

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "B", JAIPUR
BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 717/JPR/2024 (A.Y. 2008-09)

ACIT, Exemption,
Circle, Jaipur

..... Appellant

Vs.

Urban Improvement Trust,
UIT Building near Cad Circle,
CAD Circle, Kota 324 007
PAN No.: AAALU 0110D

..... Respondent

ITA Nos. 794 to 797/JPR/2024 (A.Ys. 2006-07, 2007-08, 2009-10 & 2016-17)

DCIT, Exemption,
Circle, Jaipur

..... Appellant

Vs.

Urban Improvement Trust,
UIT Building near Cad Circle,
CAD Circle, Kota 324 007
PAN No.: AAALU 0110D

..... Respondent

ITA Nos. 731, 773, 774, 803, 811, 812, 813, /JPR/2024
(A.Ys. 2008-09, 2003-04, 2005-06, 2006-07, 2016-17, 2007-08 & 2009-10)

Urban Improvement Trust,
UIT Building near Cad Circle,
CAD Circle, Kota 324007

PAN No.: AAALU 0110D

..... Appellant

Vs.

**ACIT, Exemption,
Circle, Jaipur**

..... Respondent

Appellant by : Mr. Prakul Khurana, Adv. &
Mr. Mukesh Soni, Adv. Adv., Ld. ARs
Respondent by : Mrs. Alka Gautam, CIT, Ld. DR
Date of hearing : 11/08/2025
Date of pronouncement : 11/08/2025

ORDER

PER GAGAN GOYAL, A.M:

These appeals by assessee and revenue are directed against the order of NFAC, Delhi dated 22.03.2024, 27.03.2024, 31.03.2024 & 30.03.2024 respectively passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act').

Revenue's Appeal

The revenue has raised the following grounds of appeal vide **ITA No. 717/JPR/2024 (A.Y. 2008-09)** as under:-

- 1 Order of the Id. CIT (A) is bad in law and needs to be quashed.*
- 2 Whether order passed by the Ld. CIT (A) is justified, ignoring the facts and circumstances of the present case and without applying the correct preposition of law.*
- 3 Whether Ld. CIT(A) is justified in holding that the AO has erred in not allowing the benefit provided in the order passed by the respective CIT(A) and Hon'ble ITAT while computing the total income of the Appellant Trust in spite of the facts that the Hon'ble*

ITAT in para 6 of order dated 08.06.2016 has directed to set aside the orders passed by the authorities below.

4 Whether Id. CIT (A) is justified in holding that the AO has erred in not following the decision of Id. Commissioner of Income Tax (Appeals), Kota in the case of Appellant Trust itself in earlier Assessment Years 2003-04 and 2004-05 and thereby not allowing the following expenditure while computing income of the appellant trust under head 'profits and gains from business or profession'-A. The non plan expenditure incurred for development work amounting to Rs.3390.12 Lakhs. B. The expenditure incurred for development of Kachhi Basti amounting to Rs.49.67 Lakhs. C. The expenditure for development work included under head "Deposit Work" amounting to Rs.92.23 Lakhs. D. The expenditure for repair and maintenance of vehicles under head 'Machinery & Plant' amounting to Rs.4.57 Lakhs. E. The expenditure of Rs. 100.00 Lakhs under head payment to RUIDP. F. The expenditure of Rs.25.95 Lakhs incurred for social welfare under head Mahila and BAL Vikas Pariyojana.

5. Whether Id. CIT (A) is justified in holding that the AO has erred while computing total income of the appellant trust, in including the following amounts which are collected on behalf of Nagar Nigam and deposited to Nagar Nigam: 15 percent of Rs. 9131.79 Lakhs under head "Receipts from sale of residential and commercial plots". 15 percent of Rs. 435.21 Lakhs, under "Receipts from sale of constructed House/shops. 2/3 of Rs.5928.01 Lakhs under the head "Receipts from sale of land in Rajiv Gandhi Nagar Yojana.

6 Whether Id. CIT(A) is justified in holding that the AO has erred while computing total income of the appellant trust, in including the following amounts which are collected on behalf of the State Government and deposited to the State Government 40% of Rs.189.98 Lakhs under head receipts from land regularization and conversion. 60% of Rs.315.09 Lakhs under head Receipts from Nagariya Kar (Lease Rental)

7 on the facts and in the circumstances of the case, the Id. CIT (A) has erred in: treating the rental income of Rs. 30.16 lakhs assessed under the head 'income from house property as Income from business

8 on the facts and in the circumstances of the case, the Id. CIT (A) has erred in allowing the expenses of Rs.3662.54 lakhs by treating the same as revenue expenditure.

9 On the facts and in the circumstances of the case, the Id. CIT(A) has erred in allowing the deduction of Rs. 1617.59 lakhs by holding that ground rent, conversion charges, transfer fee etc. collected by the assessee also constituted the shares of State Government and Municipal Bodies and were never part of assessee's income.

10 on the facts and in the circumstances of the case, the Id. CIT (A) has erred in allowing expenses of Rs.1111.08 lakhs out of total expenses claimed at Rs.1567.79 lakhs under the head "Other miscellaneous expenses" and disallowed by the A.O.

11 Appellant craves the right to add, alter or amend any grounds of appeal before the Hon'ble ITAT in the interest of justice.

In ITA No. 794/JPR/2024 (A.Y 2006-07), the revenue has raised the following grounds of appeal: -

- 1. Order of the Ld. CIT(A) is bad in law and needs to be quashed*
- 2. Whether order passed by the Ld. CIT (A) is justified, ignoring the facts and circumstances of the present case and without applying the correct preposition of law*
- 3. Whether Ld. CIT(A) is justified in holding that the AO has erred in not allowing the benefit provided in the order passed by the respective CIT(A) and Hon'ble ITAT while computing the total income of the Appellant Trust in spite of the facts that the Hon'ble ITAT in para 6 of order dated 08.06.2016 has directed to set aside the orders passed by the authorities below*
- 4. on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in treating the rental income of Rs.33.13 lakhs assessed under the head "income from house property" as "income from business.*
- 5. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in allowing the expenses of Rs.576.13 lakhs by treating the same as revenue expenditure viz: Non-plan expenditure incurred for development work amounting to Rs. 469.82 Lakhs Expenditure incurred for development of Kachhi Basti amounting to Rs. 100.74 Lakhs . Expenditure incurred for repair and maintenance of vehicles under the head 'Machinery & Plant' amounting to Rs. 5.57 Lakhs. The expenditure incurred on account of taxes payable to various departments accounted for under head 'other misc.*
- 6. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in allowing the deduction of Rs.791.53 lakhs (15% of Rs. 5276.86 Lakhs received under head 'receipts from sale of plots) by holding that ground rent, conversion charges, transfer fee etc. collected by the assessee also constituted the shares of State Government and Municipal Bodies and were never part of assessee's income*
- 7. Whether Ld. CIT(A) is justified in allowing deduction from the amount of Rs. 326.29 lakhs under the head receipts from land regularization and conversion and Nagariya Kar*

(Lease Rental) considering the same as share of receipts payable to the other parties and holding that the same do not partake the character of income of the assessee.

8. *Appellant craves the right to add, alter or amend any grounds of appeal before the Hon'ble ITAT in the interest of justice.*

In ITA No. 795/JPR/2024 (A.Y 2007-08), the revenue has raised the following grounds of appeal: -

1. *Order of the Id. CIT (A) is bad in law and needs to be quashed.*

2. *Whether order passed by the Ld. CIT (A) is justified in ignoring the facts and circumstances of the present case and without applying the correct preposition of law.*

3. *Whether Ld. CIT(A) is justified in holding that the AO has erred in not allowing the benefit provided in the order passed by the respective CIT(A) and Hon'ble ITAT while computing the total income of the Appellant Trust in spite of the facts that the Hon'ble ITAT in para 6 of order dated 08.06.2016 has directed to set aside the orders passed by the authorities below.*

4. *on the facts and in the circumstances of the case, the Id. CIT (A) has erred in treating the rental income of Rs.34.35 lakhs assessed under the head "income form house property" as "income from business.*

5 *On the facts and in the circumstances of the case, the Id. CIT (A) has erred in allowing the expenses of Rs. 1673.46 lakhs by treating the same as revenue expenditure viz: The non-plan expenditure incurred for development work amounting to Rs. 907.92 lakhs. The expenditure incurred for development of Kachhi Basti amounting to Rs. 352.14 lakhs. The expenditure of Rs. 406.95 lakhs under head 'payment to RUIDP'. The expenditure for repair and maintenance of vehicles under head 'Machinery & plant' amounting to Rs. 0.34 Lakhs. The expenditure of Rs 6.11 lakhs incurred for social welfare under head 'Mahila and BAL Vikash Pariyojana.*

6 *On the facts and in the circumstances of the case, the Id. CIT(A) has erred in allowing the deduction of Rs.793.79 lakhs by holding that ground rent, conversion charges, transfer fee etc. collected by the assessee also constituted the shares of State Government and Municipal Bodies and were never part of assessee's income viz: 15 percent of Rs. 1428.92 Lakhs being the amount under the head "Receipts from sale of residential plots". 15 percent of Rs. 755.92 Lakhs being the amount under the head "Receipts from sale of Commercial plots". 15 percent of Rs. 1089.95 Lakhs being the amount under the head "Receipts from sale of constructed Houses/Shops 2/3 rd of Rs.*

109.07 Lakhs under head "Receipts from sale of land in Rajiv Gandhi Nagar Yojana". 40% of Rs.109.49 Lakhs under head "Receipts from Land Regularization and Conversion"; 60% of Rs. 310.10 lakhs under head Receipts from Nagariya Kar (Lease Rental)

7. Appellant craves the right to add, alter or amend any grounds of appeal before the Hon'ble ITAT in the interest of justice.

In ITA No. 796/JPR/2024 (A.Y 2009-10), the revenue has raised the following grounds of appeal: -

1 Order of the Id. CIT (A) is bad in law and needs to be quashed

2 Whether order passed by the Ld. CIT (A) is justified, ignoring the facts and circumstances of the present case and without applying the correct preposition of law

3 Whether Ld. CIT(A) is justified in holding that the AO has erred in not allowing the benefit provided in the order passed by the respective CIT(A) and Hon'ble ITAT while computing the total income of the Appellant Trust in spite of the facts that the Hon'ble ITAT in para 6 of order dated 08.06.2016 has directed to set aside the orders passed by the authorities below

4 on the facts and in the circumstances of the case, the Id. CIT (A) has erred in allowing the expenses of Rs. 6110.00 lakhs by treating the same as revenue expenditure viz. The non-plan expenditure incurred for development work amounting to Rs. 5281.77 lakhs. The expenditure incurred for development of Kachhi Basti amounting to Rs. 304.50 lakhs. The expenditure for development work included under head "Deposit Work" amounting to Rs. 493.40 Lakhs. The expenditure for repair and maintenance of vehicles under head 'Machinery& plant' amounting to Rs. 17.85 Lakhs. The expenditure of Rs 12.48 lakhs under the head Women and Child Development Program of state government for the benefit of pregnant/lactating women

5 On the facts and in the circumstances of the case, the Id. CIT(A) has erred in allowing the deduction of Rs. 827.60 lakhs by holding that ground rent, conversion charges, transfer fee etc. collected by the assessee also constituted the shares of State Government and Municipal Bodies and were never part of assessee's income viz: 15 percent of Rs. 5146.61 lakhs under head Receipts from sale of Residential and

Commercial plots. 15 percent of Rs. 370.74 lakhs under the head Receipts from sale of constructed houses/shops

6 on the facts and in the circumstances of the case, the Id. CIT (A) has erred in treating the rental income of Rs.31.99 lakhs assessed under the head "income form house property" as "income from business.

7. Whether Ld. CIT(A) is justified in allowing deduction from the amount of Rs. 908.46 lakhs under the head receipts from land regularization and conversion and Nagariya Kar (Lease Rental) considering the same as share of receipts payable to the other parties and holding that the same do not partake the character of income of the assessee.

8. Appellant craves the right to add, alter or amend any grounds of appeal before the Hon'ble ITAT in the interest of justice

In ITA No. 797/JPR/2024 (A.Y 2016-17), the revenue has raised the following grounds of appeal: -

1 Order of the Id. CIT (A) is bad in law and needs to be quashed

2 Whether order passed by the Ld. CIT (A) is justified, ignoring the facts and circumstances of the present case and without applying the correct preposition of law.

3 Whether the Id. CIT (A) is justified in holding that no adjustment is warranted in respect of amount of Rs. 34, 85,37,621/- made to the total income of the assessee on account of withheld amount ignoring the fact that the assessee has failed to furnish requisite details in this regard.

4 Whether Ld. CIT (A) has justified in deletion of addition of amount of Rs. 47, 37, 17,000/- received on account of share of state Govt. and Nagar Nigam in sale under affordable housing scheme ignoring the fact that same is part of gross receipts.

5. Whether Ld. CIT(A) has justified in deletion of addition of amount of Rs. 3,78,58,000/- received on account of Niyaman of Agriculture land and Urban Tax, ignoring the fact that amount was not actually paid during the year and assessee was following cash system of accounting and same has not been declared as income.

6. *Whether Ld. CIT(A) has justified in deletion of addition of amount of Rs. 11,59,92,805/-on account of various expenditure treated as a capital expenditure ignoring the nature of expenditure*

7. *Appellant craves the right to add, alter or amend any grounds of appeal before the Hon'ble ITAT in the interest of justice.*

Assessee's appeal

In ITA No. 731/JPR/2024 (A.Y 2008-09), the assessee has raised the following grounds of appeal: -

1. *Under the facts and the circumstances of the case and in law, the order dated 22.03.2024 passed by the Ld. CIT(A) u/s 250 of the Income Tax Act, 1961 is perverse, non-speaking, arbitrary and bad in law and without proper service as required under law.*
2. *under the facts and circumstances of the case and in law, Ld. CIT (A) erred in passing Impugned order u/s 250 of the Act without providing adequate opportunity of being heard*
3. *under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in not providing the benefit u/s 11 and 12 of the Act to Appellant.*
4. *Under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the benefit of application of income as per Section 11 of the Act made by the Appellant Trust Towards the charitable objects of the Appellant Trust.*
5. *under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the allowing the statutory deduction under section 24 of the Income Tax Act, 1961 while determining the income of the Appellant Trust under head 'income from house property'.*
6. *Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing various expenditure incurred by Appellant Trust in entirety.*
7. *Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing the set off of losses against the total income and has also erred in not allowing the carry forward of unabsorbed losses.*

8. under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in levying interest u/s 234A, 234B and 234C of the Act.

9. the appellant Company craves leave to add, amend and modify all or any ground of appeal on or before the date of hearing.

In ITA No. 773/JPR/2024 (A.Y 2003-04), the assessee has raised the following grounds of appeal: -

1. Under the facts and the circumstances of the case and in law, the order dated 27.03.2024 passed by the Ld. CIT(A) u/s 250 of the Income Tax Act, 1961 is perverse, non-speaking, arbitrary and bad in law and without proper service as required under law.

2. under the facts and circumstances of the case and in law, Ld. CIT (A) erred in passing Impugned order u/s 250 of the Act without providing opportunity of being heard including personal hearing, thereby violating the principle of natural justice

3. Under the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in not providing the benefit u/s 11 and 12 of the Act to Appellant.

4. Under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the benefit of application of income as per Section 11 of the Act made by the Appellant Trust Towards the charitable objects of the Appellant Trust.

5. under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the development expense of Rs. 1367.4 Lakhs incurred and claimed by the Appellant.

6. under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the depreciation alternatively claimed by the Appellant.

7. under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing various expenditures incurred by Appellant Trust in entirety.

8. Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing the set off of losses against the total income and has also erred in not allowing the carry forward of unabsorbed losses.

9. under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in levying interest u/s 234A, 234B and 234C of the Act.

10. *the appellant Company craves leave to add, amend and modify all or any ground of appeal on or before the date of hearing.*

In ITA No. 774/JPR/2024 (A.Y 2005-06), the assessee has raised the following grounds of appeal: -

1. *Under the facts and the circumstances of the case and in law, the order dated 27.03.2024 passed by the Ld. CIT(A) u/s 250 of the Income Tax Act, 1961 is perverse, non-speaking, arbitrary and bad in law and without proper service as required under law.*
2. *under the facts and circumstances of the case and in law, Ld. CIT (A) erred in passing Impugned order u/s 250 of the Act without providing opportunity of being heard including personal hearing, thereby violating the principle of natural justice*
3. *under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in not providing the benefit u/s 11 and 12 of the Act to Appellant.*
4. *Under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the benefit of application of income as per Section 11 of the Act made by the Appellant Trust Towards the charitable objects of the Appellant Trust.*
5. *under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the depreciation alternatively claimed by the Appellant.*
6. *Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing the set off of losses against the total income and has also erred in not allowing the carry forward of unabsorbed losses.*
7. *under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in levying interest u/s 234A, 234B and 234C of the Act.*
8. *the appellant Company craves leave to add, amend and modify all or any ground of appeal on or before the date of hearing.*

In ITA No. 803/JPR/2024 (A.Y 2006-07), the assessee has raised the following grounds of appeal: -

1. *Under the facts and the circumstances of the case and in law, the order dated 31.03.2024 passed by the Ld. CIT(A) u/s 250 of the Income Tax Act, 1961 is perverse,*

non-speaking, arbitrary and bad in law and without proper service as required under law.

2. under the facts and circumstances of the case and in law, Ld. CIT (A) erred in passing Impugned order u/s 250 of the Act without providing opportunity of being heard including personal hearing, thereby violating the principle of natural justice

3. under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in not providing the benefit u/s 11 and 12 of the Act to Appellant.

4. Under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the benefit of application of income as per Section 11 of the Act made by the Appellant Trust Towards the charitable objects of the Appellant Trust.

5. under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the depreciation alternatively claimed by the Appellant.

6. Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing the set off of losses against the total income and has also erred in not allowing the carry forward of unabsorbed losses.

7. under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in levying interest u/s 234A, 234B and 234C of the Act.

8. the appellant Company craves leave to add, amend and modify all or any ground of appeal on or before the date of hearing.

In ITA No. 811/JPR/2024 (A.Y 2016-17), the assessee has raised the following grounds of appeal: -

1. Under the facts and the circumstances of the case and in law, the order dated 30.03.2024 passed by the Ld. CIT(A) u/s 250 of the Income Tax Act, 1961 is perverse, non-speaking, arbitrary and bad in law and without proper service as required under law.

2. under the facts and circumstances of the case and in law, Ld. CIT (A) erred in passing Impugned order u/s 250 of the Act without providing adequate opportunity of being heard

3. under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in not providing the benefit u/s 11 and 12 of the Act to Appellant.

4. *Under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not accepting the Income tax Return and audit report submitted by Appellant Trust in compliance with the provisions of Section 12(1)(b) of the Act*
5. *Under the facts and circumstances of the case and in law, the Ld. CIT has erred in upholding the addition of Rs. 1,86,29,94,499/- made by the Ld.AO to the total income of the Appellant Trust in respect of surplus from income and expenditure account*
6. *Under the facts and the circumstances of the case and in law, the Ld. CIT has erred in upholding the action of Ld. AO in requiring the account of the Appellant Trust to be audited under section 142(2A) of the Income Tax Act, 1961 by special auditor*
7. *Under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the benefit of application of income as per Section 11 of the Act made by the Appellant Trust Towards the charitable objects of the Appellant Trust.*
8. *under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing various expenditures incurred by Appellant Trust in entirety.*
9. *Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing the set off of losses against the total income and has also erred in not allowing the carry forward of unabsorbed losses.*
10. *under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in levying interest u/s 234A, 234B and 234C of the Act.*
11. *the appellant Company craves leave to add, amend and modify all or any ground of appeal on or before the date of hearing.*

In ITA No. 812/JPR/2024 (A.Y 2007-08), the assessee has raised the following grounds of appeal: -

1. *Under the facts and the circumstances of the case and in law, the order dated 31.03.2024 passed by the Ld. CIT(A) u/s 250 of the Income Tax Act, 1961 is perverse, non-speaking, arbitrary and bad in law.*
2. *under the facts and circumstances of the case and in law, Ld. CIT (A) erred in passing Impugned order u/s 250 of the Act without providing opportunity of being heard including personal hearing, thereby violating the principle of natural justice*
3. *under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in not providing the benefit u/s 11 and 12 of the Act to Appellant.*

4. *Under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the benefit of application of income as per Section 11 of the Act made by the Appellant Trust Towards the charitable objects of the Appellant Trust.*
5. *under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the depreciation alternatively claimed by the Appellant.*
6. *Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing the set off of losses against the total income and has also erred in not allowing the carry forward of unabsorbed losses.*
7. *under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in levying interest u/s 234A, 234B and 234C of the Act.*
8. *the appellant Company craves leave to add, amend and modify all or any ground of appeal on or before the date of hearing.*

In ITA No. 813/JPR/2024 (A.Y 2009-10), the assessee has raised the following grounds of appeal: -

1. *Under the facts and the circumstances of the case and in law, the order dated 31.03.2024 passed by the Ld. CIT(A) u/s 250 of the Income Tax Act, 1961 is perverse, non-speaking, arbitrary and bad in law and without proper service as required under law.*
2. *under the facts and circumstances of the case and in law, Ld. CIT (A) erred in passing Impugned order u/s 250 of the Act without providing adequate opportunity of being heard*
3. *under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in not providing the benefit u/s 11 and 12 of the Act to Appellant.*
4. *Under the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing the benefit of application of income as per Section 11 of the Act made by the Appellant Trust Towards the charitable objects of the Appellant Trust.*
5. *Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing the allowing the depreciation alternatively claimed by the Appellant.*
6. *Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing various expenditure incurred by Appellant Trust in entirety.*

7. *Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing the set off of losses against the total income and has also erred in not allowing the carry forward of unabsorbed losses.*

8. *under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in levying interest u/s 234A, 234B and 234C of the Act.*

9. *the appellant Company craves leave to add, amend and modify all or any ground of appeal on or before the date of hearing.*

2. There are total five appeals by the revenue and total seven appeals for different assessment years are there by the assessee. The grounds raised by the assessee are purely legal in nature, to be decided by this bench. We observe that the grounds raised by the assessee as a direct bearing not only on the appeals filed by the assessee but also on outcome of the appeals filed by the revenue hence we deem it appropriate to take up and decide the appeal of the assessee first. Out of the seven appeals as mentioned (supra), we are taking ITA No. 731/JPR/2024 as lead case, since issues involved in all the years are identical.

3. The issues involved in these seven appeals are of purely legal in nature and issue to be decided by us is as under:-

(i) Under the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in not providing the benefit u/s. 11 and 12 of the Act to Appellant.

The brief facts of the case are that the appellant is a statutory body created and established under the Rajasthan Urban Improvement Act, 1959 vide notification no. 5(3)/TP/70 dated 09/07/1970 in the Official Gazette with the object to carry out improvement of urban areas in the city of Kota, Rajasthan. In view of the statutory status and the object of the trust, the appellant claimed to be a local

authority within the meaning of section 10(20) of the Income Tax Act, 1961 and claimed exemption of its income. There was an amendment in section 10(2) of the Act and an explanation was inserted as under:-

[Explanation- For the purposes of this clause, the expression “local authority” means-

- (i) Panchayat as referred to in clause (d) of Article 243 of the Constitution;
or
- (ii) Municipality as referred to in clause (e) of Article 243P of the Constitution; or
- (iii) Municipal Committee and District Board, Legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or
- (iv) Cantonment Board as defined in section 3 of the Cantonments Act, 1924 (2 of 1924);]

4. It is observed that the assessee under consideration is not falling in any of the category above hence benefit of section 10(2) is no more available to the assessee w.e.f Assessment Year 2003-04. This issue further reached up to the Hon’ble Supreme Court in the case of ITO vs. Urban Improvement Trust (2018) 409 ITR 1 (SC), wherein it was held as under:-

“The Urban Improvement Trust constituted under the Rajasthan Urban Improvement Act, 1959 cannot be held to be covered by the definition of municipal committee as contained in Explanation (iii). The expression “municipal committee” occurring in clause (iii) has a definite purpose and object. The purpose and object was to cover those bodies which are discharging

municipal functions but are not covered by the definition of municipalities as was required to be constituted by article 243Q of the Constitution of India.”

5. There was another section, i.e. section 10(20A) of the Act directly dealing with the facts of the matter was also abolished w.e.f A.Y 2003-04. Thereafter, the assessee chosen for registration u/s. 12A of the Act, which was denied to the assessee hence the assessee, is in appeal before us. We have gone through the order of authorities below and various judicial pronouncements relied upon by the assessee. In addition to the above documents, we have gone through the Urban Development Trust Laws. The relevant sections of the Rajasthan Urban Improvement Act, 1959 is as under:-

3. Power of State Government to order preparation of Master plan

(1) The State Government may, by order, direct that in respect of and for any urban area in the State specified in the order, a civil survey shall be carried out and a master plan shall be prepared, by such officer or authority as the State Government may appoint for the purpose,

(2) For the purpose of advising the officer or authority appointed under sub-section (1) on the preparation of the master plan, the State Government may constitute an advisory council consisting of a Chairman and such number of other members as the State Government may deem fit.

4. Contents of Master plan

The master plan shall-

(a) Define the various zones into which the urban area for which the plan has been prepared may be divided for the purposes of its improvement and indicate the manner in which the land in each zone is proposed to be used, and

(b) Serve as basic pattern of frame work within which the improvement schemes of the various zones may be prepared.

5. Procedure to be followed

(1) Before preparing any master plan officially the officer or authority appointed to prepare it shall publish a draft of the master plan by making a copy thereof available for inspection and publishing a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from every person with respect to the draft master plan before such date as may be specified in the notice.

(2) Such officer or authority shall also give reasonable opportunity to every local authority within whose local limits any land touched by the master plan is situated to make any representations with respect to the master plan.

(3) After considering all objections, suggestions and representations that may have been received, such officer or authority shall finally prepare the master plan.

(4) Provisions may be made by rules made in this behalf with respect to the form and contents of a master plan and with respect to the procedure to be followed and any other matter in connection with the preparation of the master plan.

8. Establishment and incorporation of Trusts

(1) The State Government may, by notification in the official Gazette, establish, for the purpose of carrying out improvement of any urban area in the State, whether a master plan in respect thereof has or has not been prepared, a Board of Trustees to be called the Improvement Trust of the place where its principal office is situated, hereinafter called 'the Trust'.

(2) Every such Trust shall be a body corporate by the aforesaid name having perpetual succession and a common seal with power to acquire, hold and dispose of property both movable and immovable and to contract and shall by the said name sue and be sued.

9. Constitution of Trust

(1) The Trust shall consist of-

(a) A Chairman,

(b) Two members of the Municipal Board, if any, having authority in the urban area, x x

(bb) x x x

(c) such number of other persons, as may be determined by the State Government for each Trust, of whom one shall be a person belonging to scheduled tribe or scheduled caste, if no person of such caste or tribe is represented in the Trust by virtue of clause (a) or clause (b). x x x

(2) The Chairman and the persons referred to in clause (c) of sub-section (1) x x x shall be appointed by the State Government by notification.

(3) The members of the Municipal Board referred in clause (b) of sub-section (1) shall be elected by the said Board

(4) If the said Board does not, by such date as may be fixed by the State Government, elect two of its members to be Trustees, the State Government shall appoint two members of the said Board to be Trustees and every person so appointed shall be deemed to be a Trustee as if he had been duly elected by the Municipal Board.

(5) If the said Board shall have been superseded or dissolved in accordance with the provisions of the Municipal law for the time being in force, it shall be represented on the Trust by persons appointed or elected, as the case may be, by the officer or authority appointed under the said law to discharge the functions and exercise the powers of the Board during the period of its supersession or dissolution

(6) Of the person referred to in clause (c) of sub-section (1) at least one shall be a person in the service of the State Government.

(7) The names of all persons appointed or elected to the Trust shall be notified by the State Government in the official Gazette.

14-A. Termination of appointment and re-constitution. - *Notwithstanding anything contained in section 11, 12 or 15, the State Government may, if it thinks fit in public interest so to do, terminate the appointment of Chairman or any Trustee of a Trust or re-constitute the same at any time.*

24. Power to fix strength, salaries etc. of staff

Subject to any general or special direction issued by the State Government every Trust shall, from time to time propose for the sanction of the State Government the strength of officers and servants to be appointed, setting forth the conditions of service and emoluments of each officer or servant. The State Government may sanction such proposal with or without amendment and no appointment shall be made otherwise than in accordance with such sanction:

Provided that the Trust may, subject as aforesaid, direct that one person shall be appointed to discharge the duties of any two or more officers.

24A. Power of transfer. - *The officers and employees of a Trust may be transferred by the State Government from one Trust to another or to the Jaipur Development Authority in accordance with the rules made under section 74.*

25. Power of appointment etc.

Subject to the provisions of section 24 and to any rules for the time being in force, the power of appointing and granting leave to officers and servants of the Trust and censuring, reducing, suspending or dismissing them for misconduct and dispensing with their services for any reason other than misconduct, shall be vested-

(a) in the case of officers and servants drawing such monthly salary as may be specified by the State Government for each Trust, in the Chairman, and

(b) In other cases, in the Trust:

Provided that, in the case of Government servants whose services are lent to the Trust, the power of granting leave only will so vest and the other powers specified in this section will be exercisable by the State Government or by an appropriate authority of the State Government upon a complaint made by the Trust in that behalf or otherwise:

Provided further that officers may be appointed to administrative and technical posts in the Trust by the State Government either from amongst staff holding posts in the Trust with nomenclature and duties corresponding to posts in a department of the Government from which promotions to similar posts are made or from amongst officers holding posts en-cadred in the Rajasthan Municipal Service, or the State sendees, and the strength of these services shall stand increased accordingly, if necessary.

29. Schemes-matters to be provided therein

(1) The Trust shall, on the orders of the State Government or on its own initiative or on a representation made by the Municipal Board and subject to availability of Financial resources, frame schemes for the improvement of the urban area for which the Trust is constitute

(2) Such schemes may provide for all or any of the following matters, namely:

(a) The acquisition of any land or other property necessary for, or effected by, the execution of the scheme

(b) The re-laying out of any land comprised in the scheme

(c) The construction and re-construction of buildings:

(d) The formation, construction and alteration of streets;

(e) The closure or demolition of dwellings or portions of dwellings unfit for human habitation

(f) The demolition of obstructive buildings or portions of building

(g) The draining, water supply and lighting of street

(h) The raising or leveling of any land which the Trust may deem expedient to raise or level

(i) The forming of open spaces for the benefit of the area comprised in the scheme or any adjoining area:

(j) All or any of the sanitary arrangements required for the area comprised in the scheme;

(k) The establishment and construction of markets and other places of public requirement or convenience;

(l) The limitation of areas within which special trades or industries may or may not be carried on or which are reserved exclusively for residential or other purposes;

(m) The division of any land into plots for the erection of buildings for residential purposes;

(n) the erection of buildings on any site, the restrictions and conditions in regard to the open spaces to be maintained in or around such buildings, the height and character of such buildings and the architectural features of the elevation or frontage thereof;

(o) The amenities to be provided in relation to any site or building or buildings on such site whether before or after the erection of such buildings and the person or authority by whom or at whose expense such amenities are to be provided;

(p) the construction of buildings for the accommodation (including shops) of the poor and the working classes or of any other class of the inhabitant of the area comprised in the scheme including such classes as are likely to be displaced by the execution of the scheme;

(q) The provision of facilities for communications;

(r) The reclamation or reservation of land for gardens, afforestation and the provision of fuel and grass supply and other needs of the population;

(s) The planting and preservation of trees and plantations

(t) The sale, letting or exchange of any property or land comprised in the scheme; and

(u) Any other matter for which in the opinion of the State Government it is expedient to make provision with a view to the improvement of the area comprised in the scheme or the general efficiency thereof.

37. Power to sanction, reject or return scheme (1) *The State Government may sanction, or may refuse to sanction or may return for reconsideration any scheme submitted to it under section 3*

(2) *If a scheme returned for reconsideration under sub-section (1) modified by the Trust it shall be re-published in accordance with section 33-*

(a) *in every case in which the modification affects the boundaries of the area comprised in the scheme or involves the acquisition of any land not previously proposed to be acquired, and*

(b) *In every other case, unless the modification is, in the opinion of the State Government, not of sufficient importance to require re-publication*

(3) *Notwithstanding anything in section 29 or in any other provision of this Chapter*

(a) *it shall be lawful for the State Government to sanction any scheme framed by any Trust before the commencement of the Rajasthan Urban Improvement (Amendment) Act, 1963 comprising in part, any area lying beyond the area for which such Trust was established*

(b) *upon such sanction being given, all previous notification issued, notices as to scheme prepared, published and transmitted, objections, suggestions or representations, if any, considered, applications for sanction submitted and the notices regarding such submission published in respect of such scheme shall be deemed to have been duly issued, prepared, published and transmitted, considered and submitted and such area shall, notwithstanding anything in section 8, be deemed to have been included in the area for which such Trust was established.*

38. Notification of sanction of scheme

(1) *Whenever the State Government sanctions a scheme it shall announce the fact by notification, and the Trust shall forthwith proceed to execute the same*

(2) *The publication of a notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.*

47. Powers under the Municipal Laws vested in the trust (1) *Such provisions of the Municipal law for the time being in force in any part of the State as may be prescribed in the case of each Trust, shall so far as may be consistent with the tenor of this Act, apply to the urban area for which the Trust is established under this Act and all references in the said provisions to the Municipal Board, Council or Corporation shall be construed as references to the Trust which, in respect of any such urban area may alone exercise and perform all or any of the powers and functions which under any of the said provisions might have been exercised and*

performed by the Municipal Board, Council or Corporation or by the Chairman or President or by any officer thereof.

Provided that the Trust may delegate to the Chairman or to any officer of the Trust all or any of the powers conferred under this section.

48. Transfer of duties etc. of Municipal Board to Trust

The State Government may by notification in the official Gazette transfer to the Trust any of the duties, powers, functions and responsibilities of the Municipal Board and thereupon the Trust shall carry out, exercise, perform and discharge such duties, powers, functions and responsibilities.

68. Accounts and Audit

(1) The Trust shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheet in such form as the State Government may prescribe.

(2) The accounts of the Trust shall be subject to audit annually by the Examiner of Local Fund Audit and the provisions of the Rajasthan Local Fund Audit Act. 1954 (Rajasthan Act 38 of 1954) shall apply.

69. Annual Report

The Trust shall prepare for every year a report of its activities during that year and submit the report to the State Government in such form and on or before such date as may be prescribed.

74. Power of Government to make rules

(1) The State Government may make rules consistent with this Act-

(a) As to the authority on which money may be paid from the Trust fund;

(b) For prescribing the fees payable for a copy of or extracts from the assessment list under section 35 or section 73;

(bb) for prescribing standards for the sub-division or re- constitution of plots, lay-out of private streets etc., and, for provision of roads, lanes, water connections, electric connections and other amenities to be provided for by the owner at his costs;

(bbb) for prescribing the particulars to be submitted under subsection (1) of section 73A, and the period during which the plan shall be sanctioned or refused under sub-section (2) of the same;

(c) As to the conditions on which officers and servants of the Trust appointed to offices requiring professional skill may be appointed, suspended or dismissed

(d) As to the intermediate office or offices, if any, through which correspondence between the Trust and the State Government or officers thereof shall pass

(e) As to the manner and form in which the Trust shall maintain accounts and prepare an annual statement thereof including the balance sheet;

(f) as to the authority by whom, the conditions subject to which and the mode in which contracts may be entered into and executed on behalf of the Trust;

(g) As to the form in which and the time at which the Budget shall be prepared;

(h) As to the returns, statements and reports to be submitted by the Trust;

(i) As to the mutual relations to be observed between the Trust and other local authorities in any matter in which they are jointly interested;

(j) For regulating the grant of leave allowances and acting allowances to the officers and servants of the Trust;

(jj) for prescribing the conditions under which the officers and employees of a Trust may, under section 24A, be transferred from one Trust to another or to the Jaipur Development Authority;

(k) for establishing and maintaining a pension, provident or annuity fund, for compelling all or any of the officers in the service of the Trust to contribute to such fund at such rates and subject to such conditions as may be prescribed and for supplementing such contributions out of the funds of the Trust:

Provided that a Government servant employed as an officer or servant of the Trust shall not be entitled to leave or leave allowance otherwise than as may be prescribed by the conditions of his service under the State Government;

(l) For determining the conditions under which the officers and servants of the Trust or any of them shall, on retirement, receive pensions or gratuities or compassionate allowances and the amount of such pensions, gratuities and compassionate allowances;

*(m) For regulating every matter which, under this Act, may be or is required to be prescribed; x
xx*

(n) Generally for the guidance of Trusts and public officers in all matters connected with the carrying out of the provisions of this Act;

(o) For prescribing the rates of conversion charges; and

(p) As to the authority to which, and the manner, in which an application for permission for change of use of land shall be made, and the manner in, and the authority by, which conversion charges, payable in respect thereof shall be fixed.

(2) No rule made under sub-section (1) shall take effect until it is published in the official Gazette, and no such rule shall be made except after previous publication: Provided that any such rule may be made without previous publication if the State Government considers that it should, in public interest, be brought into force at once.

93. Trustees, etc. deemed to be public servants

Every Trustee and every officer and servant of the Trust shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

93A. Liability of Trustees and officers and servants of the Trust. - Every Trustee, officer or servant of the Trust shall be liable for the misapplication of any money or other property owned by or vested in or placed at the disposal of the Trust to which he has been a party of for any loss or waste of such money or property which has been caused or facilitated by his misconduct. The chairman, secretary or other officer or person to whom executive powers are conferred by or under this Act shall be liable for such loss, waste or misapplication, if it is a direct consequence of his neglect or has been caused or facilitated by his misconduct.

94. Contribution by Trust towards leave allowance and pensions of Government servants

The Trust shall be liable to pay such contributions for the leave allowance and pension of every Government servant employed as an officer or servant of the Trust as may be required, by the conditions of his service under the Government, to be paid by him or on his behalf.

105. Ultimate dissolution of Trust and transfer of its assets and liabilities to the Municipal Board-(1) When all schemes sanctioned under this Act have been executed or have been so far executed as to render the continued existence of the Trust, in the opinion of the State Government unnecessary, the State Government may by notification declare that the Trust shall be dissolved from such date as may be specified in this behalf in special notification and the Trust shall be deemed to be dissolved accordingly.

(2) From the said date-

(a) All properties, funds and dues which are vested in or realizable by the Trust shall vest in and be realizable by the Municipal Board;

(b) All liabilities which are enforceable against the Trust shall be enforceable against the Municipal Board

(c) for the purpose of completing the execution of any scheme sanctioned under this Act which has not been fully executed by the Trust of realising properties, funds and dues referred to in clause (a) the function of the Trust under this Act shall be discharged by the Municipal Board as if it were the Trust under this Act and

(d) The Municipal Board shall keep separate accounts of all money respectively received and expended by it under this Act, until all loans raised hereunder have been repaid and until all other liabilities to in clause (b) have been duly met.

6. Now we are taking up the grounds raised by the assessee through the appeals mentioned (supra). Although, before the bench assessee never raised an issue that appellant is a **“State”** within the meaning of article 289(1) of the constitution of India i.e., **an agent/an instrumental institution of state within the meaning thereof, so as to be not taxable under the Income Tax Act 1961.** On this ground, as was never raised before the authorities below, to understand this issue raised by the assessee we have gone through the order of the authorities below, earlier orders of the co-ordinate bench, order of the Hon’ble Jurisdictional High Court and Hon’ble Apex Court, the Rajasthan Urban Improvement Act, 1959 vide paper-book filed before us, various communications between assessee and Government of Rajasthan vide paper-book.

7. The assessee has also contended that it is the arm of Government of Maharashtra and its income is not taxable, in this regards following legal positions may be noted and relied upon by us, as the Tribunal is a final fact finding authority and its Endeavour is to settle the issue in its true spirit w.r.t. Law and facts both:

a) The contention of the assessee is not acceptable in view of decision of Hon'ble Supreme Court in the case of APSRTC (52 ITR 524) wherein it has been clearly bifurcated that the income of the

state is different and income of the corporation is different. The relevant portion is reproduced as under

"Reading the three clauses together, one consideration emerges beyond all doubt and that is that the property as well as the income in respect of which exemption is claimed clause (1) must be the property and income of the State, and so, the same question faces us again is the income derived by the appellant from its transport activities the income of the State? If a trade or business is carried on by the State departmentally and income is derived from there would no difficulty in holding that the said income is the income of the State if a trade or business is carried on by a State through its agents appointed exclusively for that purpose, and the agents carry it on entirely on behalf of the State and not on their own account there would be no difficulty in holding that the income made from such trade or business is the income of the State. But difficulties arise when we are dealing with trade or business carried on by a corporation established by a State by using a notification under the relevant provisions of the Act. The corporation, though statutory, has a personality of its own and this personality is distinct from that of the State or other shareholders. It cannot be said that a shareholder owns the property of the corporation or carries on the business with which the corporation is concerned The doctrine that a corporation has a separate legal entity of its own is so firmly rooted in our notions derived from common law that it is hardly necessary to deal with it elaborately, and so, prima facie, the income derived by the appellant from its trading activity cannot be claimed by the State which is one of the shareholders of the corporation."

The Hon'ble Supreme Court after analyzing the different clauses of Article 289(1) in the context of the claim made by the assessee held as under:

The main point which we are examining at this stage: is the income derived by the appellant from its trading activity, income of the State under article 289(1) In our opinion, the answer to this question must being the negative. Far from making any provision which would make the income of the corporation the income of the State, all the relevant provisions emphatically bring out the separate personality of the corporation and proceed on the basis that the trading

activity is run by the corporation and the profit and loss that would be made as a result of the trading activity would be the profit and loss of the corporation. There is no provision in the Act which has attempted to lift the veil from the face of the corporation and thereby enable the shareholders to claim that despite the form which the organization has taken, it is the shareholders who run the trade and who can claim the income coming from it as their own. Section 28 which provides for the payment of interest clearly brings out the duality between the corporation on the one hand and the state and Central Government on the other. Take, for instance, the case of suppression of the corporation authorized by section 38. Section 38(2)(c) emphatically brings out the fact that the property really vests in the corporation, because it provides that during the period of suppression, it shall vest in the State Government. Similarly section 39(2) which deals with the distribution of assets in case of liquidation, brings out the same feature: It has been urged before by the Advocate-General that section 30 contemplates that after provisions is made as required by section 28 and 29 and funds are utilized as prescribed by section 30, the balance has to be given to the State Government for the purpose of road development, and that, it is suggested, indicates that income belongs to the State Government. This argument is clearly not well-founded. When we are deciding the question as to whether the income derived by the corporation is the income of the State, the provision made by section 30 for making over to the State Government the balance that may remain as indicated therein, is of no assistance. The income is undoubtedly the income of the corporation. All that section 30 requires is that a part of that income may be entrusted to the State Government for a specific purpose of road development. It is not suggested or shown that when such income is made over to the State, it becomes a part of the general revenue of the State. It is income which is impressed with an obligation and which can be utilized by the State Government only for the specific purpose for which it is entrusted to. Therefore, we are satisfied that the income derived by the appellant from its trading cannot be said to be the income of the State under article 289(1), and if that is so, the facts that the trading activity carried on by the appellant may be covered by article 289(2) does not really assist the appellant's case. Even if a trading activity falls under clause (2) of article 289, it can sustain a claim for exemption from Union taxation only if it is shown that the income derived from the said trading activity is the income of the State. That

is how ultimately, the cure of the problem is to determine whether the income in question is the income of the State and on this vital test, the appellant fails."

In view of the ratio, as decided in the case of APSRTC by Hon'ble Supreme Court, the assessee cannot be treated as agent of state government and its income cannot be treated as income of Maharashtra State Government.

8. The assessee is being instrument of state is exempted from filing return of income even, although the assessee has filed return of income for the assessment years under consideration. Considering, the facts that the assessee Trust is under complete superintendence, and control of the State Government financially as well as administratively falls under the definition of 'State' as per article 12 of the Constitution of India. And it is entitled for immunity from the taxation of its income under the provisions of Income-tax Act.

9. It is observed that the assessee is exempted under Article 289 of the Constitution of India, as the same exempts' state income or property from taxation. On plain reading of above Article, it is clear that Union can (i) itself impose or authorize to impose (ii) any tax to such extent, as parliament may by law provide (iii) in respect of a trade or business of any kind carried on or on behalf of Government of a state. In the case of the appellant no such taxation is prescribed by the Union or authorized by the Union.

10. On perusal of the Article 289 (2), which is the exception to 289(1), it is important to note that parliament by law provide to tax the property or income in relation to only trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income

accruing or arising in connection therewith. The nature of activity of the appellant is neither trading nor of business of any goods or services. Appellant is a body entrusted with the responsibility of administration of technical education department of the state of Maharashtra. The assessee only collects the fees and penalties on behalf of the Government have decided by the Governing Council of the assessee, which is chaired by Minister of Education Govt. of Maharashtra. Therefore, at no point of time administration activity can be treated as Trade or Business. There is no trade or business carried on by the appellant. Mere temporary surplus arose as the said alleged surplus is not yet spent on various objects of the appellant does not mean the surplus becomes from trade or business. Therefore, unless it is shown that the appellant is carrying on trade or business and parliament by law has provided to tax such activity, no tax can be levied.

11. It is observed that meaning of State as per Constitution of India Article 12 of Constitution, the word "State" has different meanings depending upon the context in which it is used. The expression "The State" when used in Parts III & IV of the Constitution is not confined to only the federating States or the Union of India or even to both. By the express terms of Article 12, the expression "the State" includes:

1.	<i>The Government and the parliament of India;</i>
2.	<i>The Government and Legislature of each state.</i>
3.	<i>All local or other Authorities within the territories of India.</i>
4.	<i>All local and other authorities under the control of the government of India.</i>

12. The term 'State' thus includes executive as well as the legislative organs or the "Authorities" of the Union & States. Further, it may be noted that according to Webster's Dictionary "Authority" means a person or body exercising power to command. In the context of **Article 12** the word "authority" means the power to make laws, orders, regulations, bye-laws, notification etc. which have the force of law and power to enforce those laws. Further 'Local authorities' as defined in Section 3 (31) of the General Clauses, Act refers to authorities like Municipalities, District Boards, Panchayat, **Improvement Trust** and Mining Settlement Boards.

13. In Article 12 the expression 'other authorities' is used after mentioning a few of them such as, the Government, Parliament of India, the Government and Legislature of each of the States and all local authorities. In Article 12 the bodies specifically named are the Government of the Union and the States, the Legislature of the Union and the states and local authorities. There is no common genus running through these named bodies nor can these bodies so have placed in one single category on any rational basis. The decision of Hon'ble Apex Court in *Electricity Board v. Mohan Lal* AIR 1967 Raj. 1857, wherein the Hon'ble Supreme Court held that the expression 'other authorities' is wide enough to include all authorities created by the constitution or Statute on whom powers are conferred by law. It is not necessary that the statutory authority should be engaged in performing Governmental or Sovereign function. In effect the Rajasthan Electricity Board's decision has overruled the decision of the Madras High court in Santa Bai's case, holding a university not to be the 'state'. And finally, the Patna High Court, following the decision of the Supreme Court, has held that the Patna University is "a state". Mathew, J. in a separate but concurring judgment preferred a broader test that if the functions of the Corporation are of

public importance and closely related to governmental functions It should be treated an agency or instrumentality of government and hence a 'State' within the ambit of Article 12 of the Constitution of India.

14. The definition of the expression "the State" in Article 12 is used in the concept of the State in relation to the Fundamental Rights guaranteed by Part III of the Constitution and the Directive Principles of State as above. Policy contained in Part IV of the Constitution which principles are declared by Article 37 to be fundamental to the governance of the country and enjoins upon the State to apply making laws. The State is an abstract entity and it can, therefore only set through its agencies or instrumentalities, whether such agency or instrumentality is human or juristic. The Id. Dr further submits that so far as exemption under section 10 of the Act is concerned, it was submitted that with the omission of clause (20) of section 10, income of such local authorities was subject to tax which are engaged in the business activities or running with profit motive. However, on insertion of clause (46) to section 10 of the Act, by Finance Act 2011 w.e.f. 01.06.2011. On application made to the Board, the CBDT vide its notification published in the Gazette of India dated 29.03.2016 notified the streams of income disclosed by the Board in its return of income as exempt for the purpose of clause (46) of the section 10 of the Act, but that would not take away the status of assessee as "State" within the meaning of Article-12 r.w.s. Article 289 of the Constitution of India. The CBDT has specifically exempted certain income by way of this notification. There is no change in the activities of the assessee since inception which establishes the fact that the assessee was never into the business of commercial activities. The source of income of assessee consists of grant from State Government, various fees/conversion charges collected from public to

convert land use changes, receipt from auction of land etc. and receipt from other government bodies or interest on deposits. None of these items can be said to be carrying of any activities in the nature of trade, commerce or business. The assessee is not rendering any services in the nature of trade, commerce or business for a fee or any other consideration. The assessee engaged in regulation of concerned city/district in terms of town planning and improvement of residential and commercial property needs. In support of our observations we relied upon the decision of Hon'ble Supreme Court in *M/s. Novopan India Ltd. v. Collector of Central Excise and Customs* [1994] Supp. (3) SCC 606, for the proposition that once the provision is found applicable to a subject, full effect i.e., liberal interpretation must be given to it and strict construction of any exemption provision should be applied only at the threshold stage. The decision of Kolkata Tribunal in *Narayan Rice Mill v. CIT* (ITA No. 732/Kol/2015 dated 07.06.2017, decision of Pune Tribunal in *Smt. Sapna Sanjay Raisoni v. ITO* [2016] 70 taxmann.com 7 also held the same on identical issue.

15. The definition of the State under Article 12 has come for the consideration on number of occasions before the Hon'ble Supreme Court. The State consists of three departments, the Legislature, the Executive and the Judiciary. We need not go into all the limbs of the State as only the limited issue before us is whether the term Government used in clause (b) to Rule 6DD includes even the autonomous bodies which partakes the character of instrumentalities of the Government. The core test to be applied, whether a particular corporation which is autonomous body is a part of Government, to be seen in the context of degree of control over management and policy decisions. The issue of Maharashtra State Road Transport Corporation (MSRTC) was also examined and observed ***“As per the certificate of***

the share capital filed before us, the entire share capital is contributed by the State Government and the Central Government and there is no private participation. We further find that MSRTC is incorporated under special legislation i.e., Road Transport Corporation Act, 1950. We have examined the provisions of the said enactment. As per section 5 of the said Act, the State Government is only having power to appoint the Chairman and other Members in the Managing body. There is a full control of the State Government on the policy decisions as well as management. In our opinion, if we apply the test of the control and management as well as the equity participation, MSRTC is a State within Article 12 of the Constitution.” Applying the above test, the Hon'ble Supreme Court has held, as discussed hereinabove that the autonomous bodies like State Road Transport Corporation or Warehousing Corporation where there is a full control by the Government, either Central or State, these are the instrumentalities of the Government only. The term Government is very much wide under the constitutional set up. Government may be central or State or it may be Local Government which is envisaged by our Constitution, like Zilla Parishad, Municipal Corporations, Municipal Councils, and Panchayat Samithi's, etc. The Public Works Department is part of the Government. In our opinion, this aspect has not been considered by the authorities below and they have closed door to the assessee to make out the case for examination under Rule 6DD. We are, therefore, of the opinion, that in the light of our above discussion, the plea of the assessee needs reconsideration by the Ld. CIT (Appeals). We, therefore, set aside the issue in respect of the disallowance made u/s.40A (3) to the file of the Ld. CIT (A) to decide the same *de novo* in the light of our above observations and discussion. Accordingly, the relevant Grounds taken by the assessee in all these

appeals are allowed for statistical purposes. Needless to say, the Ld. CIT (A) is directed to give opportunity of being heard to the assessee as per the principles of natural justice.'

16. The expression "other authorities" used in Article 12 is neither defined in the Constitution of India nor in any other statute. Therefore, the Hon'ble Supreme Court of India and the Hon'ble High Courts have interpreted this expression in various judgments. The Hon'ble Supreme Court of India while interpreting the expression "other authorities" in the case of *Som Prakash Rekhi vs. Union of India* reported as AIR 1981 SC 212 have culled out certain tests to determine as to when a corporation should be said to be an instrumentality or Agency of the Government. The tests laid down by the Hon'ble Apex Court are summarized as under:

"1.	<i>If the entire share capital of the corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of the Government.</i>
2.	<i>Existence of deep and pervasive State control may afford an indication that the corporation is a state agency or instrumentality.</i>
3.	<i>Whether the Corporation enjoys monopoly status which is State conferred or State protected.</i>
4.	<i>If the functions of the corporation are of public importance and closely related to governmental functions. It would be a relevant factor in classifying the corporation as an instrumentality or agency of the Government.</i>
5.	<i>If a department of a government is transferred to a corporation, it would be a strong factor supporting this inference of the corporation being an</i>

instrumentality or agency of the Government."

17. **After applying the cumulative effect of all the relevant factors mentioned above, if the body is found to be an instrumentality of the agency of the Government, it would be an authority included in term "State" under Article 12 of the Constitution of India. However, the tests indicated by the Hon'ble Apex Court in the case of Som Prakash Rekhi are merely indicative and not absolute and thus, have to be applied discretely. If any body or organisation falls within the criteria as lay down by the Hon'ble Apex Court it can be considered that it falls within the term "State".**

18. In *CIT vs. Karnataka Urban Infrastructure Development & Finance Corpn.*, decided by the Hon'ble High Court of Karnataka, the assessee - corporation, a fully owned State Government company was appointed as a nodal agency for the implementation of the Mega-city scheme worked out by the Planning Commission of Ministry of Urban and Employment for Development of Urban Infrastructure to Bangalore city, for which purpose the Central Government provided the money to the assessee for implementing the said scheme. The money so received from the Government of India was parked by the assessee in various bank deposits during the unutilised period. The interests earned during the year on these deposits were transferred to the Mega-city scheme account directly with an appropriate disclosure in the notes to the accounts. The assessee also performed the other projects of development of infrastructure apart from the activity as a nodal agency for the implementation of the Mega-city scheme undertaken by the Government of India from time to time.

The Assessing Officer treated the interest earned and received by the assessee out of the amount which it had received from the Central and State Governments and deposited in various banks, as income of the assessee and brought the aforesaid amounts to tax. The aforesaid view of the Assessing Officer was upheld by the Commissioner of Income-tax (Appeals). The assessee preferred an appeal before the Tribunal. The Tribunal looked into the guidelines which provided the background of the scheme. The Tribunal while setting aside the Orders of the Assessing Officer and Commissioner of Income-tax (Appeals) held that the assessee in fact acted as an agent of the Governments of both the Central and the State for implementing the scheme of the Government. *This being the factual position, the lower authorities', committed serious error in treating the interest as income of the assessee and bringing the same to tax.* Aggrieved by the Order of the Tribunal, the Department/Revenue preferred an appeal before the High Court. The High Court held that the interest accrued on bank deposits cannot be treated as an income of the assessee as the interest is earned out of the money given by the Government of India for the purpose of implementation of Mega-city scheme. The pertinent observation of the High Court read as follows:

Quote; 4. The material on record shows that the very purpose of constitution of the assessee was to act as a nodal agency for implementation of Mega-city scheme worked out by the Planning Commission. Both the Central and the State Governments are expected to provide requisite finances for implementation of the said project. The funds from the Central and State Governments will flow directly to the specialised institutions/nodal agencies as grant and the nodal agency will constitute a revolving fund with the help of Central and state shares out of which finance could be provided to various agencies such as water, sewerage boards, municipal corporations, etc. The objective is to create and maintain a fund for the development of infrastructural assets on a continuing basis and, therefore, the assessee is a nodal agency

formed/created by the Government of Karnataka as per the guidelines; there is no profit motive as the entire fund entrusted and the interest accrued there from on deposits in bank though in the name of the assessee has to be applied only for the purpose of welfare of the Nation/States as provided in the guidelines; the whole of the fund belongs to the State Exchequer and the assessee has to channelise them to the objects of centrally sponsored scheme of infrastructural development for Mega-city of Bangalore. Funds of one wing of the Government are distributed to the other wing of the Government for public purpose as per the guidelines issued. The monies so received, till it is utilised, is parked in a bank. The finding recorded by the Tribunal clearly shows that the entire money in question is received for implementation of the scheme which is for a public purpose and the said scheme is implemented as per the guidelines of the Central Government and, therefore, the assessee is only acting as a nodal agency of Central Government for implementation of these projects. It is not the case of the revenue that the assessee was carrying on any business or activities of its own while implementing the scheme in question. The unutilised money, during which the project could not be fully implemented, is deposited in a bank to earn interest. That interest earned is also again utilised for the implementation of the Mega-city scheme which is also permitted under the scheme. Therefore, in computing the total income of the assessee for any previous year the interest accrued on bank deposits cannot be treated as an income of the assessee as the interest is earned out of the money given by the Government of India for the purpose of implementation of Mega-city scheme."

19. The Income-tax Authorities under the Act cannot assess all receipts; they can assess only those receipts that amount to 'income' and, therefore, before they assess a receipt, they must find that to be the income of an assessee so as to invite chargeability provisions of Section 4 of the Act. The classification of income would result and follow only thereafter, as per the provisions of Section 14 of the Act only if a particular receipt is income as per Section 4 of the Act. **To safeguard the interest of the State Government from payment of taxes at the hand of the**

Union of India, the provisions of Article 289 of the Constitution of India assume significance and importance, which read as under:

Exemption of property and income of a State from Union taxation.

289. (1) the property and income of a State shall be exempt from Union taxation.

(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.

(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government.

20. Article 289 of the Constitution of India supplants the charging section *i.e.*, Section 4 of the Act in as much as the income of the State Government is exempt from Union Taxation. Neither Section 4 and/or Section 2(24) of the Act *i.e.*, chargeability provision and provision defining income lays down any exception with regard to any income earned by the State Government and/or its instrumentality overriding the provisions of Article 289 of the Constitution. Strictly, the income earned by the State through its instrumentalities carrying on a trade and/or a business is not exempt by virtue of Article 289 of the Constitution of India.

21. To perform the functions, the Government has its various departments and to facilitate its working, the Government itself may be divided into various Sections. To carry out the commercial activities by the State, the Corporations have been established by enactment of Statutes and the "power to charter Corporations is

incidental to or in aid of Governmental functions." Such Corporations would ex-hypothesis be agencies of the Government. Thus, until and unless the statute, under which the instrumentality has been brought into existence, provides that such an instrumentality shall be the agent of the State, the instrumentality shall not be a State. The pertinent observation in regard thereto, made by the Supreme Court in the case of *Heavy Engg. Mazdoor Union vs. State of Bihar* reads as under:

"The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so provides, such a corporation can easily be identified as the agent of the State as in Graham v. Public Works Commissioners, [1901] 2 KB 781 where Phillimore, J. said that the Crown does in certain cases establish with the consent of Parliament certain officials or bodies who are to be treated as agents of the Crown even though they have the power of contracting as principals. In the absence of a statutory provision, however, a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State. The fact that a minister appoints the members or directors of a corporation and he is entitled to call for information, to give directions which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government. (See: The State Trading Corporation of India Ltd v. The Commercial Tax Officer, Visakhapatnam, [1964] 4 SCR 99 at 188, and Tamlin v. Hannaford [1950] 1 KB 18 at 25, 26. Such interference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and non commercial functions. (of London County Territorial and Auxiliary forces Association v. Nichlos) [1948] 2 All E.R. 432." (Emphasis supplied)

22. However, there is a thin line of demarcation between bodies of the State to whom for implementation of Government projects, work in relation thereto is assigned and as a result thereof, during the performance of such activity on behalf of the State, income is earned though utilised for the same purpose and

instrumentalities carrying on trade and/or business activity of the State Government earning income. In both the cases aforesaid there is existence of deep and pervasive State Control. In the former case, the body to whom work has been entrusted and income is earned acts as a nodal agency of the State whereas in the latter case it is not so as the instrumentality having independent identity has income arising from its trading and/or business activity and conduct of such activity not being attributable to State in any manner. The aforesaid distinction is discernible from various cases decided by the Hon'ble Supreme Court as well as the High Courts. In the case of *Andhra Pradesh State Road Transport Corporation v. CIT*, the Andhra Pradesh State Road Transport Corporation constituted under the Road Transport Corporations Act, 1950, by a notification issued by the Andhra Pradesh Government, was held not be immune from liability to income-tax on income derived from its trading activities, under article 289 of the Constitution of India for the reason that though the majority of its shares are owned by the Andhra Pradesh Government and its activities are controlled by the State, the Corporation has a separate personality of its own, the trading activities are the trading activities of the Corporation and the profit and loss arising there from are the profit and loss of the Corporation and therefore, the income derived by the Corporation from its trading activities cannot be said to be the income of the Andhra Pradesh State under Article 289 of the Constitution of India. The Supreme Court for reaching the aforesaid conclusion referred to the following observations which had been made by Lord Denning in the case of *Tamlin v. Hannaford* [1950] 1 KB 18:

"The corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its

servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government." **Thus, on the basis of the aforesaid observations, that a trading activity carried on by the corporation is not a trading activity carried on by the State departmentally, nor is it a trading activity carried on by a State through its agents appointed in that behalf, the Hon'ble Supreme Court held that the income derived by the Corporation from its trading activities cannot be said to be the income of the Andhra Pradesh State under Article 289(1) of the Constitution of India.**

23. The following principles deserve to be kept in focus while considering the question of taxability of interest/income earned on FDRs/conversion charges by an Instrumentality of the State and/or Department/Organization of the State:

(1)	Interest income arising out of the business/trading activity carried out by the instrumentality of the State would be taxable in its hands;
(2)	The statute under which the instrumentality of the State is brought into existence must expressly provide for principal and agent relationship between the State and such instrumentality; and in the absence thereof, any interest income derived by such instrumentality would be taxable as income in their hands.;
(3)	Any income by way of interest earned by the instrumentality of the State after having received any amount of grant or subsidy for the implementation of project/scheme <i>i.e.</i> , earmarked purpose of the State would not be taxable as income in the hands of such instrumentality of the State or the State.;
(4)	Any income by way of interest much less any income earned by a Department/Organization of the State would not be taxable in the hands of either the State and/or such Department/Organization of the State.

(5)	Carrying on business activity for profit motive by an instrumentality and/or Department of the State is immaterial for determining the taxability of income.
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24. In view of above facts and settled legal position, we hold that assessee is a “State” within the meaning of Article 289(1) of the Constitution of India being an instrumentality of State within the meaning thereof. **Here there is an existence of deep and pervasive State control may afford an indication that the assessee is a state agency or instrumentality. Here the assessee enjoys monopoly status which is State conferred or State protected. Here the functions of the assessee are of public importance and closely related to governmental functions. It would be a relevant factor in classifying the assessee as an instrumentality or agency of the Government. If a department of a government is transferred to an entity like assessee, it would be a strong factor supporting this inference of the assessee being an instrumentality or agency of the Government.**

25. We have gone through the provisions of section 10(46) and 10(46A) of the Act, reproduced as under:

- (46) any specified income arising to a body or authority or Board or Trust or Commission (by whatever name called) other than those covered under clause (46A)] , or a class thereof which-
- (a) has been established or constituted by or under a Central, State or Provincial Act, or constituted by the Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public;
 - (b) is not engaged in any commercial activity ; and
 - (c) Is notified by the Central Government in the Official Gazette for the purposes of this clause.

Explanation.-For the purposes of this clause, “specified income” means the income, of

the nature and to the extent arising to a body or authority or Board or Trust or Commission (by whatever name called) other than those covered under clause (46A), or a class thereof referred to in this clause, which the Central Government may, by notification in the Official Gazette, specify in this behalf;

(46A) any income arising to a body or authority or Board or Trust or Commission, not being a company, which-

(a) has been established or constituted by or under a Central Act or State Act with one or more of the following purposes, namely:-

- (i) dealing with and satisfying the need for housing accommodation;
- (ii) planning, development or improvement of cities, towns and villages;
- (iii) regulating, or regulating and developing, any activity for the benefit of the general public; or
- (iv) regulating any matter, for the benefit of the general public, arising out of the object for which it has been created; and

(b) is notified by the Central Government in the Official Gazette for the purposes of this clause;

26. We have gone through the above sections and found the same to be irrelevant, specifically in the light of above discussion on the constitutional provisions. In view of the above, it is held and confirmed that the assessee under consideration fulfils the requirement of Article 12 and 289 of the constitution of India and in terms of above **ITA Nos. 731, 773, 774, 803, 811, 812, 813, /JPR/2024 (A.Ys. 2008-09, 2003-04, 2005-06, 2006-07, 2016-17, 2007-08 & 2009-10)** of the Assessee are allowed and **ITA No. 717/JPR/2024 (A.Y. 2008-09) ITA Nos. 794 to 797/JPR/2024 (A.Ys. 2006-07, 2007-08, 2009-10 & 2016-17)** of the Revenue are dismissed. In the result, the assessee's income is found to be not chargeable under the Income Tax Act at all and the AO is directed to delete the additions made, irrespective of the head of income.

27. In the result, all the appeals of the assessee mentioned (supra) are allowed and all the appeals of the Revenue are dismissed.

The Order is pronounced in the open court on the 11th day of August 2025.

Sd/-

Sd/-

(Dr. S. SEETHALAKSHMI)

(GAGAN GOYAL)

JUDICIAL MEMBER

ACCOUNTANT MEMBER

Jaipur, दिनांक/Dated: 11/8/2025

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr.DR., ITAT,
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	11.08.2025		Sr.PS/PS
2	Draft Placed before author	11.08.2025		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			