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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA Nos. 354 & 355/Bang/2024
Assessment Years : 2016-17 & 2017-18

M/s. Karnataka Industrial Areas Development Board, No. 49, 4th & 5th Floors, Khanija Bhavan, Race Course Road, Bangalore – 560 001. **PAN: AAATK1305J**	**Vs.**	The Deputy Commissioner of Income Tax, Exemptions Circle – 1, Bangalore.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri Sudheendra B.R, Advocate
Revenue by	:	Shri Shivanand H Kalakeri, CIT-DR

Date of Hearing	:	02-12-2025
Date of Pronouncement	:	02-03-2026

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

These two appeals are filed against the separate orders of the NFAC, Delhi both dated 14/02/2024 in respect of the A.Ys. 2016-17 and 2017-18. The assessee being the same and also the issues involved in the appeals are almost similar, the appeals are heard together for the sake of convenience and a common order has been passed. The facts in the A.Y. 2016-17 has been taken and the said appeal is taken as the lead case and the decision arrived in the said appeal would apply automatically to the appeal in respect

of A.Y. 2017-18 mutatis mutandis. The grounds raised in respect of two A.Ys. are extracted hereunder:

ITA No. 354/Bang/2024 (Assessment Year: 2016-17)

"1. General Ground
1.1. The order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as CIT(A), NFAC) under section 250 of the Act to the extent prejudicial to the appellant is bad in law and liable to be quashed.

2. Assessment order passed is barred by limitation
2.1. The impugned assessment order passed under section 143(3) dated 17.2.2020 is barred by limitation in accordance with section 153(1) read with clause (iv) of Explanation 1 as well as the proviso to such Explanation. Consequently, the impugned assessment order is void ab initio, bad in law and liable to be quashed.

2.2. The learned CIT(A) erred in dismissing this ground as infructuous based on the appellant's ..bmission that in the event the ground on merits is allowed, this ground on limitation may not be adjudicated.

2.3. The learned CIT(A) erred in concluding that this ground has been withdrawn whereas the appellant never withdrew this ground.

2.4. On facts and circumstances of the case and law applicable, the assessment order passed under section 143(3) dated 17.2.2020 is barred by limitation in accordance with section 153(1) read with clause (iv) of Explanation 1 as well as the proviso to such Explanation. Consequently, the impugned assessment order is void ab initio, bad in law and liable to be quashed.

3. Denial of exemption claimed under section 11
3.1 The learned AO ad CIT(A) has erred in denying exemption claimed under section 11 of the Act and computing the total income under normal provisions of the Act. On the facts and circumstances of the case, the appellant is eligible for exemption under section 11 and the same is to be allowed and consequently the assessment of income as done is to be deleted.

3.2 The learned AO has erred in
(a) concluding that activities carried on by the appellant are commercial in nature intending to make profits.

(b) concluding that appellant is hit by the proviso to section 2(15) r.w.s. 13(8).
(c) not appreciating that the appellant, a statutory body of Government of Karnataka is a special entity to achieve the objectives set out in the KIAD Act and no activity is carried on with a view to earn profits.
(d) Not appreciating that the surplus generated out of operations, if any, is ploughed back for further industrialization in the state.

3.3 The learned AO and CIT(A) has also erred in ignoring, disregarding and not following the ITAT orders, High Court order and Supreme Court order in appellant's own case for earlier years on identical issues.

3.4 The learned AO and CIT(A) has erred in not appreciating the facts of the case. The appellant being autonomous body of State Government, having objectives of charitable nature has rightly claimed exemption under section 11 of the Act.

3.5 On facts and in the circumstances of the case and law applicable, proviso to section 2(15) and section 13(8) are inapplicable and the appellant is a genuine charitable organization. Consequently, exemption under section 11 is to be allowed as claimed by the appellant.

4. Addition / Disallowance under section 43B
4.1 The learned AO and CIT(A) erred in making additions / disallowance under section 43B in respect of slum improvement cess, labour welfare fund and contractor's welfare fund without appreciating that the impugned addition / disallowance under section 43B cannot be made in the process of computing the total income under section 11 to 13 including under section 13(8).

4.2 The learned AO and CIT(A) erred in not appreciating that Explanation 3 to section 11(1) only applies sections 40(a)(ia), 40A(3)/(3A) in computing application of income from AY 2019-20 onwards. Hence, section 43B does not apply.

4.3 Without prejudice, the learned CIT(A) erred in confirming the addition / disallowance under section 43B in respect of slum improvement cess of Rs. 1,00,000, labour welfare fund of Rs. 46,78,464 and contractor's welfare fund not paid within the extended due date i.e., 17.10.2016.

4.4 On facts and circumstances of the case and law applicable, impugned addition / disallowance under section 43B in respect of slum improvement cess, labour welfare fund and contractor's welfare fund is liable to be deleted.

5. Addition of Rs. 2 crores in respect of grant in aid from Central Govt.
5.1 The learned AO/CIT(A) erred in confirming the addition of Rs. 2 crores in respect of grant in aid from Central Govt towards ASIDE scheme without properly appreciating the facts of the case, submissions and evidences produced before the AO/CIT(A).

5.2 Without prejudice, the learned AO/CIT(A) erred in not appreciating that the grant received from central government under ASIDE scheme was towards the corpus i.e., for a specific purpose, which is exempt under section 11(1)(d) and hence not assessable to tax.

5.3 On facts and circumstances of the case and law applicable, the impugned addition of Rs. 2 crores is bad in law and liable to be quashed.

6. Set off of excess application of income of earlier years
6.1 The learned C1T(A) erred in denying the set off of excess application of income of earlier years against the income assessed relying on section 11(6) without appreciating that the said provision is not applicable in the present case.

6.2 On facts and circumstances of the case and law applicable, excess application of income of earlier years should be set off with the income assessable, if any, for the year under consideration.

7. Levy of interest under section 234A and 234B
7.1 The learned AO/CIT(A) erred in levying / confirming the levy of interest under section 234A and 234B. On facts and circumstances of the case and law applicable, interest under section 234A and 234B is not leviable. The appellant denies its liability to pay interest under section 234A and 234B.

8. Prayer
8.1. In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the orders passed under section 250 of the Act by the learned CIT(A), NFAC to the extent prejudicial to the appellant be quashed

or in the alternative the above grounds and the relief prayed thereunder be allowed.

The Appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.
The appellant prays accordingly."

ITA No. 355/Bang/2024 (Assessment Year: 2017-18)

"1. General Ground
1.1. The order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as CIT(A), NFAC) under section 250 of the Act to the extent prejudicial to the appellant is bad in law and liable to be quashed.

2. Denial of exemption claimed under section 11
2.1 The learned AO and CIT(A) has erred in denying exemption claimed under section 11 of the Act and computing the total income under normal provisions of the Act. On the facts and circumstances of the case, the appellant is eligible for exemption under section 11 and the same is to be allowed and consequently the assessment of income as done is to be deleted.

2.2 The learned AO has erred in
(a) concluding that activities carried on by the appellant are commercial in nature intending to make profits.
(b) concluding that appellant is hit by the proviso to section 2(15) r.w.s. 13(8).
(c) not appreciating that the appellant, a statutory body of Government of Karnataka is a special entity to achieve the objectives set out in the KIAD Act and no activity is carried on with a view to earn profits.
(d) Not appreciating that the surplus generated out of operations, if any, is ploughed back for further industrialization in the state.

2.3 The learned AO and CIT(A) has also erred in ignoring, disregarding and not following the 1TAT orders, High Court order and Supreme Court order in appellant's own case for earlier years on identical issues.

2.4 The learned AO and CIT(A) has erred in not appreciating the facts of the case. The appellant being autonomous body of State Government. having objectives of charitable nature has rightly claimed exemption under section 11 of the Act.

2.5 On facts and in the circumstances of the case and law applicable, proviso to section 2(15) and section 13(8) are inapplicable and the appellant is a genuine charitable organization. Consequently, exemption under section 11 is to be allowed as claimed by the appellant.

3. Addition / Disallowance under section 43B
3.1 The learned AO and CIT(A) erred in making additions / disallowance under section 43B in respect of slum improvement cess, labour welfare fund and contractor's welfare fund without appreciating that the impugned addition / disallowance under section 43B cannot be made in the process of computing the total income under section 11 to 13 including under section 13(8).

3.2 The learned AO and CIT(A) erred in not appreciating that Explanation 3 to section 11(1) only applies sections 40(a)(ia), 40A(3)/(3A) in computing application of income from AY 2019-20 onwards. Hence, section 43B does not apply.

3.3 Without prejudice, the learned CIT(A) erred in confirming the addition / disallowance under section 43B in respect of slum improvement cess of Rs. 20,04,651 not paid within the due date under section 139(1).

3.4 On facts and circumstances of the case and law applicable, impugned addition / disallowance under section 43B in respect of slum improvement cess is liable to be deleted.

4. Addition of Rs. 4.17 crores in respect of sale of flats
4.1 The learned AO/CIT(A) erred in confirming the addition of Rs. 4.17 crores in respect of sale of flats without properly appreciating the facts of the case, submissions and evidences produced before the AO/CIT(A).

4.2 The learned AO/CIT(A) erred in confirming the addition of Rs. 4.17 crores only on the basis of C&AG Audit observations without verifying the actual profit and the year in which it was assessable to tax as per section 11 to 13.

4.3 On facts and circumstances of the case and law applicable, the impugned addition of Rs. 4.17 crores is bad in law and liable to be quashed.

5. Addition of Rs. 1.64 crores in respect of service charges
5.1 The learned AO/CIT(A) erred in confirming the addition of Rs. 1.64 crores in respect of service charges without properly appreciating the facts of the case, submissions and evidences produced before the AO/CIT(A).

5.2 The learned AO/CIT(A) erred in confirming the addition of Rs. 1.64 crores in respect of service charges only on the basis of C&AG Audit observations without properly considering the submissions and the year in which it was assessable to tax as per section 11 to 13.

5.3 On facts and circumstances of the case and law applicable, the impugned addition of Rs. 1.64 crores is bad in law and liable to be quashed.

6. Set off of excess application of income of earlier years
6.1 The learned CIT(A) erred in denying the set off of excess application of income of earlier years against the income assessed relying on section 11(6) without appreciating that the said provision is not applicable in the present case.

6.2 On facts and circumstances of the case and law applicable, excess application of income of earlier years should be set off with the income assessable. if any, for the year under consideration.

7. Levy of interest under section 234A and 234B
7.1 The learned AO/CIT(A) erred in levying / confirming the levy of interest under section 234A and 234B. On facts and circumstances of the case and law applicable, interest under section 234A and 234B is not leviable. The appellant denies its liability to pay interest under section 234A and 234B.

8. Prayer
8.1. In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the orders passed under section 250 of the Act by the learned CIT(A), NFAC to the extent prejudicial to the appellant be quashed or in the alternative the above grounds and the relief prayed thereunder be allowed.

The Appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.

The appellant prays accordingly."

2. The brief facts of the case are that the Board got a registration u/s. 12A of the Act as the charitable institution and claimed the entire income as eligible for exemption u/s. 11 of the Act. The assessee claimed the entire income as exempt u/s. 11 of the Act by filing the return of income on 13/02/2017. The said return was selected for complete scrutiny and notice u/s. 143(2) was issued and notices u/s. 142(1) were also issued. In the said notice, the AO was seeking the explanation that whether the payment is hit by the proviso to section 2(15) r.w.s. 13(8) of the Act. Similarly, the AO had proposed to disallow certain amounts u/s. 43B of the Act. The assessee filed their objection by stating that the proviso to section 2(15) of the Act is not applicable to the assessee as held by the Coordinate Bench of this Tribunal in the assessee's own case for the A.Ys. 2009-10, 2010-11, 2013-14 and 2014-15. The assessee also submitted that there is no change in the facts for the current year and therefore prayed to grant the exemption claimed u/s. 11 of the Act. Similarly, the assessee had objected about the disallowance made u/s. 43B of the Act. In spite of the said objections, the AO had denied the exemption claimed u/s. 11 of the Act by invoking the section 13(8) of the Act. In the order, the AO had observed that the assessee is carrying on the activities which are commercial in nature and therefore they are hit by the proviso to section 2(15) of the Act. Insofar as the orders passed by this Tribunal for the various assessment years, the AO had observed that the orders of the Tribunals are challenged before the Hon'ble High Court and the same are pending.

3. Further, the AO had added the Slum Improvement Cess, Labour Welfare Fund, Contractor's Welfare Fund, Entertainment Expenditure and Royalty amount as income. The AO had disallowed an amount of Rs. 21,72,00,000/- on the ground that the assessee had issued utilisation certificates without incurring any expenditure with respect to certain grants received from Central and State Governments. The AO on the above said lines had passed an order u/s. 143(3) of the Act.

4. The assessee challenged the said order before the Ld.CIT(A). The assessee raised a ground on limitation since the order has been passed after the time granted for passing such an order as per section 153 of the Act. The assessee had also objected to the disallowance of exemption made u/s. 11 of the Act even though the facts are similar and no business activities are carried on by the assessee. The assessee had also challenged the additions in respect of the Slum Improvement Cess and Labour Welfare Fund u/s. 43B of the Act. The assessee also submitted that the said funds are already claimed as incomes u/s. 11 of the Act. The assessee also submitted that the Slum Improvement Cess as well as the Labour Welfare Fund are paid by the appellant and therefore they are eligible for deduction under the provisions of the Act. Similar plea was raised in respect of the Contractor's Welfare Fund. The assessee also disputed the disallowance of the Entertainment Expenditure on the ground that the same is an application of income u/s. 11 of the Act and the documents would shows that they are eligible for exemption. Similarly, the assessee had disputed the amount claimed towards the issuance of utilisation certificates with respect to the grants received from the Central and State Governments. The addition of royalty was also disputed by saying that all the details were produced before the AO. The levy of interest u/s. 234A and 234B was also disputed.

5. The Ld.CIT(A) had adjudicated the grounds issue wise. As far as the limitation ground raised by the assessee, the Ld.CIT(A) had relied on the letter furnished by the assessee on 17/07/2023 in which the assessee had prayed to decide the denial of exemption u/s. 11 of the Act based on the

judgment of the Hon'ble Supreme Court and allow the appeal on merits in favour of the assessee. The assessee further stated that in view of the said prayer, the limitation ground raised by the assessee in ground no. 2 may not be adjudicated. The Ld.CIT(A) also extracted the copy of the acknowledgement and on that score, the Ld.CIT(A) had dismissed the said ground as infructuous.

6. Insofar as the exemption claimed u/s. 11 of the Act, the Ld.CIT(A) had extracted the written submissions filed by the assessee and also considered the various judgments of the Hon'ble Supreme Court as well as the different Hon'ble High Courts and observed that the assessee is doing the trading or commerce and earned income out of the said activities which exceeds the limit prescribed under the proviso to section 2(15) of the Act and therefore they are not eligible for claiming exemption u/s. 11 of the Act based on section 13(8) of the Act. The Ld.CIT(A) had relied on the Hon'ble Supreme Court judgment in the case of ACIT(E) vs. Ahmedabad Urban Development Authority reported in 449 ITR 1. The Ld.CIT(A) had observed that the Hon'ble Supreme Court had directed the officers to scrutiny the records to discern whether the nature of appellant's activities amount to trade, commerce or business based on its receipts and income and if it is found that they are in the nature of trade, commerce or business, then it must be examined whether the quantified limit mentioned in proviso to section 2(15) has been reached or not. After observing the said finding, the Ld.CIT(A) had held that the assessee earned huge profit and therefore they are in the business venture and therefore they are hit by the proviso to section 2(15) of the Act. The Ld.CIT(A) also referred the profit margin earned by the assessee and on that basis, arrived a conclusion that the assessee is doing trade, commerce or business and therefore the incomes earned by the assessee would exceed the limit prescribed in the proviso to section 2(15) of the Act. The Ld.CIT(A) also considered the insertion of a new clause 46A in section 10 and the consequential amendment made to the Explanation to the 19th proviso of clause 23C of section 10 of the Act. The Ld.CIT(A) observed that the amendments would take effect from 01/04/2024 and

therefore the same would be applicable from the A.Y. 2024-25. The Ld.CIT(A), therefore confirmed the orders of the AO insofar as the disallowance made u/s. 13(8) of the Act and treated the income under the head "Profits and Gains of Business or Profession". Thereafter the Ld.CIT(A) had considered the other disallowances and granted partial relief.

7. The assessee not satisfied with the orders of the Ld.CIT(A), is in appeals before this Tribunal.

8. At the time of hearing, the Ld.AR submitted that the assessee is not carrying on any trade, commerce or business activities to term them as earning profits out of the activities carried out by them. The Ld.AR also took us through the various provisions of the Karnataka Industrial Areas Development Act, 1966 and submitted that the assessee is not doing any activities to earn profits. The Ld.AR further submitted that the assessee is under the control of the Government of Karnataka and the ex-officio members of the Board are all from different departments in the cadre of Secretary to Government and therefore it is not like an ordinary establishment carrying out the activities of trade or commerce. The Ld.AR further submitted that the assessee has been created for the purpose of development of industries in the State of Karnataka and therefore it is an institution of the general public utility which has not been established for earning the income out of the activities carried out by them. The Ld.AR further submitted that when the assessee is operating under the concept of no profit no loss, they would not be termed as doing the business activities and earned profits out of the said activities and therefore they are eligible for getting exemption u/s. 11 of the Act. The Ld.AR also submitted that when there is no object for earning the income as well as the profits, it could not be treated as an institution disentitled for claiming exemption u/s. 11 of the Act. The Ld.AR also submitted that in respect of earlier A.Ys., the Coordinate Bench of this Tribunal had held that the proviso to section 2(15) is not applicable to the assessee as they are not carrying on any trade and earned income and deleted the addition made by denying the exemption

claimed u/s. 11 of the Act. The Ld.AR submitted that the Hon'ble Jurisdictional High Court had also gave a finding that the assessee is a non-profit making organisation established for the purpose of developing the industrial growth in the State of Karnataka and therefore their income is eligible for deduction u/s. 11 of the Act. The Ld.AR also filed the ground wise synopsis of arguments and also a paper book enclosing the various documents to show that the assessee is doing the charitable activities and not liable to be denied the exemption u/s. 11 of the Act. The Ld.AR also filed a case law compilation enclosing the judgment of the Hon'ble Supreme Court and the orders of the Coordinate Bench in the assessee's own case. The Ld.AR also furnished the copies of the judgment of the Hon'ble Jurisdictional High Court in support of their contention that the assessee is not doing any business and therefore entitled to claim exemption u/s. 11 of the Act.

9. The Ld.DR submitted that the assessee earned a huge profit and therefore they are not eligible for exemption u/s. 11 of the Act in view of the violation to the proviso to section 2(15) of the Act. The Ld.DR further submitted that the authorities below had elaborately discussed the issue in detail and also relied on several judgments of the Hon'ble Supreme Court as well as the High Courts. The Ld.DR further submitted that the judgment of the Hon'ble Supreme Court in the case of ACIT(E) vs. Ahmedabad Urban Development Authority reported in 449 ITR 1 is in favour of the revenue and on that basis only, assessments were made and therefore the order of the Authorities are to be upheld. Insofar as the limitation raised by the assessee, the Ld.DR had filed a report received from the Deputy Commissioner of Income Tax (E), Circle – 1, Bangalore and submitted that the assessment order has been passed within the period of limitation and therefore prayed to dismiss the appeals.

10. We have heard the arguments of both sides and perused the materials available on record.

11. The assessee is an arm of the State Government established for the development of industrial areas in the State of Karnataka. The assessee has been created under the Statute Karnataka Industrial Areas Development Act, 1966 in which the statements of objects and reasons has been mentioned that, to make special provisions for securing the establishment of industrial areas in the State of Karnataka and generally to promote the establishment and orderly development of industries therein and for that purpose, establish an industrial areas development board and for the purpose of connecting with the matter aforesaid. Section 3 of the said Act states that the State Government may, by notification declare any area in the State to be industrial area for the purposes of this Act. Similarly, sections 5 & 6 of the said Act defines the establishment and constitution of the Board. The said provision mentioned about the members of the Board who are all from the Government of Karnataka holding the positions of Secretary to the Government, Commerce and Industries Department, Secretary to the Government, Finance Department, Secretary to Government, Housing and Urban Development Department, the Commission for Industrial Development and Direcotr of Industries and Commerce, Chairman and Managing Director, Karnataka State Industrial Investment and Development Corporation Ltd., Chairman, Karnataka Pollution Control Board, the Director of Town Planning, the Managing Director, Karnataka State Small Industries Development Corporation Ltd. and the Managing Director, Karnataka Financial State Corporation are ex-officio members of the Board. It shows that the entire activities of the Board is controlled by the State Government through its officers for the rapid and orderly establishment and development of industries in the State. Section 13 of the said Act defines the functions of the Board. Section 17 of the said Act mandates that the Board must bound and follow the directions issued by the State Government. Section 24 of the Act says that the accounts of the Board should be audited by an auditor appointed by the State Government. Section 28 of the said Act says that based on the notification issued by the State Government, the lands could be acquired for the purpose of development by the Board. Similarly, the section 29 speaks

about the compensation to be paid for the land owners which is to be paid by the State Government.

12. When we analyse the above said provisions, the State Government is having all control over the Board and for the purpose of industrialisation, the State Government had delegated its powers to the Board for creating industrial estates or industrial areas in the State of Karnataka. The purpose for which the Board has been created is only for the purpose of developing the industries in the State of Karnataka and for which the Board is having all powers to develop a particular area as declared by the State Government as an industrial area by creating various infrastructural facilities and thereafter handed over the said plots to various industries or entrepreneurs for a reasonable price. Therefore the assessee is doing the advancement of any other objects of general public utility. Now we will decide the various grounds raised by the assessee.

13. Insofar as the limitation ground raised by the assessee, in ground no. 2, we have perused the letter sent by the assessee on 17/07/2023 which was extracted by the Ld.CIT(A) in his order at page number 8 from which it is clear that the assessee had prayed to allow the appeal following the judgment of the Hon'ble Supreme Court. The assessee further stated in the said letter not to adjudicate the limitation ground raised by the assessee since the said issue has been decided in favour of the assessee by the Hon'ble Supreme Court. From the said letter, the assessee made two requests. One is to allow the appeal based on the judgment of the Hon'ble Supreme Court and the second request is that the limitation ground raised by them need not be adjudicated. Considering the said facts, we are accepting the finding given by the Ld.CIT(A) about the withdrawal of the limitation ground. The assessee had not specifically stated that, in the event of the non-acceptance by the Ld.CIT(A), on the merits of the issue, they are pressing the limitation ground. Instead of saying so, the assessee had prayed to follow the judgment of the Hon'ble Supreme Court and allow

the appeal and therefore they are stating that they have not pressed the limitation ground.

14. We do not find any mistake in the finding given by the Ld.CIT(A) about the withdrawal of the said ground. We, therefore confirm the order of the Ld.CIT(A) insofar as the withdrawal of the limitation ground is concerned.

15. The other grounds in ground no. 3 dealt with the issue of denial of exemption claimed u/s. 11 of the Act. We have considered the contention of the assessee that they are the creature of a Statute established for the purpose of developing the industrial areas in the State of Karnataka. The main activities of the assessee is to develop the industries, in the areas declared by the State Government and thereafter allotted the industrial sites in the parks to various industrialists / entrepreneurs to have a uniform growth of industries in the State of Karnataka. The State Government instead of doing the said work, had delegated its powers to the assessee Board and therefore it is nothing but an arm of the State Government. We have also perused the various documents which exhibits that the assessee is controlled by the State Government and the members are all the Secretaries of the various departments of the State Government and therefore it is not to be stated that they are doing the activities of trade, commerce or business in order to attract the proviso to section 2(15) of the Act. No doubt, the assessee had earned some profits out of the activities carried out by them but at no stretch of imagination, we could term the activities done by the assessee as doing the trade, commerce or business. We have also perused the orders of the Coordinate Bench of this Tribunal in the assessee's own case for the A.Ys. 2009-10 in ITA No. 378/Bang/2013 dated 04/09/2015. This Tribunal in the above said order had given the following findings:

> *"18. Our attention was drawn to the preamble of The Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as KIAD) under which the Assessee was established as a body corporate, which reads thus:*
>
> *"An Act to make special provisions for securing the establishment of industrial areas in the State of*

Karnataka and generally to promote the establishment and orderly development of industries therein, and for that purpose to establish an Industrial Areas Development Board and for purposes connected with the matters aforesaid.

WHEREAS it is expedient to make special provisions for securing the establishment of industrial areas in the State of Karnataka and generally to promote the establishment and the orderly development of industries in such industrial areas, and for that purpose to establish an Industrial Areas Development Board and for purposes connected with the matters aforesaid;"

19. He brought to our notice that in pursuance of the power vested under section 5 of the KIAD Act, the State Government has notified a Board called as the 'Karnataka industrial Area Development Board (Board in short) to achieve the objectives of the KIAD Act. The purpose of establishing the Board is provided under section 5(1) of the KIAD Act, which provides:

"Establishment and incorporation.' — For the purposes of securing the establishment of industrial areas in the State of Karnataka and generally for promoting the rapid and orderly establishment and development of industries and for providing industrial infrastructural facilities and amenity in industrial areas in the State of Karnataka, there shall be established by the State Government by notification a Board by the name of the Karnataka Industrial Area Development Board."

20. Karnataka Industrial Areas Development Board (KIADB) is a wholly owned infrastructure agency of Government of Karnataka. set up under Karnataka Industrial Areas Development Act of 1966. It is established through a State Government notification. The assessee is a creation of law. The law was enacted with certain specific objectives. Thus, the objectives for which the assessee is constituted was laid out even prior to its incorporation. The assessee and its activities are therefore ring fenced to this special Act, namely KIAD Act.

21. The State Government can give directions to the assessee, as in its opinion, are necessary or expedient for carrying out the purposes of the Act and it is the duty of the assessee to comply with such directions [section 17 of KIAD Act].

22. It was next highlighted that the assessee carries on its activities in accordance with the provisions of KIAD Act. It does not have the unfettered power to carry on its activities. It functions within the broad framework of the objectives laid down h the KIAD Act.

23. The website of the assessee which outlines its Aims and objectives and 'Functions. It states:
"Aims & Objectives:
(a) Promote rapid and orderly development of industries in the stale.
(b) Assist in implementation of policies of Government within the purview of KIAD Act.
(c) Facilitate in establishing infrastructure projects.
(d) Function on "No Profit - No Loss" basis.
Functions:
(a) Acquire land and form industrial areas in the state.
(b) Provide basic infrastructure in the industrial areas.
(c) Acquire land for Single Unit Complexes.
(d) Acquire land for Government agencies for their schemes and infrastructure projects.

Application of Appellant's funds & property
24. The funds of the assessee can only be used as per the provisions and for the purposes of the KIAD Act. Section 8 of the Act provides that all property and all other assets vesting in the assessee shall be held and applied by it, subject to the provisions and for the purposes of this Act. The purpose of application is outlined. The funds cannot be distributed or appropriated to any person unless the same is in accordance with the assessee's objectives. The employment utilization and channelizing of funds can be done within the broad framework of the assessee's objectives.

Acquisition and development of lands
25. The Acquisition section (one of the wings of the assessee) conducts the proceedings for acquisition of land as per KIAD Act and hands these lands to KIADB. Special Deputy Commissioner heads acquisition wing. He is assisted by Special Land Acquisition officers at zonal level. The Board does not have the power to acquire land of its choice; develop it and then sell it: Under section 3 of KlAD Act, it is only the State Government which can declare any area as an Industrial area by a notification, and specify the limits of such area. Thus, the Board's acquisition powers are ring fenced by the State Government's authority. As per section 28 of KIAD Act, the State Government can acquire land for the purpose of development, and pay compensation

for such compulsory acquisition. The Board cannot decide what land to acquire and how much to compensate the land owners. It is only when an area is declared as an industrial area and the land is acquired under section 28 of KIAD Act or transferred by the Government under section 32 of the KIAD Act, that the role of the Board begins.

Restraint on expenditure from funds of the assessee

26. Section 23 stipulates that the assessee shall have the authority to spend such sums as it thinks fit for the purposes authorised under this Act from out of Board's funds. Every expense has to therefore pass the 'purpose test'.

27. It was argued by ld. counsel for the assessee that in the present case, the assessee is primarily engaged in 'promotion of industrial growth in Karnataka'. It is not covered within any of the specific categories enlisted in section 2(15). The question therefore is whether the assessee's objective is covered within the phrase 'advancement of any other object of general public utility'?

28. The objectives of the assessee are explicit and cannot he circumvented. The assessee is a creation of law, It is not formed or set-up by any person(s) for any pecuniary benefit or commercial motive. The assessee owes its genesis to KIAD Act, a State Government legislation. The assessee's incorporation. Functioning, powers and scope are set out in the KIAD Act. Being a creation of a special law, compliance with the provisions therein is mandatory. The statute repeatedly emphasizes the need to carry on activities having regard to the objects of the Act. The object is promotion of Industries. It assists in implementation of polices of Government within the purview of KIAD Act. There is establishment of Infrastructure projects. Above all, it is under direct surveillance of State Government.

29. Industrialization is an initiation of social reform and economic development. It boosts the production and manufacturing segments. Employment would scale up; efficiencies stand enhanced and standardization becomes achievable. All these transformations translate into overall amelioration of the society and country as a whole. An institution with such a far sighted and development oriented objective is certainly one which benefits the public at large. The assessee serves the cause of general public utility and is therefore covered within the gamut of "Charitable purpose" as defined by section 2(15) of the I.T. Act.

30. In the course of carrying on its activities, the benefit arising from such promotion may be shared by those engaged in the industrial sector. The benefit to these cannot deter the claim of the assessee to be a 'Charitable institution'. In the words of the Apex Court in the case of CIT v Andhra Chamber of Commerce (1965) 55 ITR 722 (SC):

> *"The principal objects of the assessee are to protect, trade, commerce and industries and to aid, stimulate and promote the development of trade, commerce and industries in India or any part thereof. By the achievement of these objects, it is not intended to serve merely the interests of the members of the assessee. Advancement or promotion of trade, commerce and industry leading to economic prosperity ensures the benefit of the entire community. That prosperity would be shared also by those: who engage in trade, commerce and industry but on that account the purpose is not rendered any the less an object of general public utility. It may be remembered that promotion and protection of trade, commerce and industry cannot be equated with promotion and protection of activities and interests merely of persons engaged in trade, commerce and industry."*

31. It was submitted that the AO in his order has observed that the assessee has carried out the activities/rendered services to industrialists/ entrepreneurs in lieu of which it collected/received consideration towards sale of industrial sites and fees for various services rendered thereof. These are not services rendered to specific industrialists/entrepreneurs. The objective is not 'service of individual industrial houses' but promotion of overall industrialization of Karnataka. An incidental benefit to some industrialists/entrepreneurs would not dilute the progressive and charitable objective of the assessee.

32. To summarize, the ld. counsel submitted that the assessee plays a vital role in supplementing the governmental efforts in boosting industrialization. The assessee is a creation of law constituted for the purpose of development of industries and exists for public good. Its control and management is vested with the State Government. The benefit arising from its activities may be shared by persons engaged in the industrial sector. This however does not detract from its charitable character. The object of the assessee is clear; the functions are ring fenced and powers are frame all with a view to achieve industrial

development in Karnataka. Development of industries has been construed to be 'advancement of general public utility' by the Apex Court. Activities of the assessee are therefore to be regarded as covered within the operative provisions of section 2(15).

33. It was also submitted that assessee has continuously devoted itself to the promotion of industries in the State of Karnataka. It has not been formed and is not carrying on activities with a motive to distribute its surplus. There is no intention to make profits. The objects are to carry out Industrial and infrastructure promotion. The surplus, if any, arising from the activities are solely utilized for the achievement of its objects and no portion is utilized for distribution of any income or profits. In substance, the assessee neither earns any profits nor is it involved in the activities of trade, commerce or business. The activities of assessee are therefore charitable in nature.

34. As already mentioned, assessee operates on a no profit or no loss basis. This is evident from their pricing mechanism. The assessee acquires agricultural land from the farmers by paying compensation to the farmers. Such compensation is determined by Deputy Commissioner of District. Such land would be developed into plots for the purposes of projects approved by State High level Clearance Committee (headed by Chief Minister). State Level Single Window Clearance Committee is headed by Chief Secretary. Govt. of Karnataka and District Level Single Window Clearance Committee is headed by the Deputy Commissioners of the Districts.

35. The assessee prepares a budget for compensation payable for land acquisition and development expenditure thereon. Total pricing of land would primarily include cost of land acquisition and total development cost and 12.75% interest for one year along with Establishment & Board Service Charges towards maintenance of the Board. The computation of total cost of acquisition and development is tabulated below:-

Computation of total cost of acquisition and development	
(A)	Land compensation payable to land owners
(B)	Compensation for cost of structures, wells etc on the land
(A+B)	Cost of land
(C)	Establishment charges at 11% on (A+B)
(D)	Interest at 12.75% p.a on (A+B)
(E)	Total cost of acquisition (A+B+C+D)
(F)	Development cost for formation of layout (road, drainage, water supply, parks etc)
(G)	Board service charges at 10% on (F)
(I)	Interest charged by the Board at 12.75% p.a on (F)
(J)	Total cost of development (F+G+I)
(K)	Total cost of acquisition and development [(E) + (J)]

36. Once the total cost is so computed, it is allocated to the allotable extent of the land (generally around 65 to 70% of land). Thereafter allotment of plots is carried on to the entrepreneurs for the State / District approved projects at the same price. There is no margin included. The objective is not to earn profits on allotment of such plot of land. The excess of income over expenditure or the surplus remaining in the financial statements of the Board primarily arises on account of bank interests. These are excess funds available with the Board which are housed with the banks to generate passive interest income. Thus, the core activity of industrialization of lands (the alleged business activity) does not fetch profits; the source of income which generates surplus is from bank interests and thereby not generated on account of Board's normal course of activities.

37. In view of all the above, it was submitted by the ld. counsel for the assessee that the action of the AO affirmed by CIT(A) that the activities of the assessee are commercial in nature thereby attracting the proviso to section 2(15) is incorrect, contrary to facts, bad in law and liable to be quashed.

38. Without prejudice, the assessee submits that eleemosynary element is not essential element of charity. It is also not a necessary element in a charitable purpose that it should provide something for nothing or for less than it costs or for less than the ordinary price. The surplus

generated. if it is held and applied for charitable purpose, the assessee has to be considered as existing for a charitable purpose. The decisions in Krupanidhi Educational Trust v DIT(E), ITA No. 86/2012 dt. 14.9.2012 - Bangalore ITAT; Loka Shikshana Trust v ClT [1975] 101 ITR 234 (SC), Cricket Association of Bengal v CIT [1959] 37 ITR 277 (Cal), CIT v. Breach Candy Swimming Bath Trust (1955) 27 ITR 279 (Born), The Trustees of the Tribune, In re (1939) 7 ITR 423 (PC) and para No. 19 Page No. 528 — Volume I of The Law and Practice of Income tax by Kanga, Palkhivala and Vyas was relied upon in support of the above principle.

Difference between 'business activity' and 'activity with business principles'

39. There is a subtle difference between the phrase 'carrying on activities in the nature of business' and 'carrying on activities on business principles'. The former refers to activity itself assuming the character of business and the latter refers to activity carried on for a different purpose but with the acumen of business world. The latter indicates the import of business kind efficiency in carrying out activities. It is an evidence of being organized and carrying on activities in a structured and efficient manner.

40. Mere adoption of 'business principles' does not transform a charitable institution into a business entity. The Apex Court has echoed similar view in the case of CIT v Andhra Pradesh State Road Transport (1986) 159 ITR I (SC) wherein he Court observed as under:-

> *"No activity can be carried on efficiently, properly, adequately or economically unless it is carried on business principles. If an activity is carried on business principles, it would usually result in profit, but, as pointed out by this court in Surat Art Silk Cloth Manufacturers Associations case [1980] 120 ITR ('SC'), it is not possible so to carry on a charitable activity in such a way that the expenditure balances the income and there is no resultant profit, for, to achieve this, would not only be difficult of practical realisation but would reflect unsound principles of management."*
>
> *(emphasis supplied)*

41. In the present case, the assessee has carried on its activities on business principles and sound principles of management. As a result, the assessee has been able to repeatedly generate surplus funds. This fact by itself does not render the assessee a 'non-charitable entity; but only is an execution of sound management principles by a

charitable organisation. The assessee undertakes development of industries and infrastructure in the state of Karnataka. It is not carrying on business; but executing the tasks assigned by the State Government under the KIAD legislation. There is no occasion for the office bearers to take the 'profit making' route as the funds and their deployment is under the surveillance of the State Government (through its office bearers/public servants). To conclude, the activities of the assessee do not constitute business.

42. The learned counsel for the Assessee referred to several judicial pronouncements. We will make a reference to those decisions at the appropriate place, to the extent it is necessary to dispose this appeal.

43. The learned DR placed strong reliance on the findings of the AO in the order of assessment and the order of the CIT(A).

44. We have given a very careful consideration to the rival submissions. The purpose for which the Assessee exists is for the 'advancement of any other object of general public utility". The fact that the Assessee enjoyed registration u/s.12AA of the Act in the past is itself sufficient to come to this conclusion. The withdrawn of registration u/s.12AA of the Act was only consequent to the introduction of the proviso to Sec.2(15) of the Act by the Finance Act, 2008. Therefore the question that we need to be answered is as to whether the proviso to Sec.2(15) of the Act would be applicable to the case of the Assessee.

45. We shall now understand the approach to be adopted in coming to the conclusion as to whether the proviso to Sec.2(15) of the Act will be applicable to the Assessee in the light of the decision of the Hon'ble Delhi High Court in the case of India Trade Promotion Organization Vs. DGIT(Exemption) and others 371 ITR 333 (Delhi). The learned counsel for the Assessee has placed strong reliance on this decision to support his plea that the proviso to Sec.2(15) of the Act is not applicable to Assessee. The facts of the case before the Hon'ble Delhi High Court in the case of India Trade Promotion Organization (supra) was that the Assessee in that case enjoyed the benefit of exemption u/s.10(23C)(iv) of the Act. Sec.10(23C)(iv) provides any income received by any person on behalf of any other fund or institution established for charitable purposes which may be approved by the prescribed authority, having regard to the objects of the fund or institution and its importance

throughout India or throughout any State or States, shall not form part of the total income under the Act. The prescribed authority withdrew the approval granted to the Assessee consequent to the insertion of the proviso to Sec.2(15) of the Act, on the ground that the Assessee was deriving rental income from letting out space for rent during trade fairs and exhibitions, was deriving income from sale of tickets and income from food and beverage outlets. The said withdrawal was challenged by the Assessee before the Hon'ble Delhi High Court. The Hon'ble Delhi High Court had to go into the question as to the scope of the proviso to Sec.2(15) of the Act. The Hon'ble Delhi High Court has laid down the following very important principles as to how the proviso to Sec.2(15) of the Act has to be interpreted:-

(i) The proviso to Sec.2(15) of the Act introduced by virtue of the Finance Act, 2008 with effect from 01.04.2009 has two parts. The first part has reference to the carrying on of any activity in the nature of trade, commerce or business. The second part has reference to any activity of rendering any service —in relation to any trade, commerce or business. Both these parts are further subject to the condition that the activities so carried out are for a cess or fee or any other consideration, irrespective of the nature or use or application or retention of the income from such activities. In other words, if, by virtue of a cess' or fee' or any other consideration, income is generated by any of the two sets of activities referred to above, the nature of use of such income or application or retention of such income is irrelevant for the purposes of construing the activities as charitable or not.

(ii) If an activity in the nature of trade, commerce or business is carried on and it generates income, the fact that such income is applied for charitable purposes, would not make any difference and the activity would nonetheless not be regarded as being carried on for a charitable purpose. If a literal interpretation is to be given to the proviso, then it may be concluded that this fact would have no bearing on determining the nature of the activity carried on by the petitioner. But, in deciding whether any activity is in the nature of trade, commerce or business, it has to be examined whether there is an element of profit making or not. Similarly, while considering whether any activity is one of rendering any service in relation to any trade, commerce or business, the element of profit making is also very important.

(iii) The meaning of the expression "charitable purposes" has to be examined in the context of "income", because, it is only when there is income the question of not including that income in the total income would arise. Therefore, merely because an institution, which otherwise is established for a charitable purpose, receives income would not make it any less a

charitable institution. Whether that institution, which is established for charitable purposes, will get the exemption would have to be determined having regard to the objects of the institution and its importance throughout India or throughout any State or States.

(iv) Merely, because an institution derives income out of activities which may be commercial, that does, in any way, affect the nature of the Institution as a charitable institution if it otherwise qualifies for such a character.

(v) Merely because a fee or some other consideration is collected or received by an institution, it would not lose its character of having been established for a charitable purpose. If the dominant activity of the institution was not business, trade or commerce, then any such incidental or ancillary activity would also not fall within the categories of trade, commerce or business. If the driving force is not the desire to earn profits but to do charity, the exception carved out in the first proviso to Section 2(15) of the said Act would not apply.

(vi) If a literal interpretation were to be given to the said proviso, then it would risk being hit by Article 14 (the equality clause enshrined in Article 14 of the Constitution). Courts should always endeavour to uphold the Constitutional validity of a provision and, in doing so, the provision in question may have to be read down, as pointed out above.

(vii) Section 2(15) is only a definition clause. Section 2 begins with the words, —in this Act, unless the context otherwise requires. The expression "charitable purpose" appearing in Section 2(15) of the said Act has to be seen in the context of Section 10(23C)(iv). When the expression "charitable purpose", as defined in Section 2(15) of the said Act, is read in the context of Section 10(23C)(iv) of the said Act, we would have to give up the strict and literal interpretation sought to be given to the expression "charitable purpose" by the revenue.
(viii) The expression "charitable purpose", as defined in Section 2(15) cannot be construed literally and in absolute terms. The correct interpretation of the proviso to Section 2(15) of the said Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the

nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose'. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes.

(emphasis supplied)

46. It can be seen from the various provisions of the KIAD Act which we have set out in the earlier part of the order that the dominant and prime objective of the Assessee is not profit making. Prior to the introduction of the proviso to Section 2(15) of the Act, there was no dispute that the Assessee was established for charitable purposes. We shall now take a look at the Income and Expenditure Account for the year ended 31.3.2009 of the Assessee. The income side of the Account shows that the main component of income of the Assessee is derived in the form of interest of Rs.131.17 crores. Schedule "P" to the Income and Expenditure Account shows the break-up of the interest receipt by the Assessee. The interest on Fixed deposits is Rs.120.90 Crores. The Earnest Money Deposit given by the allottees are parked by the Assessee in fixed deposit and those deposits has earned the aforesaid interest income. Therefore there can be no profit element in earning this interest income. Besides the above, the other components of interest are interest from Allottees, penal interest from Allottees, interest on staff loan, interest from SB and others, interest on seed money, dividend received and interest on income tax refund. The other component of income is gain on disposal of land, sale of application forms, recoveries of fines and penalties, interest, other receipts, rent, forfeiture of deposits, water supply charges. The income from sale of land is Rs.18.69 Crores. The expenditure incurred by the Assessee comprises of repairs

and maintenance, administrative expenses, water and electricity charges, special and other charges, Depreciation. If the gain on disposal of land of Rs.18.69 Crores which is the primarily object of the Assessee and expenditure in the form of administrative expenses of Rs.15.42 Crores and 10.61 Crores which are fixed expenses and necessary to carry on the primary object alone are considered than there would be loss. This by itself would demonstrate that the Assessee does not exist for profit.

47. The main aim and object for which the Assessee was established is to (a) Promote rapid and orderly development of industries in the stale. (b)Assist in implementation of policies of Government within the purview of KIAD Act. (c) Facilitate in establishing infrastructure projects.(d)Function on "No Profit - No Loss" basis. For the above purpose, the Assessee (a)Acquire land and form industrial areas in the state.(b)Provide basic infrastructure in the industrial areas.(ç) Acquire land for Single Unit Complexes.(d)Acquire land for Government agencies for their schemes and infrastructure projects. The dominant and main object of the Assessee is charitable and not for making profits.

48. A look at the income stream of the Assessee clearly reveals that all the activities from which the Assessee derives income are an inherent part of the main object of the Assessee. It is clear from the facts of the case that profit making is not the driving force or objective of the Assessee. Rather the purpose for which the Assessee was created is to regulate and develop drinking water and drainage facilities in the urban areas of the State of Karnataka and for matters connected therewith. This makes it clear that any income generated by the Assessee does not find its way into the pockets of any individuals or entities. It is to be utilized fully for the purposes of the objects of the petitioner.

49. Keeping in mind the above factual aspects and the provisions of the KIDA Act, and principle laid down in the aforesaid decision of the Hon'ble Delhi High Court in the case of India Promotion Organization (supra), in our view, will clearly show that the Assessee does not driven primarily by desire or motive to earn profits but to do charity through advancement of an object of general public utility. The assessee is operating on no profit basis. This is substantiated by the actual income received on operations of the Assessee and the expenditure incurred set out in the earlier paragraphs of this order. The proviso to Sec.2(15) of

the Act is therefore not applicable to the case of the Assessee. We therefore hold that the Assessee is entitled to the benefits of Sec.11 of the Act. The AO has not disputed the conditions necessary for allowing exemption u/s.11 of the Act, except the applicability of proviso to Sec.2(15) of the Act. In view of our conclusions that the said proviso is not applicable to the case of the Assessee, we hold that the Assessee's income is not includible in the total income and therefore the income returned by the Assessee is directed to be accepted."

16. The above said order has been followed by the other Coordinate Benches in respect of the A.Ys. 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 by observing that the facts for the years under consideration as well as preceding and succeeding years are same.

17. We have also perused the Division Bench judgment of the Hon'ble Jurisdictional High Court in respect of the A.Y. 2009-10 wherein the Hon'ble High Court has held as follows:

"7. We have considered the submissions made by learned counsel for the parties and have perused the records. Admittedly, the assessee is a statutory body, which is established and incorporated under Section 5 of the KIAD Act. The assessee has been constituted to make provision for orderly establishment and development of Industries in suitable areas in the State of Karnataka. Section 6 of the KIAD Act deals with the constitution of the Board of the Assessee, which provides that the officers of the State Government, namely, the Secretary to the Government of Karnataka, Commerce and Industries, Department who shall ex- officio be the Chairman of the Board, the Secretary to the Government of Karnataka, Finance Department, the Secretary to Government, Housing and Urban Development Department, the Commissioner for Industrial Development and Director of Industries and Commerce, the Chairman and Managing Director, Karnataka State Industrial Investment and Development Corporation Limited, the Chairman, Karnataka State Pollution Control Board, the Director of Town Planning, the Managing Director, Karnataka State Small Industries Development Corporation Limited, the Managing Director, Karnataka State Financial Corporation, the Executive Member of the Board and two nominees of the Industrial Development Bank of India shall be the members of the Board of the assessee. Thus, the assessee

is virtually controlled by the State Government. From perusal of Section 13 of the Act, it is evident that the function of the Board is to promote and assist in the rapid and orderly establishment, growth and development of Industries and to provide industrial infrastructural facilities and amenity in the industrial areas. The Board of the assessee is also under the obligation to undertake schemes or programmes jointly with the Government or local or statutory authorities or on an agency basis as it considers necessary. Section 17 of the KIAD Act empowers the State Government to issue directions to the Board for carrying out the purposes of the Act which are binding on the Board. Section 18 of the Act mandates that all property, fund and other assets vesting in the Board shall be held and applied by it, subject to provisions and for the purpose of the Act. Thus, from the provisions of the Act, it is axiomatic that the Board of the assessee functions under all pervasive control of the State Government. The Board has been constituted to carry out the activities towards public purpose, namely, orderly establishment and development of Industries in suitable areas in the State.

8. The Tribunal, inter alia by taking into account the provisions of the Act, has held that the primary and dominant object of the assessee is not profit making. It has further been held that income side of income and expenditure account shows that the main component of income of the assessee is derived in the form of interest of Rs.131.17 crores and the interest of fixed deposits is Rs.120.90 crores. Therefore, there is no profit element in earning income as interest. It has also been noticed that the income of the assessee comprises of repairs and maintenance, administrative expenses, water and electricity charges, special and other charges, depreciation. It has also been held by the Tribunal that the assessee has been established to promote rapid and orderly development of industries in the State and to assist in implementation of the policy of the Government within the purview of the KIAD Act, to facilitate in establishing infrastructure projects and to function on 'No Profit-No Loss' basis. It has also been held that the State Government acquires the land for the scheme of the assessee and hand over the same to the assessee after the acquisition for the development of the industrial area. The Tribunal has further held that the profit making is not the driving force or objective of the assessee. The Tribunal has therefore, recorded the conclusion that the assessee is engaged in the charitable activity through advancement of

an object of general public utility and therefore, has concluded that the Proviso to Section 2(15) of the Act is not applicable to the case of the assessee and has further held that the assessee is entitled to benefit of Section 11 of the Act. It has also been noticed that the Assessing officer has not disputed that the assessee fulfills the conditions, which is necessary for allowing the exemption of the deductions applicable under the Act except Proviso to Section 2(15) of the Act. Thus, the Tribunal has held that the Proviso to Section 2(15) of the Act is not applicable to the case of the assessee.

9. The order passed by the Tribunal, in our considered opinion, is based on the meticulous appreciation of materials on record and by no stretch of imagination can be said to be perverse. The issue with regard to the perversity is not raised on behalf of the revenue. Besides that, in case of various statutory bodies, the different High Courts have taken a similar view, namely, in the cases (a) to (f) stated (supra) that which we respectfully agree. In view of the said enunciation of law, substantial question of law, which has been framed by this Court, is answered in the negative and against the revenue."

18. In the above said orders and the judgments, it was held that the assessee is entitled for the exemption u/s. 11 of the Act and the proviso to section 2(15) would not be applicable to them. It was also held that the assessee is operating under the context of no profit no loss and therefore the proviso to section 2(15) will not be applicable.

19. In our view, the proviso to section 2(15) would be applicable to an assessee if their primary object is to earn income out of the activities but in the present facts on hand, the assessee is not doing the activities for earning the profits. In fact the assessee is doing the activity pursuant to the directions of the State Government to develop the industrial areas in the State of Karnataka. If the industries are developed, the public could be benefited and their standard of living would be improved and other indirect benefits would be available to the public. Therefore, it could not be termed that the assessee is earning huge profits out of its activities in order to deny the exemption claimed u/s. 11 of the Act. When the assessee is not doing any trade, commerce or business, they could not be fit into the proviso to

section 2(15) of the Act. Mere earning of profit is immaterial but it should be proved that the profits are derived from carrying out the business then only the proviso to Sec 2(15) would apply. When the assessee is not carrying on any trade or commerce then the earning of profits would not disentitle the assessee from claiming exemption u/s 11 of the Act. In such circumstances, we are inclined to accept the plea of the assessee that their income is eligible for exemption u/s. 11 of the Act.

20. In respect of the other additions / disallowances made u/s. 43B of the Act, raised in ground no. 4, we already held that the income of the assessee is eligible for exemption u/s. 11 of the Act and therefore the additions / disallowances u/s. 43B would not arise. We, therefore delete the said additions made by the AO which was confirmed by the Ld.CIT(A).

21. In respect of the ground no. 5, the addition of Rs. 2 crores in respect of grant-in-aid from Central Government, we are of the view that the said amount is nothing but a corpus and therefore the said grant-in-aid granted by the Central Government could not be added as income. In fact, the said grant-in-aid is an eligible item for exemption u/s. 11(1)(b) of the Act. We, therefore allow the above said ground no. 5.

22. Insofar as the ground no. 6 in respect of both the A.Ys. under consideration, the assessee had sought for the setting off of excess application of income of earlier years as against any additions sustained in the appeals related to the A.Ys. 2016-17 and 2017-18. In support of the proposition, the Ld.AR relied on the orders of this Tribunal for the A.Ys. 2009-10 and 2010-11 in which the Tribunal had confirmed the relief granted by the Ld.CIT(A) by allowing to adjust the tax liability based on the addition sustained as against the excess application of income available for the earlier years. In the present appeals, we are not confirming any additions made by the AO and therefore the question of set off of the application of income of earlier years against the addition sustained would not arise and therefore this ground in both the appeals are decided

accordingly. We have also perused the Ld.CIT(A) order in which he has relied on the amendment made by the Finance Act, 2014 in which the sub-section (6) of section 11 was inserted for not accepting the above said ground. As rightly contended by the Ld.AR, the said amendment does not deal with the set off of excess application of income and therefore the finding given by the Ld.CIT(A) is not in order.

23. In the appeal in ITA No. 355/Bang/2024 in respect of A.Y. 2017-18, the assessee also raised a ground no. 4 in which the assessee had disputed the addition of Rs. 4.17 crores on the sale of flats in Peenya. The AO had alleged that the said income was not accounted for by the assessee as income and therefore the said amount was added to the income of the assessee. It is the contention of the Ld.AR that the said addition was made based on the C & AG audit report wherein it was mentioned that the assessee had earned a profit of Rs. 417.43 lakhs. The assessee submitted that the figures adopted by the C & AG is not correct and also submitted that that they have no idea, on what basis the figures were adopted by the Audit Wing of the C & AG. The assessee submitted that the actual profits could be about Rs. 2,36,45,956/- which was also considered while computing the profits and also the same was produced before the AO at the time of remand report as well as before the Ld.CIT(A) and submitted that the said profits were accounted in the F.Y. 2018-19 and also the said incomes were taken up while computing the total income for the A.Y. 2019-20. The Ld.AR also submitted that the relevant ledger account was also produced and therefore it would not be correct to make an addition of Rs. 4.17 crores in respect of the sale of the flats. Alternatively, if exemption u/s. 11 is allowed, the income of the assessee would be computed u/s. 11 based on the commercial accounting principles and as per Circular No. 5-P(LXX-6) of 1968 dated 19/06/1968 issued by the CBDT which was also relied on by the Hon'ble Mumbai ITAT in the case of Bai Sonabai Hirji Agiary Trust vs. ITO reported in (2005) 93 ITD 70 (Mum) SB. In the earlier paragraphs, we already held that the income of the assessee is eligible for exemption u/s. 11 of the Act and in that circumstances, the alleged income on the sale of flats

would also be eligible for deduction. Further, it is the case of the assessee that the income on the sale of flats were already taken into consideration while making the computation of income and if the said income was already considered by the assessee, then the same is also not liable to be taxed under the provisions of the Act. Therefore, we are deleting this addition of Rs. 4.17 crores in respect of the sale of flats on both the grounds.

24. In the ground no. 5, the assessee had objected the addition of Rs. 1.65 crores in respect of the services charges received from the Udupi Power Corporation Ltd. towards the allotment of land. The assessee had explained the said service charges before the AO by stating that the said service charges received during the F.Y. 2016-17 would be recognised at the time of execution of the sale deed and therefore the said amount would not be added as income to the F.Y. 2016-17. The Ld.AR also submitted that based on the Circular No. 5-P(LXX-6) of 1968 dated 19/06/1968 issued by the CBDT, the income as disclosed in the accounts plus its other income computed will be the income of the trust for the purpose of section 11(1). Therefore, the Ld.AR submitted that the addition of service charges could not be made based on the above said circular. Alternatively, the Ld.AR submitted that the service charges would be accounted at the time of execution of sale deed and therefore the said amount would not be taken into consideration while arriving the income for the F.Y. 2016-170 The Ld.AR further submitted that whether the service charges should be accounted for at the time of allotment of land or at the time of execution of sale deed is a matter of timing difference and therefore it is only a revenue neutral. Therefore, the Ld.AR prayed to delete the said addition.

25. We have considered the issue and also the circular issued by the CBDT and the audited financial statements for the year ending 31/03/2017 in which it was mentioned that the service charges received is recognised at the time of execution of sale deed. It is also a fact that during the F.Y. 2016-17, there was no sale deed executed between the assessee and the Udupi Power Corporation Ltd. and therefore the said service charges are not

recorded during the F.Y. 2016-17. Further, the circular also mentioned that the other income of the trust will also be an income of the trust for the purposes of section 11(1). In such circumstances, we do not think that this addition is to be sustained. Even otherwise, there is no loss to the revenue if the said service charges were included in the financial year in which the sale deed was executed by the assessee. We, therefore accepted the ground raised by the assessee and delete this addition also.

26. In the result, the grounds raised by the assessee in both the appeals are allowed except the limitation ground.

Order pronounced in the open court on 02nd March, 2026.

Sd/-	Sd/-
(WASEEM AHMED)	(SOUNDARARAJAN K.)
Accountant Member	Judicial Member

Bangalore,
Dated, the 02nd March, 2026.
/MS /

Copy to:

1. Appellant	2. Respondent
3. CIT	4. DR, ITAT, Bangalore
5. Guard file	6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore