

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “F” BENCH: NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.6894/Del/2018

[Assessment Year : 2014-15]

Delhi Development Authority, Room No.205, B-Block, Vikas Sadan, INA, New Delhi-110023. PAN-AAALD0031A	vs	JCIT(Exemption), Range-1, New Delhi
APPELLANT		RESPONDENT

ITA No.7072/Del/2018

[Assessment Year : 2014-15]

DCIT(Exemption), Central Circle-1(1), New Delhi	vs	Delhi Development Authority, B-Block, Vikas Sadan, INA Colony, New Delhi-110023. PAN-AAALD0031A
APPELLANT		RESPONDENT

ITA No.7073/Del/2018

[Assessment Year : 2015-16]

DCIT(Exemption), Circle-1(1), New Delhi	vs	Delhi Development Authority, B-Block, Vikas Sadan, INA Colony, New Delhi-110023. PAN-AAALD0031A
APPELLANT		RESPONDENT
Appellant by	Shri Anubhav Goel, Adv.	
Respondent by	Ms. Monika Singh, CIT DR	
Date of Hearing	17.07.2025	
Date of Pronouncement	17.07.2025	

ORDER

PER MANISH AGARWAL, AM :

The captioned cross-appeals are filed by assessee as well by the Revenue against the order, dated 03.08.2018 passed by Ld. Commissioner of Income Tax (A)-40, Delhi [“Ld.CIT(A)”] in Appeal No.379/2016-17 u/s 250 of the Income Tax Act, 1961 [“the Act”]

arising out of assessment order, dated 28.12.2016 passed u/s 143(3) of the Act pertaining to assessment year 2014-15. Further an appeal is filed by the Revenue against the order of Ld.CIT(A)-40, Delhi dated 06.08.2018 in Appeal No.208/2017-18 arising out of assessment order dated 29.12.2017 passed u/s 143(3) of the Act for Assessment Year 2015-16.

2. The issues being common, interlinked and related to the same assessee in captioned appeals, therefore, all three appeals filed by the assessee and the Revenue are heard together and accordingly, adjudicated by a common order.

3. First we take appeal of the assessee in **ITA No.6894/Del/2018** for **AY 2014-15**.

ITA No.6894/Del/2018 [Assessment Year : 2014-15]
[Assessee's appeal]

4. In **Ground of appeal No.1**, the assessee has challenged the action of Ld.CIT(A) in denying the benefit of section 11 & 12 of the Act as its activities are covered under the proviso of section 2(15) of the Act.

5. Heard the contentions of both parties and perused the material available on record. It is seen that the assessee is a legal authority established by the Parliament Act as Statutory body under Delhi Development Act, 1957 with the object of development of Delhi. It is the claim of the assessee that it encompasses

Development of land, buildings and infrastructure in the city like water, sewer roads, flyovers, greens, etc it has to cater to the need or shelter of people of all walks of life viz the higher income group middle income group, lower income group, the economically weaker section the jhuggi - jhopri dwellers, etc. It has to provide lands, buildings and infrastructure for hospitals schools, government institutions etc. The assessee claimed that these activities are carried out in a compensatory manner so that the surplus generated in the shape of various charges/ fee from various activities compensate for the of general public utilities like maintenance of green public facilities, roads, flyovers. Etc. It is a local authority pursuing the objects of general public utility, thus, the one and only and the predominant activity of the assessee is the Development of Delhi city and it has been pursuing by the said objective since it is inception in 1957 till date.

6. It is seen that assessee is granted registration u/s 12A w.e.f. 01.04.2002 as the activities are of charitable in nature which fact is admitted by the department also while granting the registration u/s 12A of the Act. However, the AO has not allowed such benefit and income of the assessee is taxed as business income.

7. Hon'ble Supreme Court in the case of **CIT(Exemption) vs Ahmedabad Urban Development Authority (2023) 4 SCC 561 (SC)** considered the facts and made following observations in respect to the Statutory Corporation Authorities or bodies:-

IV. Summation of conclusions

253. In view of the foregoing discussion and analysis, the following conclusions are recorded regarding the interpretation of the changed

definition of “charitable purpose” (w.e.f. 01.04.2009), as well as the later amendments, and other related provisions of the IT Act.

A. General test under Section 2(15)

- A.1. It is clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration (“cess, or fee, or any other consideration”);
- A.2. However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that
- (i) the activities of trade, commerce or business are connected (“actual carrying out...” inserted w.e.f. 01.04.2016) to the achievement of its objects of GPU; and
 - (ii) the receipt from such business or commercial activity or service in relation thereto, does not exceed the quantified limit, as amended over the years (Rs. 10 lakhs w.e.f. 01.04.2009; then Rs. 25 lakhs w.e.f. 01.04.2012; and now 20% of total receipts of the previous year, w.e.f. 01.04.2016);
- A.3. Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be considered to be “trade, commerce, or business” or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of “cess, or fee, or any other consideration” towards “trade, commerce or business”. In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.
- A.4. Section 11(4A) must be interpreted harmoniously with Section 2(15), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit or surplus or gains must, therefore, be incidental. The requirement in Section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to Section 2(15), has not been breached. Similarly, the insertion of Section 13(8), seventeenth proviso to Section 10(23C) and third proviso to Section 143(3) (all w.r.e.f. 01.04.2009), reaffirm this interpretation and bring uniformity across the statutory provisions.

- B. Authorities, corporations, or bodies established by statute**
- B.1. The amounts or any money whatsoever charged by a statutory corporation, board or any other body set up by the state government or central governments, for achieving what are essentially ‘public functions/services’ (such as housing, industrial development, supply of water, sewage management, supply of food grain, development and town planning, etc.) may resemble trade, commercial, or business activities. However, since their objects are essential for advancement of public purposes/functions (and are accordingly restrained by way of statutory provisions), such receipts are prima facie to be excluded from the mischief of business or commercial receipts. This is in line with the larger bench judgments of this court in Ramtanu Cooperative Housing Society and NDMC (supra).**
- B.2. However, at the same time, in every case, the assessing authorities would have to apply their minds and scrutinize the records, to determine if, and to what extent, the consideration or amounts charged are significantly higher than the cost and a nominal mark-up. If such is the case, then the receipts would indicate that the activities are in fact in the nature of “trade, commerce or business” and as a result, would have to comply with the quantified limit (as amended from time to time) in the proviso to Section 2(15) of the IT Act.**
- B.3. In clause (b) of Section 10(46) of the IT Act, “commercial” has the same meaning as “trade, commerce, business” in Section 2(15) of the IT Act. Therefore, sums charged by such notified body, authority, Board, Trust or Commission (by whatever name called) will require similar consideration – i.e., whether it is at cost with a nominal mark-up or significantly higher, to determine if it falls within the mischief of “commercial activity”. However, in the case of such notified bodies, there is no quantified limit in Section 10(46). Therefore, the Central Government would have to decide on a case-by-case basis whether and to what extent, exemption can be awarded to bodies that are notified under Section 10(46).**
- B.4. For the period 01.04.2003 to 01.04.2011, a statutory corporation could claim the benefit of Section 2(15) having regard to the judgment of this Court in the Gujarat Maritime Board case (supra). Likewise, the denial of benefit under Section 10(46) after 01.04.2011 does not preclude a statutory corporation, board, or whatever such body may be called, from claiming that it is set up for a charitable**

purpose and seeking exemption under Section 10(23C) or other provisions of the Act.

C. Statutory regulators

C.1. *The income and receipts of statutory regulatory bodies which are for instance, tasked with exclusive duties of prescribing curriculum, disciplining professionals and prescribing standards of professional conduct, are prima facie not business or commercial receipts. However, this is subject to the caveat that if the assessing authorities discern that certain kinds of activities carried out by such regulatory body involved charging of fees that are significantly higher than the cost incurred (with a nominal mark-up) or providing other facilities or services such as admission forms, coaching classes, registration processing fees, etc., at markedly higher prices, those would constitute commercial or business receipts. In that event, the overall quantitative limit prescribed in the proviso to Section 2(15) (as amended from time to time) has to be complied with, if the regulatory body is to be considered as one with 'charitable purpose' eligible for exemption under the IT Act.*

C.2. *Like statutory authorities which regulate professions, statutory bodies which certify products (such as seeds) based on standards for qualification, etc. will also be treated similarly.*

D. **Trade promotion bodies** *Bodies involved in trade promotion (such as AEPC), or set up with the objects of purely advocating for, coordinating and assisting trading organisations, can be said to be involved in advancement of objects of general public utility. However, if such organisations provide additional services such as courses meant to skill personnel, providing private rental spaces in fairs or trade shows, consulting services, etc. then income or receipts from such activities, would be business or commercial in nature. In that event, the claim for tax exemption would have to be again subjected to the rigors of the proviso to Section 2(15) of the IT Act.*

E. Non-statutory bodies

E.1. *In the present batch of cases, non-statutory bodies performing public functions, such as ERNET and NIXI are engaged in important public purposes. The materials on record show that fees or consideration charged by them for the purposes provided are nominal. In the circumstances, it is held that the said two assesseees are driven by charitable purposes. However, the claims of such non-statutory organisations performing public functions, will have to be ascertained on a yearly basis, and the tax authorities must discern from the records, whether the fees charged are nominally above the cost, or have been increased to much higher levels.*

- E.2. It is held that though GS1 India is in fact, involved in advancement of general public utility, its services are for the benefit of trade and business, from which they receive significantly high receipts. In the circumstances, its claim for exemption cannot succeed having regard to amended Section 2(15). However, the Court does not rule out any future claim made and being independently assessed, if GS1 is able to satisfy that what it provides to its customers is charged on cost-basis with at the most, a nominal markup.*
- F. Sports associations** *So far as the state cricket associations are concerned (Saurashtra, Gujarat, Rajasthan, Baroda, and Rajkot), this Court is of the opinion that the matter requires further scrutiny, in light of the discussion in paragraphs 228-238 of the judgment. Accordingly, a direction is issued that the AO shall adjudicate the matter afresh after issuing notice to the concerned assesseees and examining the relevant material indicated in the previous paragraphs of this judgment. Furthermore, if any consequential order needs to be issued, the same shall be done and resulting actions, including assessment orders shall be passed in accordance with the law under relevant provisions of the IT Act.*
- G. Private Trusts** *So far as the appeal by assessee-Tribune Trust is concerned, it has been held that despite advancing general public utility, the Trust cannot benefit from exemption offered to entities covered by Section 2(15) as the records reveal that income received from advertisements, constituted business or commercial receipts. Consequently, the limit prescribed in the proviso to Section 2(15) has to be adhered to for the Trust's claim of being as a charity eligible for exemption, to succeed. Therefore, despite differing reasoning, this court has held that the impugned judgment of the High Court does not call for interference.*
- H. Application of interpretation**
- H. At the cost of repetition, it may be noted that the conclusions arrived at by way of this judgment, neither precludes any of the assesseees (whether statutory, or non-statutory) advancing objects of general public utility, from claiming exemption, nor the taxing authorities from denying exemption, in the future, if the receipts of the relevant year exceed the quantitative limit. The assessing authorities must on a yearly basis, scrutinize the record to discern whether the nature of the assessee's activities amount to "trade, commerce or business" based on its receipts and income (i.e., whether the amounts charged are on cost-basis, or significantly higher). If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to*

time) in proviso to Section 2(15), has been breached, thus disentitling them to exemption.

8. As the case of the assessee has fallen into category “B” as summarized above, i.e. **Authorities, corporations, or bodies established by statute** by the Hon’ble Supreme Court in the case of CIT(Exemption) vs Ahmedabad Development Authority (supra) therefore, the AO is directed to examine the case of the assessee in the light of the above observations. With these directions, ground of appeal No. 1 of the assessee is allowed for statistical purposes.

9. Remaining grounds raised by the assessee became academic thus, not adjudicated hence, dismissed.

10. In the result, appeal of the assessee is partly allowed.

ITA No.7072/Del/2018 [Assessment Year : 2014-15]
(Revenue’s Appeal)

11. Since we have already set aside the order of lower authorities in and direct the AO to follow the order of Hon’ble Supreme Court in the case of CIT(Exemption) vs Ahmedabad Development Authority (supra) in assessee’s appeal for same assessment year in ITA No.6894/Del/2018, thus, the present appeal filed by the Revenue against the same order of Ld. CIT(A) for AY 2014-15 is also set aside and remand back to the AO with the direction as given in the aforesaid appeal.

12. In the result, appeal of the Revenue is partly allowed for statistical purposes.

ITA No.7073/Del/2018 [Assessment Year : 2015-16]
(Revenue's Appeal)

13. This appeal filed by the Revenue wherein Revenue has challenged the deletion of additions made towards the contribution of assessee towards gratuity funds and pension funds.

14. As while deciding the appeal of the assessee in ITA No.6894/Del/2018 [Ay 2014-15], we direct AO to examine the activities of the assessee in terms of order of Hon'ble Supreme Court in the case of CIT(Exemption) vs Ahmedabad Development Authority (supra) which observations are *mutatis mutandis* applied in the present appeal also. Therefore, by respectfully following the same observations, the appeal of the Revenue is set aside to the file AO. The grounds of appeal taken by Revenue are partly allowed for statistical purposes.

15. In the result, the appeal of the Revenue is partly allowed.

16. In the final result, cross appeals for AY 2014-15 in ITA No.6894/Del/2018 [by Assessee] and ITA No.7072/Del/2018 [by Revenue] are partly allowed and appeal of the Revenue for AY 2015-15 in ITA No.7073/Del/2018 is partly allowed for statistical purposes.

Order pronounced in the open Court on 17.07.2025.

Sd/-

**(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

Date:-30.09.2025

Amit Kumar, Sr.P.S

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

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