for engaging in activities in the nature of trade, commerce, or business, or for providing service in relation in relation thereto;

(e) Does the statute or controlling instrument set out the policy or scheme, for how the goods and services are to be distributed; in what proportion the surpluses, or profits, can be permissively garnered; are there are limits within which plots, rates or costs are to be worked out; whether the function in which the body is engaged in, is normally something a government or state is expected to engage in, having regard to provisions of the Constitution and the enacted laws, and the observations of this court in NDMC; whether in case surplus or gains accrue, the corporation, body or authority is permitted to distribute it, and if so, only to the government or state; the extent to which the state or its instrumentalities have control over the corporation or its bodies, and

whether it is subject to directions by the concerned government, etc.;

(f) As long as the concerned statutory body, corporation, authority, etc. while actually furthering a GPU object, carries out activities that entail some trade, commerce or business, which generates profit (i.e., amounts that are significantly higher than the cost), and the quantum of such receipts are within the prescribed limit (20% as mandated by the second proviso to Section 2(15)) the concerned statutory or government organizations can be characterized as GPU charities. It goes without saying that the other conditions imposed by the seventh proviso to Section 10(23C) and by Section 11 have to necessarily be fulfilled.

(v) As a consequence, it is necessary in each case, having regard to the first proviso and seventeenth proviso (the latter introduced in 2012, w.r.e.f 01.04.2009) to Section 10(23C), that the authority considering granting exemption, takes into account the objects of the enactment or instrument concerned, its underlying policy, and the nature of the functions, and activities, of the entity claiming to be a GPU charity. If in the course of its functioning it collects fees, or any consideration that merely cover its expenditure (including administrative and other costs plus a small proportion for provision) such amounts are not consideration towards trade, commerce or business, or service in relation thereto. However, amounts which are significantly higher than recovery of costs, have to be treated as receipts from trade, commerce or business. It is for those amounts, that the quantitative limit in proviso (ii) to Section 2(15) applies, and for which separate books of account will have to be maintained under other provisions of the IT Act."

16. Finally, he took us through paragraph 253 wherein the Hon'ble Supreme Court had recorded its findings with regard to exemption under section 2(15) and made particular reference to paragraph A.3 and paragraph B.1 wherein the Hon'ble Court had held that the charging of any amounts towards consideration for such activity (advancing general public utility on cost basis or nominally above cost could not be considered, 'trade, commerce or business or any service in relation thereto). It was only when the charges 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 (paragraphs A.3) and that the amounts or any money charged by a Statutory Corporation, Board or any other body set up by the Government, for achieving what are essentially, 'public functions / services' (housing, industrial development, supply of water, sewage management, supply of food grains, 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 inlying with the Larger Bench judgments of the Court in cases of Ram Tanu Cooperative Society and NDMC. The ld. AR submitted that as per aforesaid decision of the Hon'ble Supreme Court, it was very clear that; i) the Development Authorities were involved in the advancement of objects of general public utility, therefore are entitled to be considered as charities in the GPU categories and the purpose for which such public GPU charity, is set-up is for furthering the development as per its charitable object ;ii) per se, recovery of charges, fee, interest for such services, etc. cannot be characterized as "fee, cess or other consideration" for engaging in activities in the nature of trade, commerce, or business, or for providing service in relation in relation thereto; iii) in the present case, the statute set out the policy or scheme, for how the goods and services are to be distributed; iv) in the course of its functioning if it collects fees, or any consideration that merely cover its expenditure (including administrative and other costs plus a small proportion for provision) such amounts are not consideration towards trade, commerce or business, or service in relation thereto; v) 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.

17. He further submitted as per the judgment of Hon'ble jurisdictional High Court in the case of Lucknow Development Authority along with the decision of the Hon'ble ITAT in the case of Saharanpur Development Authority and Varanasi Development Authority, the amounts received towards infrastructure funds were not the income of the appellant. The ld. AR pointed out that in its judgment of Lucknow Development Authority (supra), the Hon'ble High Court in paragraph 29 had pointed out that since the money transferred to the infrastructure fund was to be utilized for the purposes of project as specified by the committee having constituted by the State Government under the said notification, the same could not be treated as belonging to the, 'authority' nor was the receipt of taxable nature in its hands. The ld. AR pointed out that this paragraph should not be read in isolation but should be read in conjunction with paragraphs 26, 27 and 28 wherein the Hon'ble High Court had discussed that the activities of

the appellate authority were charitable in nature as its aims and objects were admittedly charitable and that selling some product at a profit will not ipso facto be hit by the proviso to section 2(15) because the intention of the trustees and the manner in which the activities of the institution undertaken were highly relevant to decide the applicability of proviso to section 2(15) and there was no material to suggest that the assessee was conducting its affairs on commercial lines with the motive to earn profit or had deviated from its objects. The ld. AR argued that when read in conjunct, these paragraphs constituted the ratio decidendi of the Hon'ble High Court's order and were therefore, binding upon all Tribunals and authorities within its jurisdiction. Refuting the contention of the ld. DR that the amounts credited to the infrastructure fund were liable to be rooted through the income and expenditure account as laid down by the Delhi Bench of the Tribunal in the case of Mussoorie Dehradun Development Authority vs. Additional CIT in ITA Nos. 830/Del/2010 and 853/Del/2011, the ld. AR pointed out that the Hon'ble Delhi Bench had not taken into account its own order in the case of Saharanpur Development Authority vs. Additional CIT, Saharanpur in ITA No. 02/Del/2018. It was further submitted that the Delhi Bench of the Tribunal in the case of Saharanpur Development Authority in its order dated 23.12.2008 had held that, that assessee had no control over the infrastructure development fund and was maintaining this account as a trustee, because the amount had to be used on the direction of a power committee under the Chairman of Commissioner of Income Tax, Meerut. The Hon'ble Tribunal had pointed out that the facts of the case were identical to the facts before the Hon'ble Delhi High Court in the case of CIT(Appeal) vs. Delhi State Industrial Development Corporation, wherein the Hon'ble Delhi High Court had held that interest income on deposits earned from surplus funds generated and deposited into the Narela revolving fund, was not the income of that assessee as the amounts lying in the Narela revolving fund, which was to be used on the directions of the Government, was not the property of the assessee but rather that of the Delhi administration. Similarly, the order had been passed by relying on the case of Karnataka Urban Infrastructure Development and Financial Corporation where the Tribunals found that funds deposited by the finance corporation as an agency for implementation of Mega City Scheme worked out by the Planning Commission and Ministry of Urban Development and Employment for development of Urban infrastructure to Bangalore city related to the State Government and that assessee was only

holding the funds as a trustee on behalf of the Government. It was submitted that the facts of the assessee's case were identical and therefore, relying upon these judicial precedents, the infrastructure fund could not be assessed in its hands. It was further argued that the order of the Hon'ble High Court in the case of the Lucknow Development Authority had subsequently been followed by various benches of the Tribunal in the cases of Lucknow Development Authority, Varanasi Development Authority and Meerut Development Authority by holding the same to be binding and the department had never earlier questioned the binding nature of the order of the Hon'ble Allahabad High Court, Lucknow Bench in the case of Lucknow Development Authority therefore, the same was a binding precedent which ought to be followed, if there was any difference of opinion with regard to the orders of the various Benches of the Tribunal in the cases of Lucknow Development Authority, Varanasi Development Authority, Saharanpur Development Authority and Meerut Development Authority, then before any adverse view was taken in the case of the assessee, the matter could be referred to a Special Bench. Continuing his arguments further, the ld. AR pointed out that the Hon'ble Delhi Bench of the ITAT had ruled differently in the case of Mussoorie Dehradun Development Authority on the basis of the fact that the same did not constitute a State and it had not been registered under section 12A of the Act. The ld. AR further submitted that the ld. Member writing the order in the case of Mussoorie Dehradun Development Authority had not pointed out the reasons for differing with his own order in the case of Saharanpur Development Authority. Be that as it may, it was submitted that the case of the assessee was materially different from that of Mussoorie Dehradun Development Authority because the assessee was not registered under section 12A in that case, while the assessee was a registered under section 12A. The ld. AR went on to state that because of such registration, since these were capital receipts, even if the view was taken that they constituted the receipts of the assessee authority, the could at best be treated as a corpus fund and therefore, were not required to be rooted through the income and expenditure account of the assessee authority or be taken into account while computing the excess of income over expenditure for the purposes of benefits of section 11. In conclusion, the ld. AR placed reliance on two more judgments i.e. that of the ITAT Amritsar Bench in the case of Jalandhar Development Authority vs. DCIT in ITA Nos. 377 to 379/Asr/2023 where the external development charges collected by that assessee on the

directions of the State Government collected and spent as per the provisions of the Punjab Apartment and Property Regulation Act, 1995 had been held to be only in the custody of the Urban Development Authority and accordingly, the additions made by the ld. AO by treating such funds as assessable in the hands of that assessee had been deleted. The ld. AR also placed reliance on the judgment of the Hon'ble Chandigarh Bench of the Tribunal in the case of Improvement Trust Sungrur vs. ACIT (Exemption), Circle, Chandigarh in ITA No. 273/CHD/2020 where the Hon'ble Bench had held that neither the second proviso to section 2(15) or section 13(8) were applicable to the assessee's case and therefore, the aggregate receipts of the assessee trust from its activities of sale of plots, flats and commercial booths and also its income earned from non-construction fee, transfer fee, penal interest and compounding fee etc., were held to be entitled for exemption under section 11. In view of the aforesaid arguments, it was prayed that the appeal filed by the appellant authority deserved to be allowed and the entire addition made by the Assessing Officer and confirmed by the Appellate Authority be deleted and the nil income filed by the assessee be accepted. It was further submitted that the facts of the case relating to the assessment years 2015-16 and 2016-17 which were also for adjudication before this Hon'ble Bench in ITA No. 88 & 89/Alld/2020 were similar and only the figures were different. In the assessment year 2015-16, the addition of Rs. 1,49,06,902/- had been made on account of net profit shown in the income and expenditure account as exemption under section 11 had been denied, whereas Rs. 23,50,36,145/- were added back on account of grants and funds received and taken directly to the balance-sheet. In the assessment year 2016-17, an addition of Rs. 3,00,11,855/- was made on account of net profit shown in income and expenditure account (as exemption under section 11 was denied) and a sum of Rs. 36,68,20,842/- was added back on account of grants and funds received as above and taken directly to the balance-sheet. It was submitted that the submissions made with respect to assessment year 2014-15 were reiterated and being relied upon by the assessee in relation to an appeals for these two assessment years also.

18. On the other hand, Shri. Amalendu Nath Mishra, CIT DR (hereinafter referred to as 'the ld. CIT DR") also invited our attention to the judgment of the Hon'ble Supreme Court in the case of Ahmedabad Development Authority and Others (supra). He made particular reference to sub para 'H' of para 253 in which the Hon'ble Supreme Court had stated that the conclusions

arrived at by way of this judgment, neither precluded 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, exceeded the quantitative limit. The ld. CIT DR highlighted that the Hon'ble Supreme Court had held that the assessing authorities must on an yearly basis, scrutinize the record to discern whether the nature of the assessee's activities, constituted 'trade, commerce or business' based on its receipts and income (i.e. whether the amounts were charged are on a cost basis, or significantly higher). He pointed out that the Hon'ble Supreme Court had held, that if it was found that they were significantly higher, then they were in the nature of, 'trade, commerce and business and in such situations, it must be examined as to whether the quantified limit in the proviso to section 2(15) had been breached, thus disentitling them to exemption. The ld. DR also invited our attention to sub para B.2 of para 253, wherein the Hon'ble Supreme Court has held that in every case, the assessing authorities would have to scrutinize the records to determine if and to what extent the consideration or amounts were significantly higher than the cost and a nominal mark up, and if such was the case then such receipts would indicate that the activities were in fact, in the nature, 'trade, commerce or business'. On the strength of these observations of the Hon'ble Supreme Court, the ld. CIT DR argued that the Assessing Officer and the ld. CIT(A) had come to conclusive finding, that the assessee authority was indulging in activities which were in the nature of 'trade, commerce or business' and therefore, it would have to comply with the quantified limit in the proviso to section 2(15) of the Act to claim the benefit of exemption under section 11.

19. The ld. CIT DR then drew reference to the orders passed by the Assessing Officer. He pointed out that the activities Assessing Officer had found that the activities of the authority were in the nature of trade, commerce and business and the aggregate value of receipts from such activity were in excess of Rs. 25,00,000/- and as the authority was not in the field of education or in the field of medical relief but was within the scope of general public utility, the proviso 2(15) of the Act, was applicable in this case. The AO had relied upon the decision of the Hon'ble ITAT in the case of M/s Jammu Development Authority dated 14.06.2012, which in turn has relied upon the earlier decision in the case of Jalandhar Development Authority and the decision of the Hon'ble ITAT Chandigarh Bench in the case of Punjab Urban Planning &

Development Authority. The Hon'ble High Court of Jammu & Kashmir had dismissed the appeal filed by M/s Jammu Development Authority and while doing so, referred to the addition of the first and second proviso made by Finance Act, 2008 w.e.f. 1.04.2009 to section 2(15) of the Act. The ld. CIT DR pointed out that the Hon'ble Supreme Court had also dismissed the SLP filed by M/s Jammu Development Authority, vide its order dated 24.07.2014. In the assessment year 2015-16, the ld. CIT DR pointed out that the assessee had relied upon the decision of Hon'ble Allahabad High Court dated 3.05.2017 in the case of CIT(Exemption), Lucknow vs. Moradabad Development Authority, directing to allow the exemption under section 11 of the Income Tax Act, but had observed that the decision of Hon'ble High Court in the case of Moradabad Development Authority was based on its earlier decision in the case of CIT vs. M/s Yamuna Expressway Industrial Development Authority (YEIDA) and in the case of YEIDA, registration under section 12AA was granted after amendment under section 2(15) of the Act. Further, the AO had also observed that the Hon'ble High Court in para 31 of the order in the case of YEIDA dated 21.04.2017, had observed that the ld. CIT(Exemption), at the stage of registration was not supposed to enquire into the conduct of charitable or other activities to be performed by a trust which had submitted the application for registration that investigation had to be subsequently done at the time of assessment by the Assessing Authority. The ld. CIT DR also pointed out that the Assessing Officer had relied on the decision of the Hon'ble Karnataka High Court in the case of DIT vs. Garden City Education Trust 191 taxman 238 and various other case laws, wherein it had been held that the manner of application by trust and as to whether the trust could claim the benefit of exemption in terms of sections 11, 12 of the Act are questions which have to be examined by the Assessing Officer, at the stage when the same are urged and not by the Commissioner while considering the application for registration. The ld. CIT DR also pointed out that one more issue highlighted by the Assessing Officer in his order for the assessment year 2015-16 was regarding the 2% reservation to employees and 10% discount on the value to employees, which was in violation of the provisions of section 13(3) of the Act, thereby assessee rendering the assessee as unfit for the claim of exemption under section 11 of the Act. He pointed out that the issues in assessment year 2016-17 were more or less similar to those raised in earlier assessment years. Thereafter, the ld. CIT DR took us through the orders of the ld. CIT(A) and pointed out that the decision of the AO to disallow the exemption and

assess the various funds and grants transferred directly to the balance-sheet in the hands of the assessee had been upheld by the ld. CIT(A). The ld. CIT DR pointed out that the ld. CIT(A) in his orders had rendered a clear finding that under the Income Tax Act, 'charitable purpose' included relief to the poor, education, medical relief in the advancement of any other object of, 'general public utility' but the advancement of any other object of, 'general public utility' had been removed from the definition of charity if the assessee was conducting any business or trade. The ld. CIT(Exemption) pointed that the ld. CIT(A) had held that if general public utility was imparted with a profit motive, to hold in such a case a charitable purpose would not be correct. The ld. CIT DR submitted that it was well settled law that even if the registration was granted by the ld. CIT(Exemption), then also the Assessing Officer was empowered to and the assessee had to prove that during the year, the assessee undertook activities that were charitable in nature. The question of accessibility to such tax for exemption would therefore, have to be determined in each year and until and unless the appellant satisfied the Assessing Officer, that it fulfilled the conditions for exemption in respect of that particular year, it could not claim the exemption as a rule and therefore the facts in each case would have to be ascertained from year to year. He submitted that it was settled law that there is no precedence for any issue that had been decided on the facts in a particular year. He pointed out the findings of the ld. CIT(A), that for the year under consideration the appellant had not claimed anywhere that they were a charity, there was no evidence brought on record that the appellant had undertaken any philanthropic activities and therefore, the assessee could not rely upon a judgment of a preceding year as a rule, for claim of exemption in that particular year. The ld. CIT DR again drew reference to the finding of the ld. CIT(A,) that the objects of the authority which were to promote and secure the development of development area did not have any charitable purpose. Objects like infrastructure development, sale and purchase of properties made the appellant a commercial organization, with an aim of earning profit from activities in the nature of trade, commerce or business. Further, he highlighted the findings of the ld. CIT(A) that there was no object of the appellant for doing any charitable work as there was no spending of the income exclusively for the purposes of charitable activities and there was no obligation on the part of the appellant to spend money on charitable purposes. He further dwelt on section 58 of the U.P.U.P.D.A., 1973 to state that on dissolution of the appellant all its properties and funds

would vest in the State Government and there was complete freedom and no restriction as to how the same were to be utilized by the State Government. The ld. CIT DR pointed out that the ld. CIT(A) had concurred with the view of the of the Assessing Officer that by providing reservation of 2% and discount of 10% for the employees of the appellant in respect of allotment of residential land and commercial properties, the assessee had violated section 13(3) of the Act. Therefore, in these circumstances, the ld. CIT(A) had applied the judgment of the Jammu & Kashmir High Court in the case of Jammu Development Authority. On the issue of addition of amounts received under funds and grants, he took us through the findings of the ld. CIT(A) wherein the ld. CIT(A) had held that the receipts on account of various funds were part of various trading receipts of the appellant and that utilization of a receipt did not alter its nature as income. He pointed out that there is no clause in the Government Order which showed that the funds needed to be returned to the State Government on the completion of the project and the appellant was only a custodian. The ld. CIT(A) had demonstrated that the unutilized funds had been retained by the appellant for a number of years and utilized subsequently as and when required. The ld. CIT DR also pointed out that the ld. CIT(A) had relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Sitaldas Tirathaldas 41 ITR 367 (SC) and held that the agencies giving the funds were the customers on whose behalf the Development Authority was executing specific projects from the funds. In other words, this was not a case of diversion of income but a case of application of income after receipt of the same. It was submitted that the orders of the Assessing Officer and the ld. CIT(A) had been challenged on the basis of a decision of the Hon'ble ITAT in (ITA No. 390/Alld/2006) which had been confirmed by the Hon'ble High Court of Judicature at Allahabad vide order dated 16.09.2003 and also on the ground that the decision of Hon'ble Jammu & Kashmir High Court in Jammu Development Authority vs. Union of India was not applicable in its case. The ld. CIT DR submitted that the order of the Hon'ble Lucknow Bench of the Allahabad High Court dated 16.09.2013 in the case of Lucknow Development Authority pertained to assessment years 2004-05 to 2006-07 and none of the assessment years after the insertion of proviso to section 2(15) w.e.f. 1.04.2009 were involved in that order. Further it had been observed in that order that no material / evidence had been brought on record by Revenue which may suggest that the assessee was conducting its activities on commercial lines, with a motive to earn profit or had deviated from

its objects. However, in the present case, in all three years, the AO and the ld. CIT(A) had brought on record the fact that there were huge profits and grants and funds had been received which had been transferred directly to the balance-sheet. The ld. CIT DR drew reference to the decision of Hon'ble High Court in Appeal No. 320/2007, vide its judgment and order dated 29.08.2016 in the case of CIT vs. Hapur Development Authority & Ors wherein the Hon'ble High Court had quoted from its earlier order in CIT vs. Lucknow Development Authority 2014 (98) DTR (All) 183 and pointed out in para 21 that registration under section 12A was mandatory to claim exemption under sections 11 and 30 of the Act, but registration alone cannot be treated at conclusive, and it was always open to the Revenue authorities, while processing the return of income of these assessees to examine the claim of the assessee under sections 11 and 13 of the Act and give such treatment to these institutions as is warranted by the facts of the case. He pointed out that the aforesaid findings were similar to that of the Hon'ble Supreme Court in the case of CIT vs. Ahmedabad Urban Development Authority (449) ITR 1 SC dated 19.10.2022, as contained in sub para-B-2 of para 253. The ld. CIT DR reiterated that in the present case, there were substantive profits and substantial income from grants and funds received which brought the case within the purview of trade commerce or business, in view of the decision of the Hon'ble Supreme Court referred to above, since the limits given in the proviso to section 250 of the Act had been exceeded. Therefore, he requested that the grounds be dismissed and the order of the ld. CIT(A) and ld. Assessing Officer be confirmed. It was further submitted that the assessee had not submitted anything to differentiate his case from that of the Jammu Development Authority where the SLP was dismissed on 21.07.2014 by the Hon'ble Supreme Court against the decision of the Hon'ble Jammu & Kashmir High Court.

20. On the addition made on account of fund and grant, the ld. CIT DR contested the submission of the assessee that he had no right, title or interest of its own on the funds and grants that were added to its income by the Assessing Officer and referred to the decision of the Hon'ble Uttarakhand High Court in the case of Mussoorie Dehradun Development Authority vs. Addl CIT (2022) 288 taxman 113/140 taxman.com 192 (Uttarakhand) (HC) which had held that the MDDA being a separate legal entity with its own assets and liabilities would be distinct from the State Government and thus fees collected for infrastructure development would be treated as income of the assessee and would be liable to tax in its hands. He contested the

argument of the ld. AR that the contents of para 29 in the order of the Hon'ble Allahabad High Court, Lucknow Bench in the case of CIT vs. Lucknow Development Authority 2014 (98) DTR All 183 constituted a ratio decidendi of the said order either in isolation or when read in conjunction with paragraphs 26, 27 and 28 of the said order. The ld. CIT DR invited our attention to the substantial questions of law that was in contention before the Hon'ble High Court in those appeals which were as under: -

i. "Whether keeping the facts and circumstances of the case, the Tribunal had committed substantially illegal by holding that the income of the assessee is exempted under section 11 of the Income Tax Act, though there is no condition that no profits should be earned by its activities and the profit earned will not be distributed amongst the stakeholders and the finding of the Tribunal with regard to exemption under section 12 of the Act is also substantially illegal?"

ii. "Whether by assuming registration under section 12AA of the Income Tax Act and exempting income of the assessee without considering the dispute in terms of section 11, 12 and 13 of the Income Tax Act coupled with nature of activities, the Tribunal has acted arbitrarily or substantially illegally?"

iii. "Whether the ld. ITAT was correct in law in holding that without exhausting the provisions contained in section 143(2) of the Act, the proceedings initiated by the ld. AO by issuing notice under section 148 of the Act were not valid in the given facts and circumstances of the case?"

The ld. CIT DR submitted that there was no substantial question of law before the Hon'ble Allahabad High Court in the said matter pertaining to the nature of the infrastructure fund and no arguments had been pressed by the rival parties before the Hon'ble Allahabad High Court in that case, on whether there was diversion by overriding title to the State Government in respect of the infrastructure fund. The only issued that was decided by the Hon'ble High Court was the eligibility for exemption therefore, it was argued that since the matter was not a substantial question of law under consideration of the Hon'ble Court and no arguments on the subject were presented by either party that could be ascertained from the order of the Hon'ble Court, paragraph 29 of the order of the Hon'ble Allahabad High Court which opined that the infrastructure could not be treated as belonging to the Lucknow Development Authority or the

same being not taxable in its hands, was only an observation of the Hon'ble Court and therefore, an *Obiter Dicta*, which did not have any binding precedent upon the matter presently under consideration. The ld. CIT DR further submitted that conjoint readings of paragraph 26 to 29 would also show that the issue under discussion was the eligibility for exemption and the issue had been substantially decided by the Hon'ble Court in paragraphs 26 to 28 of its order. Thus, para 29 was only an observation in support of the decision rendered by the Hon'ble Court in paragraph nos. 26 to 28. The ld. CIT DR also invited our attention to two decisions of the Hon'ble Supreme Court to drive home the point that no decision had been rendered by the Hon'ble Allahabad High Court in the case of Lucknow Development Authority on the issue of infrastructure fund which could be held to be a binding precedent. He took us through the judgment in the case of Union of India vs. Dhanwanti Devi and Ors in 1996 Supp. (5) S.C.R. 32 wherein the Hon'ble Supreme Court held as under: -

> *"It is not everything said by a Judge who giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents, every decision contain three basic postulates [i] findings of material facts, is the inference which the Judge draws from the direct, or perceptible facts; [ii] statements of the principles of law applicable to the legal problems disclosed by the facts; and [iii] judgment based on the combined effect of the above. A decision is only an authority for what it actually decides, What is of the essence in decision is its ratio and not every observation found therein not what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding between the parties to it, but it, is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.*
>
> *Therefore, in order to understand and appreciate the binding force of a decision is always necessary to see what were the facts in the case in which the decision was*

given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent in the use of precedents."

21. The ld. CIT DR submitted that in view of the fact that no question of law with relation to the nature of the infrastructure fund had been placed or argued before the Hon'ble Court, the observations in para 29 of its order could not be held to be a binding precedent so as to prevent an examination into the nature of such fund and whether or not it constituted the income of the assessee. The ld. CIT DR also took us through the decision of the Hon'ble Supreme Court in the case of State of U.P. and Another vs. Synthetics and Chemicals Limited and Another (1992) 87 STC 289 in which the Hon'ble Supreme Court had discussed the impact of a decision passed sub-silentio wherein the Hon'ble Supreme Court had held in para 41 of its order as under: -

"41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words, can such conclusions be considered as declaration of law? Here again the English Courts and jurists have carved out an exception to the rule of prece- dents. It has been explained as rule of sub-silentio.

"A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular' point of law involved in the decision is not perceived by the Court or present to its mind"

(Salmond 12th Edition). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd., [1941] (1) KB 675 the Court did not feel bound by earlier decision as it was rendered 'wit- hout any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur, [1989] 1 SCC 101. The Bench held that, 'precedents sub-silentio and without argument are of no moment'. The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decedendi. In Shama Rao v. State of Pondicherry, AIR 1967 SC 1680 it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

21.1 The ld. CIT DR, therefore, argued that even if it was held that para 29 of the judgment and order of the Hon'ble Allahabad High Court was the order, it was an order passed sub-silentio and therefore, the it could not be deemed to be a law declared having binding effect as is contemplated by article 141 of the Constitution. Therefore, the Hon'ble Bench was not precluded from looking into the question of the nature of the infrastructural fund and for this reason, the orders of the various Benches of the ITAT in Lucknow Development Authority, Varanasi Development Authority and Meerut Development Authority**,** which refrained from looking into the issue on the grounds that a binding precedent had been created were clearly an incorrect appreciation of the law. On the contrary, he pointed out that the specific issue before the Hon'ble ITAT Delhi Bench in the case of Mussoorie Dehradun Development Authority was, "that on the facts and in the circumstances of the case and in law, the authorities below had erred in holding that the claim of the appellant that there was diversion by overriding title in respect of infrastructure contribution is untenable", and the Hon'ble Delhi Bench had held that there was no diversion of income by overriding title in the case of infrastructure fund and accordingly it had rejected the appeals of the assessee in this regard. Furthermore, it was argued that the assessee had carried the matter to the Hon'ble High Court of Uttarakhand (HC) where the matter had been argued extensively and the Hon'ble Uttarakhand High Court in its judgment had held that the fees collected for infrastructure development would be treated as income of the assessee and would be liable to be taxed. He, therefore, argued that since the Mussoorie Dehradun Development Authority was constituted under the same act as the assessee (UPUPDA, 1973) and was governed by the same O.M. dated 15.01.1998 issued by the Uttar Pradesh Government, prior to the partition of the State of Uttar Pradesh, the judgment rendered by the Hon'ble Bench in the matter on identical facts and subsequently affirmed by the Hon'ble Uttarakhand High Court, was the correct precedent to follow in the matter. With regard to the submissions of the ld. AR that the Revenue had never sought clarifications or review of the order of the Hon'ble Allahabad High Court in the case of Lucknow Development Authority or challenged it in the past, the ld. CIT DR submitted that unless there was some concrete decision, there could be no challenge to the order and it was the view of the department that no concrete decision had been rendered by the Hon'ble Allahabad High Court on the issue of infrastructure fund that merited a further challenge to the matter in the Hon'ble

Supreme Court. With regard to the decision rendered by the Delhi Bench in the case of Saharanpur Development Authority, the ld. CIT DR submitted that the said judgment had been delivered by the same member who subsequently wrote the judgment in the case of Mussoorie Dehradun Development Authority and the issue there, was whether the ld. AO, not having taxed the principal amount of the infrastructure fund in the hands of the assessee, could, thereafter bring the interest on such deposit out of infrastructure fund to tax in the hands of the assessee. The ld. CIT DR submitted that the Hon'ble Bench had essentially ruled that since the principal had not been taxed in the hands of the assessee, the interest on the same, could not be brought to tax in its hands. He conceded the fact that the Hon'ble Bench in that case had held that the said funds did not belong to the assessee as it was to be used under the command and direction of the State Government, but he submitted that in rendering this judgment, the Hon'ble ITAT had relied upon the cases of Delhi State Industrial Development Corporation reported in 295 ITR 419 and the judgment of the ITAT Bangalore in Karnataka Urban Infrastructure Development and Finance Corporation vs. ACIT (2006) 7 SOT 879, but in the subsequent decision passed in the case of Mussoorie Dehradun Development Authority, the same Member had amended his view by observing that Mussoorie Dehradun Development Authority was not to be regarded as a State and was carrying out business activities of its own. Furthermore, it was argued that since the decision in Mussoorie Dehradun Development Authority was rendered after considering the specific provisions of the UPUPDA, 1973, which was not the case in Saharanpur Development Authority (supra), it was the proper explanation of law on the subject. The ld. CIT DR then proceeded to analyze what the infrastructure fund was. He pointed out that the O.M. dated 15.01.1998 defines it in Clause 1 as the income of the development authority. He further pointed out that the committee constituted under this O.M. for overseeing the spending as per Clause 3 of the said O.M. was merely a recommendatory committee. Nowhere in the O.M. was it mentioned that it was the owner of the fund or that the fund belonged to the Government. The ld. CIT DR then took up through paragraphs 20, 21, 22 and 23 of the judgment of the Hon'ble ITAT Delhi Bench in the case of Mussoorie Dehradun Development Authority to show that the Bench had come to a conclusion that the infrastructure fund constituted the income of the assessee after examining the provisions of the memorandum viz a viz., the provisions of the U.P. Urban Planning and Development Act, 1973.

With regard to the judgment of the Hon'ble ITAT Amritsar Bench in the case of Jalandhar Development Authority vs. DCIT (ITA Nos. 377 to 379), the ld. CIT DR submitted that the said judgment was distinguishable because in that case the EDC (External Development Charges) could not be spent without previous permission of the Government of Punjab and furthermore, in that case and the said charges were also collected by that assessee on the basis of various notifications issued by the Government of Punjab from time to time. Therefore, in that case, the assessee had no control over such charges as received under the directions and guidelines of the Government of Punjab and these charges were collected from developers and utilized separately also as per directions of Government of Punjab. It was submitted that the cases were not similar because in the case of the assessee the charges were collected as per the powers given under the UPUPDA, 1973 and furthermore it was argued that the said judgment of the ITAT was based upon the judgment of the Punjab and Haryana High Court in the case of Pr. CIT vs. Punjab Police Housing Corporation Limited as reported in 195 DTR 150 P & H wherein it had been held that interest on grants received by the State Government could not be treated as income of the assessee. However, the ld. CIT DR argued that it had been pointed out by the Hon'ble Patna High Court in the case of Bihar Police Building Construction Corporation Private Limited vs. Pr. CIT (2023) (09) PAT CK 0020 that circulars of the State Government providing for deduction of grants in successive years to the extent of interest earned from the grants of early years, could not regulate the taxability under the Income Tax Act and if the interest was brought to tax in the hands of the assessee corporation, then the assessee corporation could request the Government not to deduct the amounts paid as income tax from grants of subsequent years, but the circular issued by the State Government regulating the business / transaction between the Government and its corporation could not have any effect on the taxability of the interest income which is deemed to be income from other sources in the hands of the assessee. The ld. CIT DR submitted that the said judgment could therefore not be a proper precedent to determine the question before the Tribunal in this present matter. With regard to the decision of the Chandigarh Bench of the Tribunal in Improvement Trust Sungrur in ITA No. 273/CHD/2020, the ld. CIT DR submitted that in the said order, the ITAT had quoted from the case of Ahmedabad Urban Development Authority in para 83 of its order and that said paragraph itself recorded the fact that the conclusions arrived at in that judgment did not

preclude the authorities from scrutinizing the accounts of the assessee's from year to year to determine whether the assessee's were indulging in activities that amounted to, 'Trade Commerce or Business and if so whether the quantified limit as laid down in proviso to section 2(15) had been breached. Thus, the said judgment did not preclude the ld. AO in the present case from examining the same, which he had done. The ld. CIT DR thereafter concluded his arguments by opposing the plea of the ld. AR for preferring the matter to a Special Bench pointing out that such a reference was only necessary when a matter had been examined in detail by two separate Benches and different conclusions reached. However, in the present case, the issue in question of whether the infrastructure fund created under the O.M. dated 15.01.1998 was the income of the assessee or stood diverted by overriding title to the State Government had only been examined by the Delhi Bench of the Tribunal and their findings had subsequently been affirmed by the Hon'ble Uttarakhand High Court. Therefore, as this was the only judgment on the matter by the Hon'ble High Court or a Bench of the Tribunal, there was no justification or need to constitute a Special Bench and the Hon'ble ITAT should decide the issue on the basis of the only proper legal precedent. The ld. CIT DR further argued that the grant of exemption under section 12A did not make any difference to the issue of an application of income viz a viz., diversion of overriding title because if an assessee enjoyed exemption if a trust is registered under section 12A then it could get exemption if it spent 85% of its income towards its objects but if it was not registered the entire amount had to be taxed. The fact of registration under section 12A would not change the nature of the infrastructure fund. He submitted that the facts of this case were also similar and therefore, the grounds taken by the assessee against such additions may also be dismissed.

22. We have duly considered the facts and circumstances of the case, heard the rival parties and gone through the material placed on record. There are essentially two main issues to be decided in this appeal. The first is whether the activities of the appellant authority constitute activities for the advancement of objects of, 'general public utility' thereby making it eligible for exemption under section 11 and 12 of the Act and secondly whether the assessee is justified in not including funds collected and grants received on account of infrastructure activities in its income and expenditure account but carrying it directly to the balance-sheet on account of the

plea that such income stood diverted by overriding title and could not be included in its own income. The other issues that have been raised by the Assessing Officer and the ld. CIT(A) are ancillary to the main issue i.e. the denial of exemption under section 11 by holding that the appellant authority is indulging in activities in the nature of trade, commerce or business and therefore, is hit by the proviso to section 2(15) of the Act, 1961.

23. The question of whether a development authority can be regarded as a body indulged in objects of, 'general public utility' is no longer *res integra* after the decision of the Hon'ble Supreme Court in the case of ACIT (Exemption) vs. Ahmedabad Development Authority (2022) 143 taxman.com 278 (SC) wherein the Court in para 190 of the said order and judgment has held that bodies which carry out statutory function and whose income was eligible to be considered for exemption under section 10(20A) prior to 1.04.2003, but thereafter ceased to enjoy that benefit after deletion of that provision, are not *ipso facto* precluded from claiming benefit as GPU category charities under section 11 r.w.s. 2(15) of the Act. The Hon'ble Court further held that statutory corporations, Boards, authorities, Commissions etc., by whatever name called in the fields of housing development, town planning, industrial development sectors etc., were involved in the objects of, 'general public utility' and therefore were entitled to be considered as charities in the GPU categories. The Hon'ble Supreme Court also held that such statutory corporations, Boards, trust, authorities may be involved both in promoting public objects and also in the course of pursuing their objects, be involved or engaged in activities in the nature of trade, commerce or business but the determinative tests to consider whether such bodies were GPU category charities was i. whether the State or Central law or memorandum of association, Constitution advanced any GPU object (which were illustrated as development of housing, town planning, development of industrial areas or regulation of any activity in the general public interest, supply of essential goods or services-water supply, sewage service, distributing medicines, food grains etc)., ii. while carrying on of such activities to achieve such objects, the purpose for which such public GPU charity is set up – whether it is for furthering the development of a charitable object or for carrying on trade, business or commerce in relation to such trade etc,. Thus, the first issue raised by the ld. Assessing Officer and concurred with by the ld. CIT(A) viz that the activities of the appellate authority carried on as per its objects as laid down in section 7 of U.P.U.P.D.A., 1973 were not charitable activities, do not hold any water

after this decision of Hon'ble Supreme Court which categorically states that statutory bodies engaged in Housing Development Term Planning etc., are involved in objects of, 'general public utility' and therefore, are entitled to be considered as charities in the GPU category. It is observed that the Hon'ble Allahabad High Court in the case of CIT vs. Lucknow Development Authority, vide its order dated 16.09.2013, has already held that the Lucknow Development Authority whose provisions are *para materia* to that of the assessee authority, was carrying out its activities on non-commercial lines with no motive to earn profits and therefore, would not be hit by section 2(15) of the Act, as the aims and objects of the said authority were admittedly charitable in nature. The said order has been followed by the Hon'ble Allahabad High Court in the assessee's own case vide its order dated 29.08.2016. Therefore, once the finding has been rendered by the Hon'ble Supreme Court, that the statutory bodies involved in Housing Development Town Planning etc., are involved in the objects of, 'general public utility' and the earlier finding of the Hon'ble Allahabad High Court, after examination of the objects of the authorities set up under the U.P.U.P.D.A., 1973, that their activities are charitable activities not hit by section 2(15) of the Act, the orders of the ITAT Amritsar Bench in the case of Jammu Development Authority and Jalandhar Development Authority will have no application to the facts of the assessee's case or be a justification for the denial of exemption to it under sections 11 and 12 of the Income Tax Act, 1961.

24. Among the reasons cited by the ld. Assessing Officer and confirmed by the ld. CIT(A) for denial of exemption to the assessee were the observations that the assessee was generating income from the activities of the disposing of the plots, flats, shops and commercial complexes with the definite motive of profit and not charitable purposes as such profit was not incidental for by-product of the activity of the appellant, but was its main predominant purpose and there was no application of income for any charitable purpose under the terms of the object. It has also been argued that the levy of betterment charges, upon occupants of a development project and the auctioning of properties by the Development Authority constitute activities in the nature of trade, commerce and business and because the sum total of the earnings from these activities exceeds the maximum amount permissible under section 2(15) of the Act, 1961, the assessee is not entitled for deduction. Many of these issues have been addressed by the Hon'ble Supreme Court in the case of ACIT (Exemption) vs. Ahmedabad Urban Development

Authority (supra). In paragraph 140 of its order, the Hon'ble Supreme Court quoted from its earlier order in the case of New Delhi Municipal Corporation vs. State of Punjab (1979) 7 SCC 339, wherein the Hon'ble Court had held that unless an activity in the nature of trade and business is carried out with a profit motive, it would not be a trade or business contemplated by Clause ii of Article 289. By way of example, it had been highlighted that mere sale of Government properties, movable or immovable or granting of leases and licenses in respect of its properties, does not amount to carry on trade or business. Only where a trade or business is carried out with a profit motive – or any property is used or occupied for the purpose of carrying out such trade or business that the proviso or for that matter Clause ii of Article 289 would be attracted. From the said judgment, the Hon'ble Supreme Court observed in AUDA (supra), that the crucial and determinative element in the venture, is whether the performance of a function is actuated by a profit motive. It thereafter proceeded to examine the true meaning of the expressions, 'fee, cess or consideration' and held that if a fee or cess or such consideration was collected for the purpose of an activity, by a State Department or entity, which is set up by a statute, its mandate to collect such amounts cannot be treated as consideration towards trade or business. It held that statutory Boards and authorities who are mandated to develop housing, industrial and other states including development of residential housing at reasonable or subsidized cost, which might entail charging higher amounts from some section of beneficiaries to cross subsidize the main activity, cannot be characterized as engaging in business. The character of, 'State' and such corporations or bodies set up under specific laws would therefore, not mean that the amounts are, 'fee' or, 'cess' to provide some commercial or business service. Further in paragraph 176, after considering the fact that statutory powers and corporations have to recover the cost of providing essential goods and services in public interest and also fund large scale development and maintain public property, which entailed recovering charges or fees, interest and also receiving interest for holding deposits ,the Hon'ble Court held that the mere fact that these bodies have to charge amounts towards supplying of goods and articles or rendering services (including maintenance of roads, parks etc.,) ought not to be characterized as, 'commercial receipts' the rational for such exclusion would be that if such rates, fees, tariffs etc., determined by statutes and collected for essential services were included in the overall income as receipts as part of trade, commerce or business, the quantitative limit of 20% imposed by the

second proviso to section 2(15) would be attracted thereby negating the essential general public utility object and thus driving up the costs to be borne by the ultimate user or consumer which is the general public. In paragraph 190 while laying out the determinative tests to consider when whether such statutory bodies are GPU category charities, the Hon'ble Supreme Court had also pointed out that rendition of service or providing any article or goods by such Boards, authority, corporation etc., on cost or nominal markup basis would not *ipso facto* be activities in the nature of business, trade or commerce or service in relation to such business, trade or commerce. It further held that where the controlling instrument, particularly a statute, imposes certain responsibilities or duties upon the concerned body, such as fixation of rates on predetermined statutory basis, or based on a formula regulated by law, or rules having the force of law. *Per se*, the recovery of such charges, fees, interest etc., cannot be characterized as fee, cess or other consideration for engaging in activities in the nature of trade, commerce or business or for providing services in relation thereto. The Hon'ble Court further held that it merited examination to see whether the statute or controlling instrument set out the policy or scheme for how the goods and services are to be distributed; in what proportion the surpluses or profits can be permissibly garnered, are there limits within which the plot rates or costs are to be worked out, whether the function in which the body is engaged in normally something a Government or State is expected to engage in, having regard to the provisions of the Constitution and the enacted laws and the observations of the Hon'ble Supreme Court in the NDMC; whether in case surplus or gains accrued the corporation or body is permitted to distribute it, and if so only to the Government or State; the extent to the State or its instrumentalities have control over the corporation or its bodies and whether it is subject to directions by the concerned Government. The Court held that as long as the concerned statutory body, corporation, authority while actually pursuing a GPU object carries out activities that entail some trade, commerce or business which entails profit (i.e. amounts that are significantly higher than the cost) and the quantum of such receipts is within the prescribed limited (20% as mandated by second proviso to section 2(15), the concerned statutory or Government organization can be characterized as GPU charity. Therefore, in each case the authority considering granting exemption must take into account the objects of enactment or instrument concerned its underlying policy and nature of the functions and the activities of the entity

claiming to be a GPU charity. If in the course of its functioning, it collects fees or any consideration that merely cover its expenditure (including administrative and other costs plus small proportion for provision), such amounts are not consideration towards trade, commerce or business or service in relation thereto, however, amounts which are significantly higher than recovery of costs have to be treated as receipts from trade, commerce or business. It is only for those amounts that the quantitative limit in proviso 2 to section 2(15) of the Act applies and for which separate books of accounts would have to be maintained under other provisions of the act.

25. It would be appropriate to examine the case of the assessee in the light of these observations of the Hon Supreme Court in the case of Ahmedabad Development Authority (supra). The assessee has been constituted under section 4 of the Uttar Pradesh Planning & Development Act, 1973 and was notified in exercise of power under section 3 of the State Act, 1973 by the State Government by Gazette Notification dated 19.08.1974. Thus, the assessee is a, 'statutory authority' which was established under the 1973 State Act. The Preamble to the 1973 State Act provides that it is an act to provide for development of certain area of Uttar Pradesh according to plan and for matters ancillary thereto. The Act was enacted to tackle the problems of town planning and urban development resolutely in the developing areas of Uttar Pradesh. It recognizes that existing local bodies and authorities were not able to cope with the problems to the desired extent and hence the need was felt to create an authority in developing areas on the patter of Delhi Development Authority. Thus, it becomes clear from the Preamble itself that the predominant object and purpose for the creation of the Allahabad Development Authority, is to tackle the problem of town planning and urban development, to have a planned and integrated development of the town within the development area, according to a plan and not otherwise. The purpose was therefore, to have a planned development and not profit making as its core objective. It is provided in section 4 of the 1973 under the U.P.U.P.D.A., 1973, that the authority shall be a body corporate having a perpetual succession with the power to, 'acquire, hold and dispose of property both movable and immovable. Thus, the acquisition and sale of property by the authority are well within its share of activity as regulated by the Act. Section 4 of the U.P.U.P.D.A., 1973 also provides that the staff and the officers shall be appointed by the State Government namely the Chairman and Vice Chairman and ex officio Members such as the

Secretary to the State Government in charge of the Department to which the business relating to the Development Authorities is interested, the Secretary to the State Government in charge of Department of Finance, the Chief Town & Country Planner, Uttar Pradesh; the Managing Director of the Uttar Pradesh Jal Nigam; the Mukhya Nagar Adhikari; the District Magistrate; 04 Members to be elected by the Sabhasads of the Nagar Palika for the said city from amongst themselves and such other Members as may be nominated by the State Government. Section 5 of the U.P.U.P.D.A., 1973 provides that the State Government may appoint the Secretary and the Chief Accounts Officer of the Development Authority while section 6 provides that the State Government may appoint an advisory council for the purposes of advising the authority on the preparation of the master plan and on such other matters relating to the planning of development or in connection with the administration of the said act. This clearly shows that the State Government has a deep and pervasive control over the appointment and management of the authority.

26. The objects of the authority have been stated in section 7 of the U.P.U.P.D.A., 1973 which are to promote and secure the development of the area, according to plan. The authority has the powers to acquire, hold, manage and dispose of land and other property, to carry on building, engineering, mining and other operations, to execute work in connection with the supply of water and electricity, to dispose of sewage and to provide and maintain other services and amenities and generally do anything necessary or expedient for the purposes of such development and for purposes incidental thereto. It has also been invested with the responsibility of providing amenities within the development area falling within its jurisdiction which include road, water supply, street lighting, drainage, sewerage, public works and other conveniences, as per section 2A of the Act. Section 8 of the Act provides that the authority shall prepare a master plan for the development of the area and section 9 provides for development area for each zone, which is defined under the master plan prepared under section 8. Section 10 provides for the approval of the master plan and general development plans by the State Government. Under section 15 of the Act provides that the authority is vested with powers to levy fees, for granting permission to any person or body to carry out development of land, once the area is declared as the development area falling within the jurisdiction of the development authority. It is vested with the power to levy development fees, mutation charges, staking fees

and water fees in such manner at such rates as may be prescribed. Section 16 of the Act empowers the authority to dispose of the land acquired by the State Government under the Land Acquisition Act for achieving the objects of planned and regulated development of the development area falling within its jurisdiction. Section 20(2) of the Act provides that the funds of the authority shall be meeting the expenses incurred by the authority in the administration of the U.P.U.P.D.A., 1973 and for no other purpose. Section 22 of the Act provides that the accounts of the authority shall be subject to audit annually by the examiner local funds accounts however, State Government may also entrust the audit to the Accountant General, Uttar Pradesh or to the Comptroller & Auditor General of India or any other auditor. Section 23 provides that authority shall prepare an annual report of its activities and submit the same to the State Government for placing the same before both Houses of Legislature. Section 41 relates to control by the State Government and states that the authority, Chairman and Vice Chairman shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act and that every order of the State Government made in exercise of such powers would be final. Thus, it is clear from the provisions of the statute under which the appellant authority is constituted that the appellant authority meets the tests laid down by the Hon'ble Supreme Court in that, it is a body that is under a deep and pervasive control of the State Government; that it has been granted the power to acquire and dispose of lands etc as part of its overall objective of planned development or development areas; the fees and charges levied by the authority are levied in such manner and in such rates that have been prescribed under the Act. The fact that the appellant authority has been constituted for the specific purpose of planned development, and not for profit is evidenced both from the provisions of the Act under which it is constituted, as also from the fact that the funds of the authority may not be utilized for any purpose other than the expenses incurred by the authority in the administration of the U.P.U.P.D.A., 1973. Furthermore, as per section 58 of the Act, upon dissolution of the authority, such funds as are left over with the authority would be transferred to the State Government for the specific purpose of carrying out development which has not been fully carried out by the Authority. Thus, the authority seems to satisfy the test laid down by the Hon'ble Supreme Court in AUDA, that it is a general public utility charity and there is no merit in the observation of the ld. Assessing Officer or the ld. CIT(A) that the sale and purchase

of land renders it a commercial organization, because the same are seen to be done for furtherance of its objectives of ensuring planned development of its development area and neither the ld. Assessing Officer nor the ld. CIT(A) have brought on record any facts that would suggest that these sales and purchases take place with a huge markup, thereby generating profits for the appellant authority.

27. Both, the AO and the ld. CIT(A) have highlighted the issue of auction of properties by the development authority to opine that because of such auctions, the development authority is charging much more than the cost for the sale of such properties. It is observed that the issue has been addressed by the Hon'ble Supreme Court itself in the case of Ahmedabad Urban Development Authority wherein the Hon'ble Supreme Court has held in para 144 that statutory Boards and authorities who are under mandate to develop housing, industrial and other state, including development of residential housing at reasonable and subsidized cost, which might entail some sections of beneficiaries, to cross subsidize the main activity cannot be characterized as engaging in business. The character of being, "State" and such Corporations or bodies set up under specific laws, (whether by States or Centre) would therefore, not mean that the amounts, 'fee' or 'cess' to provide some commercial or business service. Thus the Hon'ble has accounted for the fact that certain services may be provided at a slightly higher rate, in order to cross subsidize other activities performed by the development authority. The question of whether this, 'higher rate' amounts to maximization of profits converting the said receipts into commercial receipts has been addressed by the Hon'ble Varanasi Circuit Bench in the case of M/s Varanasi Development Authority vs. ACIT, Circle-3, Varanasi in ITA Nos. 264, 265, 266 & 267/Alld/2017. The Hon'ble Tribunal has pointed out that the process of allocation by State or (State instrumentalities) of natural resources through the process of public auction brings in transparency and efficiency in the entire allocation process and is considered to be the most efficient and transparent process for allocation of natural resources. The process of allocation of natural resources leads to an efficient and transparent method for price discovery of the natural resources being allocated by the State, so that there is no allegation of buyers and malafide, and chances of manipulation and distribution of resources at throw away prices is avoided. The Hon'ble circuit Bench, Varanasi drew reference to the decision of the Hon'ble Supreme Court in the 2G Telecom case and the subsequent Presidential reference – special reference no. 1 of 2012

under article 143(1) of the Constitution of India (2012) 9 SCR 31111. Accordingly, the Varanasi Circuit Bench held that merely because the assessee had adopted a method of selling through public auction, it could not be said that the assessee was profiteering and was a commercial enterprise de hors the vast and onerous responsibilities cast upon the assessee under the 1973 State Act to have planned development of the development area falling within his jurisdiction. We are in complete agreement with views the Hon'ble Varanasi Circuit Bench. Till such time as the AO can bring on record evidence to show that such public auction generated for the development authority, of far higher cost than the market value of the properties that were sold, it cannot be said that the disposal of the assets through public auction amounts to maximization of profits. Rather it has to be held that it provides for price discovery in a transparent manner. It may not be out of place that section 18(2) of the UPUPDA, 1973 specifically prohibits the authority to dispose of any land by way of gift and specifies that any references to the disposal of land in the said act would be construed as references to disposal by way of sale, exchange, lease or creation of any rights on the land. Accordingly, we are not in a agreement with the ld. AO and the ld. CIT(A) that the assessee authority is a commercial agency on this account.

28. Similarly another issue that has been raised by the authorities below to hold that the assessee is not a charitable organization but one functioning on market principle is the issue of, 'betterment charge'. We find that the matter has been also been considered by the Varanasi Circuit Bench in its order dated 6.07.2022. The Varanasi Circuit Bench has pointed out that these charges are levied under the authority of section 35 of the 1973 State Act and that they are levied only in situations where, in the opinion of the authority, as in consequence of any development scheme having been executed by the authority in any development area, the value of any property in that area which has been benefited by the development, has increased or will increase. In such circumstances, the authority is authorized to levy upon the owner of the property or any person having an interest therein a betterment charge in respect of the increase in value of the property resulting from the execution of the development. From this, the Hon'ble Varanasi Circuit Bench concluded that there was a **quid pro quo** and only where the value of the property had been benefited by some development undertaken by the authority was a better charge levied. The Circuit Bench, Varanasi also held that to carry out the administration of vast

and onerous responsibilities cast upon the authority by virtue of 1973 State Act to have planned development of the development area, and to provide various amenities, the authority has to raise funds from various sources to fulfill its responsibilities and to make itself self-sustainable and recovery of such betterment charges would not render the authority to implicate commercial enterprise. Most importantly, the Varanasi Circuit Bench pointed out that there are cost associated with implementation of any particular development scheme which is to be incurred by the authority, and if the said costs are recouped from the property owners of that area, it could not make the authority a commercial enterprise existing for some profits, even some surplus is generated on that count, as section 20(ii) of the 1973 State Act mandates that the authority was bound to apply its funds towards meeting the expenses incurred by the authority in the administration of this Act and for no other purpose. We are in complete agreement with our Ld. Brothers that the levy of betterment charges has to be viewed as a means of recovery of costs towards execution of development in a particular area and since the surplus, if any, generated from the said levy is required to be applied towards the objectives of the authority, as per the provisions of section 20(ii) of the U.P.U.P.D.A., 1973, the view of the ld. Assessing Officer and the ld. CIT(A) that this would confer a commercial nature on the development authority is not concurred with. Furthermore, as the power to levy betterment charges arise out of section 35 of the Act and the process of assessment of such betterment charges are laid down in section 36 of the Act, following the judgment of the Hon'ble Supreme Court in the case of (supra), such charges cannot be held to be fee or a cess and thereby taken into consideration for computation of receipts from commercial activities.

29. The ld. Assessing Officer and the ld. CIT(A) have also held as one of the justifications for denying the benefit of exemption relief to the authority, their belief that the authority was not complying with the test laid down by the Hon'ble Supreme Court in the case of CIT vs. Andhra Pradesh State Road Transport Corporation reported in (1986) 159 ITR 1 (SC), in view of the provisions of section 58 of the U.P.U.P.D.A., 1973 which held that upon dissolution of the authority, the funds of the authority of the authority would vest to the State Government and the State Government was free to apply it in any manner that it chose. However, a plain reading of section 58 does not bear out this belief of the ld. Assessing Officer and ld. CIT(A) for the reason that they have committed to consider the provisions of sub section D of section 58 which state

the purposes for which the properties, funds, dues, liabilities, lands etc., vested in, realizable, enforceable against, or placed at the disposal of the authority shall vest in the State Government, 'for the purpose of carrying out any development which has not been fully carried out by the authority and for the purpose of realizing funds, properties and dues referred to in Clause (a), the functions of the authority shall be discharged by the State Government'. For this essentially means if that the funds of the authority on its dissolution will vest in the State Government for the specific purpose of carrying out development which has not been carried out by the authority and the functions of the authority will be performed by the Government. Thus, to hold that there is no restriction on the Government in the way the funds of the authority are applied, is an incorrect assumption not borne out by a plain reading of the law. It is also seen that in the assessment year 2015-16, the ld. Assessing Officer has observed that the assessee violated the provisions of section 13 of the Act by allowing some rebate towards employees and reservation of some plots for its employees. The ld. CIT(A) while considering the matter in his orders has pointed out to the judgments of Hon'ble Patna High Court in the case of Buddha Vikas Samiti vs. CIT 199 taxman 395 Patna and the Hon'ble Supreme Court in the case of Noida Entrepreneurs Association vs. Noida & Others in WP (Civil) No. 150 of 1997. In consideration of their orders, we find that the Hon'ble Lucknow Bench of the ITAT has dealt with this issue in its order dated 10.03.2022 in ITA Nos. 185, 186, 163, 164, 439/Lkw/2019 wherein after going through the provisions of sub section (3) of section 13, it has found that the list of persons mentioned in sub section (3) does not contain employees as a category. The ld. AO and the ld. CIT(A) have held that the employees are, 'managers' as per Clause (d) of sub section (3) of section 13 however, the Lucknow Bench has referred to the decision of the Hon'ble Patna High Court in the case of CIT vs. Tata Steel Charitable Trust 78 taxman 98 (Pat) dated 7.01.1993 in which the Hon'ble High Court had held that the employees of the author of the trust do not fall in the specified category of persons referred to in section 13(3) of the Act. In the said judgment, the Hon'ble Patna High Court had held that "as regards, the second condition, it seems that even if a trust has been created wholly for charitable purposes, when subsequently it is found that its income either ensures or is used or applied directly or indirectly for the benefit of any person specified under sub-section (3) of section 13, then such trust becomes disentitled to claim any exemption under section 11. But the list of such persons as contained under section 13(3) does not include the employees of the author of the

trust. The employees of the author of the trust do not fall within the specified categories of persons referred to in section 13(3). Even section 13(3)(d), which includes any relative of the author, can have no application in the case of the employees of the author because 'relative' means a person connected by birth or marriage with another person. The person having any other relationship pursuant to a contract like that of employer and employee cannot be said to be a relative. Therefore, the application of part of the income of the trust for the benefit of the employees of TISCO and their relatives could not disentitle the trust from claiming exemption, under section 11(1)(a)." The Hon'ble Lucknow Bench, thereafter, distinguished the case laws relied upon by the Revenue among which one was that of Noida Entrepreneurs Association, which has also been relied upon by the ld. CIT(A) in this case. The Hon'ble Lucknow Bench held that the said case law was not applicable to the facts of the appellant authority because in the case of Noida Entrepreneurs Association, a CBI enquiry had been enquiry had been conducted into gross violation of the funds of the assessee which was not there in the case of Lucknow Development Authority, therefore, the said case law could not be applied to the facts of the assessee's case. We are in complete agreement with the view expressed by our ld. Brothers on the aforesaid matter as pointed out by the Hon'ble Patna High Court in CIT vs. Tata Steel Charitable Trust (supra), the employees of the development authority do not fall in the specified category of persons referred to in section 13(3) of the Act. The decision of the Hon'ble Supreme Court in the case of Noida Entrepreneurs Association vs. Noida & Others (supra), we also not apply because the said judgment related to passing of colourable orders by the CEO to favour himself and certain contractors. The rebate and reservation allowed to the employees of the appellate authority, are not on account of any colourable exercise of power by the Managers of the authority, but on account of implementation of a Government Order, hence the facts of the case being entirely different, the case of Noida Entrepreneurs Association vs. Noida & Others (supra) cannot be relied upon to withdraw the exemption from the assessee authority. Similarly, it is observed that in the case of Buddha Vikas Samiti vs. CIT (supra), the appellant had utilized the form and organization of the trust to confer benefits on members of the family who were the trustees in violation of the parameters of the Act and the objectives of the trust whereas the instant case, the concessions have been allowed to the employees as a part of Government policy. Hence, there cannot be any comparison between the two situations. Moreover, looking in detail through the said

Government Order which has been scanned and reproduced by the ld. Assessing Officer in the assessment order for the said assessment year, it is observed that the reservation of plots is not confined to the employee of the development authorities but is provided to them among many other categories such as Scheduled Castes, Scheduled Tribes, Other Backward Classes, MPs, MLAs, Freedom Fighter, Government Employees, Defense Services Employees above 50 years of age, handicapped persons, ex-serviceman and their dependents, employees of U.P. Housing Board, Water Board, Municipal Corporation etc,. Therefore, the said Government Order must be used as a social welfare measure for a broad category of citizens and not as an order to confer benefit on the employees of the authority in violation of the provisions of section 13(3) of the Act. Furthermore, the said Government Order in fact shows that the process of allotment and pricing of land to be based on social rather than commercial consideration which would further buttress the argument that the objective of such sale is not the maximization of profit. Hence, we are not able to agree with the ld. CIT(A) or the ld. Assessing Officer that the exemption to the development authority should be denied on this account.

30. Finally, even while we have already observed that with the decision of the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra), the issue of whether the activities of a statutory corporation or body entrusted with housing, development town planning etc., constituted an activity of general public utility is no *res integra*, it bares merit to point out that the Hon'ble Allahabad High Court in its order in the case of Lucknow Development Authority vs. CIT (supra) dated 16.9.2013 had, held that the objects of the assessee society were admittedly charitable. The Hon'ble Allahabad High Court being the jurisdictional High Court, there was no justification for the authorities below to draw cue from the judgments of the Hon'ble Jammu & Kashmir High Court and the Amritsar Bench of the ITAT to hold that the objects and the activities of the society were not for charitable purposes. Be that as it may, as the matter has been settled by the decision of Hon'ble Supreme Court, the decision to deny the exemption to the appellate authority on account of the judgments of the ITAT, Amritsar Bench, in Jammu Development Authority, Jalandhar Development and Jammu & Kashmir High Court in Jammu Development Authority cannot be upheld.

31. In summation, it is observed that the development authority is constituted under a statute with the objective of developing the development area allotted to it and it is empowered

to indulge in various activities such as buying, selling, leasing etc., in order to further its objectives. It is also seen that the authority is under deep and pervasive control of the Government in various ways, its valuation and pricing policy is controlled by Govt Orders and it is obliged to apply of its earnings towards the objectives for which it has been set up. Thus, the assessee authority must be held as a general public utility charity within the mandate of the judgment of the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra). In view of the same, it is held that the denial of exemption under section 11 is not justified and the additions made by the ld. Assessing Officer on account of the surplus in the income and expenditure account are not sustainable. We have duly noted the submissions of the learned CIT DR that the Hon Supreme Court has pointed out that in each year the Assessing Officers should examine the expenses of the assessee to see whether they were on cost to cost basis or whether there was a significant mark up and thereafter to compute the threshold limit for applying the proviso to section 2(15) and his request to send back the matter to the Assessing Officer, so that this could be done. However we note that the Hon Court has quite categorically pointed out in sub para (d) of Para 190 that in the case of statutory corporations or bodies, where rates are fixed on a pre-determined statutory basis or based on formulae regulated by law or rules having the force of law and where money is invested in deposits or govt securities then any such receipts as laid down in sub para (d) of Para 190 of the said order cannot be characterized as " fee, cess or other consideration" for the purposes of computing the threshold under the provisos to section 2(15). Therefore, it is clear that in terms of the orders of the Hon Court, such receipts that are provided for in the statute, or in the rules and Govt orders framed under the powers granted to the State Govt under the statute, cannot be considered as "fee, cess or other consideration "for the purposes of computing the thresh hold of section 2(15). It is further observed that in Para 144 of their orders, the Hon Supreme Court has recognized that some services may have to be charged at a higher rate to cross subsidize others. The learned AO or the Learned CIT(A) have not till now, brought on record any specific instance of profiteering or allowed for cross subsidization of events like the Kumbh/Magh Mela Therefore, while we restore the matter back to the file of the Learned AO for this recomputation, we would caution that the principles laid down by the Hon. Supreme Court be strictly adhered to, while making such computation.

32. Ground Nos. 1 to 8 for the Assessment Year 2014-15, ground nos. 1 to 8 for the Assessment Year 2015-16 and grounds nos. 1 to 6 for the Assessment Year 2016-17 are partly allowed, as above

33. With regard to Ground Nos. 5 and 6 of assessment years 2014-15 and 2015-16 and Ground No. 4 of the assessment year 2016-17, relating to the addition made by the learned Assessing Officer on the issue of Infrastructure Development Reserve Fund (IDRF), in view of the arguments presented by the learned AR and refuted by the learned CIT (D.R) on the subject, it is imperative to decide whether there was an exposition of law that created a binding precedent on the issue, in the order of the Hon'ble Allahabad High Court in the case of CIT vs. Lucknow Development Authority (2013) 38 taxman.com 246 Allahabad. It is a settled law, that a decision of a Court is to be ascertained from the questions involved in the case and the judgment rendered with respect to the same. The Hon'ble Supreme Court in the case of CIT vs. Sun Engineering (P) Ltd., ITD 198 ITR 197 SC held that a decision could not be interpreted out of the context to the questions of law which were raised before it. The Hon'ble Court held as under:-

> *"Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."*

The Learned CIT(DR) has also invited out attention to the orders of the Hon Supreme Court in Union of India vs. Dhanwanti Devi and Ors in 1996 Supp. (5) S.C.R. 32 for the proposition that a a decision is only an authority for what it actually decides and it is the essence of the decision which constitutes its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. He has also invited our attention to the order of the Hon Supreme Court in State of U.P. and Another vs. Synthetics and Chemicals Limited and Another (1992) 87 STC 289 , for the proposition that an order passed sub silentio

does not constitute a declaration of law .Perusal of the order in Lucknow Development Authority (supra) in the light of these orders of the Hon Supreme Court shows that the questions of law that were raised before the Hon'ble High Court and answered by it in the said order, related to the eligibility of the assessee authority for exemption under section 12 of the Income Tax Act and grant of registration by the Tribunal under section 12AA of the Income Tax Act. After considering the rival arguments presented before it, the Hon'ble High Court rendered its decision, that the authority had objects which were admittedly charitable in nature and the mere selling of some products at a profit would not *ipso facto* hit the assessee, by applying the proviso section 2(15), so as to deny exemption under section 11. The intentions of the assessee and the manner in which the activities of the charitable trust were undertaken were highly relevant to decide the issue of applicability of the proviso of section 2(15) and there was no material or evidence brought on record by Revenue, to suggest that the assessee was conducting its affairs on commercial lines with a motive to earn profit. Therefore, the Hon'ble High Court held that the proviso to section 2(15) was not applicable to the facts and circumstances of the case and the assessee was entitled to exemption provided under section 11, for the relevant assessment year. In para 29 of the said order, the Hon'ble High Court also observed that the authority had been maintaining an Infrastructure Development and Reserve Fund (IDRF) as per the notification dated 15.01.1998 and the money transferred to this fund was to be utilized for the purpose of the project, as specified by a committee constituted by the State Government and the same could not be treated as belonging to the authority or making the receipt taxable in the hands of the authority. The Hon'ble High Court expressed its view that, for this reason also, it appears that the funds of the authority were utilized for general utility. From our study of this judgment and order, it is fairly clear that the nature of or title over the Infrastructure Development and Reserve Fund (IDRF), was not a question of law presented to the Hon'ble Court for decision. Furthermore, the order does not show that any arguments were presented before the Hon'ble Court with regard to the nature of and title over the Infrastructure Development and Reserve Fund (IDRF). Thus, it is quite clear that the judgment and order of the Hon'ble Court in the aforesaid case, primarily related to the eligibility of the assessee authority for exemption under section 11 and the correctness or otherwise of the Tribunal's decision, to order its registration under section 12AA. It's judgment with regard to these issues is reflected in the paragraphs 18 to 28 and specifically in paragraphs

26 to 28 and it appears, that the observation made in para 29 of the said order with relation to the Infrastructure Development and Reserve Fund (IDRF), was also with a view to demonstrate that the funds of the authority were utilized for general utility, in support of the decision that was being rendered by the Hon'ble Court. Therefore, while we have the greatest regard for the views expressed by their Lordships, we are inclined to agree with the learned CIT D.R. that the reference to ownership of the Infrastructure and Development Reserve Fund (IDRF) in the said order, cannot be treated as an exposition of law having binding precedent, that would preclude us from looking into this question after considering the arguments on the issue, but were only an observation in support of the actual decision rendered by the Hon'ble Court.

34. The ld. AR had also submitted that in view of a number of decisions rendered by various Benches of the ITAT in the cases of Lucknow Development Authority, Varanasi Development Authority and Meerut Development, that followed this judgment, if we were to take a contrary view from those Benches, then the matter should be referred to a Special Bench. In consideration of this argument, we observed that the question of reference to a Special Bench would only arise if different Benches had, upon analysis of the same set of facts or issues and arguments with respect to the same, come to a different conclusion. However, in the instant case, we observe that the various Benches have not considered the issue on its merits, but have accepted arguments advanced by assessees that they were bound by the views expressed in Paragraph 29 of the order of the Hon'ble Allahabad High Court. Furthermore, we observe that there is a judgment by the Hon Uttarakhand High Court on the exact issue under consideration. Therefore, reference to a Special Bench would not be warranted in such a case. With regard to the judgment of the ITAT Amritsar Bench in the case of Jalandhar Development Authority (supra), we observe that the same is distinguishable, because in that case, the External Development Charges (EDC) were collected by that assessee on the basis of various notifications issued by the Government of Punjab and the same could not be spent without the previous permission of the Government of Punjab, which is different from the case of the assessee, because the charges from which the Infrastructure Development and Reserve Fund (IDRF) was constituted, were collected by the Allahabad Development Authority, as per the powers assigned to it under the U.P.U.P.D.A. 1973 and even the committee constituted by the State Government was only to ensure, that funds so constituted were spent in a targeted manner, on certain objects of the assessee authority that

were already enshrined in U.P.U.P.D.A. 1973. Furthermore, it is observed that the decision by the ITAT Amritsar Bench in the case of Jalandhar Development Authority (supra) was given after considering the provisions of the Punjab Apartment and Property Regulation Act, 1995, and the ld. AR has not brought any material on record, to show us that the provisions of the Punjab Apartment and Property Regulation Act, 1995 were *para materia* to the U.P.U.P.D.A. 1973. Furthermore, it is also seen that the judgment by the ITAT Amritsar Bench, was delivered following the judgment of the Hon'ble Punjab and Haryana High Court in the case of Punjab Police Housing Corporation Limited, which related to taxability of interest on bank deposit made out of unutilized government grants, which in our view is a different issue altogether and with regard to which there is a contrary decision by the Hon'ble Patna High Court in the case of Bihar Police Building Construction Corporation, which in turn, has been delivered on the basis of the findings of the Hon'ble Supreme Court in Tuticorin Alkali Chemicals and Fertilizers Ltd v. CIT (1997) 6 SCC 117. Therefore, the only judgment rendered by any of the Tribunals with regard to the nature and ownership of the Infrastructure Development and Reserve Fund (IDRF), is the judgment of the Hon'ble Delhi Bench in the case of Saharanpur Development Authority. Here too, we observed that the basic question before the Hon'ble Delhi Bench was whether, if the principal amount (of the Infrastructure Development and Reserve Fund) had not been brought to tax by the ld. AO, whether the interest from the investment of such principal, could be brought to tax by him. It is true that the Hon'ble Delhi Bench held that the said Infrastructure Development and Reserve Fund (IDRF) did not belong to the assessee but to the State Government, but it did so by relying on the judgments of the Hon'ble Delhi High Court in the case of Delhi State Industrial Development Corporation (supra) and the ITAT Bangalore in Karnataka Urban Infrastructure Development and Finance Corporation. While doing so, the Delhi Bench did not delve into the provisions of the U.P.U.P.D.A. 1973 and therefore, its judgment was rendered without reference to the same. Nor did the said judgment look into the status of the assessee as an independent entity. Subsequently, the same Member who authored the judgment in the case of Saharanpur Development Authority, had occasion to consider the nature and title over the Infrastructure Development and Reserve Fund (IDRF) while authoring the judgment in the case of Mussoorie Dehradun Development Authority vs. Additional CIT, Dehradun in ITA Nos. 830/Del/2010 and 853/Del/2011. The ld. AR has submitted that the judgment in Mussoorie Dehradun Development

Authority (supra) does not take into account the judgment rendered in Saharanpur Development Authority, thereby rendering it per incuriam. We do not agree with the said submission. We observe that the ITAT Delhi Bench has analyzed the judgment in Karnataka Urban Infrastructure Development and Finance Corporation in great detail and rendered a different finding with regard to the ownership over the infrastructure fund, on account of conjoint reading of the O.M. dated 15.01.1998 viz. a viz., the provision of the Uttar Pradesh Urban Planning & Development Act, 1973. The Bench had rendered the finding that since the assessee was not a State and since it was performing activities of its own which was not the case in Karnataka State Industrial Development Corporation who was essentially implementing certain Central and State Governments projects, the facts of that case would not help the assessee. Hence, especially because the judgment in Mussoorie Dehradun Development Authority (supra) had been rendered by the same author, who rendered the judgment in the case of Saharanpur Development Authority, and because the said author had brought out the reasons for differing with his own earlier judgment in the said order, the mere fact that the earlier order was not referred to in the judgment of Mussoorie Dehradun Development Authority, would not render the same to be per incuriam. In fact, it could be argued that the author did not feel the need to specifically refer to the said order, as it had not been placed by way of argument before him. But it is inconceivable that he was unaware of the judgment passed by him in the case of Saharanpur Development Authority and the subsequent order in the case of Mussoorie Dehradun Development Authority has therefore to be viewed as an amendment in his understanding of the issue.

35. Ongoing through the judgment of the Delhi Bench in the case of Mussoorie Dehradun Development Authority, we find that the Hon'ble Bench has duly considered both the O.M. dated 15.01.1998 issued by the U.P. Government and the provisions of the U.P.U.P.D.A. 1973. After a conjoint reading of both these provisions, it has held that authority had been given to the assessee for collecting certain fees and charges in the process of its functioning and according to section 20 of the U.P.U.P.D.A. 1973, the assessee could retain the funds collected by it under the Act. Thus, the powers to collect the funds were already in existence under section 20 of the Act and it had to credit the fees and charges collected by it, to its own funds, which were to be applied to the fulfillment of the assessee's object. The ld. Bench observed, that going through the

office memorandum, would reveal that paragraph 1 of the said O.M. contemplates that the "income" of the development authorities described in Clause 5 of the said memorandum, would not be deposited in an ordinary pool, but would be deposited in a separate account, which would be used exclusively for residential infrastructure. Thus, it held that the provisions of the said memorandum, itself showed that firstly, the fees and charges collected by the assessee in Clause 5 of the memorandum, would be the income of the development authority but it would not be deposited in the ordinary pool, rather it would be earmarked to ensure the development of residential infrastructure. It therefore held, that the memorandum only provided a regulatory mechanism for incurring the expenses and carving out a preferential area within the assessee's objects. The Hon'ble Bench had observed, that the arguments of the assessee demonstrating that the infrastructure funds were a separate entity independent of the assessee, were a fiction and there was nothing in the memorandum to this effect. The memorandum only spoke of a designated bank account in which a fixed portion of the assessee's receipts would be deposited and out of which, expenses would be incurred in a preferred area of the assessee's objects, with an approval of an empowered committee. The Hon'ble Bench observed, that all these receipts formed part of the normal receipts of the assessee and that the committee referred to in the memorandum as well as in the Act, was not alien to the assessee. Thus, the Hon'ble Bench held, that the empowered committee was only concerned with giving approval for specific items of work to be done by the assessee, and not for the administration of funds. The funds formed part of the assessee's balance-sheet and were audited in the course of audit of its own accounts. Therefore, there was no separate entity called infrastructure fund, but just a bank account which was designated for channelizing a portion of the assessee's receipts, for the fulfilment of a preferential area of the assessee's deposit.

36. On consideration of the various judgments presented before us by both parties, it is important to consider the fact that the judgment and order of the Delhi Bench in the case of Mussoorie Dehradun Development Authority (supra), is the only judgment where a detailed analysis had been conducted of the said O.M. dated 15.01.1998 along with the provisions of the U.P.U.P.D.A. 1973. It may be important for us at this stage, to consider some of these provisions of the U.P.U.P.D.A. 1973 which have been referred to by the Hon'ble Delhi Bench in the case of

Mussoorie Dehradun Development Authority (supra). Section 20 of the Act (U.P.U.P.D.A. 1973) states, that the authority shall have and would maintain its own fund, to which would be credited all the monies received by the authority from the State Government, by way of grants, loans, advances or otherwise; all monies borrowed by the authority from the State Government from sources other than the State Government by way of loans and debentures; all fees, tolls and charges received by the authority under the Act; all monies received by the authority from the disposal of lands, buildings and other properties, movable and immovable and all monies received by the authority by way of rents and profits, or in any other manner from any other source. Sub Section 20(2) states that that fund shall be applied towards meeting the expenses incurred by the authority, in the administration of this act and for no other purpose. Section 41 of the Act relates to control by the State Government and empowers the State Government to issue such directions to the authority from time to time, as may be necessary, for the efficient administration of the Act and it states, that if there is any dispute between the authority and the State Government with regard to the exercise of its powers and discharge of its functions by the authority, then the decision of the State Government on such dispute shall be final. Thus, the provisions of the U.P.U.P.D.A. 1973 as laid out above makes it quite clear that all the money received by the authority from the State Government, from loans, from its earnings or from any source, would constitute the funds of the society. Furthermore, the provisions of section 41 allow the State Government to issue directions to the authority for the effective administration of the Act. A conjoint reading of these two provisions, make it abundantly clear that the O.M. dated 15.01.1998, which arises out of the powers of the State Government under section 41 of the U.P.U.P.D.A. 1973, cannot divert the title to the funds of the authority to the State Government, but rather has to be viewed as directions to the authority, for efficient administration of the Act, in accordance with the objects of the authority. This interpretation is further reinforced by the judgment of the Hon'ble Uttarakhand High Court in the case of Mussoorie Dehradun Development Authority in ITA Nos.5 & 6 of 2012 which were filed in appeal against the aforesaid order of the Hon'ble Delhi Bench in ITA No. 830/Del/2010 and ITA No.853/Del/2011. The Hon'ble Uttarakhand High Court, while taking note of the dispute observed, that in the case of Adityapur Industrial Area Development Authority vs. Union of India (2006) 153 taxman 107 (SC), a question had arisen regarding interpretation of article 289 of the Constitution of India as well as section 17

of the Bihar Industrial Area Development Authority Act, 1974.The Hon'ble Supreme Court had held, that the income of the authority constituted under the said Act was its own income and that the authority managed its own funds. It had its own assets and liabilities. It could be sued and could sue in its own name and since it was an authority constituted under an act of the Legislature of the State, it had a distinct legal personality, being a body corporate, as distinct from the State. The Hon'ble Supreme Court further clarified, that section 17 of the said Act, stated that only upon its dissolution, would the funds, assets and liabilities of the authority, devolve upon the State Government. It accordingly stated, that therefore before its dissolution, its assets, funds and liabilities were its own. For this reason, it held that it was futile to contend that the income of the authority was the income of the State Government, even though the authority was constituted under an Act, enacted by the State Legislature, by issuance of a notification by the Government thereunder. Accordingly, basing itself on this judgment of the Hon'ble Supreme Court, the Hon'ble Uttarakhand High Court dismissed two questions of law raised by Mussoorie Dehradun Development Authority relating to Article 289 and whether the collection of levies by statutory authorities in the nature of fees, charges, tax etc. imposed by the State through an enactment (U.P.U.P.D.A. 1973) can be said to be income of such authority. Thereafter, it compared the provisions of section 17 of the Bihar Industrial Area Development Authority Act, 1974, with the corresponding provision in the Uttar Pradesh Urban Planning and Development Act, 1973, i.e. section 58 and pointed out that both the provisions were *para materia* in substance. The Hon'ble High Court thereafter pointed out, that since the Mussoorie Dehradun Development Authority, constituted under the Uttar Pradesh Urban Planning and Development Act, 1973, was a separate entity which was distinct from the State, having its own legal identity, as a cooperate body which could sue or be sued in its name and having its own assets and liabilities, it was only when the State Government decides that the purpose of the development authority had been achieved and there was no need for continuance of such an authority, then upon dissolution of the authority the income, assets and liabilities of the authority would vest with the State Government and not before. It, therefore, held that in deference of the orders of the Hon'ble Supreme Court in the case of Adityapur Industrial Area Development Authority (supra), any fees collected for infrastructure development by the development authority, would be treated as the income of the authority and the expenses incurred by the authority for the purposes of infrastructure

development would be deductible from its' income. What emerges from the said order , is that the funds of the authority, which are defined vide section 20 of the U.P.U.P.D.A. 1973 cannot devolve or be diverted to the State Government, prior to the dissolution of the authority as envisaged in section 58 and therefore, to view the O.M. dated 15.01.1998, as diverting the funds of the authority to the State Government, is not maintainable Therefore, the O.M. dated 15.01.1998 has to be viewed in the context of the powers of supervision enjoyed by the State Government under the U.P.U.P.D.A. 1973 for the better administration of the Act, and not as creating any diversion of income by overriding title, because the State Government did not have the power to divert the income under the Act prior to the dissolution of the authority. For this reason, the Judgment cited by the assessee claiming diversion of income, ie Jit & Pal X Ray, will have no application to the facts of the assessee's case, in view of the express provisions of the Uttar Pradesh Urban Planning and Development Act, 1973. In fact, as has been clearly pointed out by the ld. CIT DR in his arguments and by the Delhi Bench of the Tribunal, is that Clause 1 of the said O.M., itself refers to the deposit of, 'income of the development authorities described in Clause 5' to be deposited in a separate account for residential infrastructure. The fact that the State Government has deep and pervasive administrative control over the authority is established and is, in fact, one of the grounds on which the assessee has been held eligible to be regarded as a general-purpose utility, having charitable objects, that are not for profit. Therefore, the O.M. dated 15.01.1998 has to be viewed in the context of the powers of supervision enjoyed by the State Government under the U.P.U.P.D.A. 1973 and not as creating any diversion of income by overriding title, as has been contended by the assessee and the ld. AR in their submissions before us. After analysis of the various legal pronouncements, the provisions of the U.P.U.P.D.A. 1973 and the O.M. dated 15.01.1998, the plea that the assessee did not have any right, title or interest over the said infrastructure fund and that it was merely a Nodal agency for implementing the projects of the State Government, is fit to be rejected. Therefore, following the Judgment of Hon. Uttarakhand High Court in Mussoorie Dehradun Development Authority (Supra), we hold that the Infrastructure Development and Reserve Fund is also the fund of the Assessee authority and liable to be considered in its hands. Needless to say, before any part of the same is considered as income of the authority, the expenditure made out of the same has to be considered as application towards the objects of the assessee authority.

37. The ld. AR has also made an alternative argument against routing this amount through the income and expenditure account, pointing out that because of the effect of the OM, the receipts to the fund were capital receipts and were therefore to be considered as accretion to the corpus of the Authority rather than its income. We observe that the receipts listed the OM dated 15.01.1998 are not voluntary contributions with specific directions, within the meaning of section 11 (1)(d) of the Act, but it is also noted that the OM dated 15.01.1998, issued under section 41 of the UPUPDA 1973, earmarks certain portion of receipts to the infrastructure fund for capital expenditure and the Hon'ble Supreme Court has held, in the case of Padmaraje. R. Kadambande vs CIT 62 Taxman 456(1992), that it is settled law, that in order to find out whether a receipt is a capital receipt or a revenue receipt, one has to see what it is in the hands of the receiver and not its nature in the hands of the payer. In other words, the nature of the receipt is determined entirely by its character in the hands of the receiver and the source from which the payment is made has no bearing on the question. Therefore, we deem it appropriate to restore this matter back to the file of the assessing officer to analyze the nature of the receipts with reference to the OM dated 15.01.1998, and thereafter take an appropriate decision on the quantum that is required to be routed through the Income and Expenditure account.

38. Ground Nos. 5 and 6 of assessment years 2014-15 and 2015-16 and Ground No. 4 of the assessment year 2016-17, are partly allowed, as above. The remaining grounds are general in nature and do not require a decision.

39. In the result all three appeals of the Assessee are partly allowed.

Order pronounced on 31.01.2025 under Rule 34(4) of the ITAT Rules, 1963.

Sd/-	***Sd/-***
[SUDHANSHU SRIVASTAVA]	**[NIKHIL CHOUDHARY]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: 31/01/2025
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Copy forwarded to:
1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.