

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'B', NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

AND

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA NO. 4691/DEL/2024

A.YR. : 2014-15

HAPUR DEVELOPMENT AUTHORITY, C/O KAPIL GOEL, ADVOCATE F-26/124, SECTOR-7, ROHINI, DELHI – 110 085 (PAN: AAALH0057L)	PILKHUWA Vs.	DCIT EXEMPTION CIRCLE, GHAZIABAD ROOM NO. 105, CGO COMPLEX, 1 ST FLOOR, KAMLA NEHRU NAGAR, GHAZIABAD UTTAR PRADESH
(Appellant)		(Respondent)

Assessee by	Dr. Kapil Goel, Adv.
Department by	Shri Surender Pal Singh, CIT(DR)

Date of hearing : 27.03.2025

Date of pronouncement : 25.06.2025

ORDER

PER MAHAVIR SINGH, VP :

This appeal filed by the Assessee is directed against the order dated 28.08.2024 passed by the NFAC, New Delhi in relation to assessment year 2014-15 on the following grounds:-

- i) That orders of AO and Ld. First Appellate Authority respectively passed u/s. 143(3) and section 250 are both invalid / nullity and both deserve to be quashed / set aside for total want of application of mind and being passed in most

arbitrary manner without appreciating the past “settled” decisions in “own” case of assessee and further without considering the settled legal position as laid down by jurisdictional high court and Hon’ble Apex Court on subject issues which are adversely decided against assessee.

- ii) That orders of AO and Ld. First Appellate Authority respectively passed u/s. 143(3) and section 250 are both invalid in so far as aspect of holding of assessee’s activities fall foul of section 2(15) of the Act (that is assessee’s activities are not charitable in nature u/s. 2(15) which is grossly perverse and patently illegal on face of it.
- iii) That orders of AO and Ld. First Appellate Authority respectively passed u/s. 143(3) and section 250 are both invalid in so far as aspect of addition of Rs. 9,19,31,085/- is concerned on account of amount of infrastructure fund which is totally contrary to binding jurisdictional high Court rulings.

2. Brief facts of the case are that the assessee company is engaged in development work on behalf of the State of UP. The assessee is registered under section 12A of the Act. The assessee filed its return of income on 30.09.2014 declaring NIL total income by claiming the income exempt as per the provisions of section 11 & section 12 of the Act. The case of the assessee was selected for scrutiny under CASS statutory notices u/s. 143(2) and section 142(1) of the Act were issued and served upon the assessee which were replied by the assessee. The assessee claimed the amount transferred directly to “Infrastructure Development Fund A/c” to be exempt “Corpus Receipts” and further, the assessee claimed benefit of

section 11 of the Act. Vide order passed u/s. 143(34) of the Act, the AO has made the addition of Rs. 51,93,79,021/- holding that the amount which is directly transferred by the appellant to “Infrastructure Development Fund A/c” to be exempt “Corpus Receipts”. The AO further added Rs. 15,04,302/- being depreciation claimed by the assessee holding that when capital expenditure in acquiring fixed assets has already been allowed in respective years, depreciation cannot be allowed separately. Thus, the AO assessed the total income of the assessee at Rs. 48,18,44,518/-. Thereafter, assessee filed a petition u/s. 154 of the Act, on which the AO rectified his mistake of considering Rs. 51,93,79,021/- being amount transferred by the assessee directly to “Infrastructure Development Fund A/c” instead of correct amount of Rs. 9,19,31,085/-. AO further rectified the addition on account of depreciation making it to be NIL by determining the total income at Rs. 5,28,92,280/- vide his order u/s. 154 dated 24.3.2017. Aggrieved, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 28.8.2014 dismissed the appeal of the assessee.

3. Against the above order, Assessee is in appeal before us.

4. We have heard both the parties and perused the records. At the time of hearing, Id. Counsel for the assessee submitted that on the first issue viz. activity of assessee/ development authority u/s 2(15) of the Act is concerned, this issue is squarely covered by the decision of the Tribunal in assessee’s own case in ITA No. 4125/Del/2017 vide order dated 04.02.2022 relevant to assessment year 2012-13 wherein, the Tribunal relied upon the earlier decision in assessee’s own case in ITA No. 1384 to 1386/2016 dated 6.6.2018 for assessment years 2009-10 to 2011-12, which

has been approved by the Hon'ble High Court. It is further submitted that recently in two decisions of the Coordinate Bench the present issue is fully covered by the decision of the ITAT, Delhi 'E' Bench in the case of DCIT vs. Meerut Development Authority ITA no. 1657/Del/2018 (AY 2014-15) vide order dated 27.01.2025 and also covered in another case of 'C' Bench, ITAT Delhi in the case of DCIT vs. Kanpur Development Authority in ITA No. 1655/Del/2018 dated 12.03.2025. In these cases being similar type of organization under the same Act, the issue was decided in assessee's favour after considering the decision in the case of Ahmedabad Urban Development Authority (AUDU) of the Hon'ble Supreme Court viz. 449 ITR 1 & 449 ITR 389.

5. As regards second issue relating to amount credited to infrastructure development fund is concerned, it is submitted that the same issue is also covered by the decision of the Tribunal in assessee's own case in ITA No. 4125/Del/2017 vide order dated 04.02.2022 relevant to assessment year 2012-13. It is further submitted that recently in two decisions of the Coordinate Bench this issue is fully covered i.e. ITAT, Delhi 'E' Bench in the case of DCIT vs. Meerut Development Authority ITA no. 1657/Del/2018 AY 2014-15 vide order dated 27.01.2025 and in another case of 'C' Bench, ITAT Delhi in the case of DCIT vs. Kanpur Development Authority in ITA No. 1655/Del/2018 dated 12.03.2025. Thus, it is submitted that respectfully following the aforesaid precedents, the appeal of the assessee may be allowed.

6. The aforesaid factual position has not been controverted by the ld. DR for the Revenue, but he has supported the order passed by the Ld. CIT(A).

7. We have heard both the parties and perused the records. As regards the issue of activity of assessee/ development authority u/s 2(15) of the Act is concerned, we note that this issue is squarely covered by the decision of the Tribunal in assessee's own case in ITA No. 4125/Del/2017 vide order dated 04.02.2022 relevant to assessment year 2012-13 wherein, the Tribunal relied upon the earlier decision in assessee's own case in ITA No. 1384 to 1386/2016 dated 6.6.2018 for assessment years 2009-10 to 2011-12, which has been approved by the Hon'ble High Court. The relevant findings of the Tribunal in its order dated 04.02.2022 are as under:-

“8. At the very outset, Id. AR for the assessee contended that this issue is covered in favour of the assessee by virtue of the order passed by the Tribunal in assessee's own case for A.Y. 2009-10 to 2011-12 and also covered by the decision rendered by Hon'ble High Court of Allahabad in assessee's own case (ITA No. 657 of 2007). Learned AR for the assessee also laid emphasis on the principle of consistency, as this issue for the earlier years has been successively decided in favour of the assessee. This factual position has not been controverted by Id. DR for the Revenue, but he has supported the order passed by Id. CIT(A).

9. We have perused the order dated 06.06.2018 passed by the coordinate Bench of the Tribunal in assessee's own case for the assessment years 2009-10 to 2011-12 in ITA No. 1384 to 1386/2016, which is on identical issue. Coordinate Bench of Tribunal by relying upon the decision dated 21.04.2017 rendered by Hon'ble Allahabad High Court in the case of CIT vs. Yamuna Expressway Industrial Development Authority and another decision dated 04.01.2018 rendered by coordinate Bench of Tribunal in the case of Moradabad Development Authority vs. ACIT (Exemption) in ITA No.

4631 & 4632/Del/2007, decided the issue in favour of the assessee by returning following findings:-

“3. We have heard both the sides and perused the relevant material on record. The Hon'ble Jurisdictional High Court in CIT vs. Yamuna Expressway Industrial Development Authority, vide judgment delivered on 21.4.2021, has decided similar issue in assessee's favour. The Delhi Bench of the Tribunal in Moradabad Development Authority vs. ACIT (Exemption), vide order dated 4.1.2018 in ITA No. 4631 and 4632/Del/2017, dealt with the case of an Authority working in the same way as the assessee in question and held that the benefit of exemption under section 11 cannot be denied. In reaching this conclusion, the Tribunal considered the relevant judgments on the point and eventually held that the case is covered by the judgment of Hon'ble Jurisdictional High Court in the case of Yamuna Express way Industrial Development Authority (supra). A copy of such order has been placed on record in which the relevant discussion has been made from pages 2 to 7 of the order. Since the facts and circumstances of the instant case are mutatis mutandis similar to those as considered and decided by the Hon'ble Jurisdictional High Court in the case of Yamuna Expressway Industrial Development Authority (supra) and the Tribunal in Moradabad Development Authority (supra), we uphold the impugned order in deciding this issue in assessee's favour. This ground is not allowed.”

10. In view of what has been discussed above and following the decision rendered by Hon'ble High Court in assessee's own case and decision rendered by coordinate bench of Tribunal, we are of the considered view that now the issue is no longer res integra, as it has already been held that “there is no good reason for holding that Statutory bodies could not be treated as

charitable within the meaning of section 2(15) of the Act, as its object is to provide shelter to the homeless people.

11. So there being no material/evidence on record supporting the case of the Revenue to reach the conclusion that the assessee was conducting its affairs on commercial lines with the profit earning motive and as such the proviso to section 2(15) of the Act is not attracted in this case and the assessee was entitled to exemption provided u/s. 11 of the Act. Moreover, no cogent reason or distinguishable facts have been brought on record by the Revenue if the year under consideration is different from earlier years, i.e., A.Yrs. 2009-10 to 2011-12, which have already been decided in favour of the assessee. So, in these circumstances, the Revenue authorities are required to follow the "principle of consistency", as has been laid down by Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT (1992) 193 ITR 321 (SC). Consequently, grounds Nos. 1 to 4 are decided in favour of the assessee."

7.1 In view of above, and respectfully following the aforesaid precedents, we are of the considered view that now the issue is no longer *res integra*, as it has already been held that there is no good reason for holding that Statutory bodies could not be treated as charitable within the meaning of section 2(15) of the Act, as its object is to provide shelter to the homeless people and thus the proviso to section 2(15) of the Act is not attracted in this case and the assessee was entitled to exemption provided u/s. 11 of the Act. Therefore, this ground of appeal is decided in favour of the assessee.

8. As regards the issue relating to amount credited to infrastructure development fund is concerned, we note that the issue is also covered by the decision of the Tribunal in assessee's own case in ITA No. 4125/Del/2017 vide order dated 04.02.2022 relevant to assessment year

2012-13. The relevant findings of the Tribunal in its order dated 04.02.2022 are as under:-

"12. While challenging the impugned addition of Rs.14,15,88,504/-made by Assessing Officer, Id. AR for the assessee contended that this issue has also been decided in favour of the assessee by the Hon'ble High Court of Allahabad. He has further contended that there is no material on record to appreciate that during the year under consideration, expenditure was more than the receipts. This factual position has not been controverted by the Id. DR for the Revenue, but he has supported the order passed by the Id. CIT(A).

13. Undisputedly, the expenditure made by the assessee-authority during the year under consideration was not more than the receipt, as is evident from the income & expenditure account for the period ending 31.03.2012, available at page 6 & 7 of the paper book. Ld. AR for the assessee taken us to para 32 of the order passed by Hon'ble High Court of Allahabad available at page No. 141/144 of the paper book, wherein the identical issue has been decided in favour of the assessee by returning following findings :

"32. From the record, it also appears that the "authority" had been maintaining infrastructure development and reserve fund IDR as per the notification dated 15th January, 1998, the money transferred to this funds is to be utilized for the purpose of project as specified by the committee having constituted by the State Government under the said notification and the same could not be treated to be belonging to the "authority" or the receipt of taxable nature in its hands. For this reason also, it appears that the funds are utilized for general utility."

So, when the issue under consideration has already been decided by the Hon'ble High Court in favour of the assessee, by holding that infrastructure fund, development and reserve fund IDR as per Notification dated 15.01.1998 belongs to State and the assessee- authority is a mere custodian, the same

cannot be taxed in its hand. Even otherwise, the same has been utilized for general utility. So, in view of the matter, grounds Nos. 5 to 10 are also decided in favour of the assessee.

8.1 In view of above, and respectfully following the aforesaid precedents, we are of the considered view that now this issue also no longer *res integra* as it has already been held that infrastructure fund, development and reserve fund IDRFB as per Notification dated 15.01.1998 belongs to State and the assessee authority is a mere custodian, the same cannot be taxed in its hand. Even otherwise, the same has been utilized for general utility. Therefore, this ground of appeal is decided in favour of the assessee.

9. In the result, appeal filed by the Assessee stands allowed.

Order pronounced on 25/06/2025.

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

“SRBHATNAGAR”

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi