IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA Nos. 2593 to 2596/Bang/2024
Assessment Years : 2012-13, 2013-14, 2015-16 & 2018-19

M/s. Magadi Planning Authority, Bagegowda Layout, Tirumale Main Road, Magadi, Ramnagar – 562 120. Karnataka. **PAN: AAALM1912D**	**Vs.**	The Income Tax Officer (Exemption), Ward – 3, Bangalore.
APPELLANT		**RESPONDENT**

Assessee by	:	D.N. Joshi & Co, CAs
Revenue by	:	Shri Subramanian S., JCIT-DR

Date of Hearing	:	21-02-2025
Date of Pronouncement	:	24-03-2025

ORDER

PER BENCH

These are the four appeals filed by the assessee challenging the orders of the NFAC, Delhi all dated 17/12/2024 in respect of the A.Ys. 2012-13, 2013-14, 2015-16 and 2018-19.

2. All these appeals are related to the same assessee and the issue involved in all the appeals are similar. We decided to take up all the appeals together and pass a common order for the sake of convenience. Since the

grounds raised by the assessee in all the appeals are identical, grounds of appeal raised for the A.Y. 2012-13 in ITA No. 2593/Bang/2024 is reproduced hereinbelow for reference.

ITA No. 2593/Bang/2024

> *"1. Order of the CIT appeal is bad in law, on the basis of facts and circumstances of the appellant case.*
>
> *2. Appellant denies the exemption which is legally allowable by virtue of the provision of section 11 and 12, on the basis of facts and circumstances of the appellant case.*
>
> *3. CIT appeal fails to appreciate that the assesse is legally eligible for exemption u/s 11 and 12 of the act and the activity of the assessee is not covered u/s 2(15) of the Income tax act 1961.*
>
> *4. CIT appeal erred in considering the activity of the Planning authority is business activity by virtue of section 13(8).*
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> *5. CIT appeal and LAO erred in considering the activity of the planning authority as business in lieu of the fact that they are governed by the guidelines issued by the government of Karnataka for collecting and utilisation of the various fees and cess from the citizen for carrying out planned development.*
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> *6. LAO and CIT appeal erred in considering the receipt of various fees like Betterment fees , lake Development fees, and other cess for specific purpose, where in the Assessee does not have any right of fixation and usge power in the hands of the Authority.*
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> *7. LAO and CIT appeal erred in appreciating the fact that the amount collected by the planning authority is as per the guidelines fixed by the government and to be used only after proper approval from the government, hence not income of the authority.*
>
> *8. CIT appeal fails to consider the judgement of the CIT appeal and ITAT Bangalore in the case of Kanakapura Planning authority while deciding the case before hand.*

9. CIT Appeal has not considered the Judgement of Supreme Court in case of AUD and others in civil appeal dated 19/10/2022.

10. And or such other ground as may arise in the course of the proceedings may be considered.

PRAYER:
1. Assessee is eligible for the exemption u/s 11 and 12 based on the facts and circumstance of the case and same be allowed.

2. Receipt of fees by the authority is for specific purpose and there is raider on the collection and utilisation of the same is falling u/s 11(1)(d) of the act hence be allowed."

3. We will take up the appeal in ITA No. 2593/Bang/2024 for A.Y. 2012-13 as the lead case and the result arrived in the said appeal will apply mutatis mutandis to the appeals in ITA Nos. 2594 to 2596 for A.Ys. 2013-14, 2015-16 and 2018-19.

4. The brief facts of the case are that the assessee is a local planning authority established by the Government of Karnataka with the main objects of planning, development and improvement of cities, towns, villages or both. The assessee is an independent authority and it is a part of Magadi Municipal Corporation. The members are elected members. The assessee enjoyed the benefit u/s. 10(20A) of the Act and the entire income derived from charges and fees were exempted from the purview of the Income Tax Act. Subsequently, the said provision 10(20A) was deleted from the Statute w.e.f. 01/04/2003 and therefore from the A.Y. 2003-04, the benefits u/s. 10(20A) would not be applicable to the assessee. Therefore the assessee had claimed exemption u/s. 11 and 12 of the Act. The assessee got registration u/s. 12A of the Act and thereafter claimed deduction u/s. 11/12 of the Act. The AO considered the said issue and came to the conclusion that the assessee is not entitled for claiming deduction u/s. 11/12 since they are not local authority and also not doing any charitable activities. Even though the assessee had brought to the knowledge of the AO that the similar

development activities had got the deduction and relied on the order of the Tribunal for the said proposition, the AO not accepted the case of the assessee and denied the deduction claimed by the assessee by holding that the activities done by the assessee is in the nature of trade and hit by proviso to Section 2(15) of the Act and therefore the said exemption claimed u/s. 11 is not eligible. The AO also not accepted the assessee as a local authority. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that the assessee had got registration u/s. 12A of the Act and their activities could not be termed as trade and therefore they are eligible for exemption u/s. 11 of the Act irrespective of the proviso to section 2(15) r.w.s. 13(8) of the Act. The Ld.CIT(A) had considered the issue and confirmed the order of the AO by holding that the activities undertaken by the assessee is an adventure in the nature of trade and hence proviso to section2(15)would apply. The Ld.CIT(A) further observed that the issue as to whether the assessee's activity is akin to business or otherwise had not attained finality and confirmed the denial of exemption u/s. 11 of the Act. As against the said orders, the assessee is in appeal before this Tribunal.

5. At the time of hearing, the Ld.AR took us through the various activities carried out by the assessee and also the statutory provisions and also furnished the order of the Coordinate Bench of this Tribunal dated 22/01/2025 in the assessee's own case and prayed to allow the appeals.

6. The Ld.DR relied on the orders of the lower authorities and prayed to dismiss the appeals filed by the assessee.

7. We have heard the arguments of both sides and perused the materials available on record.

8. We have perused the order passed by the Coordinate Bench of this Tribunal in ITA Nos. 1056, 1352 & 1353/Bang/2024 dated 22/01/2025 in which a similar dispute arose in respect of the A.Ys. 2014-15, 2016-17 and

2017-18 which were decided by the Coordinate Bench by following the earlier order passed in the case of Bangalore Development Authority which reads as follows:

> *"13.2 We find that in the case of BDA, the coordinate bench of ITAT had categorically held that activities undertaken by a statutory authority in fulfilment of its public duties, even when they involve in the collection of fees, do not fall within the scope of trade, commerce, or business as per the proviso to Section 2(15) of the Act. The finding of the Tribunal in the case of BDA (supra) are extracted as under:*
>
> > *9. At the time of hearing of the appeal, it was agreed by both the parties that identical issue had come up for consideration in assessee's own case for asst. year 2012-13 in ITA No.1104/Bang/2017 and this tribunal vide its order dated 22/3/2019 held that the assessee is entitled to the benefit of sec. 11 of the Act and that its activities cannot be said to fall within the ambit of proviso to sec. 2(15) of the Act. The conclusions of the Tribunal can be summed up as follows:-*
> >
> > > *1. In Paragraph 5.8.1, the Tribunal extracted the objects of the Assessee as per Section 14 of the BDA Act, 1976, which is as under:*
> > >
> > > > *"14. Objects of Authority:--The objects of the authority shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose the authority shall have the power to acquire, hold, manage and dispose of movable and immovable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary of expedient for the purpose of such development and for purposes incidental thereto."*
> > >
> > > *In Paragraph 5.8.2 the Tribunal came to the conclusion that there were five limbs to the definition of "Charitable Purpose" in Sec.2(15) of the Act, viz., (i) Relief of the poor, (ii) Education, (iii) Medical relief, (iv) Preservation of environment (including watersheds, forests and wildlife) and (v) Preservation of monuments or places or objects of artistic or historic interest). Though the five limbs are*

not specifically provided for in section 14 of the BDA Act, the objects enunciated involved preservation of environment, preservation of water bodies, preservation of forest areas, etc., appears to have merit; for it is a fact that planned urban development cannot take place or be done without due consideration being given to the preservation of the environment, water bodies like lakes, streams, etc., and forest areas. In coming to the above conclusion, the Tribunal found that from the financial statements of the assessee it was evident that it has expended an amount of Rs.2095.24 lakhs on planting of one crore seedlings in the green belt area for improvement of the environment. The Assessee has expended a sum of Rs.2997.42 lakhs towards development of lakes. The Tribunal therefore held that the Assessee carried out the activity of preservation of environment and water bodies and that the conclusion of the revenue authorities that these activities were done only to enhance the commercial value of the layout developed is untenable.

2. The Tribunal held that allotment of sites and flats to the economically weaker sections of society constitutes relief for the poor and that relief to the poor does not necessarily mean giving something free of cost to the poor. It also includes providing them things at a concessional rate. The Tribunal also embarked upon an enquiry as to whether the word "poor" can mean only those who are below the official poverty line or does it include all those who are economically weaker, but not necessarily below the poverty line. The Tribunal concluded that it is not necessary that educational / medical assistance is to be given free only to those below the poverty line. It will suffice if education / medical assistance is provided at concessional rates. The Tribunal also held that the rules that govern the allotment of sites are so formed in order to facilitate the economically weaker sections of society to purchase these sites. In the case of construction of flats, it was clear from the very scheme and the name thereof, that these flats are meant only for the Economically Weaker Sections of society.

3. The Tribunal held that the complaint of the Revenue authorities that the assessee was not

applying huge amount of profit generated from the activities towards any charitable activities such as relief of poor, education, medical relief and other objects of advancement of general public utility and such surplus is being invested in fixed deposits in order to earn interest income was also not correct in as much as the Assessee was constructing grade separators, PRR Bridges on Flyovers, carrying out renovation and remodeling works, Maintenance of BBMP facilities, Development of Lakes, etc. The Tribunal also held that object of the Assessee was planned urban development of Bangalore City and not with the purpose of profit making; i.e., the activity of formation of layouts and allotment of sites is only carried out with the primary and main object to ensure planned development of Bangalore City and not with the intention to make profits. In coming to the above conclusion, the Tribunal has referred to the decision of the Hon'ble Apex Court in the case of Barendra Ray and Others Vs. ITO (1981) 129 ITR 295 wherein it was held one has to see whether the predominant object of the activity is to make profit or whether the predominant object of the activity is to carry out charitable purposes and not profit making. The Tribunal also referred to the decision of the Hon'ble Apex Court in the case of Surat Art Silk Organisation Vs. CIT (121 ITR 1), wherein it was held that a charitable organization cannot be expected to balance its accounts in such a manner that the income for the year matches exactly with its expenditure. It is inevitable that in carrying on the activities, certain surplus may ensue. The earning of such surplus, in itself, would not mean that the organization existed for profit. The Hon'ble Apex Court went on to observe that every Association requires funds for expanding the range of its activities (for example; an Educational Institution may require additional infrastructure under which more class rooms can be set up / created). If profits are generated to support and expand these activities, then it cannot, in the view of the Hon'ble Apex Court, be held that there is a profit motive involved to deny the exemption. From the above ratio of the decision of the Hon'ble Apex Court, it is clear that it is the basic motive behind the activity, which is important to be considered; whether it is one with profit motive or not. Merely because surplus is generated from a particular activity, it cannot be said that such activity

is in the nature of trade, commerce or business. What needs to be seen is, what the intent and purpose of starting such activity is. The tribunal found that BDA's embarkation of the activity of setting up of residential layouts, including the activity of sale of sites and flats, is definitely not with a view to earn profit, but to ensure planned urban development and also to accomplish a social objective of providing an opportunity to economically weaker sections of society to be able to own a residence on their own. The tribunal also held that the process of auctioning of corner sites by the BDA was only to ensure that officials do not use their discretion to allot corner sites and was therefore an activity which will ensure no loss to the public exchequer.

4. The Tribunal took note of the fact that the concerned Income Tax authorities have recognized the assessee as a public charitable organization by grant of registration under section 12A of the Act since 26.03.2003 and that the assessee's objects clause, i.e., section 14 of the BDA Act has not undergone any change or modification since its enactment; which is what must have prompted the Income Tax Department to take the view that it was charitable in nature. The tribunal took note of the fact that after the introduction of the proviso to section 2(15) of the Act the Income Tax Department took a view that the activity of 'BDA' was in the nature of trade, commerce or business and cancelled the registration, granted under section 12A of the Act, vide order dated 08.11.2011. The assessee's registration under section 12A of the Act however stood restored by a decision of the Co-ordinate Bench of this Tribunal vide order in ITA No.12/Bang/2012 dated 10.04.2015. In this prevailing factual matrix, there is no change in the objects and the only issue which apparently prompts Revenue to take the view it has taken, i.e., that the activity of the assessee is hit by the proviso to section 2(15) of the Act; is the fact that the activity of the assessee has resulted in huge surplus or profits. In our view, the fact of surplus or shortfall is not to be reckoned as the test for applicability of the proviso to section 2(15) of the Act; but rather, whether the activity is embarked upon solely with the view to earn profit or not; which the AO and CIT(A) have not done.

5. The Tribunal took note of the fact that in the case of similar urban development authorities in India, such as the Assessee, the revenue took a similar stand that those urban development authorities cannot be regarded as existing for "Charitable Purpose" after introduction of the proviso to Sec.2(15) of the Act and such approach has been held to be incorrect by the various judicial forums in the following cases:

(i) Ahmedabad Urban Development Authority Vs. ACIT (Exemptions) (2017) 396 ITR 323 (Guj.);
(ii) Jaipur Development Authority Vs. CIT (2014) 52 taxmann.com 25 (Jaipur - Trib.)
(iii) Haridwar Development Authority Vs. CIT (2015) 57 taxmann.com 6 (Delhi - Trib.)
(iv) CIT Vs. Lucknow Development Authority (2013) 38 taxmann.com 246 (Allahabad)
(v) CIT Vs. Jodhpur Development Authority (2017) 79 Taxmann 361 (Raj.).

6. The Tribunal also held that the AO's reliance on the following decisions in support of his conclusion that the Assessee does not exist for "Charitable Purpose" was not correct because the issue involved in those cases were with regard to cancellation of registration u/s.12A of the Act. The cases referred to by the AO in this regard were as follows:

(i) Jammu Development Authority Vs. UOI in ITA No.164/2012, CMA/2/2012 (J & K High Court);
(ii) Punjab Urban Planning and Development Authority (103 TTJ 98) (ITAT - Chandigarh);
(iii) Indore Development Authority - ITA No.366/Ind/2008 (ITAT - Indore).
(iv) Improvement Trust Vs. CIT, Bhatirda (41 Taxmann.com 403) (ITAT - Amritsar).

10. In view of the aforesaid decision of the Tribunal, we are of the view that the assessee's activities have to be regarded as charitable in nature. The facts and circumstances under which the Tribunal decided the aforesaid issue and the basis of the conclusions in AY 12-13 and the AY 13-14 & 14-15, which are the AYs in the present appeals, are identical. The conclusions of the Tribunal in AY 12-13 would therefore be equally applicable to AY 13-14 & 14-15 also. The assessee

would be entitled to the benefits of sec. 11 of the Act for AY 13-14 & 14-15. We hold accordingly and allow ground No.5 in both the Assessment years. In view of the findings rendered as above, the other grounds/issues raised by the Assessee in these appeals and the grounds raised by the revenue in its appeal become academic in nature as these conclusions flow only on the basis that the Assessee does not exist for "Charitable Purpose", which conclusion has been held by us to be incorrect. The AO will therefore compute total income on the basis that the Assessee is entitled to the benefits of Sec.11 of the Act and if done so there would be no income which can be brought to tax.

13.3 Despite admitting the factual similarity, the AO chose to dismiss the assessee's reliance on the ITAT's decision in the BDA case, citing the pendency of an appeal under Section 260A before the Hon'ble High Court of Karnataka. This Tribunal, however, emphasizes the principle of judicial discipline and consistency, which requires that identical cases be treated in a uniform manner. The AO's attempt to disregard the binding precedent set by the ITAT in the BDA case solely due to an unresolved appeal is unwarranted and contrary to established legal norms. Until and unless the Hon'ble High Court reverses the ITAT's findings, the ruling remains binding in cases with identical facts.

13.4 We further observe that the assessee operates under stringent Government regulation. All its receipts and expenditures are deposited into the Magadi Planning Authority Fund, and the budget is subject to approval by the State Government. The assessee's accounts are audited annually by Government agencies, and any surplus or assets, upon dissolution, revert to the State Government. These factors unequivocally demonstrate the non-commercial character of the assessee's activities. We, accordingly, concur with the assessee's argument that the imposition of income tax on its operations would contradict statutory mandate and undermine its role as a state instrumentality serving public welfare.

13.5 The AO's invocation of Section 13(8) of the Act, citing that the assessee's fee-earning activities constitute trade or business, lacks sufficient merit. The activities cited by the AO--such as layout plan approvals, betterment fees, and lake conservation fees--are intrinsic to the assessee's statutory responsibilities and do not exhibit the

characteristics of a profit-driven enterprise. These fees are charged to ensure accountability and fund public welfare initiatives, not to generate profit. As such, the AO's interpretation of the assessee's activities as trade or commerce is inconsistent with the intent and purpose of Sections 11 and 12 of the Act.

13.6 The learned CIT(A) further erred in concurring with the AO without adequately addressing the assessee's submissions, including its reliance on the BDA case. The appellate authority failed to provide a reasoned explanation for dismissing the precedent, despite the AO's admission of factual similarity.

13.7 Given the admitted identical nature of the facts and the binding judicial precedent set by the Bangalore ITAT in the BDA case, we hold that the denial of exemptions under Sections 11 and 12 of the Act is unjustified. The assessee's activities are undeniably charitable, and the provisions of the Act support its exemption claim. The addition made by the AO and upheld by the learned CIT(A) is, therefore, quashed.

13.8 It is equally important to note that the Hon'ble Supreme Court in the case of ACIT Vs. Ahmedabad Urban Development Authority reported in 143 taxmann.com 278 involving identical facts and circumstances, has decided the issue on hand favouring assessee by holding as under:

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

13.9 In conclusion, we allow the appeal of the assessee. The findings of the lower authorities are reversed, and the assessee is entitled to exemptions under Sections

11 and 12 of the Act, 1961. Hence the ground of appeal raised by the assessee is hereby allowed."

9. We found that the present facts involved in these appeals are also similar to the facts of the cases already decided by this Tribunal and we do not find any different circumstances prevailed in respect of the A.Ys. under dispute and therefore we are following the above order of the Coordinate Bench of this Tribunal in the assessee's own case and by following the above said order we are allowing the appeals filed by the assessee by holding that the assessee is entitled for deduction u/s. 11 and 12 of the Act.

10. In the result, all the four appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 24th March, 2025.

Sd/-	Sd/-
(LAXMI PRASAD SAHU)	(SOUNDARARAJAN K.)
Accountant Member	Judicial Member

Bangalore,
Dated, the 24th March, 2025.
/MS /

Copy to:

1. Appellant	2. Respondent
3. CIT	4. DR, ITAT, Bangalore
5. Guard file	6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore