

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,  
AND  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

ITA NOS. 2200, 2201 & 2202/Del/2023		
A.YRS. : 2015-16, 2016-17 & 2017-18		
KANPUR DEVELOPMENT AUTHORITY, 1 <sup>st</sup> floor, KDA Building, Benajhabar Road, Motijheel, Kanpur, Uttar Pradesh-208002 (PAN: AAALK0324M)	VS.	ADDL. CIT, EXEMPTION, RANGE, GHAZIABAD CGO COMPLEX-II, PURANI HAPUR CHUNGI, GHAZIABAD UTTAR PRADESH
(APPELLANT)		(RESPONDENT)

Appellant by : Dr. Rakesh Gupta, Adv.

Respondent by : Shri Dayainder Singh Sidhu,  
CIT(DR) & Shri Om Prakash, Sr. DR

Date of hearing : 17.03.2025

Date of pronouncement : 21.03.2025

**ORDER**

**PER SHAMIM YAHYA, AM :**

The captioned appeals filed by the assessee have been directed against the separate orders of the Ld. CIT(A)/NFAC, Delhi all dated 22.06.2023 pertaining to assessment years 2015-16, 2016-17 & 2017-18. Since common grounds have been raised, except the difference in figures, in these appeals, hence, we are dealing with the facts of the assessment year 2015-16, being lead case and the decision thereof will apply mutatis mutandis to other assessment years i.e.

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2016-17 and 2017-18 as well. The grounds raised in assessment year 2015-16 read as under:-

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in holding that the assessee authority is hit by the provisions of section 13(8) r.w.s. 2(15) of the Act and the assessee authority is not entitled for the benefit of exemption under section 11, 12 & 12A and assessee is not charitable entity and has further erred in holding that the assessee is conducting its affairs on commercial lines and further erred in taxing the surplus of Rs.77,27,50,277/- at maximum marginal rate and that too by recording incorrect facts and findings and without observing the principles of natural justice.
2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in not granting the benefit of exemption u/s 11 & 12 and further erred in taxing the amount of surplus of Rs.77,27,50,277/- at maximum marginal rate, is bad in law and against the facts and circumstances of the case and without observing the principles of natural justice and further erred in observing that the assessee authority is carrying activity with the motive to earn profit and further erred in treating the assessee's income as taxable.
3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in treating the income earmarked as an amount of Rs.4,31,31,883/- relating to infrastructure fund and FAR fund as taxable and that too by recording incorrect facts and findings and without observing the principles of natural justice.
4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in treating the income earmarked as an amount of Rs.4,31,31,883/- relating to infrastructure fund and FAR fund as taxable is bad in law and against the facts and circumstances of the case.
5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making the addition of Rs.41,47,240/- on account of contribution to AwasBandhu by treating it as payment made for non-business purposes and that too by recording incorrect facts and findings and without observing the principles of natural justice.

6. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making the addition of Rs. 41,47,240/- on account of contribution to AwasBandhu by treating it as payment made for non-business purposes, is bad in law and against the facts and circumstances of the case.
7. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making the impugned additions/disallowances and passing the impugned assessment order dated 11-12-2017 is illegal, bad in law, void ab-initio and against the facts and circumstances of the case and barred by limitation also.
8. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B and 234D of Income Tax Act, 1961.
9. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

2. The brief facts of the case are that the assessee is an authority constituted under the UP Urban Planning and Development Act, 1973 and running various developmental, building and sale/purchase activities. It filed its return of income on 30.09.2015 at Rs. NIL. Assessment in this case was completed u/s 143(3) at total income of Rs.82,00,29,400/- on 11.12.2017 after denying exemption u/s 11 to the assessee. From the records, AO noted that an amount of Rs.62,11,35,199/- was credited in Infrastructure Fund without crediting in Income & Expenditure account. AO held that the same may be credited to Income Expenditure account and expenditure on Infrastructure amounting Rs. 57,80,03,316/- was allowed. However, AO held that the same shall not be allowable for various reasons mentioned in the assessment order.

2.1 In view of the above facts and circumstances, unclaimed expenditure on infrastructure amounting Rs.57,80,03,316/- was added to the total income of the

assessee. Hence, the total income of the assessee was assessed at Rs. 1,39,80,32,716/- u/s. 147/153(3) r.w.s. 144B of the Act.

3. Against the above order, assessee appealed before the Ld. CIT(A), who vide his impugned order has dismissed the appeal of the assessee. Aggrieved with the same, assessee is now in appeal before us.

4. At the time of hearing, Ld. Counsel for the assessee submitted that as regards Ground Nos. 1 and 2 are concerned, the primary issue in the present appeal is regarding the denial of exemption u/s 11 and 12 of the Income Tax Act, 1961 allegedly on the ground that the activities of the assessee are hit by the proviso to Section 2(15) of the Income Tax Act, 1961 and therefore, the activities of the assessee are in the nature of trade, commerce or business and are not eligible for exemption u/s 11 and 12 of the Income Tax Act, 1961. In this regard, it was submitted before us that the assessee has been setup for achieving essential public functions/services and the objects of the assessee are essential for advancement of public purpose/functions and therefore, the activities undertaken by the assessee are not hit by the proviso to Section 2(15) as held by Hon'ble Supreme Court in the case of ACIT (Exemptions) vs. Ahmedabad Urban Development Authority, 449 ITR 1 (SC). He further submitted that identical issue has already been decided in favour of assessee in assessee's own case for AY 2014-15 in ITA No. 1655/2018 vide order dated 12.03.2025. Thus, in view of the decision of Hon'ble Supreme Court (supra), it is respectfully submitted that assessee is eligible for exemption u/s 11 and 12 and it may please be so held.

4.1 With regard to the Ground Nos. 3 and 4 are concerned, it was the contention of the ld. AR that these grounds are against the action of Ld. CIT(A) in confirming the action of Ld. AO in treating the amount earmarked as Infrastructure Fund and FAR Fund as taxable in the hands of the appellant. It

was the further contention that it has been held in the following judicial decisions that Infrastructure Funds are received by the appellant under the order of Government of Uttar Pradesh and appellant was required to use such funds as per the directions of the High Powered Committee having constituted by State Government and the appellant has no control over the said funds and therefore said funds cannot be treated as taxable in the hands of the appellant:

\* CIT vs. Lucknow Development Authority, (2014) 265 CTR 433 (All).

\* ITO vs. Saharanpur Development Authority, ITA No. 4113/2017, dated 24.03.2021 (Del).

\* ACIT vs. M/s Firozabad Shikohabad Development Authority, ITA No. 270/2016, dated 25.01.2018 (Agra).

4.2 Ld. AR also submitted that identical issue has been decided in favour of assessee in assessee's own case for AY 2014-15 in ITA No. 1655/2018 vide order dated 12.03.2025.

4.3 As regards, Ground No. 5 and 6 are concerned, it was the further contention of the Ld. AR that these grounds are against the disallowance of contribution to Awas Bandhu allegedly as payment for non-business purposes. It is submitted that contribution to AwasBandhu is allowable as application of income in view of decision of Hon'ble Jurisdictional High Court (Allahabad) in the case of CIT vs. UPSIDC dated 03.09.2012 wherein Hon'ble High Court have decided the issue in favour of assessee and the said decision has been relied upon by Ld. CIT(A) in assessee's own case for AY 2013-14 and has allowed the contribution to AwasBandhu as application of income and department has not disputed this issue in AY 2013-14. In this view of the matter, it is submitted that since assessee is eligible to benefit of section 11&12 and therefore the said disallowance does not survive.

4.5 As regards Ground No. 7 it is submitted by the Ld. AR that in view of the above discussions, the action of Ld. CIT(A) in confirming the action of Ld. AO

in making the impugned additions/disallowances and passing the impugned assessment order dated 11-12-2017 is illegal, bad in law, void ab-initio and against the facts and circumstances of the case and barred by limitation also.

4.6 As regards ground no. 8 relating to charging of interest u/s 234B & 234D are consequential in nature, hence, need not be adjudicated.

4.7 The ground no. 9 is general in nature, hence, need not be adjudicated.

5. Ld. DR did not controvert the aforesaid proposition of the Ld. AR, but he relied upon the orders of the authorities below.

6. We have heard both the parties and perused the records. With regard to Ground Nos. 1 and 2 are concerned, the primary issue in the present appeal is regarding the denial of exemption u/s 11 and 12 of the Income Tax Act, 1961 allegedly on the ground that the activities of the assessee are hit by the proviso to Section 2(15) of the Income Tax Act, 1961 and therefore, the activities of the assessee are in the nature of trade, commerce or business and are not eligible for exemption u/s 11 and 12 of the Income Tax Act, 1961. We note that assessee has been setup for achieving essential public functions/services and the objects of the assessee are essential for advancement of public purpose/functions and therefore, the activities undertaken by the assessee are not hit by the proviso to Section 2(15) as held by Hon'ble Supreme Court in the case of ACIT (Exemptions) vs. Ahmedabad Urban Development Authority, 449 ITR 1 (SC).

6.1 With regard to the Ground Nos. 3 and 4 are concerned, are against the action of Ld. CIT(A) in confirming the action of Ld. AO in treating the amount earmarked as Infrastructure Fund and FAR Fund as taxable in the hands of the assessee. We find that considerable cogency in the contention of the Ld. AR that in the following judicial precedents, it has been held that Infrastructure Funds are received by the assessee under the order of Government of Uttar Pradesh and appellant was required to use such funds as per the directions of the

High Powered Committee having constituted by State Government and the assessee has no control over the said funds and therefore said funds cannot be treated as taxable in the hands of the appellant:-

\* CIT vs. Lucknow Development Authority, (2014) 265 CTR 433 (All).

\* ITO vs. Saharanpur Development Authority, ITA No. 4113/2017, dated 24.03.2021 (Del).

\* ACIT vs. M/s Firozabad Shikohabad Development Authority, ITA No. 270/2016, dated 25.01.2018 (Agra).

7. We note that the identical issues viz. Ground 1 to 4 as above, have already been decided in favour of assessee in assessee's own case for AY 2014-15 in ITA No. 1655/Del/2018 vide order dated 12.03.2025 wherein, the Tribunal has held as under:-

*“7. The learned counsel for assessee has submitted that the assessee has been setup for achieving essential public services and the object of the assessee are essential for advancement of public purpose and therefore, the activities undertaken by the assessee are not hit by the proviso to Section 2(15) of the Act. Reliance has placed the case of ACIT (Exemption) v. Ahmedabad Urban Development Authority, 449 ITR1 (SC).*

*8. The Ld. Counsel for the assessee has also submitted that Infrastructure funds are received by the assessee under the order of the Government of Uttar Pradesh and the assessee was required to use such funds as per the directions of the high-powered committee having constituted by State Government and the assessee has no control over the said funds and therefore said funds cannot be treated as taxable in the hands of the assessee. He has also submitted that in the case of CIT v. Rajasthan and Gujarati Charitable Foundation Poona Civil Appeal No. 7186/2014 dated the Hon'ble High Court held that the amendment of section 11(6) of*

*the Act is prospective and therefore applicable from A.Y. 2015-16. Ld counsel for assessee prayed that the appeal be dismissed. Reliance have placed on the following decisions:*

*(i) ACIT, Circle -2(2) (1) vs M/s Firozabad Shikohabad Development Authority ITA no. 270/Agra/2016 dated 2501-2018*

*ii) ITO vs. Saharanpur Development Authority ITA No. 4113/Del/2017 dated 24-03-2021*

*iii) Commissioner of Income Tax -1 Lucknow v. Lucknow Development Authority, Gomti Nagar [2013] 38 taxmann.com.246 (Allahabad)*

*iv) Ld CIT(A) has observed in his order as under:*

*“After considering the matter from all angles, it is clear that the Hon'ble Supreme Court in the case of Surat Art Silk Cloth Manufacturers Association (supra) held that what is important is whether the predominant object of the activity involved in carrying out the object of general public utility or is to subserve the charitable purpose or to earn profit. It is not required that the activity must be carried on in such a manner that it does not result in any profit. If the profits are earned then they must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. Keeping in view the ratio laid down by the Hon'ble Supreme Court and jurisdictional Allahabad High Court in the above cases, I have examined the objects and activities of the assessee. From the perusal, I find that the activities of the appellant are to frame and execute the housing and improvement schemes and other projects; to plan and coordinate various housing activities in the State and to ensure expeditious and efficient implementation of housing and improvement schemes*

*in the State. Activities like ManyavarKansiram Urban Poor Housing Scheme wherein it is instructed that KDA shall add NIL Land cost to the costing; sale of the scheme notified by GO No. 972/AATH-2-2011-2475/08TC-1 dated 09.04.2011; KDA Board's approval of reducing the cost of WES houses by reducing the cost of land of such houses by 40% and by not charging any overhead charges in the costing of the houses except for 2% for contingency; or chart showing costing of EWS houses in Shatabdi Nagar Scheme wherein it can be clearly seen that KDA has given a reduction in Land Cost and not added any overhead Charges so as to make the houses affordable for the rural poor; or act of not adding any overhead charges and further reducing the cost of the houses by a further 10% all these activities show that KDA is spending more than cost, on account of meeting its objectives for weaker section of society. These all activities are nothing but purely charitable in nature. Another major "charitable activity" of Kanpur Development Authority (KDA) is the providing development of the town of Kanpur through various development of Naveen Market and construction of multi-level parking at parade as infrastructure, providing public amenities like Multi-Level parking at various places in Kanpur, preservation-of Ganga River Bank, beautification of parks etc.*

*I have also perused the UPUPD Act, 1973. Section 4 of the said Act provides that State Government may, by notification in the Gazette constitute for the purposes of this Act, an Authority to be called the Development Authority for any development area. The Kanpur Development Authority has been constituted by the Government under this section. Section 17(1) of this Act provides*

as under: "If in the opinion of State Government, any land is required for the purpose of development or for any other purposes under this Act, the State Government may acquire such land under the provisions of Land Acquisition Act, 1894." It is clear that as per clause 4 of Land Acquisition Act, the land could be acquired only for public purposes. Section 57 of the said Act also provides that Authorities could make its bye-laws with the approval of the State Government. Section 58 provides that in case of dissolution of the Authority, all the properties, funds and dues which are vested in or realizable by the Authority, shall vest in or to be realizable by the State Government. Various sections of the said Act make it abundantly clear that the activities of the Authorities were aimed at public purposes and not personal one. I, therefore, have no hesitation in holding that the activities of the assessee are charitable in nature and are for advancement of general public utility. It is therefore clear that KDA fully qualifies the test laid down by the apex court and the jurisdictional high court in as much as there is obligation that the properties of the authority will be utilised only for the purpose for which the authority was set up. The AO has incorrectly chosen to interpret applicability of proviso of S. 2(15) of the IT Act otherwise without considering the complete facts and only influenced by profit being made from all these activities and not considering the nature of activities. In view of the above factual and legal proposition laid down by jurisdictional high court and the apex court, addition made by AO is deleted. These grounds are allowed.

Ground No. 5 & 6 relates to making addition of Rs. 74,65,69,311/- by holding that the amount earmarked for Infrastructure Fund is

taxable income. In the assessment order, the AO has stated as under:

"4. Infrastructure Development fund: it was found that an amount of Rs.74,65,69,311/- was directly credited to infrastructure development fund without being credited to Income and expenditure account hence the amount is added back. (Additions of Rs. 74,65,69,311/-)

During the appellate proceedings the AR has filed written submission as under: The premises on which addition has been made, has been laid down by the Assessing Officer on page 5 of the assessment order and reads as hereunder: .

"On the Perusal of Income & Expenditure Account read with annexure B out of the total receipts only a fixed portion is credited to Income & Expenditure account the details being as under :-

Head of Receipt	Credited to Income and Exp. Account	Total receipts	Short credited in income expenditure (directly credited to infrastructure development fund)
Conversion of land use	1,17,44,258.00	1,05,69,832.20	11,74,425.80
Betterment and registration	1,63,06,390.00	1,46,75,751.00	16,30,639.00
Compounding fee	5,25,66,441.00	2,62,83,220.50	2,62,83,220.00
Income from Stamp duty	21,59,42,368.00	19,43,49,131.20	2,15,94,236.80
Freehold charges	2,16,87,260.00	1,95,18,533.94	21,68,726.00
Development fee	49,24,40,032.00	44,31,96,027.75	4,92,44,003.25
Total	10,63,15,008.51	85,28,84,320.00	74,65,69,311.49

*On the basis of the aforesaid chart the assessing officer proceeds to arrive at the assessed income by adding the amount shown in column 4 of the above chart against the item of addition. Before going into the reasons for this erroneous addition, without prejudice to whatever is being submitted, it is most humbly pointed out that even the very chart prepared included in the assessment order*

*has been wrongly drafted without application of mind. The correct position behind the logic taken by the assessing officer should have been as follows as is*

*demonstrated in the redrafted chart:*

<i>Head of Receipt</i>	<i>Gross amount under each head or total receipts.</i>	<i>Credited directly to balance sheet as infrastructure fund in accordance with GO</i>	<i>Credited to income and expenditure account with laws</i>
<i>Conversion of land use</i>	<i>1,17,44,258.00</i>	<i>1,05,69,832.20</i>	<i>11,74,425.80</i>
<i>Betterment and registration</i>	<i>1,63,06,390.00</i>	<i>1,46,75,751.00</i>	<i>16,30,639.00</i>
<i>Compounding fee</i>	<i>5,25,66,441.00</i>	<i>2,62,83,220.50</i>	<i>2,62,83,220.00</i>
<i>Income from Stamp duty</i>	<i>21,59,42,368.00</i>	<i>19,43,49,131.20</i>	<i>2,15,94,236.80</i>
<i>Developed fee</i>	<i>49,24,40,032.00</i>	<i>44,31,96,028.75</i>	<i>4,92,44,003.25</i>
<i>Total</i>	<i>81,06,86,749.00</i>	<i>70,85,91,947.59</i>	<i>10,20,95,251.49</i>

*gr*

*On comparison of both the charts it will be noted that besides the components of Infrastructure fund having been wrongly identified in the assessment order even the total of the columns were wrong. Only on this basis of this patent mistake the impugned assessment order needs to be set aside and the addition deleted.*

*Regarding this addition on account of Infrastructure Fund, the appellant begs to draw your honours attention to the G.O.152/E-0-1-1998 dt. 15.01.1998 on the basis of which the transfers have been made to the infrastructure fund. A copy of the GO been submitted during the course of assessment proceedings. From the said G.O. and the documents attached thereto, it would be seen that the receipts represent collection made on behalf of the government, for being utilised for the specified purposes. The appellant itself did not have any right, title or interest*

*to such receipts nor it has even the discretion to apply such receipts for attainment of the objects for which ADA had been notified. During the year under consideration, there were credits for sums aggregating Rs. 70,85,91,497.59/- under the head "Infrastructure fund" which the "appellant authority" had taken directly to the Balance Sheet, after transferring from various accounts. The said fund is in the process of being created as per the Government order and the same was liable to be utilized in the manner laid down in the related Government order itself. In other words, it was to be utilized only for the purposes as spelt out and specified by the State Government and the "appellant authority" has merely acted as "nodal agency", having no right, title or interest of its own in the said 'Fund'. It is also relevant to mention here that 'infrastructure fund is being utilised as per instructions of the State Government*

and it is for this reason that balance in the said account as on 31.3.2014 got increased to Rs. 1,76,86,50,200.17/- and it kept on fluctuating as per the instructions of the State Government. In fact, in relation to infrastructure fund the status of KDA is that of a mere nodal agency. Looking to the nature of receipts, it is stated that the appellant had never acquired any right, title or interest therein of its own, therein. The receipts stood diverted from source. However, the ground on which the disallowance has been made by the Assessing Officer, is that these receipts cannot be allowed exemption under section 11(1)(d) as benefit of exemption under section 11 itself was being denied to the appellant. In this background the appellant's submissions are twofold vs.

a) Firstly, denial of exemption under section 11, is based on misconception and the same deserves to be allowed keeping in view the submissions made in paras herein fore; and b) irrespective of firstly, the receipts in question never belonged to the appellant as the same stood diverted at source thereof, therefore decision of Delhi Bench of Hon'ble ITAT in case of Saharanpur Development as has been discussed in para herein forth is squarely applicable.

*Decision:*

I have perused the facts of the case, contention of AO and submissions made by the appellant. AO has made the addition by a very cryptic and non-speaking order without mentioning anything about the issue involved, facts of the matter or any legal and accounting provision under which the same has been added. Appellant has tried to bring to my knowledge the inference drawn from the assessment order, pointing the para that might be relevant for the basis of this addition. A perusal of the para shows that AO has in fact calculated sum in every column, incorrectly. In fact if it

*is presumed that the table made by AO is correct then appellant has in fact credited more in P&L Account and not less. Secondly even if it is to be held that the accretion to his fund namely Infrastructure fund received can be added to the income of the assessee then also the same shall be free of taxation because of the fact that appellant enjoys the exemption u/s 11 of the IT Act. Without getting into the merits of the case and submissions of the appellant, this addition is deleted for the reason that it is made without any basis, by passing a non-speaking order. This ground is allowed.*

*Ground No. 7 - Disallowance of Depreciation of Rs.1,69,33,620/-:*

*In the assessment order, the AO has stated as under: "5. Depreciation: The Assessee has claimed depreciation of Rs.1,69,33,620,25 on account of application of income for charitable purposes which is not allowable as the capital expenditure on acquiring fixed assets has already been allowed in the respective years. During the appellate proceedings the AR has filed written submission as under:-*

*An amount of Rs. 1,69,33,620.25 has been added on account of disallowing depreciation as the investments in fixed assets has already being claimed as application of Income in earlier years. In this regard as already has been discussed and submitted herein above KDA filed its return in Form 10B after claim exemption under section 11 of the Act, after balancing the receipts with the utilization thereof and the same is fully supported by the audit report in Form 108 that was available on record. It has also been discussed herein above that KDA is NOT a commercial entity and its registration U/s 12AA remained intact and continued to be in force, even on today. Further it has been submitted applicability and scope of proviso to section 2(15) as had been inserted by the*

*Finance Act 2009 w.e.f. 1.4.2009 will not apply to KDA. KDA filed its return claiming the benefits U/s 11 and while computing the receipts and the utilisation thereof did not claim Depreciation of Assets as a utilization as is evident from the computation U/s 11 available on record. It may be pointed out that in the last few years assessments KDA has not been allowed the benefit U/s. 11. All these assessments are under various stages of litigation before authorities. Without prejudice to KDA's claim to the benefits U/s. 11 it is most humbly submitted that this addition of Rs. 1,69,33,620.25 was not called for as the same has been made on the basis of assumptions and even that on holding that KDA is a commercial entity (which by no dint of imagination it is not) this addition should not have been made and should not have been added at the time of framing the assessment order so that the disputed high pitched demand would have been reduced.*

*Decision:*

*The A.O has denied the claim of depreciation holding that assessee is enjoying exemption u/s 11 since inception and the assets was created out of exempt Income and thus claiming depreciation on such assets which was acquired from exempted income is amount to double deduction. Claim made for depreciation is for use of the assets while claim of capital outgo as an application is on a different footing, just because capital expenditure was considered as application of income, it could not be said that the assessee would not be entitle to claim of depreciation thereon. The Hon'ble High Court Calcutta Bench in the case of CIT vs. Siliguri Regulated Market Committee has also held that prior to 1-4-2015 depreciation was to be allowed on assets acquired by the trust even though cost of same has already been treated as application of*

*income for charitable purpose. The Hon'ble ITAT, Lucknow Bench in the case of Assistant Commissioner of Income-tax v. Saraswati Gyan Mandir Shiksha Sansthan reported in [2014] 50 taxmann.com 203 (Lucknow -Trib.) held that allowing exemption under s. 11 is not equal to allowing deduction. Allowing exemption means that the income is not liable to tax but the income remains the same and it does not get reduced, although such income is not taxable because of the operation of s. 11(1) of the Act. The Hon'ble Bombay High Court in the case of CIT v. Institute of Banking Personnel Section [2003] 264 ITR 110/131 Taxman 386 he submitted that the Hon'ble High Court in the said decision has clearly held that depreciation is allowable on the assets the cost of which has been fully allowed as application of income u/s.11 in past years. The Hon'ble Bombay High Court has followed its earlier decision in the case of DIT (Exemptions) v. Framjee Cawasjee Institute [2014] 227 Taxman 266/49 taxmann.com 22. In the said decision, it was held that depreciation on depreciable assets had to be taken into account in computing the income of Trust although the amount spent on acquiring such assets had been treated as application of income of the Trust in the year in which such assets were acquired. The Hon'ble ITAT Pune in the case of Parkar Medical Foundation v. Deputy Commissioner of Income-tax, Ratnagiri Circle, Ratnagiri reported in [2015] 55 taxmann.com 268 (Pune - Trib.) has also affirmed the view taken by Hon'ble Bombay High Court and held that assessee is entitled to depreciation on assets entire amount of which has been claimed as deduction on account of application for charitable purposes. The Hon'ble Rajasthan High Court in the case of Commissioner of Income Tax-II, Jodhpur vs. Krishi UpajMandiSamiti reported in*

[2015] 55 taxmann.com 63 (Rajasthan) held that income of a charitable trust like the present assessee derived from the depreciable heads is also liable to be computed on commercial basis, however, while doing so it is to be kept in mind that ultimately assessee is a charitable institution and its income for tax purposes is required to be determined by provisions of Section 11 of the Act of 1961 after taking into consideration provisions extending normal depreciation and deductions from its gross income. In computing the income of a charitable institution/trust depreciation of assets owned by such institution is a necessary deduction on commercial principles, hence, the amount of depreciation has to be deducted to arrive at the income available. The Hon'ble Bombay High Court in the case of Commissioner of Income-tax v. Institute of Banking Personnel Selection (IBPS) reported in [2003] 131 TAXMAN 386 (BOM.) has held that in the case of a Charitable Trust, there Income and thus claiming depreciation on such assets which was acquired from exempted income is amount to double deduction. Claim made for depreciation is for use of the assets while claim of capital outgo as an application is on a different footing, just because capital expenditure was considered as application of income, it could not be said that the assessee would not be entitle to claim of depreciation thereon. The Hon'ble High Court Calcutta Bench In the case of CIT vs. Siliguri Regulated Market Committee has also held that prior to 1-4-2015 depreciation was to be allowed on assets acquired by the trust even though cost of same has already been treated as application of income for charitable purpose. The Hon'ble ITAT, Lucknow Bench in the case of Assistant Commissioner of Income-tax v. Saraswati Gyan Mandir Shiksha Sansthan reported in [2014] 50

*taxmann.com 203 (Lucknow Trib.) held that allowing exemption under s. 11 is not equal to allowing deduction. Allowing exemption means that the income is not liable to tax but the income remains the same and It does not get reduced, although such income is not taxable because of the operation of s. 11(1) of the Act. The Hon'ble Bombay High Court in the case of CIT v. Institute of Banking Personnel Section [2003] 264 ITR 110/131 Taxman 386 he submitted that the Hon'ble High Court in the said decision has clearly held that depreciation is allowable on the assets the cost of which has been fully allowed as application of income u/s.11 in past years. The Hon'ble Bombay High Court has followed its earlier decision in the case of DIT (Exemptions) v. FramjeeCawasjee Institute [2014] 227 Taxman 266/49 taxmann.com 22. In the sald decision, it was held that depreciation on*

*depreciable assets had to be taken into account in computing the income of Trust although the amount spent on acquiring such assets had been treated as application of income of the Trust in the year in which such assets were acquired. The Hon'ble ITAT Pune in the case of Parkar Medical Foundation v. Deputy Commissioner of Income-tax, Ratnagiri Circle, Ratnagiri reported in [2015] 55 taxmann.com 268 (Pune Trib.) has also affirmed the view taken by Hon'ble Bombay High Court and held that assessee is entitled to depreciation on assets entire amount of which has been claimed as deduction on account of application for charitable purposes. The Hon'ble Rajasthan High Court in the case of Commissioner of Income Tax-II, Jodhpur vs. Krishi UpajMandiSamiti reported in [2015] 55 taxmann.com 63 (Rajasthan) held that Income of a charitable trust like the present assessee derived from the*

depreciable heads is also liable to be computed on commercial basis, however, while doing so it is to be kept in mind that ultimately assessee is a charitable Institution and its income for tax purposes is required to be determined by taking into consideration provisions of Section 11 of the Act of 1961 after extending normal depreciation and deductions from its gross income. In computing the income of a charitable institution/trust depreciation of assets owned by such institution is a necessary deduction on commercial principles, hence, the amount of depreciation has to be deducted to arrive at the income available. The Hon'ble Bombay High Court in the case of Commissioner of Income-tax v. Institute of Banking Personnel Selection (IBPS) reported in [2003] 131 TAXMAN 386 (BOM.) has held that in the case of a Charitable Trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of subsequent years. Income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by the Trust for charitable and religious purposes in the earlier years against the Income earned by the Trust in the subsequent year will have to be regarded as application of income of the Trust for charitable and religious purposes in the subsequent year in which adjustment has been made having regard to the benevolent provisions contained in section 11 of the Act and that such adjustment will have to be excluded from the income of the Trust under section 11(1)(a) of the Act. The amended provision of section 11(6) of the I.T Act, which has been inserted w.e.f 1-4-2015 which is explanatory and clarificatory in nature. The provision is applicable from A.Y 2015-16 onwards. Respectfully following the

*above decisions, I am of the view of the view that since in the present case, exemption is allowed at the time of user of assets, It does not amount to double deduction and thus A.O Is directed to allow the claim of depreciation. This ground is allowed. Ground No. 8 Holding That No Profit Has Been Shown By The Assessee On Sale Of Properties:*

*Since no addition has been made on this ground in the assessment order AR did not press this ground as being academic. Hence this ground is dismissed as not*

*pressed. Grounds no 9 to 11 are general.*

*Appeal is partly allowed.”*

*9. We have heard the parties and gone through the material available on record.*

*10. The Ld CIT(A) has examined the issues in the correct prospective and rightly deleted the additions made by the A.O. The reasoning and findings of the Ld. CIT(A) granting relief is on proper appreciation of law expounded by the judicial dicta. We do not find any reasons to interfere with the findings of the Ld. CIT(A). The appeal of the revenue is liable to be dismissed.*

*11. In the result the appeal of the revenue is dismissed.”*

8. In view of the aforesaid discussions and respectfully following the aforesaid precedent, we allow the ground nos. 1 to 4 in favour of the assessee.

9. As regards, Ground No. 5 and 6 are concerned, these grounds are against the disallowance of contribution to Awas Bandhu allegedly as payment for non-business purposes. We find potency in the arguments of the Ld. AR that the contribution to AwasBandhu is allowable as application of income in view of decision of Hon'ble Jurisdictional High Court (Allahabad) in the case of CIT vs. UPSIDC dated 03.09.2012 wherein Hon'ble High Court have decided the issue

in favour of assessee and the said decision has been relied upon by Ld. CIT(A) in assessee's own case for AY 2013-14 and has allowed the contribution to AwasBandhu as application of income and department has not disputed this issue in AY 2013-14. Since assessee is eligible to benefit of section 11&12 and therefore the said disallowance does not survive and deleted as such. Accordingly, the ground no. 5 and 6 are allowed.

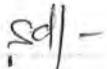
10. In view of above the other grounds viz. ground no. 7 to 9 have become academic/consequential and general in nature, hence, need not be adjudicated.

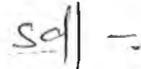
11. In the result, the appeal no. 2200/Del/2023 (AY 2015-16) is allowed.

12. As regards ITA No. 2201 & 2202/Del/2023 (Ays. 2016-17 & 2017-18) are concerned, since exactly the similar and identical Grounds have been decided in favour of the assessee in ITA No. 2200/Del/2023 (AY 2015-16) as aforesaid, hence, our aforesaid decision taken in assessment year 2015-16 shall apply *mutatis mutandis* to other cases relating to assessment years 2016-17 & 2017-18 as well. We hold and direct accordingly.

13. In the result, all the (03) assessee's appeals also stand allowed in the aforesaid manner.

Order pronounced on 21.03.2025.

  
(SUDHIR PAREEK)  
JUDICIAL MEMBER

  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

SRBHATNAGAR

**Copy forwarded to:-**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar