

IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND  
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /ITA No.581/Hyd/2024  
(निर्धारण वर्ष/Assessment Year:2020-21)

M/s. Hyderabad Metropolitan Development  
Authority, Hyderabad.

PAN:AAALH0058D

Vs.

Asst. Commissioner of Income Tax (Exemptions),  
Circle-1(1), Hyderabad.

.....Appellant.

.....Respondent.

आ.अपी.सं /ITA No.568/Hyd/2024  
(निर्धारण वर्ष/Assessment Year:2020-21)

Asst. Commissioner of Income Tax (Exemptions),  
Circle-1(1), Hyderabad.

Vs.

M/s. Hyderabad Metropolitan Development  
Authority, Hyderabad.

.....Appellant.

.....Respondent.

निर्धारिती द्वारा/Assessee by:	Shri S. Rama Rao, Advocate
राजस्व द्वारा/Revenue by:	Ms. M. Narmada, CIT-DR
सुनवाई की तारीख/Date of hearing:	03/04/2025
घोषणा की तारीख/Pronouncement:	23/05/2025

**आदेश/ORDER**

**PER MADHUSUDAN SAWDIA, A.M. :**

These cross appeals are filed by Revenue and M/s. Hyderabad Metropolitan Development Authority ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi (“Ld. CIT(A)”), dated 31.03.2024 for the A.Y. 2020-21.

2. The brief facts of the case are that the assessee is a development authority registered under the Hyderabad Metropolitan Development Authority Act, 2008 (“HMDA Act”). The assessee filed its Return of Income (“ROI”) for A.Y. 2020-21 on 30.12.2020 declaring total income of Rs.Nil. The case of the assessee was selected for scrutiny and notice u/s.143(2) of the Income Tax Act, 1961 (“the Act”) dated 29.06.2021 was issued to the assessee. After considering the submission of the assessee, the Learned Assessing Officer (“Ld. AO”) completed the assessment u/s.143(3) r.w.s. 144B of the Act on 30.09.2022 assessing the total income at Rs.72,96,60,104/-.

3. Aggrieved with the order of Ld. AO, the assessee filed appeal before the Ld. CIT(A), who partly allowed the appeal of the assessee. Against the impugned order of Ld. CIT(A), both the assessee as well as the revenue have filed cross appeals before us.

**ITA No.581/Hyd/2024 (Assessee’s Appeal)**

4. The assessee has raised the following grounds of appeal :

1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.
2. The learned Commissioner of Income-Tax (Appeals) erred in holding that the scrutiny proceedings have taken place for scrutiny of all the issues whereas the Assessing officer mentioned clearly that the case is selected for scrutiny of 11 items only.
3. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in treating balance of 85% of the development charges of Rs.490,16,65,407/- as the income of the appellant and in arriving at the gross receipt at Rs.668,78,47,583/-.
4. The learned Commissioner of Income-Tax (Appeals) ought to have seen that treating the 85% of the development charges as income is not within the scope of the scrutiny proceedings.
5. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing office in rejecting the claim of payment of Income-Tax as utilisation for the purpose of Sec.11 of the I.T.Act. As an alternate, the amount should have been reduced from income.
6. The learned Commissioner of Income-Tax (Appeals) erred in not considering the repayment of loan of Rs.60,76,52,000/- as the utilisation for the purpose of determining the income assessable u/s 11 of the I.T. Act.
7. The learned Commissioner of Income-Tax (Appeals) erred in not considering the claim that the excess of expenditure of the earlier years is to be considered as utilisation for the year under consideration.
8. Any other ground that may be urged at the time of hearing.

5. The assessee has raised the following additional ground of appeal :

*“ The Assessing Officer is not justified in adopting the expenditure claimed by the appellant at Rs.578,49,20,346/- when the actual amount was Rs.639,25,72,346/-”*

5.1 In this context the Learned Authorised Representative (“Ld. AR”) submitted that the additional ground so raised is admissible in view of judgment rendered by the Hon’ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC). The prayer for admission of additional ground noted above which is not in memorandum of appeal is being admitted for adjudication in terms of Rule 11 of the ITAT Rules owing to the reason that the relevant facts related to the objections raised in additional ground are stated to be emanating from the existing records.

6. Further, the Ld. AR submitted that, ground nos.1 & 8 of the appeal are general in nature and separate adjudication is not required on the same. Accordingly, ground nos.1 & 8 of the assessee are dismissed being not pressed.

7. Under ground nos.2 & 4, the assessee has raised objection against the jurisdiction of Ld. AO with regard to the scope of scrutiny. In this regard, the Ld. AR submitted that the case of the assessee was selected for scrutiny for limited purpose which has been captured by Ld. AO at page nos.1 & 2 of his order which is to the following effect :

*“ Reason of selection :*

- i) Sale consideration of property in ITR is less than sale consideration report in Form 26QB.*
- ii) Sale of high value immovable property.*
- iii) Ratio of expenditure on Establishment and Administration, to Expenditure on objects of the trusts is high.*
- iv) Large capital expenditure for charitable purposes.*
- v) Large receipts reported by trust for charitable purposes.*
- vi) Claim of large value refund.*
- vii) Large receipts from other income.*
- viii) Trust executing contracts, providing professional services, earning commission incomes or rent (verification as per proviso to section 2(15) or any other section).*
- ix) High refund claimed by Trust.*
- x) Large amount of income accumulated or set apart by Trust.*
- xi) Large claim of depreciation for Trust – Whether asset itself has been claimed as application of income.”*

7.1 The Ld. AR further submitted that, the Ld. AO had made certain additions on account of receipt of development charges by the assessee which was not covered under the reasons for selection of the case of the assessee. Therefore, it was argued that the Ld. AO exceeded his jurisdiction by making addition qua receipt of development charges.

7.2 Per contra, the Learned Department Representative (“Ld. DR”) submitted that, although the case was selected for some specific reasons, it was a case of complete scrutiny. Under complete scrutiny assessment, the Ld. AO has jurisdiction to examine all the aspects of the ROI, including verification of receipts, expenditure and claim made by the assessee. The verification is not restricted under the complete scrutiny only to the specified reasons for

selection. The Ld. DR prayed before the bench to reject the technical argument advanced by the assessee.

7.3 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We find merit in the submission of Ld. DR that, the present case was selected for complete scrutiny and under such scrutiny, the Ld. AO is empowered to examine all issues arising from the ROI and documents submitted. The mere fact that the selection was based on certain parameters, it does not limit the jurisdiction of Ld. AO under complete scrutiny. Hence, in our considered opinion, the argument of the assessee that the Ld. AO was not entitled to verify the receipt of development charges is devoid of merit and is liable to be rejected. Accordingly, the ground nos.2 & 4 of the assessee are dismissed.

8. Ground no.3 of the assessee is related to treatment of entire development charges as revenue receipt by the Ld. AO.

8.1 In this regard, the Ld. AR submitted that, the assessee had received development charges and fees/levies (“development charges”) amounting to Rs.576,66,65,185/- during the year under consideration. The Ld. AR further submitted that, in accordance with para no.3 of Government Order (“G.O.”) no.439 dated 13.06.2007 issued by the state Government of Andhra Pradesh,

only 15% of development charges were treated as revenue receipts in the computation of income. The Ld. AR argued that as per the said G.O., the 85% of the receipts were required to be expended strictly in accordance with the instructions given by the state government, without any discretion available to the assessee. Therefore, it was argued that, as the assessee had no liberty to expend 85% of the receipts, the same cannot be treated as revenue receipts in the hands of the assessee. In support of their claim, the assessee relied on the decision of Hon'ble Bombay High Court in the case of City and Industrial Development Corporation of Maharashtra Limited Vs. ACIT (2023) 157 taxmann.com 603 (Bombay) and the co-ordinate bench of the Tribunal in the case of DCIT Vs. Andhra Pradesh Capital Region Development Authority in ITA nos.26 to 29/Viz/2023 dated 21.04.2023. Accordingly, the Ld. AR prayed before the bench to delete the addition made by the Ld. AO on account of development charges.

8.2 Per contra, the Ld. DR invited our attention to para no.3 of G.O. no.439 (supra) and submitted that, there was no restriction from the state government that the assessee cannot use the 85% of the collection on account of development charges. The only restriction imposed by the said G.O. no.439 (supra) was that, the assessee shall utilise 85% of the receipts to implement the provisions of master plan viz. a) traffic improvement (b) construction of bridges

(c) development of green belts and parks, etc. (“specified objects”) . Therefore, there was only restriction towards certain specific object where the assessee can utilise 85% of the development charges. The contention of the assessee that, the assessee has no liberty to utilise 85% of the development charges is not correct. The Ld. DR also invited our attention to computation of income of the assessee placed at page no.23 of the paper book and submitted that, in the computation of income, the assessee has claimed certain expenditure which fall under the specified objects, which demonstrate that, the assessee was not prevented to utilise its receipts towards the specified objects. The Ld. DR further submitted that, during the year, the assessee has claimed deficit of Rs.460,63,90,170/-. The deficit itself is evident that, the assessee has utilised the amount specified for 85% of the development charges. Hence, the assessee was not restricted altogether to utilise the 85% of the development charges. The Ld. DR reiterated that the restriction on account of 85% of the development charges was only towards utilisation for specified objects only. Finally, the Ld. DR submitted that, the entire amount collected by the assessee towards development charges is liable to be treated as revenue receipts and hence, there is no error in the order of the Ld. AO or the decision of the Ld. CIT(A) on this aspect.

8.3 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We have gone through para no.3 of G.O.(supra) placed at page no.54 of the paper book which is to the following effect :

*“ The amount so collected by Urban Development Authorities shall be kept in a separate account by Vice-Chairman of Urban Development Authorities. The Urban Development Authorities shall utilise 85% of the income to implement the provisions of Master Plans viz., (a) traffic improvement; (b) construction of bridges; (c) development of green belts and parks, etc. and remaining 15% can be utilised for administration and other maintenance.”*

8.4 On perusal of the above, it is evident that only the mode of utilisation has been prescribed by the government. In the said G.O., it has been specified that the assessee shall utilise 85% of the income to implement the provisions of Master Plans viz., (a) traffic improvement; (b) construction of bridges; (c) development of green belts and parks, etc. and remaining 15% can be utilised for administration and other maintenance. In the said G.O., there is no restriction that the assessee cannot utilise 85% of the development charges or the assessee has no liberty over 85% of development charges. The restriction has been made for utilisation of 85% for some specified objects i.e. a) traffic improvement (b) construction of projects. (c) development of green belt and parks, etc. We have also gone through page no.23 of the paper book which is to the following effect :

## HYDERABAD METROPOLITAN DEVELOPMENT AUTHORITY

Computation of Income  
Assessment Year 2020-21

		<i>Assessee's version</i>	<i>Rupees</i>
<b>Income:-</b>			
<b>Revenue Receipts</b>			
Advertisement & Hoardings		38,76,809	
Income from Parks		20,96,64,229	
Interest		57,66,70,227	
Rental Income		12,33,26,012	
Prior Period income		14,20,452	
Other Receipts		<u>62,24,669</u>	
			92,11,82,398
Development Charges	5,21,67,82,555		
Fees & Levies collected	<u>54,98,82,631</u>		
		<u>5,76,66,65,185</u>	
Assessee's income (Administration Charges)	15%		86,49,99,778
			<u>1,78,61,82,176</u>
<b>Application towards Charitable Purpose:-</b>			
<b>Revenue Payments</b>			
Salaries & Wages		46,25,58,526	
Exhibition & Public Relations		2,08,18,102	
Maintenance of Vechiles		2,35,81,857	
Office Expensess		3,55,30,676	
Maintenance of Parks		49,89,13,707	
Interest on Loans		36,65,47,912	
Maintenance of Commercial Complexes		7,23,78,935	
Consultancy & Professional Charges		6,43,09,828	
Service Tax Paid		87,48,890	
Urban Forestry		<u>88,02,53,384</u>	
			2,43,36,41,817
<b>Capital Payments</b>			
Lake & Road Development works		1,44,16,73,805	
Purchase of Fixed Assets		1,62,553	
Development of Sites and Services		33,32,52,572	
Advances to HGCL		1,35,00,00,000	
HUDCO Loan Repayment		<u>60,76,52,000</u>	
			3,73,27,40,930
<b>Other Payments</b>			
Income Tax paid			9,76,99,378
GST paid			11,58,09,736
<b>Depreciation on Assets</b>			
			1,26,80,485
			<u>6,39,25,72,346</u>
Income			-4,60,63,90,170
Income setapart u/s 11(1a)			<u>26,79,27,326</u>
			<u>-4,33,84,62,844</u>
Accumulation u/s 11(2)			2,70,00,00,000

8.5 On perusal of above, we found that the assessee has incurred certain expenditure i.e. lake and road development work of Rs.144,16,73,805/-, and development of sites and services of Rs.33,32,52,572/-, which are in the nature of expenditure covered under specified objects. The incurrence of these expenses also establishes that the assessee was not prevented from undertaking specified object.

8.6 Further, we have also gone through the decision of Hon'ble Bombay High Court in the case of City and Industrial Development Corporation of Maharashtra Ltd. Vs. ACIT (supra), wherein at para no.10 of its order, the Court has held as under :

*“ 10. The ITAT in its order dated 8<sup>th</sup> August 2012 for A.Y. 2006-2007 while considering the issue whether petitioner should be held to be “an agent” of the State or an “arm” of the State, working solely under the authority and guidelines issued through various notifications by the State, i.e. the Government of Maharashtra has come to a finding that the resolutions taking back to 1970 make it clear that petitioner is an agent and functions as an arm of the State Government because petitioner can only work under the control and supervision of the State Government meaning thereby petitioner cannot make / take any decisions suo motu.”*

8.7 On perusal of above, we found that the decision of Hon'ble Court has been given under different set of facts, where the assessee is an agent and functions as an arm of the state government. However, the facts in the present

case are different. Hence, the decision of Hon'ble Court(supra) is not applicable to the issue before us.

8.8 We have also gone through the decision of co-ordinate bench of Tribunal in the case of DCIT Vs. Andhra Pradesh Capital Region Development Authority (supra), wherein at para no.8 of its order the Tribunal has held as under :

*“ 8. We have heard both the parties and perused the material available on record. It is undisputed fact that the assessee is a non-profit organisation, established for the development of urban areas by implementing the provisions of the Master Plan as per the directions of the Government of Andhra Pradesh. The assessee debited 85% of the Development Charges received to the sinking fund to meet the future formation charges as per the directions given in GO Ms.No.530 dated 28.09.1998. Coordinate Bench of the Tribunal in the assessee’s own case for the A.Y.2009-10 to 2013-14 on similar issue in I.T.A. No.395, 396, 397, 398 & 399/Viz/2017 dated 30.09.2022 allowed the appeal of the assessee holding that since the assessee could not expend 85% of the development charges during the relevant assessment year does not warrant disallowance of the same, as the expenditure shall be incurred in future years for the purpose of general public utilities. For the sake of clarity and convenience, we extract relevant part of the order of the Tribunal as under :*

*“19. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly, the assessee is a Non-Profit Organization established for the development of Urban Areas by implementing the provisions of the Master Plan. As the assessee has been formed under section 3 of the Andhra Pradesh Urban Areas (Development) Act, 1975, it is bound by the Circular issued by the Government of Andhra Pradesh. In the instant case, even though the assessee has not spent the entire amount but debited 85% of the Development Charges received to the Sinking Fund to meet the future formation charges expenditure as per the directions given in G.O.Ms. No.530, dated 28/9/1998. The assessee being a Local Authority which acts as per the directions of the Government of Andhra Pradesh by implementing the Master Plan approved by them. It is also seen from the submission of the Ld. AR that the Institution was exempted from the Income Tax U/s. 10(20A) of the Act upto AY 2002-03. Reliance placed by the Ld. AR on the decision of the ITAT, Hyderabad in the case of HUDA in ITA No. 321/Hyd/07 is distinguishable on the fact that HUDA in the relevant assessment year actually incurred the expenditure which was*

*more than the Sinking Fund created during the year. It is normal accounting practice under the Accrual System of Accounting any future expenditure needs to be provided in the books of accounts in the relevant assessment year. It is not necessary that deduction shall be permissible only in case of amounts actually expended or paid. Further, it is also noticed that the assessee is supposed to expend 85% of the amount to developmental activities as approved by the Government of Andhra Pradesh in accordance with the Master Plan revised. It can be concluded that the assessee as formed under the Andhra Pradesh Urban Areas (Development) Act is bound by the directions of the Government in the collection and execution of development charges. It is also found that the assessee after getting necessary approvals and permissions from the Government of Andhra Pradesh has to expend 85% of the Development Charges collected by them to implement the provisions of the Master Plan. In view of the above discussions, we are of the considered view that the assessee being a non-profit oriented organization established for the purpose of implementing the provisions of the Master Plan is not carrying on any business activity and is only an organ of Government of Andhra Pradesh. Since the assessee could not expend 85% of the development charges during the relevant assessment year it does not warrant disallowance of the same as the expenditure shall be incurred in future years for the purpose of general public utilities. Accordingly, we allow the 7 I.T.A. No.26-29/Viz/2023 & CO No.04-07/Viz/2023, A.Y.2014-15, 2016-17 to 2018-19 Andhra Pradesh Capital Region Development Authority, Vijayawada ground raised by the assessee and hereby set aside the order of the Ld. Revenue Authorities.*

*Respectfully following the order of the Tribunal in assessee' own case for the A.Y.2009-10 to 2013-14, we hold that the Ld.CIT(A) has rightly deleted the disallowance made by the AO. We are therefore, inclined to uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue."*

8.9 On perusal of above, we found that in the aforesaid case, the assessee has debited 85% of the development charges received to the sinking fund to meet the future formation charges as per the directions given in G.O.Ms.No.530 dated 28.09.1998. However, in the present issue before us, no such direction has been given by the state government as per para no.3 of G.O. no.439 placed at page no.54 of the paper book. Therefore, the decision of the

co-ordinate bench of the Tribunal(supra) is not applicable to the present case before us.

8.10 Therefore, under the facts and circumstances of the case, we are of the opinion that there was no restriction on the assessee for utilisation of 85% of the development charges. Accordingly, we hold that the entire amount collected by the assessee towards development charges is liable to be treated as revenue receipts. Therefore, we find no irregularity in the order of revenue authorities. Accordingly, the ground no.3 of the assessee is dismissed.

9. Ground no.5 of the assessee relates to disallowance on account of claim of TDS amounting to Rs.9,76,99,378/- as application of income by the assessee.

9.1 In this regard, the Ld. AR submitted that, the assessee had claimed the amount of TDS as application of income on the ground that the said amount was not available with the assessee for utilisation, as the same was deducted at source by the payer. The Ld. AR also submitted that, both the income tax authorities have rejected the claim of the assessee primarily on the ground that the income against which TDS was deducted i.e. the sale of land, was not offered as income by the assessee. It was also held by the revenue authorities that, when the corresponding receipts are not recognised as income in the hands of the assessee, the claim of TDS as application of income cannot be

allowed. The Ld. AR contended that, in such cases the amount not available with the assessee should be considered as applied for the purpose of section 11 of the Act. Accordingly, the Ld. AR prayed before the bench to allow the amount of TDS as application of income.

9.2 Per contra, the Ld. DR submitted that the TDS was primarily deducted on the sale of land. The assessee is only an agent of state government as far as the receipt of sale proceeds of land is concerned, and as such the assessee has not offered the same as its income. Therefore, no deduction of TDS should be allowed as application of income on such amount.

9.3 In rejoinder, the Ld. AR invited our attention to the details of TDS placed at page nos.24 & 25 of the paper book and submitted that the TDS in question is not entirely related to sale of land. He argued that TDS has also been deducted on other revenue receipts which have been offered as income of the assessee. Accordingly, the Ld. AR submitted that, the entire amount of TDS could not be disallowed on the ground that it relates only to sale of land.

9.4 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. There is no dispute that, in so far as the sale of land is concerned, the assessee had acted as an agent of the state government and the corresponding receipts has not been offered as

income. Hence, the TDS corresponding to such receipts cannot be treated as application of income. We have gone through the details of TDS placed at page nos.24 & 25 of the paper book which is to the following effect :

Aggregate Tax Liability				
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Tax Deducted at Source TAN	Name of the deductor	Section	Amount of TDS	
HYDC01806A	Central Power Distribution Company Of Andhra Pradesh Limited	194A		4,903
HYDI00178D	Indian Overseas Bank	194A		35,394
HYDO03302F	Our Home Realtors Llp	194A		24,160
HYDS49207E	Southern Power Distribution Company Of Telangana Limited	194A		1,889
DELC11375A	Csc E-Governance Services India Limited	194C		780
HYDF00458D	Fore-Sites	194C		1,14,524
BBNO00181G	Orissa State Co-Operative Handicrafts Corporation Limited.	194C		1,032
LKNS05719A	Small Industries Development Bank Of India (Sidbi), Head Office	194C		876
HYDS03960F	Society For Elimination Of Rural Poverty	194C		1,853
MUMS86153E	State Bank Of India	194C		2,393
HYDT06090A	Telangana State Tourism Development Corporation Limited	194C		3,300
HYDU01367C	Utdai, Regional Office	194C		7,764

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Taxes paid				
HYDK03593C	Khairatabad Hpo Hyderabad	194EE	4,220	
HYDL00455A	Lic Housing Finance Ltd	194H	16,408	
HYDA12390A	Ancon-Kcp Logistics Park Private Limited	194IA	17,400	
HYDM01244F	Masqati Dairy Products	194IA	2,16,556	
HYDM20178E	Masqati Dairy Products Limited	194IA	1,52,415	
HYDU01367C	Uidai, Regional Office	194IA	2,53,164	
HYDA01924G	Aisin Cosmos R & D Co Ltd	194IB	62,336	
HYDA10210E	Andhra Infra Projects & Industries Private Limited	194IB	7,58,332	
HYDA11280D	Anion Health Care Services	194IB	3,17,589	
HYDA10982G	Arvind Talia Kumar	194IB	4,40,465	
HYDB05267D	B-Cube Consulting Private Limited	194IB	46,323	
DELC11375A	Csc E-Governance Services India Limited	194IB	53,765	
HYDC07193E	Cupid	194IB	47,127	
HYDD01609G	Director Of Factories	194IB	1,15,371	
HYDD09467D	Divisional Marketing Office Secunderabad Tshwtsid Tsc	194IB	3,502	
DELD03576G	Dr. Lal Pathlabs Limited	194IB	1,71,827	
HYDD06356A	Durgasoft India Private Limited	194IB	3,06,619	
HYDE01598C	Employment Generation And Marketing Mission	194IB	4,83,217	
HYDE02879C	Entersoft It Solutions Labs Private Limited	194IB	99,571	
HYDM04964B	Hmda Truck Dock Logistics Private Limited	194IB	70,000	
CALI01422B	Ica Edu Skills Private Limited	194IB	1,12,862	
HYDA01695B	Inventcorp Technologies Limited	194IB	2,03,285	
HYDK03593C	Khairatabad Hpo Hyderabad	194IB	37,980	
HYDL00455A	Lic Housing Finance Ltd	194IB	1,78,354	
HYDL02136B	Lime Life Advertising Private Limited	194IB	1,23,468	
HYDM06466F	Macro Tech	194IB	1,23,086	
HYDM14901F	Mahesh Kumar Nadikude	194IB	1,30,718	
HYDM01244F	Masqati Dairy Products	194IB	2,13,510	
HYDM12453A	Med Quest Diagnostics Private Limited	194IB	1,28,771	
DELM30124D	Medical Institute For Screening Test	194IB	2,02,991	
BLRM05339F	Metro Cash And Carry India Private Limited	194IB	23,80,579	
DELN05771D	National Minorities Development And Finance Corporation	194IB	64,100	
BBNO00181G	Orissa State Co-Operative Handicrafts Corporation Limited.	194IB	41,282	
HYDP08893D	Paradise Food Court Private Limited	194IB	21,17,545	
HYDP01478B	Peers Technologies Private Limited	194IB	1,70,522	
HYDP09333C	Purnachandra Rao Sunkara	194IB	4,67,071	
HYDR13025F	Rachnoutsav Education Society	194IB	5,81,725	
HYDR11066A	Ram Digi Graphics	194IB	55,929	
HYDR03370D	Ramdigimedias Private Limited	194IB	1,59,456	
HYDS15415B	Sai Geetha Chitreddy	194IB	47,086	
HYDS42710D	Sai Vishnumalakala Educational Society	194IB	2,12,283	
HYDS30567F	Satya Sai Govindan	194IB	2,25,453	
LKNS05719A	Small Industries Development Bank Of India (Sidbi), Head Office	194IB	68,502	
BLRS29812G	Sphere Travel Media Exhibitions Private Limited	194IB	53,700	
HYDS34423E	Sreshtha Hospital	194IB	1,23,927	
HYDS4357C	Ss Suppliers And Caterers	194IB	71,012	
MUMS86153E	State Bank Of India	194IB	1,54,952	
MUMS11250B	Stock Holding Corporation Of India Limited	194IB	2,44,624	
HYDS38923D	Stree Nidhi Credit Co-Operative Federation Ltd Telangana	194IB	58,452	
HYDT88255C	Telangana Fiber Grid Corporation Limited	194IB	88,320	
HYDT06559A	Telangana State Agro Industries Development Corporation Limited	194IB	1,71,388	
HYDU01367C	Uidai, Regional Office	194IB	1,78,602	
HYDV15127A	Vijayarani Nadikude	194IB	2,51,185	
HYDZ00069G	Zoom Technologies (India) Pvt.Ltd	194IB	1,65,953	
HYDB01527B	Bhagyanagar Gas Limited	194J	1,28,348	
HYDM12453A	Med Quest Diagnostics Private Limited	194J	15,301	
HYDU02394A	Urbanrise Builders Lip	194J	47,763	
HYDK03593C	Khairatabad Hpo Hyderabad	194LA	8,440	
HYDS18628B	Sree Krishna Automotives Hyderabad Private Limited	206CL	19,960	
		194IA	8,40,37,807	
				9,76,99,378
	Advance Tax paid on			
	Self Assessment Tax paid			9,76,99,378
	<b>Refund due</b>		<b>9,76,99,378</b>	
<b>Refund</b>	<b>Amount of Refund</b>	<b>9,76,99,378</b>	<b>Bank a/c No.</b>	<b>057202000000373</b>
	<b>MICR Code</b>	<b>500020007</b>	<b>Type of account</b>	<b>Savings</b>
	<b>IFSC</b>	<b>IOBA0000572</b>		<b>Indian Overseas Bank,Himayathnagar</b>

9.5 On perusal of above, we found that in addition to TDS on sale of land, TDS has been deducted on other receipts as well, which the Ld. AR contended to have been offered as income by the assessee. In view of the above, we are of the considered opinion that, the matter requires verification. Therefore, the Ld. AO is directed to verify the nature of receipt on which TDS has been deducted. In respect of receipts which had been treated as income in the hands of the assessee, the corresponding TDS amounts may be treated as application of

income. However, no such benefits shall be extended in respect of receipts which have not been treated as income in the hands of the assessee, including the sale proceeds of land where the assessee has merely acted as a collecting agent of the state government. Accordingly, ground no.5 of the assessee is treated as partly allowed for statistical purposes.

10. Ground no.6 raised by the assessee pertains to disallowance of the claim of Rs.60,76,52,000/- towards application of income on account of repayment of loan.

10.1 In this regard, the Ld. AR submitted that, the assessee had availed loan from HUDCO for construction of express highway, which were utilized in F.Y. 2010-11 and 2012-13 towards object of the assessee. It was specifically contended that in the years of utilization of loan amount, the assessee had not claimed the same as application of income. Accordingly, the assessee has claimed the repayment of the said loan amount as application of income in the year under consideration. However, the Ld. AO rejected the claim of the assessee by observing that the amount has already been utilized for the object in earlier year and hence could not be treated as application of income in the year of repayment. During the appellate proceedings before the Ld. CIT(A), the Ld. CIT(A) affirmed the action of the Ld. AO on the ground that the application of loan amount would have already been claimed in the year of actual

utilization. The Ld. AR contended that, in fact, the assessee had not claimed the same as application of income in the year of utilization. Accordingly, the Ld. AR prayed before the bench to allow their claim.

10.2 Per contra, the Ld. DR relied upon the orders of revenue authorities and submitted that, the claim of the assessee is liable to be rejected.

10.3 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. It has been submitted by the Ld. AR that, the assessee had availed loan from HUDCO for construction of express highway, the proceeds of which were utilized towards the object of the assessee. It has been specifically contended by the Ld. AR that in the year of utilization of loan amount, the assessee had not claimed the same as application of income. However, we found that the Ld. AO has rejected the claim of the assessee contending that the amount had already been utilized for the object in earlier year and hence could not be treated as application of income in the year of repayment. Further, the Ld. CIT(A) dismissed the appeal of the assessee on the ground that application of loan amount has already been claimed by the assessee in the year of actual utilization. We are of the considered view that, where a charitable institution utilises borrowed fund towards its object, and such utilization is not claimed as application of income in the year of utilization, then the repayment of such loan can be treated as

application of income in the year of repayment. Therefore, in the present case, the factual verification is required whether the utilization of loan amount was already treated as application of income in earlier year or not. If the assessee had not claimed the utilization of loan as application at the time of utilization, the repayment thereof must be allowed as application of income in the year of repayment. Accordingly, we direct the Ld. AO to verify whether the assessee had claimed application of loan amount in the year of utilization or not. If it is found that the assessee had not claimed the utilization of loan amount, in the year of application, the Ld. AO shall allow the claim of the assessee for the repayment of loan as application of income in the year under consideration. Accordingly, the ground no.6 of the assessee is allowed for statistical purposes.

11. Ground no.7 of the assessee pertains to the denial by the Ld. AO of the claim for set off of excess expenditure incurred over income (“deficit”) in earlier years . In this regard, the Ld. AR invited our attention to details of b/f deficit of various years placed at page no.124 of the paper book and submitted that, the assessee has b/f deficit for which the assessee is entitled for set off against the income of the current year. The Ld. AR further submitted that, the restriction on allowing the set off of b/f deficit has been introduced for the first time by insertion of Explanation 5 to section 11(1) of the Act w.e.f. A.Y. 2022-

23. Therefore, for the year under consideration i.e. prior to A.Y. 2022-23, the set off of b/f deficit is legally permissible.

11.1 Per contra, the Ld. DR relied on the order of revenue authorities and prayed before the bench to uphold the same.

11.2 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We have gone through Explanation 5 to section 11(1) of the Act, which has been inserted by Finance Act, 2021 w.e.f. A.Y. 2022-23 wherein the statute has restricted the set off of b/f deficit against the income of current year. We are of the considered opinion that, the restriction imposed by Explanation 5 to section 11(1) of the Act is prospective and applicable only from A.Y. 2022-23 onwards. We are also of the opinion that, the law prior to insertion of Explanation 5 to section 11(1) clearly permitted the charitable institution to set off b/f deficit of earlier year against the income of current year. Therefore, for the year under consideration, we hold that the Ld. AO has erred in denying the claim of the assessee on account of set off of b/f deficit against the income of the current year. However, we are of the considered view that, the set off of b/f deficit claimed by the assessee needs to be verified with the record of the assessee to ensure correctness and arithmetical accuracy. Accordingly, we direct the Ld. AO to verify the correctness of the amount of b/f deficit claimed by the

assessee from the record and if found correct, to allow the set off of the same against the income of current year while completing the assessment. Accordingly, the ground no.7 is allowed for statistical purposes.

12. In the additional ground, the assessee argued that, the assessee has incurred total expenditure of Rs.639,25,72,346/-. However, while completing the assessment, the Ld. AO has taken the same as Rs.578,49,20,346/-. In this regard, we are of the considered opinion that, the matter requires factual verification from the record of the assessee. Therefore, we remand the issue to the file of Ld. AO to verify the actual amount of expenditure incurred by the assessee and allow the claim as per law. Accordingly, the additional ground of the assessee is allowed for statistical purposes.

13. To sum up, the appeal of the assessee in ITA no. 581/Hyd/2024 is partly allowed for statistical purposes.

#### **ITA No.568/Hyd/2024 (Revenue's Appeal)**

14. The revenue has raised the following grounds of appeal :-

*" 1. The Ld CIT(A) erred in law and in facts of the case in allowing the appeal of the assessee on the ground related to service tax by stating that the AO has not given any reason to reject the claim of service tax paid except stating that the details were not produced, though in the Assessment order, the AO has clearly mentioned that the assessee has not offered the income to tax in the ITR on which the service tax was paid by the assessee.*

*2. The Ld CIT(A) erred in law and ignored the fact that the AO in the Assessment order has clearly mentioned that the assessee has not offered the income to tax in the ITR on which the service tax was paid by the assessee. The*

*Ld.CIT(A),NFAC erred in not considering the facts that the assessee has failed to file revised return of income for correct claim of exemption u/s.10(23C) (vi) of the I.T Act, 1961 before completion of assessment.*

*3. The Ld CIT(A) erred in law and in facts of the case in allowing the appeal of the assessee on the ground related to GST and has held that the AO has assumed that the GST claimed as application is on account of sale of land which is not offered to tax.*

*4. The Ld CIT(A) erred in law and ignored the fact that the AO has clearly mentioned in the Assessment Order that the assessee has not offered the income to tax in the ITR on which the GST was paid by the assessee.*

*5. Any other ground that may be urged at the time of hearing.”*

15. The solitary issue raised by revenue against the order of Ld. CIT(A) is, deleting the disallowance made by the Ld. AO on account of GST & Service Tax (“GST/ST”) claimed as deduction by the assessee.

15.1 In this regard, the Ld. DR submitted that the assessee has paid GST/ST in respect of receipts arising from sale of land and collection of development charges. However, the assessee has not offered the corresponding receipts as income in its books of account. Therefore, it was contended that if the underline revenue has not been offered to tax, then the GST/ST paid in relation to such receipts cannot be allowed as an application for deduction.

15.2 Per contra, the Ld. AR invited our attention to Schedule III of GST Act placed at page no.128 of the paper book and submitted that, as per item no.5 of Schedule III, no GST is leviable on the sale of land. Further, it was

contended that the assessee has not offered the sale proceeds of land as income, as the assessee has acted merely as an agent of the state government, with regard to collection of sale proceeds of land. However, the GST/ST paid by the assessee pertains to other service components, which have been duly offered as revenue by the assessee in its books of account. Accordingly, there is no infirmity in the order of Ld. CIT(A).

15.3 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We have gone through entry no.5 of Schedule III of GST Act placed at page no.128 of the paper book, which is to the following effect :

**SCHEDULE III.**

[ See section 7 ]

**ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES**

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;  
(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity;  
or  
(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than <sup>3</sup>[Specified actionable claims].
- <sup>7</sup> <sup>4</sup>[Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.]

9. Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

10. Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.]

[Explanation 1.-For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

[Explanation 2.- For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (50 of 1962).]

\* Retrospective exemption to certain activities and transactions vide s. 159 of The Finance Act 2023 (No. 8 of 2023). Brought into force w.e.f. 01st July, 2017.

1. Inserted by s.32 of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) - Brought into force w.e.f. 01st February, 2019.

2. Re-numbered by s.32 of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) - Brought into force w.e.f. 01st February, 2019.

3. Substituted by s.4 of The Central Goods and Services Tax (Amendment) Act, 2023 (No. 30 of 2023) - w.e.f. 01.10.2023.

4. Inserted by section 149 of The Finance Act (No. 2) Act, 2024 No. 15 of 2024 dated 16.08.2024.

15.4 On perusal of above, we found that sale of land is not a taxable supply under the GST Act and hence no GST is leviable thereon. Further, it is not disputed that the assessee has not offered the sale proceeds of land as income as the assessee has acted only as an agent on behalf of the state government. However, the issue that requires verification is whether the GST/ST claimed by the assessee as deduction pertains to revenue receipts, which has been offered as income in the ROI. In our opinion, if the GST/ST has been paid on such receipt that has been shown as income, then the corresponding GST/ST must be allowed as application of income. In the interest of justice and fair play, we deem it appropriate to remand this issue to the file of Ld. AO. The Ld. AO shall verify from the record, the nature of receipt

on which the GST/ST has been paid by the assessee. In respect of receipt which has been duly offered as income, the corresponding GST/ST paid shall be allowed as application of income. However, no deduction shall be allowed in respect of GST/ST paid on the receipt which has not been offered as income. Accordingly, the appeal of the revenue is partly allowed for statistical purposes.

16. To sum up, the appeal of assessee and revenue are partly allowed for statistical purposes.

**Order pronounced in the open Court on 23rd May, 2025.**

Sd/-

**(VIJAY PAL RAO)  
VICE PRESIDENT**

Hyderabad,

Dated: 23.05.2025.

Sd/-

**(MADHUSUDAN SAWDIA)  
ACCOUNTANT MEMBER**

\* Reddy gp

**Copy of the Order forwarded to :**

1.	M/s. Hyderabad Metropolitan Development Authority, 2 <sup>nd</sup> Floor, HUDA Complex, Tarnaka, Secunderabad-500004
2.	DCIT / ACIT (Exemptions), Circle 1(1), Hyderabad.
3.	Pr.CIT, Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,