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

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

ITA Nos. 240 to 242/Bang/2024
Assessment Year : 2016-17 to 2018-19

The Assistant Commissioner of Income Tax (Exemptions), Circle – 1, Bengaluru.	**Vs.**	M/s. Bangalore Development Authority, T. Chowdaiah Road, Kumara Park West, Seshadripuram S.O., Bangalore – 560 020. **PAN: AAALB0060D**
APPELLANT		**RESPONDENT**

Assessee by	:	Shri T. Srinivasa, CA
Revenue by	:	Shri Shivanand Kalakeri, CIT-DR

Date of Hearing	:	15-05-2025
Date of Pronouncement	:	30-05-2025

ORDER

PER BENCH

These are all the appeals filed by the revenue against the separate orders of the NFAC, Delhi all dated 13/12/2023 in respect of the A.Ys. 2016-17 to 2018-19 and raised the following grounds:

ITA No. 240/Bang/2024

> *"I. The order of Ld.CIT(A) is opposed to facts and circumstances of the case;*
>
> *II. The CIT(A) has erred in holding that the assessee is not covered by the proviso to section 2(15) r.w.s.13(8) of the*

Income Tax Act, 1961 and is eligible to claim exemption u/s.11 of the Income Tax Act, 1961 when the activity of auctioning sites during the F.Y.2015-16 was an activity that entail business and the receipts from the said activity constituted more than 25% of the revenue thereby, bringing the assessee within the purview of proviso to section 2(15) of the Income Tax Act, 1961 and the assessee is not eligible for exemption u/s.11;

III. The CIT(A) has erred in allowing the prior period expenses debited by the assessee to the Income & Expenditure account while the prior period expenses do not pertain to the application of funds during the current financial year i.e. 2015-16 and cannot be allowed as application of income for the A.Y.2016-17;

IV. The CIT(A) has erred in allowing "assets written off" debited by the assessee to the Income & Expenditure account while "assets written off" do not qualify as application of funds during the current financial year i.e. 2015-16 and cannot be allowed as application of income for the A.Y.2016-17;

V. The CIT(A) has erred in allowing payments towards electrical deposits and expenditure towards accommodation of various committees while the assessee is not eligible for exemption u/s.11 by virtue of proviso to section 2(15) r.w.s.13(8) of the Income Tax Act, 1961 for the A.Y.2016-17 and the Gross Receipts of the assessee have to be taxed C, 30% and no expenditure is allowable;

VI. The CIT(A) has erred in allowing Slum Clearance Cess payable to the State Government as an allowable expenditure despite the fact that the amount in question had not been paid during the F.Y.2015-16 and cannot be considered as application of income for the A.Y.2016-17;

VII. The CIT(A) has erred in remitting back the issue of disallowance of expenditure of Rs.11.38 crores to the AO with a direction to verify the relevant bills and allow the same after verification, while the assessee is not eligible for exemption u/s.11 by virtue of proviso to section 2(15) r.w.s.13(8) of the Income Tax Act, 1961 for the A.Y.2016-17 and the Gross Receipts of the assessee have to be taxed @, 30% and no expenditure is allowable;

VIII. The CIT(A) has erred in remitting back the issue of pension and leave salary contribution to the AO and allow the same after verification, while the assessee is not

eligible for exemption u/ s.11 by virtue of proviso to section 2(15) r.w.s.13(8) of the Income Tax Act, 1961 for the A.Y.2016-17 and the Gross Receipts of the assessee have to be taxed 30% and no expenditure is allowable;

IX. The appellant craves leave to add, alter or amend all or any of the Grounds of Appeal before or at the time of the hearing of the appeal;

X. The order of the Ld.CIT(A) may be set-aside and the order of the AO may be confirmed."

ITA No. 241/Bang/2024

"I. The order of Ld.CIT(A) is opposed to facts and circumstances of the case;

II. The CIT(A) has erred in holding that the assessee is not covered by the proviso to section 2(15) r.w.s.13(8) of the Income Tax Act, 1961 and is eligible to claim exemption u/s.11 of the Income Tax Act, 1961 when the activity of auctioning sites during the F.Y.2016-17 was an activity that entail business and the receipts from the said activity constituted more than 25% of the revenue thereby, bringing the assessee within the purview of proviso to section 2(15) of the Income Tax Act, 1961 and the assessee is not eligible for exemption u/s.11;

III. The CIT(A) has erred in allowing the expenditure debited by the assessee to the Income & Expenditure account on account of refund of deposit receipts when the assessee is not eligible for exemption u/s.11 as it is covered by the proviso to section 2(15) of the Income Tax Act, 1961 and the Gross Receipts for the F.Y.2016-17 have to be taxed g 30% and no expenditure ought to be allowed;

IV. The CIT(A) has erred in allowing the prior period expenses debited by the assessee to the Income & Expenditure account while the prior period expenses do not pertain to the application of funds during the current financial year i.e. 2016-17 and cannot be allowed as application of income for the A.Y.2017-18;

V. The CIT(A) has erred in allowing Workers' Welfare Cess payable to the State Government as an allowable expenditure despite the fact that the amount in question had not been paid during the F.Y.2016-17 and cannot be considered as application of income for the A.Y.2017-18;

VI. The appellant craves leave to add, alter or amend all or any of the Grounds of Appeal before or at the time of the hearing of the appeal;

VII. The order of the Ld.CIT(A) may be set-aside and the order of the AO may be confirmed."

ITA No. 242/Bang/2024

"I. The order of Ld.CIT(A) is opposed to facts and circumstances of the case;

II. The CIT(A) has erred in holding that the assessee is not covered by the proviso to section 2(15) r.w.s.13(8) of the Income Tax Act, 1961 and is eligible to claim exemption u/ s.11 of the Income Tax Act, 1961 when the activity of auctioning sites during the F.Y.2017-18 was an activity that entail business and the receipts from the said activity constituted more than 25% of the revenue thereby, bringing the assessee within the purview of proviso to section 2(15) of the Income Tax Act, 1961 and the assessee is not eligible for exemption u/ s.11;

III. The CIT(A) has erred in allowing the prior period expenses debited by the assessee to the Income 8, Expenditure account while the prior period expenses do not pertain to the application of funds during the current financial year i.e. 2017-18 and cannot be allowed as application of income for the A.Y.2018-19;

IV. The CIT(A) has erred in deleting the addition made on account of Rent Recoverable from BBMP on the ground that the AO had misconstrued the balance sheet item whereas the assessee itself in its Statement of Computation of Income submitted before the AO had declared Rental Income of Rs.10,47,03,300/- for the F.Y.2017-18 on accrual basis which ought to have been offered for tax as per clause (ii) of Explanation (1) to Section 11(1) of the Income Tax Act, 1961;

V. The CIT(A) has erred in allowing Workers' Welfare Cess payable to the State Government as an allowable expenditure despite the fact that the amount in question had not been paid during the F.Y.2017-18 and cannot be considered as application of income for the A.Y.2018-19;

VI. The CIT(A) has erred in allowing the interest on late payment of Service Tax on the ground that the payment is not of penal nature and hence does not come under the purview of section 37 of the Income Tax Act, 1961 while

the assessee is not eligible for exemption u/s.11 by virtue of proviso to section 2(15) r.w.s.13(8) of the Income Tax Act, 1961 for the A.Y.2018-19 and the Gross Receipts of the assessee have to be taxed Ca3 30% and no expenditure is allowable;

VII. The appellant craves leave to add, alter or amend all or any of the Grounds of Appeal before or at the time of the hearing of the appeal;

VIII. The order of the Ld.CIT(A) may be set-aside and the order of the AO may be confirmed."

2. All these appeals are related to the same assessee and therefore we decided to take up all the appeals together and pass a common order for the sake of convenience.

3. In all the appeals, the common question involved are whether the assessee was eligible for deduction u/s. 11 of the Act by treating the activities carried out by the assessee as a charitable activity.

4. The brief facts of the case are that the assessee is an authority created for the development of the Bangalore and came into existence from 1976. Their main purpose is to promote and secure the development of Bangalore Metropolitan area in addition to providing infrastructure facility as a general public utility. The assessee also developed various layouts and sold the said plots to the public as well as to the economically weaker sections of the society at the concessional rates. Therefore the assessee claimed that they are doing the charitable activities and not doing any trade or business to subject the assessee to tax under the provisions of the Income Tax Act. The assessee initially claimed deduction u/s. 10(20A) of the Act upto the A.Y. 2002-03 and after the deletion of the said provision, the assessee had opted for exemption u/s. 11 and 12 from the A.Y. 2004-05. The assessee also initially granted registration u/s. 12A which was later on cancelled pursuant to the amendment made to the definition of charitable purposes in which the first proviso was added w.e.f. 01/04/2009. The assessee also challenged the said cancellation and by approaching the Tribunal as well as

the Hon'ble High Court, the registration was restored. Even though for the earlier years, the AO had denied the exemption claimed u/s. 11 and 12 of the Act, the said orders were challenged by the assessee and the appellate authorities had decided the issue in favour of the assessee. In respect of the A.Ys. 2013-14 and 2014-15, similar dispute came up for consideration before this Tribunal in ITA Nos. 1968 to 1971/Bang/2018 dated 04/06/2019, this Tribunal had decided the issue in favour of the assessee. Inspite of such proceedings, in favour of the assessee, the AO proceeded to make the assessment and denied the exemption claimed u/s. 11 and 12 of the Act because the assessee is not doing any charitable activities.

5. As against the said order of the AO, the assessee filed appeals before the Ld.CIT(A) and contended that the assessee eligible for deduction u/s. 11 and 12 of the Act and they are very much coming under the definition of charitable purpose defined in section 2(15) of the Act and the first proviso inserted would not be applicable to the assessee's case. The Ld.CIT(A) had considered the issue in detail and also the principles laid down by the Hon'ble Supreme Court in the case of ACIT(E) vs. Ahmedabad Urban Development Authority in Civil Appeal No. 21762 of 2017 vide its order dated 19.10.2022 and allowed the claim made by the assessee that they are eligible for exemption u/s. 11 and 12 of the Act. Insofar as the other disallowances also, the Ld.CIT(A) had given a finding and deleted / remitted the issues to the AO for fresh consideration.

6. Aggrieved with the above order of the Ld.CIT(A), the revenue is in appeals before this Tribunal.

7. At the time of hearing, the Ld.AR submitted the paper books for all the assessment years and also filed a common compilation of the decisions relied upon and submitted that this issue is no longer resintegra since the Hon'ble Supreme Court as well as the Tribunal had decided the issue in favour of the assessee. The Ld.AR also took us through the orders passed by the Tribunal as well as the findings given by the Hon'ble Supreme Court

in the judgement of Ahmedabad Urban Development Authority and submitted that the AO had erred in passing the assessment order. The Ld.AR also relied on the decision of the Coordinate Bench of this Tribunal in the case of Magadi Planning Authority vs. ITO in ITA Nos. 1056, 1352 & 1353/Bang/2024 dated 22/01/2025 and prayed to dismiss the appeals filed by the revenue insofar as the exemption claimed u/s. 11 and 12 of the Act.

8. The other issues raised by the department will be dealt with separately since the common issue involved in all the three appeals are initially decided.

9. The Ld.DR appearing for the revenue / appellant contended that the order of the AO is a detailed order and therefore the finding of the Ld.CIT(A) is not correct. The Ld.DR also relied on the various grounds raised in respect of the claim of exemption made u/s. 11 of the Act since the assessee is not doing any charitable activities as per section 2(15) r.w.s. 13(8) of the Act. The Ld.DR further submitted that the assessee is doing the business activities and therefore earned income out of the said business and therefore the provision 2(15) first proviso would apply to the assessee and therefore the benefit of exemption would not be available to the assessee.

10. Now let us consider the issue that whether the assessee is eligible for exemption u/s. 11 of the Act. This issue was already considered by the Coordinate Bench of this Tribunal in ITA Nos. 1968 to 1971/Bang/2018 in assessee's own case for the A.Ys. 2013-14 and 2014-15 in which the assessee's own case for the A.Y. 2012-13 in ITA No. 1104/Bang/2017 dated 22/03/2019 was considered in which the Tribunal's findings were extracted as below:

> *"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."

11. Similarly, in a recent order by the Coordinate Bench of this Tribunal in ITA Nos. 1056, 1352 & 1353/Bang/2024 dated 22/01/2025 in case of Magadi Planning Authority had also held that the assessee's activities are undeniably charitable and the provisions of the Act support its exemption claim and set aside the order of the AO as well as the Ld.CIT(A). The Coordinate Bench also relied on the earlier order of the Coordinate Bench of this Tribunal in ITA No. 1104/Bang/2017 dated 22/03/2019 and came to the following conclusions.

"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."

12. The Ld.CIT(A) had considered the issue in the light of the judgments rendered by the Hon'ble Supreme Court as well as the Hon'ble Gujarat High Court and also the orders of this Tribunal in the assessee's own case in respect of the A.Ys. 2012-13, 2013-14 and 2014-15 had given the following findings:

4.1.3 I have carefully perused facts of the case and arguments of both the AO and the appellant. The only issue here is whether the receipts from activities of development & sale of sites to general public by way of auction can be termed as an activity of trade/commerce/business, carried out with the intent of making profits and consequently, can the limit of 20% as per clause (ii) of proviso to section 2(15) be applied to take the appellant out of the scope of exemption u/s 11 of the Act.

It is noted here that there is no doubt that the appellant is carrying out functions of General Public Utility while maintaining and constructing public roads/bridges and flyovers etc. The AO has not made out a case that the appellant is not carrying out such activities of general public utility. It is also not under contention that appellant is not functioning as per BDA 1976 (an act of State of

Karnataka). The AO has not made any case that the Karnataka State had formed the appellant trust to carry out activities of a land developer under the garb of general public utility with the sole intent and purpose of making handsome profits akin to a private developer. AO himself has analysed the function of the appellant in para 4.5 and 4.6 of his order as stipulated in BDA 1976 and it is clear that selling of sites to general public is only one of its various activities and it is not mentioned as the predominant activity.

Mere profit making on account of certain incidental or ancillary activities of the appellant does not disentitle it to claim the exemptions. Selling of some portion of uneven plots/sites to general public does not take it out of the definition of 'charitable purpose' in section 2(15) as the harmonious meaning of trade, commerce and business in section 2(15) must be such as to involve an element of profit.

The AO has not made out a case that making profit is the predominant motive of the appellant. It is seen that the main purpose of the appellant is development and maintenance of public infrastructure, selling of properties is only incidental and ancillary to such main purpose. Even if such sites/plots are developed/premises are constructed and sold at market price, such sale is necessitated to implement the provisions of the BDA 1976 through statutory schemes and such sale is, therefore, driven by the public requirement. A perusal of annual reports of the appellant, also available on its website from FY 2017-18 onwards, show that apart from creating affordable housing, the appellant is engaged in many urban projects viz. water supply, drainage, skywalks, flyovers & bridges, water bodies maintenance, creating infrastructure for cultural activities, sports and education etc. It can not said to be a commercial or business venture per se. Also, parking of receipts in fixed deposits does not make the activity a trade/business as such parking of funds is also required to ensure that till such public funds are deployed in next infrastructure project, the same have to be gainfully kept with banks. The AO has not made out any case that the deployment of funds from sale of sites to general public is in the fixed deposits on a perpetual basis and the appellant is not deploying these funds to develop public infrastructure (roads/parks/bridges etc) as and when required. Such actions of parking funds in fixed deposits would not make appellant fall under the proviso to section 2(15) of the Act.

On this issue, judicial position as below is also to be noted:

(a) In a very elaborate order in ***(2019) 104 Taxmann.com 266 (Bangalore-Trib.),*** Hon'ble ITAT in appellant's own case for AY 2012-13 (ITA No. 1087 & 1104/Bang/2017), vide decision dated 22/03/2019, has dealt this very issue striking down the order of CIT(A). It has been held by Hon'ble Tribunal that the fact of surplus or shortfall in income/expenditure account should not be the test for deciding the applicability of proviso to section 2(15) of the Act. It has also been held the intention to embark upon the activities undertaken by the appellant is very important factor & the case of the appellant does not fall under the proviso to section 2(15) of the Act.

In the assessment order or in the remand report dated 07/09/2023, the AO has not brought out that this decision of Hon'ble ITAT has been reversed by any higher judicial forum.

(b) As has been mentioned in the assessment order itself, in para 5.29 therein, Hon'ble ITAT had upheld the granting of registration u/s 12A of the Act to the appellant and thus, the appellant is eligible to claim exemption u/s 11 of the Act.

(c) Subsequent to decision of Hon'ble Supreme Court in ***Ahmedabad Urban Development Authority (Civil Appeal No. 21762/2017 dated 19/10/2022)***, Hon'ble Apex Court & lower Courts have time and again held that activities undertaken by various City/Area Development Authorities (which function under an Act/regulations enacted by a State) across the Country do not fall under the proviso to section 2(15) of the Act even if these Development Authorities make profit on sale of plots/land/buildings etc. similar to the case of the appellant. Some of these decisions are listed below:

*(i) **Ghaziabad Development Authority (2023) 151 taxmann.com 296 (SC)***

*(ii) **Karnataka Industrial Area Development Board (2023) 151 taxmann.com 430 (SC)***

*(iii) **Gandhinagar Urban Development Authority (2023) 148 taxmann.com 339 (SC)***

*(iv) **Gujarat Industrial Development Authority (2023) 452 ITR 27 (Guj),***

*(v) **Improvement Trust Fazilka (2023) 153 taxmann.com 494 (Amritsar-Trib.)***

*(vi) **Ahmedabad Urban Development Authority (ITA No. 74/2021 dated 11/09/2023)***

*(vii) **Improvement Trust (2023) 156 taxmann.com 153 (Chandigarh-Trib.)***

Considering the aforementioned facts and the ratio of decisions cited above, it is held that the appellant is not covered by the proviso to section 2(15) rws 13(8) of the Act. It is also held that the appellant is eligible to claim exemption u/s 11 of the Act.

Ground no. 1 to 7 of appeal are allowed.

13. Apart from the above said order of the assessee's own case, the Coordinate Bench of this Tribunal also had decided the issue in favour of the assessee by following the orders of the assessee's own case. There is no different facts available during the current assessment years in order to take a different view. We, therefore, held that the assessee is entitled for exemption u/s. 11 and 12 of the Act since their activities falls u/s. 2(15) of the Act and not hit by the first proviso which was inserted from 01/04/2009.

14. Therefore, the ground no. 2 raised by the revenue in all the three appeals are dismissed.

15. Insofar as ground no. 3 raised in the A.Ys. 2016-17 and 2018-19 and ground no. 4 raised in A.Y. 2017-18, the Ld.CIT(A) had given the following finding in respect of the prior period expenses which was disallowed by the AO.

4.3.1 The AO had made disallowances of Rs. 6,79,96,833/- noting that the appellant follows accrual method of accounting and hence the same had to be claimed only in the year of incurring these expenses irrespective of when the actual payment was made.

The AO had also made disallowance of Rs. 9,97,86,686/- also claimed by the appellant as prior period expenses since the bills pertaining to these expenses did not carry the dates and these should have been claimed in the year of accrual and not in the year of payment.

4.3.2 The appellant submitted that it undertakes various activities and projects the implementation of which extends to several years and consequently certain expenses get carried over to subsequent years for want of acceptance and approval by the competent authority and this is the consistent practice followed by the appellant over the past many years. It was also

submitted that these expenses being part of ongoing projects were debited to Work-in-Progress (WIP) and did not adversely affect revenues of this AY 2016-17 as these were not debited to the income and expenditure account of this AY 2016-17

The appellant did not furnish any explanation regarding the bills of Rs. 9,97,86,686/- being without date.

4.3.3 It is noted first that the claim of the appellant that the prior period adjustments had not been routed through the income & expenditure account is incorrect. In schedule 23 to income & expenditure account, submitted before the AO on 19/07/2018, shows the below:

SCHEDULES TO THE INCOME & EXPENDITURE

(₹. In lakh)

	CURRENT YEAR 2015 - 16		PREVIOUS YEAR 2014 - 15	
SCHEDULE : 23				
PRIOR PERIOD ADJUSTMENTS				
CREIDITS				
Auction site	69.92		48.89	
Bulk site 95% development cost	37.78			
Flat Initial Deposits	636.98			
Deffered amount	3.09			
Pension contribution & leave salary contribution	160.93			
Others	17.79	926.49	3.02	51.91
DEBITS				
Refund to Bulk Site allotees	39.76			
Auction site	964.96		203.84	
CA site	355.45		330.08	
Refund of EMD & FSD	6.49		246.88	
Service tax			35.54	
Others	0.09	1,366.75		816.34
Prior period adjustments net		(440.26)		(764.43)

Thus, the prior period adjustments (both credits and debits) are being routed through income and expenditure account on regular basis.

It is also seen here that the issue of prior period expenses has been decided in favour of the appellant in its own case in ***(2019) 104 Taxmann.com 266 (Bangalore-Trib.)*** for AY 2012-13 holding it to be mere academic once the appellant is held to be outside the purview of proviso to section 2(15) of the Act and also eligible for exemption u/s 11 of the Act.

It is also seen that Hon'ble ITAT Hyderabad in case of ***Institute for Development and Research in Banking Technology, Hyderabad (ITA No. 2217 and 2218/Hyd/2017 for AY 2013-14 & 2014-15 decision dated 31/07/2018)*** had also decided the issue of prior period expenses in favour of the assessee-society which had been granted exemption u/s 11 of the Act. In this case, Hon'ble ITAT had held as under:

"Once it is held that the appellant society is eligible for exemption u/s. 11 of the Act, as a

logical corollary, the income of the appellant society has to be computed on commercial principles as held by the Hon'ble Supreme Court in the case of CIT v. Programme for Community Organization (2001) 248 ITR 1. If the commercial principles for determining the income are applied, it is but natural that the adjustment of the expenses incurred by the appellant society for charitable purposes in the earlier year against income earned by the appellant society in the subsequent year will have to be regarded as application of income of the appellant society for charitable purpose in the subsequent year in which such adjustment has been made having regard to the benevolent provisions contained in section 11 and will have to be excluded from the income of the appellant society under section 11(1)(a) Reliance in this regard is placed on the decision in the case of CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal, (1995) 211 ITR 293, 300 (Guj). Further, we also note that the provisions of section 11(1)(a) of the Act does not prescribe that income of the year should have been applied only in the year in which income has arisen. Therefore, we hold that the pre-operative expense of Rs.1,26,807/- should be allowed as deduction."

Respectfully following the decisions of Hon'ble Tribunals, it is held that prior period expenses of Rs. 6,79,96,833/- (in case of which there is no doubt about the dates) are allowable to the appellant. AO is directed to grant relief to the appellant accordingly.

However, regarding the amount of Rs. 9,97,86,686/-, the appellant has offered no explanation before the AO or during these appeal proceedings regarding the undated bills. In the absence of the dates, it cannot be ascertained as to which period these pertained to.

The AO is directed to verify as to whether dates of bills for these expenses are supported by any other evidences viz. work order, financial sanction order, delivery challan etc. If the dates are found to be in order for a prior period, then the expenses are to be allowed either as being debited to WIP or to income/expenditure account, as the case may be.

If the AO finds that during such verification, the appellant does not produce any supporting evidences (viz. work order, financial sanction order, delivery challan etc.) about the dates of these bills, then these shall be disallowed. If these have been debited to WIP, then the WIP is to be reduced to the extent of unverified bills. If the AO finds that these have been debited to income and expenditure account then also the same have to be disallowed to the extent of not verified bills.

Ground no. 9 of appeal is allowed partly in above terms.

16. The revenue had raised the ground generally and not brought out any new facts in order to attack the order of the Ld.CIT(A) as incorrect. The Ld.CIT(A) had examined the issue in detail and gave a clear finding that the issue was already covered in the assessee's own case and also the Hyderabad Tribunal in ITA Nos. 2217 & 2218/Hyd/2017dated 31/07/2018. The revenue had not pointed out any other circumstances or orders of the higher judicial forums to overcome the findings of the Ld.CIT(A). In such circumstances, the order of the Ld.CIT(A) insofar as the said ground of prior period expenses is in order and requires no interference. Hence the grounds

raised in ground no. 3 for the A.Ys. 2016-17 and 2018-19 and ground no. 4 raised for the A.Y. 2017-18 are dismissed.

17. Insofar as the ground no. 4 raised by the assessee in the A.Y. 2016-17, the revenue had contended that the assets written off do not qualify as application of funds. The Ld.CIT(A) in paragraph 4.4.1 to 4.4.3 had discussed the issue and held that the addition need not be made since the appellant has been held eligible to claim exemption u/s. 11 of the Act and proviso to section 2(15) of the Act not applicable to its activities, then the capital expenses shall also be treated as application of income. The revenue had not pointed out any new facts contrary to the findings given by the Ld.CIT(A) and further the finding of the Ld.CIT(A) is also a correct one and we, therefore, dismiss this ground raised by the revenue in the A.Y. 2016-17.

18. Insofar as the ground no. 5 raised by the revenue about the allowance of payments towards the electrical deposits and expenditure towards accommodation of various committees, the Ld.CIT(A) had given the following finding while allowing the said ground:

4.5 Ground no. 11: It relates to the claim that the AO should not have added back a sum of Rs. 12,88,014/- paid as electrical deposits to BESCOM as this was not refundable till surrender of power connections/meters.

4.5.1 The AO had disallowed this sum holding these to be deposits to electricity utility, BESCOM, which were refundable.

4.5.2 The appellant submitted that these deposits were made towards providing power supply to the prospective allottees and, as a policy, were recovered from them as and when the properties were sold/allotted. It was further submitted that since such collections from the allottees were treated as revenue income, the payments also should be allowed as expenditure.

4.5.3 It is seen here that the expenses were incurred by the appellant to make the properties habitable and without electricity connections, it would not have been possible to sell the properties. Further, the appellant has been consistently following the practice of showing the same as income as and when recovered from the prospective allottees.

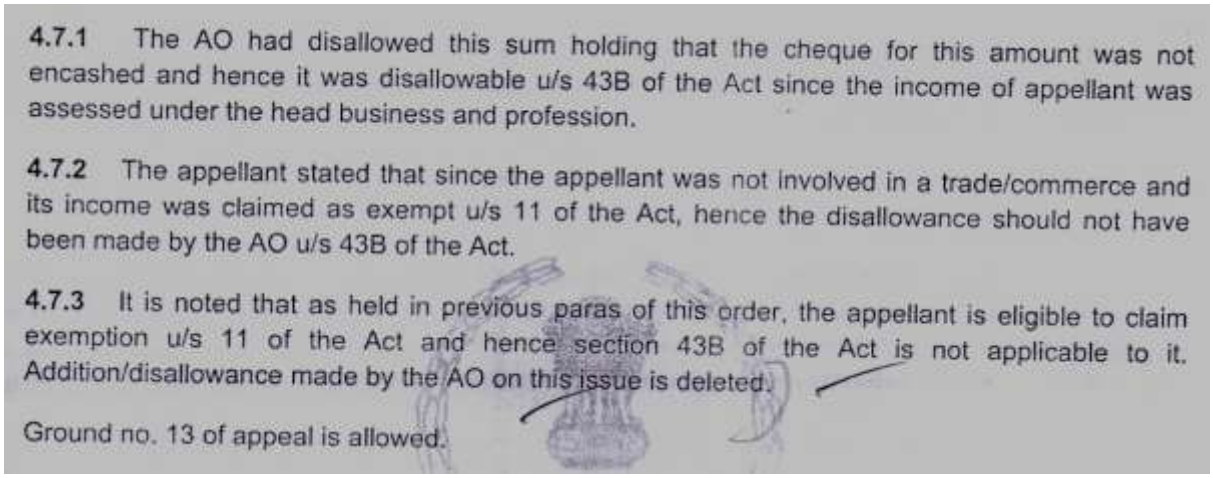
It is also noted that in the case of ***Chaman Vatika Educational Society [2013] 37 taxmann.com 299 (Chandigarh - Trib.),*** Hon'ble Tribunal had held that when as per method of accounting regularly followed by assessee, it was declaring interest on FDRs when it was actually realized, Assessing Officer could not include amount of un-realized interest in assessee's income.

Considering the above, additions made by the AO on this issue are deleted. This ground of appeal is allowed.

19. In coming to the said conclusion, the Ld.CIT(A) had also relied on the Chandigarh Tribunal order reported in (2013) 37 taxmann.com 299 in the case of Chaman Vatika Educational Society. Further, in the grounds raised by the revenue, the revenue had relied on the position that the assessee is not eligible for exemption u/s. 11 by virtue of proviso to section 2(15) r.w.s. 13(8) of the Act. In our order , we have already held that the assessee is entitled for exemption u/s. 11 of the Act. In such circumstances, unless and until the said finding is reversed, the ground raised by the revenue will not hold good. Even otherwise, the Ld.CIT(A) had considered the case on merits and the revenue had not placed any materials to take a different view. We, therefore, dismiss this ground raised by the revenue.

20. Insofar as the ground no. 6 raised by the revenue in the A.Y. 2016-17, the revenue had contested that the Ld.CIT(A) would not have allowed the slum clearance cess payable to the State Government as an allowable expenditure. The said amount was paid during the A.Y. 2016-17 and therefore the same could not be considered as application of income. We

have perused the finding given by the Ld.CIT(A) in this regard which reads as follows:



4.7.1 The AO had disallowed this sum holding that the cheque for this amount was not encashed and hence it was disallowable u/s 43B of the Act since the income of appellant was assessed under the head business and profession.

4.7.2 The appellant stated that since the appellant was not involved in a trade/commerce and its income was claimed as exempt u/s 11 of the Act, hence the disallowance should not have been made by the AO u/s 43B of the Act.

4.7.3 It is noted that as held in previous paras of this order, the appellant is eligible to claim exemption u/s 11 of the Act and hence section 43B of the Act is not applicable to it. Addition/disallowance made by the AO on this issue is deleted.

Ground no. 13 of appeal is allowed.

21. The Ld.CIT(A) had given a clear finding that the assessee is not involved in trade or commercials and claimed its income as exempt u/s. 11 of the Act and therefore held that when the assessee is eligible for exemption u/s. 11 of the Act, the disallowance made u/s. 43B would not arise. As already stated, the revenue had not placed any materials before us to take a different view and also in view of the fact that, the assessee is entitled for exemption u/s. 11 of the Act. The question of disallowance would not arise in this year also.

22. We, therefore, uphold the order of the Ld.CIT(A) and dismiss the ground raised by the revenue.

23. Insofar as the ground no. 7 raised by the revenue for the A.Y. 2016-17, the revenue had objected the remitting of the issue of disallowance of expenditure for verification and allow the same if the same is eligible for deduction, after verification. The revenue also raised the plea that since the assessee is not eligible for exemption u/s. 11, the order passed by the Ld.CIT(A) by remitting the said issue requires to be reconsidered and subjected to tax at 30%.

24. The Ld.CIT(A) had remitted the issue since the assessee had not provided the corroborative documents toward the expenses of the sum. Therefore, we do not find that the order of the Ld.CIT(A) directing the assessing authority to verify the documents and thereafter if the documents are correct, allow the expenses is not correct. Further, the revenue had raised this ground on the basis that the assessee is not entitled to claim exemption u/s. 11 of the Act whereas this Tribunal as well as in the earlier order of this Tribunal, we have held that the assessee is entitled for exemption u/s. 11 of the Act. In such circumstances, we are of the view that this ground is also not a valid ground and therefore the ground no. 7 raised by the revenue is also dismissed.

25. Insofar as the ground no. 8 raised by the revenue that the estimation of the issue of pension and leave salary contribution to the AO is not correct when the assessee is not eligible for exemption u/s. 11 of the Act.

26. The Ld.CIT(A) had given the following finding in respect of the said ground raised by the revenue.

4.13.1 The AO had made this addition holding that the appellant had not furnished complete details for FY 2015-16 on this issue, that it was not clear whether the amounts pertained to calendar year or financial year and hence this sum was treated as understatement of sundry debtors and added back by the AO.

4.13.2 The appellant did not produce the break-up of this sum before the AO. It did not file the same during these appeal proceedings also. It was, however, submitted that since the sum was 'recoverable' from other Departments, the same could not have been part of expenditure & hence no disallowance could have been made on this account.

4.13.3 It is apparent from the submission of the appellant that it pays the leave salary/pension contributions to the officers/officials on its roll, on deputation, from other Departments. It then recovers such sums from these other Departments to whom such officers/officials originally belong to. The issue arose because the appellant could not provide financial year-wise break-up of such recoverable sums.

AO is directed to verify whether the amount has been reflected under the head 'sundry debtors' and whether the same was not debited to the income and expenditure account. If found to be not debited to the income and expenditure account, the relief shall be granted to the appellant. Ground no. 19 of appeal is allowed subject to such verification by the AO.

27. Therefore the above said finding given by the Ld.CIT(A) is a reasonable one. Further, we have already held that the assessee is entitled for exemption u/s. 11 of the Act and therefore this ground raised by the revenue on the premise that the assessee is not eligible for exemption u/s. 11 of the Act does not hold good. We, therefore, dismiss this ground raised by the revenue.

28. In respect of ground no. 3 raised by the revenue in the A.Y. 2017-18, the revenue had found fault with the allowing the claim of expenditure debited by the assessee in their income and expenditure account on account of refund of deposit receipts when the assessee is not entitled for exemption u/s. 11 of the Act.

29. The Ld.CIT(A) had considered the issue and gave the following finding:

5.3 **Ground no. 9:** It pertains to the plea that the AO was not justified in adding back Rs. 1,97,00,000/- in respect of refund of deposit receipts for allotment of sites as a bogus expenditure based upon only the observation of the Comptroller & Auditor General of India (C & A G).

5.3.1 The AO had treated this amount as inadmissible expenditure holding that the appellant had not furnished explanation before the AO regarding the observation of the C & A G. The AO had reproduced the observation of the C & A G that in 79 cases of refund, dual payment of Rs. 1.97 crores were yet to be recovered.

5.3.2 The appellant submitted that the AO failed to appreciate that this amount was not related to any item of expenditure but a case of recovery of excess refund against which the appellant had received an amount of Rs. 1,48,38,256/- & only Rs. 50,38,500/- was pending to be recovered. It was also submitted that the amount was only a balance sheet item and not an item of income or expenditure. It was also submitted that AO should not have made additions only on the basis of the report of C & A G.

5.3.3 It is seen here that in para 57.1 of the assessment order, the AO reproduced both the observation of the C & A G & the reply of the appellant to the C & A G, wherein the appellant had mentioned that only Rs. 50,38,500/- was pending to be recovered. It is also noted here that the C & A G report mentioned only the excess payment and not the 'bogus' nature of the expenses. The AO was not correct in labelling such payment as 'bogus' when it was merely an excess payment. Further, the items related to balance sheet and not the income/expenditure account, do not affect the net surplus of the appellant.

In view of the above, addition of Rs. 1,97,00,000/- made by the AO on this issue is hereby deleted.

30. This finding of the Ld.CIT(A) is objected by the revenue on the ground that the assessee is not entitled for exemption u/s. 11 of the Act. As discussed earlier we have held that the assessee is entitled for exemption u/s. 11 of the Act and therefore this ground raised by the revenue is also not maintainable and therefore the same is also dismissed.

31. The revenue had raised ground no. 5 in both the A.Ys. i.e. 2017-18 and 2018-19 that the order of the Ld.CIT(A) in allowing the workers welfare cess payable to the State Government despite the fact that the amount in question had not been paid during the financial year 2016-17 and therefore the same could not be considered as application of income for the A.Y. 2017-18. The Ld.CIT(A) had dealt with this issue and gave the following finding:

5.6 Ground no. 12: It pertains to the claim that the AO was not justified in adding sum of Rs. 7,99,00,000/- u/s 43B of the Act on account of workers welfare cess payable to the State Government.

5.6.1 The AO had disallowed this sum holding that this sum was outstanding as on 31/03/2017, that the proof of payment was not filed by the appellant and hence it was disallowable u/s 43B of the Act since the income of appellant was assessed under the head 'business and profession' & this sum had not been remitted to the concerned authorities before 31/03/2017 or within due date of filing return of income.

5.6.2 The appellant stated that since the appellant was not involved in a trade/commerce and its income was claimed as exempt u/s 11 of the Act, hence the disallowance should not have been made by the AO u/s 43B of the Act. It was also submitted that this sum was not debited to the income and expenditure account and had not been claimed as expenditure but it was part of the 'current liabilities' in the balance sheet.

5.6.3 It is noted that as held in previous paras of this order, the appellant is eligible to claim exemption u/s 11 of the Act and hence section 43B of the Act is not applicable to it.

Even otherwise, this being an item of the balance sheet item and receipt & payment account, the same is not liable for disallowance. Accordingly, disallowance of Rs. 7,99,00,000/- made by the AO on this issue is hereby deleted.

32. Further, the Ld.CIT(A) while dealing with this issue in respect of the A.Y. 2018-19, had also observed as follows:

Even otherwise, it is noted that the income & expenditure account do not reflect any such payments. On the other hand, receipt & payment account shows Rs. 2744.27 lakhs as receipts and Rs. 1404.12 lakhs as paid during FY 2017-18 as workers welfare cess while schedule 11 (current liabilities) of balance sheet shows that workers welfare cess of Rs. 4532.44 lakh was payable as on 31/03/2018. The balance sheet, income & expenditure account and receipts & payment account, along with all their schedules, had been furnished by the appellant before the AO as part of annexure-1 to submissions dated 29/03/2021 during the assessment proceedings. Thus, it is apparent that the AO had misunderstood the items of balance sheet/income & expenditure account/receipts and payment account.

33. From the above said findings given by the Ld.CIT(A), we found that the order of the Ld.CIT(A) is correct since no disallowance could be made u/s. 43B of the Act when the entire income is eligible for exemption u/s. 11 of the Act. There are no other valid evidences available with the department to take a different view. Further, we have held that the assessee is entitled for exemption u/s. 11 of the Act and therefore the question of disallowance u/s. 43B would also does not arise. In such circumstances, we dismiss these grounds also raised in the A.Ys. 2017-18 and 2018-19.

34. The revenue raised ground no. 4 in the A.Y. 2018-19 against the deletion of the additions made on account of rent recoverable from BBMP.

35. The Ld.CIT(A) had discussed the issue in its order in para nos. 6.5.1 to 6.5.3 and gave the following finding.

6.5 Ground no. 7: It relates to the claim that the AO erred in adding a sum of Rs. 2885 lakhs as rent recoverable from BBMP.

6.5.1 The AO had added this amount holding that the rent recoverable, for shopping complexes & head office, from Bruhat Bangalore Mahanagar Palike (BBMP) was to be included in the income of the appellant on accrual basis as below:

Particulars	Amount (Rs. In Lakhs)	Amount (Rs. In Lakhs)
Outstanding rent i.e. opening balance as on 01/04/2017	2364.18	
Add: Rental income for the year (on accrual basis)	1047.03	
Total	3411.21	3411.21
Less: Rent received during the year		556.31
Balance receivable		2855.00

6.5.2 The appellant submitted, as had also been submitted before the AO in response dated 25/05/2021, that the income under the head 'rent' recognized by the appellant under schedule 15 of audited financial statements was Rs. 3522.88 lakhs and not Rs. 556.21 lakhs which the AO, incorrectly, had taken from 'receipts and payments account', instead of taking correct figure of Rs. 3522.88 lakhs. It was also stated that the rental income has been correctly recognized in the income and expenditure account at Rs. 3522.88 lakhs.

6.5.3 It is noted here that schedule 15 of the income and expenditure account shows rental income of Rs. 3522.88 lakhs while schedule 8 (sundry debtors) of balance sheet shows amount of Rs. 153.08 lakhs outstanding receivable both as on 31/03/2018 & 31/03/2017 under the head '*CA sites & Shop rent & others receivable from BBMP*'. The balance sheet, income & expenditure account and receipts & payment account, along with all their schedules, had been furnished by the appellant before the AO as part of annexure-1 to submissions dated 29/03/2021 during the assessment proceedings. Thus, it is apparent that the AO had misunderstood the items of balance sheet/income & expenditure account/receipts and payment account.

In view of the above, the action of AO in adding back Rs. 2855.00 lakh was not justified. This addition is hereby deleted.

Considering the above, ground no. 7 of appeal is allowed.

36. In view of the above said finding given by the Ld.CIT(A) and also in view of the fact that the assessee is entitled for exemption u/s. 11 of the Act, we do not find any reason to interfere in the order of the Ld.CIT(A). Therefore, ground no. 4 raised by the assessee in the A.Y. 2018-19 is also dismissed.

37. Insofar as the ground no. 6 raised by the revenue in A.Y. 2018-19, against the allowing interest paid on the late payment of service tax, the revenue contended that it is penal in nature and therefore it is disallowable u/s. 37 of the Act.

38. The Ld.CIT(A) had considered the issue and gave the following finding.

6.8 Ground no. 10: It pertains to the claim that the AO erred in disallowing interest of Rs. 367.45 lakhs on late payment of service tax.

6.8.1 The AO had disallowed this sum holding that this payment was in the nature of a penalty and is disallowable u/s 37 of the I.T. Act 1961. AO also relied upon decisions in ***Mamta Enterprises 266 ITR 356 (Kar)*** and ***M/s Millenia Developers Pvt Ltd 322 ITR 401 (Kar HC).***

6.8.2 The appellant has submitted that interest on late payment is not of penal nature and it is allowable u/s 37 of the Act. Appellant also relied upon decisions in ***Narayani Ispat Pvt Ltd (ITAT Kolkata), Prince Holdings Madras P Ltd (ITA No. 524/Chny/2021 dated 02/11/2022)*** and ***Planaman HR Pvt Ltd (ITA No. 5152/Del/2017 dated 15/07/2021).***

6.8.3 In preceding paras of this order, it has been held that the appellant is eligible to claim exemption u/s 11 of the Act and its activities do not constitute business/trade/commerce. Thus, the provisions of section 37 of the Act are not applicable to the appellant. Even otherwise, in various decisions, viz. ***Sri Radhakrishna Shipping Ltd [2019] 110 taxmann.com 62 (Mumbai - Trib.), Prince Holdings (Madras) Pvt Ltd(ITA No. 524/Chny/2021 dated 02/01/2022) Messee Dusseldorf India (P.) Ltd. [2010] 129 TTJ 81 (DELHI)(UO)*** etc., Hon'ble Tribunals have held that interest payment on late deposit of service tax is not penal but compensatory in nature and it is an allowable expenditure u/s 37(1) of the I.T. Act 1961.

Considering the above, disallowance of Rs. 367.45 lakhs made by the AO is deleted. Ground no. 10 of appeal is allowed.

39. The revenue also raised this ground on the premise that the assessee is not entitled for exemption u/s. 11 of the Act. In our order, we have already decided the issue and held that the assessee is entitled for exemption u/s. 11 of the Act. Therefore, on the ground that the interest on the late payment of service tax would be an allowable expenditure u/s. 37 of the Act and also on the ground that the assessee is eligible for exemption u/s. 11 of the Act, we do not find any infirmity in the order of the Ld.CIT(A) and hence this ground raised by the revenue is also dismissed.

40. In the result, all the three appeals filed by the revenue are dismissed.

Order pronounced in the open court on 30th May, 2025.

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

Bangalore,
Dated, the 30th May, 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