

Court No. - 3

1. Case :- INCOME TAX APPEAL No. - 35 of 2022
Appellant :- Commissioner Of Income Tax (Exemptions) And Another
Respondent :- M/S Ghaziabad Development Authority
Counsel for Appellant :- Ashish Agrawal
Counsel for Respondent :- Abhinav Mehrotra, Anshul Mittal

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2. Case :- INCOME TAX APPEAL No. - 33 of 2022
Appellant :- Commissioner Of Income Tax And Another
Respondent :- M/S Ghaziabad Development Authority
Counsel for Appellant :- Ashish Agrawal

3. Case :- INCOME TAX APPEAL No. - 41 of 2022
Appellant :- Commissioner Of Income Tax And Another
Respondent :- M/S Aligarh Development Authority
Counsel for Appellant :- Ashish Agrawal
Counsel for Respondent :- Abhinav Mehrotra

4. Case :- INCOME TAX APPEAL No. - 48 of 2022
Appellant :- Commissioner Of Income Tax Exemptions Lucknow And Another
Respondent :- M/S Ghaziabad Development Authority
Counsel for Appellant :- Ashish Agrawal
Counsel for Respondent :- Abhinav Mehrotra, Anshul Mittal

5. Case :- INCOME TAX APPEAL No. - 53 of 2022
Appellant :- Commissioner Of Income Tax Exemptions Lucknow And Another
Respondent :- M/S Haridwar Development Authority
Counsel for Appellant :- Ashish Agrawal

6. Case :- INCOME TAX APPEAL No. - 67 of 2022
Appellant :- Commissioner Of Income Tax And Another
Respondent :- M/S Ghaziabad Development Authority
Counsel for Appellant :- Ashish Agrawal
Counsel for Respondent :- Abhinav Mehrotra, Anshul Mittal

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

1. Heard Sri Ashish Agrawal, learned counsel for the appellant and Sri Abhinav Mehrotra, learned counsel for the respondent/Development Authority.

2. The facts and controversy involved in this Bunch of appeals are similar and, therefore, with the consent of learned counsels for the parties the Income Tax Appeal No.35 of 2022 is treated as a leading appeal and facts thereof are being noted.

3. Briefly stated facts of the present case are that the respondent – assessee is a Development Authority constituted under the provisions of the U.P. Urban Planning and Development Act, 1973 with the object of development of areas according to plan and for that purpose, the authority has been empowered to acquire, hold, manage and dispose land and other properties to carry out building activities, engineering and other operations etc. For the Assessment Year 2012-13, the assessment of the respondent - assessee was framed under Section 147/143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act 1961”), after disallowance of assessee’s claim of exemption under Section 11 of the Act, 1961 and an addition of Rs.3,46,03,14,429/- being the net amount transferred to Infrastructure Development Fund, was determined as Income of the Respondent - Development Authority/Assessee. The exemption was disallowed by the Assessing Officer on the ground that registration under Section 12AA granted to the assessee stood cancelled vide order dated 31.03.2014, passed by the CIT, Ghaziabad. Further, the Assessing Officer has disputed the charitable nature of activities carried out by the respondent – assessee in terms of Section 2(15) of the Act, 1961.

4. Aggrieved with the assessment order the respondent - assessee preferred an Appeal before the CIT (A) who dismissed the appeal. Therefore, the respondent – assessee had filed appeal before the Income Tax Appellate Tribunal, Delhi Bench ‘C’ : New Delhi. The Tribunal considered the submissions of both the sides and recorded the following findings/held, as under :-

*“3.1 With respect to ground Nos.3 to 6, the Ld. AR submitted that the issue of cancellation of registration u/s 12AA of the Act had been considered by this Tribunal and **the Tribunal had restored the registration u/s 12AA vide order dated 29.04.2019 in ITA No.2400/Del/2014.** A copy of the said order was placed on record by the Ld. AR and it was submitted that the Tribunal, after taking note of the objects and activities of the assessee had held that the **objects of the assessee were charitable in nature in terms of Section 2(15) of the Act** and further that the assessee was entitled to registration u/s 12AA of the Act. The Ld. AR argued that once the objects and activities were held to be charitable there remained no basis for denying the benefit of exemption u/s 11 of the Act.*

5.0 Having heard the rival submissions and having perused the material on record, we note that the issue for our consideration is the allowability of assessee’s claim of exemption u/s 11 read with provisions of Section 2(15) of the Act. The assessee authority has been created under the UP Urban Planning Development Act, 1973 with the preliminary object of undertaking planned development in specified area. For the purpose of ascertaining eligibility u/s 11 of the Act, it is important to analyze and understand the objects, purpose and operational structure of the authority so as to as certain whether the activities carried out by the assessee fall within the definition of charitable purpose as defined u/s 2(15) of the Act while keeping in mind the language and intent of the proviso as well as. However, we note that this exercise has been cut short by the order of the Co-ordinate Bench in assessee’s own case in ITA No.2400/Del/2014 wherein, while deciding the eligibility of registration u/s 12A of the Act, the Tribunal had the occasion to indepth examine the objects and activities of the assessee authority in context of Section 2(15) of the Act. The Tribunal proceeded to restore the registration u/s 12AA of the Act by holding as under:

“13 In the case of Navodaya Education Trust and G D Singla Charitable Trust mentioned Supra the registration was refused as the entities were operated by a single family unit. In the case of Self Employers Service Society, it was held that there was no charitable activity undertaken by the society. Similarly the case of UPDA, there was no finding of charitable work undertaken by the association. The case of Travancore Education Society the registration was cancelled due to collection of capitation fee which was prohibited by law. Thus we find none of the cases referred to by the revenue were in the work of development of townships or city development by the local bodies / improvement trust/ developing authority. The facts and the operations

of the assessee and the cases referred above are on different set of circumstances. The only relevant cases referred by the revenue namely JDA and Baddi Barotiwala development authority have been well differentiated by various courts and tribunal as mentioned above and registration was allowed to various development agencies, development authorities, improvement trust by whatever name they are known and in the same line of operation as that of the assessee in question.

14. We also find registration under section 12 AA was directed to be granted by various courts/tribunals in the case of

- Moradabad Development Authority,*
- Jaipur Development Authority,*
- Ahmdabad_Urban Development Authority,*
- Jodhpur Development Authority,*
- Improvement Trust, Moga,*
- Improvement Trust, Sangrur,*
- Improvement Trust, Khanna,*
- Improvement Trust, Kapurthala*
- Haridwar Development Authority*
- Agra Development Authority*

16 Further we also find that Hon'ble Allahabad High Court has held that the objects and activities of Ghaziabad Development Authority are such that it is eligible for benefit of registration u/s 12A even after proviso to section 2(15) is taken into consideration. The proviso to section 2(15) has been considered by Hon'ble Allahabad High Court in assessee's own case in the order, therefore the judgment of jurisdictional High Court will have the primacy. The Authority GDA is creation of state of U.P UP Urban Planning and Development Act, 1973 where as the other improvement trusts are creation of various state laws involving similar activities. Further examination of the activities of the assessee with regard to the objectives, whether the manner in which the assessee trust was conducting its activities constituted advancement of general public utility as set out in section 2(15) and further whether the work ceased to be for charitable purpose due to the first proviso to section 2(15) which lays down that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, irrespective of the nature of use or application, or retention of the income from such activity we find that the assessee has not brought any changes in the objectives which forces the revenue to change its earlier stand. As long as the object of general public utility is not merely a mask to hide true purpose or rendering of any service in relation thereto, and where such services are being rendered as purely incidental to or as subservient to the main objective of 'general public utility', the carrying on of bonafide activities in furtherance of such objectives of 'general public utility' cannot be hit by proviso to s. 2(15).

17 Hence keeping in view the provisions of the act , objectives of the assessee , judgment in the case of the assessee by the Hon'ble High court of Allahabad, approvals given in the case of other town development agencies, we hold that the assessee trust is carrying out charitable activity of advancement of public utility and the business activity carried out by it are incidental to the attainment of its main object and thus the proviso to section 2(15) is not attracted in the

assessee's case. We therefore hold that the assessee is entitled for restoration of registration u/s 12AA of the Income Tax, 1961."

5.1 Therefore, in view of the above observations of the Coordinate Bench of this Tribunal in assessee's own case restoring the registration u/s 12AA of the Act, we are of the opinion that the objects of the assessee authority are charitable in nature and the same are not hit by proviso to Sec.2(15) of the Act. **However, we direct the Assessing Officer to examine the activities of the assessee authority and if the same are found to be in consonance with the objects, the benefit of exemption u/s 11 is to be allowed. Accordingly, Ground Nos.3 to 6 are allowed for statistical purposes.**

8.0 We have considered the arguments of both the parties with respect to Ground Nos. 7 & 8 and have also gone through the material on record. **We note that the issue of nature and taxability of amount transferred to the Infrastructure Development Fund was considered by the Co-ordinate Bench of this Tribunal in the case of Saharanpur Development Authority in ITA No.4113/Del/2017 vide order dated 24.03.2021 wherein it was held as under:**

"6. It is noted from the material on record that in the case, similar issue has been decided in the case of the assessee for the assessment years 2004-05 to 2007-08 by the Co-ordinate Bench of ITAT "G" Bench, Delhi where in it was held that, "the appellant has received in infrastructure funds under the orders of Govt. of U.P. and it was required to use such funds as per the direction of the High Powered Committee and has no control over the said funds. Therefore, the interest income from such funds is not the income of the appellant." 7. This observation has been given consistently by the ITAT in favour of the assessee for the Assessment years 2004-05 to 2007-08. Further, the Hon'ble Allahabad High Court in the case of Lucknow Development Authority has held that the money transferred to the Infrastructure fund account is to be utilized for the purpose of the projects as specified by the Committee having constituted by the State Government and cannot be treated as belonging to the authority or receipt is taxable nature in its hand."

8.1 Identical issue was also considered by the Co-ordinate Bench in the case of *Khurja Development Authority vs. ACIT* in ITA No.5103/Del/2016 vide order dated 03.04.2019. The relevant observations of the Co-ordinate Bench are reproduced herein under:

"12. As regards, the addition made on account of infrastructure fund, Ld. Counsel for assessee relied upon the judgment of Allahabad High Court in the case of *CIT vs. Lucknow Development Authority* 265 CTR 433 in which it was held as under: "Where the trust is carrying out its activities on noncommercial lines with no motive to earn profits, or fulfillment of its aims and objectives, which are charitable in nature and in the process earn some profits, the same would not be hit by proviso to section 2(15)."

13. Ld. Counsel for assessee submitted that this issue is related to exemption u/s 11 of the Act and that assessee is custodian of the amount in question and this amount can be used by the assessee as per directions of the State Authorities. Therefore, it can never be the income of the assessee.

14. Ld. DR, however, submitted that this issue has been decided in detail by the CIT(Appeals), therefore, the order may be maintained. 15. After considering the rival submissions, we are of the view that this issue also requires reconsideration at the level of the AO. The assessee has now been granted registration u/s 12AA of the Act and thus, assessee is entitled for exemption from income u/s 11 of the Act as per law. Even if the infrastructure reserve fund may be treated as income of assessee, it will have to be examined, whether, assessee is entitled for exemption u/s 11 of the Act on the same income. Therefore, it would depend upon findings with regard to exemption u/s 11 of the Act. We have already restored the issue of exemption u/s 11 of the Act to the AO for fresh decision as per law. Further, the authorities below have not appreciated the fact that assessee claimed that infrastructure fund was received for development activities from the State Authorities, the assessee has to spend the amount on the same as per approval of the State Authorities. Thus, there may not be any profit element out of the same sources. It may also be noted here that whatever amount has been spent by assessee on the same issue, the AO has accepted that assessee spent the same amount as per the directions of the State Authorities. Then in that event it is difficult to believe that part amount is capital receipt and part would be Revenue in nature. Therefore, there was no justification for Ld. CIT(A) to hold that the impugned receipt is Revenue in nature. This issue also requires reconsideration in view of the fact that assessee is entitled for exemption u/s 11 of the Act. We, accordingly, set aside the orders of the authorities below on the issue of infrastructure fund as well and restore the issue to the file of AO with direction to redecide the issue as per law by giving reasonable opportunity of being heard to the assessee.”

5. The impugned order of the Income Tax Appellate Tribunal shows that the order cancelling the registration under Section 12 AA of the Act, 1961 has been set aside by the Tribunal and the Tribunal has restored the registration of the respondent - assessee under Section 12 AA of the Act, 1961 by order dated 29.04.2019 in ITA No.2400/DEL/2014. In paragraph 5.1 the tribunal has recorded the findings of fact that the nature of activity of the respondent - assessee is charitable and it is not hit by proviso of Section 2(15) of the Act, 1961. The Tribunal has remanded the matter to the Assessing Officer to examine the activity of the respondent - assessee and if it is found to be inconsonance with the object the benefit of exemption under Section 11 has been directed to be allowed. The Tribunal has also considered the taxability of the amount transferred to the Infrastructure Development Fund and followed its decision dated 24.03.2021 in ITA No.4113/DEL/2017 and directed the Assessing Officer to adjudicate the issue afresh keeping in mind the ratio laid down by Co-

ordinate benches of the Tribunal in Saharanpur Development Authorities case and Khurja Development Authorities'. Thus, the tribunal has remanded the matter to the assessing officer to examine the activities of the respondent assessee for allowing benefit of exemption under Section 11 of the Act. The assessing officer has also been directed to adjudicate the issue of transfer of fund to infrastructure development fund in terms of the ratio laid down by Co-ordinate benches of the Tribunal in the case of Saharanpur Development Authorities and Khurja Development Authority. That apart the question of grant of registration under Section 12 AA of the Act, 1961 to Development Authority like the present respondent assessee, was considered by Co-ordinate bench of this court in Income Tax Appeal No. 657 of 2007 and other connected appeals decided on 29.08.2016 in the matters of Hapur Pilkhuwa Development Authority, Ghaziabad Development Authority, Kanpur Development Authority, A.D.A. Allahabad, Aligarh Development Authority, Jhansi Development Authority, Gorkahpur Development Authority and Banda Development Authority in various income Tax appeals and it was held in paragraphs 18, 19, 20, 21 and 22 as under :

"18. We find it unnecessary to go for much research work and debate issue further for the reason that in respect to a similar authority, namely, "Lucknow Development Authority", which is also constituted under U.P. Act, 1973, a similar question, whether activities of Development Authority can be said to be 'charitable' as defined under Section 2(15) came up for consideration before a Division Bench in CIT Vs. Lucknow Development Authority 2014 (98) DTR (All) 183 and Court held as under:

"21. We have heard learned counsel for the parties and gone through the material available on record.

It is undisputed fact that the assessee is a "statutory authority" which was established under the provisions of the Uttar Pradesh Planning and Development Act, 1973. In the instant case, prior to 1st April, 2003, the assessee was enjoying exemption under Section 10(20A) and Section 10(29). When these provisions were amended w.e.f. 1st April, 2003, then the necessity arose to register these institutions under Section 12A. In view of the objects, there is no good reason for holding that statutory bodies could not be treated as "charitable" within the meaning of Section 2(15). The object of the "Authority" is to provide shelter to the homeless people, therefore, there is no objectionable material to treat these institutions as non-charitable. The registration under Section 12A is mandatory to claim exemption under Sections 11

& 13, but registration alone cannot be treated as conclusive. It is always open to Revenue Authorities, while processing return of income of these assesseees, to examine the claim of the assesseees under Sections 11 & 13 and give such treatment to these institutions as is warranted by the facts of the case. Revenue Authorities are always at liberty to cancel the registration under Section 12AA(3). Moreover, it may be mentioned that the benefit of Section 11 is not absolute or conclusive. It is subject to control of Sections 60 to 63. If it is found by keeping in view the provisions of Sections 60 to 63 that it is not so includible then such income does not qualify for any relief."

"25. Further, it may be mentioned that Section 12AA of the Act lays down the procedure for registration in relation to the conditions for applicability of Sections 11 & 12 as provided in Section 12A. Therefore, once the procedure is complete as provided in sub-section (1) of Section 12AA and a certificate is issued granting registration to the trust or institution the certificate is a document evidencing satisfaction about (i) the genuineness of the activities of the trust or institution, and (ii) about the objects of the trust or institution. Section 12A stipulates that the provisions of Sections 11 & 12 shall not apply in relation to income of a trust or an institution unless the conditions stipulated therein are fulfilled. Thus, granting of registration under Section 12AA denotes that the conditions laid down in Section 12A stand fulfilled.

26. The effect of such a certificate of registration under Section 12AAA, therefore, cannot be ignored or wished away by the Assessing Officer by adopting a stand that the trust or institution is not fulfilling the conditions for applicability of Sections 11 & 12. In the case of *Gestetner Duplicators P. Ltd. vs. CIT* (1979) 8 CTR (SC) 371 : (1979) 117 ITR 1 (SC), the Apex Court was called upon to determine as to whether the contribution made by the employer should be treated as a business expenditure, the requirement being contribution should be made to a recognized provident fund.

27. Needless to mention that this Hon'ble Court in the case of *CIT vs. M/s. U.P. Forest Corporation Ltd.*, in Income Tax Appeal No. 70 of 2009 observed that the Forest Corporation being an statutory entity is entitled for the registration under Section 12A of the Act. The said observations was upheld by the Hon'ble Apex Court vide its order dated 12th May, 2011 in Special Leave Petition (Civil) No. 2590 of 2011.

28. We may also like to refer a C.B.D.T. Circular No. 11 of 2008 dated 19th December, 2008 [(2009) 221 CTR (St) 1 : (2009) 17 DTR (St) 1] wherein the applicability of the commercial activities in respect of charitable purpose has been clarified. The said circular is reproduced as below:

"2.2. 'Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under Section 11(4A) or the seventh proviso to Section 10(23C), which are that-

(i) the business should be incidental to the attainment of the objectives of the entity, and

(ii) separate books of accounts should be maintained in respect of such business."

29. For the applicability of proviso to Section 2(15), the activities of the trust should be carried out on commercial lines with intention to make profit. Where the trust is carrying out its activities on non-commercial lines with no motive to earn profits, for fulfillment of its aims and objectives, which are charitable in nature and in the process earn some profits, the same would not be hit by proviso to section 2(15). The aims and objects of the assessee-trust are admittedly charitable in nature.

30. Mere selling some product at a profit will not ipso facto hit assessee by applying proviso to Section 2(15) and deny exemption available under Section 11. The intention of the trustees and the manner in which the activities of the charitable trust institution are undertaken are highly relevant to decide the issue of applicability of proviso to Section 2(15).

31. There is no material/evidence brought on record by the revenue which may suggest that the assessee was conducting its affairs on commercial lines with motive to earn profit or has deviated from its objects as detailed in the trust deed of the assessee. In these facts and circumstances of the case, the proviso to Section 2(15) is not applicable to the facts and circumstances of the case, and the assessee was entitled to exemption provided under Section 11 for the relevant assessment year.

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

19. The findings and observations in the aforesaid judgment are squarely applicable in the case in hand also.

20. We also find that another statutory body, namely, Krishi Utpadan Mandi Samiti constituted under U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as "Act, 1964") was also registered under Section 12AA of Act, 1961 and the question whether amount transferred to Mandi Parishad would constitute application of income for 'charitable purpose' under Section 11(1)(a) of Act, 1961 has been decided against Revenue by Supreme Court in Commissioner of Income Tax Vs. Krishi Utpadan Mandi Samiti 2012 (12) SCC 267 wherein Court has also confirmed this Court's judgment dated 04.12.2009 passed by this Court at Lucknow in I.T.A. No. 102 of 2009.

21. In view of above, we answer above question against Revenue and confirm judgment of Tribunal impugned in all these appeals.

22. All the appeals are, accordingly, dismissed."

6. The appellant herein has challenged the aforesaid judgment of this Court dated 29.8.2016 in Income Tax Appeal No.657 of 2007

(Commissioner of Income Tax Ghaziabad and another Vs. Hapur Pikuwa Development Authority Preet Vihar) in Special Leave Petition (Civil) Diary No(s).26127 of 2018 which was dismissed by Hon'ble Supreme Court by order dated 27.08.2018 with cost of Rs.10 lacs. The aforesaid order of Hon'ble Supreme Court dated 27.08.2018 is reproduced below :

“This petition for special to leave has been filed by the Commissioner of Income Tax, Ghaziabad.

First of all this petition has been filed after a delay of 596 days. There is an inadequate and unconvincing explanation given for the delay in filing the petition.

Secondly, it is mentioned in the proforma for first listing that a similar matter being C.A. No. 7096/2012 is pending in this Court. However, the office has given a report stating that C.A. No. 7096/2012 was decided by this Court as far back as on 27.09.2012. In other words, the petitioners have given a totally misleading statement before this Court.

We are shocked that the Union of India through the Commissioner of Income Tax has taken the matter so casually.

As we have noted, there is an inadequate explanation of delay of 596 days in filing the petition and a misleading statement about pendency of a similar civil appeal. Under the circumstances, we dismiss the petition with costs of Rs.10 lacs to be paid to the Supreme Court Legal Services Committee within four weeks from today. The amount be utilized for juvenile justice issues.

List the matter for compliance after four weeks.”

7. In view of the facts and circumstances and legal position as noted above, we find that no substantial question of law is involved in the impugned order of the Tribunal. The controversy is concluded by findings of fact and the judgments of this Court as affirmed by the Hon'ble Supreme Court.

8. In view of the aforesaid, all the appeals are **dismissed and all the pending applications are disposed of.**

Order Date :- 4.8.2022/vkg