आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गा राव,न्यायिकसदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER&
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं**./I.T.A.No.295/Viz/2012**
(निर्धारण वर्ष**/Assessment Year:)**

Visakhapatnam Metropolitan Region Development Authority (Formerly known as Visakhapatnam Urban Development Authority) 8th Floor, Udyog Bhavan Siripuram Jn., Visakhapatnam **[PAN : AAALV0082F]**	Vs	Chief Commissioner of Income Tax (OSD) Visakhapatnam
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Shri S.Ravi Kumar, Sr.Counsel & Shri V.Satish, Advocate & Sr. Counsel
प्रत्यार्थी की ओर से / Respondent by	:	Smt.M.Kiranmayee, Sr.Standing Counsel
सुनवाई की तारीख / Date of Hearing	:	09.03.2020
घोषणा की तारीख/Date of Pronouncement	:	20.03.2020

आदेश /O R D E R

Per Bench:

This appeal is filed by the assessee against the order of the Chief Commissioner of Income Tax (OSD), (in short CCIT) Visakhapatnam in F.No.Asst/VUDA/CIT-1/VSP/2011-12 dated 04.05.2012.

2. All the grounds of appeal are related to the cancellation of registration granted u/s 12AA(3) of the Income Tax Act, 1961 (in short 'Act'). The Chief Commissioner of Income Tax (OSD) (in short CCIT), Visakhapatnam found that Visakhapatnam Urban Development Authority (hereinafter referred to as VUDA) now name changed to Visakhapatnam Metro Region Development Authority (VMRDA in short) was granted registration u/s 12AA of the Act on 31.07.2006 , with a condition that surplus of income if any should be utilised for attainment of the objects of the assessee and shall not be utilised for any other purpose and also not to divert the funds to State Government.

2. The Ld.CCIT found that the assessee is engaging in commercial activity and auctioned the lands to highest bidders in gross violation of its objects and entered into joint venture for construction of commercial properties with top builders of the region. Therefore, issued show cause notice calling for the explanation of the assessee as to why the registration granted u/s 12AA of the Act, should not be cancelled. In response to which the assessee filed explanation objecting for cancellation of registration and submitted that the assessee has neither violated the provisions of Andhra Pradesh Urban Areas (Development) Act, 1975(in short, APUDA) nor carried on any activity in violation of the objects of APUDA Act. The assessee further submitted to

the Ld.CCIT that the activities of the assessee are genuine and it has carried out its activities in accordance with the APUDA Act, hence, requested not to cancel the registration. The Ld.CCIT considered the submissions of the assessee and found that as per APUDA Act, the assessee is established to promote and secure development of all or any of the areas in it's jurisdiction according to Master plan and for that purpose, assessee has been vested with the powers to acquire by way of purchase or otherwise hold, manage, plan, develop and mortgage or otherwise dispose of land and other property. The development is the predominant object of the assessee. The Ld.CCIT further observed that the happenings in the year 2008 and subsequently, VUDA has lost sight of its aims and objects and functioning as a realtor monopolizing real estate activity, making it the prerogative of the big realtors. The Ld.CCIT further observed that the assessee has sold the lands and remitted the sale proceeds to A.P.State Government in gross violation of it's objectives.

2.1. The assessee argued before the Ld.CCIT that it had acted as an agent for resource mobilisation of state government and sold the state government lands and deposited the sale proceeds in the government account on one occasion and submitted that VUDA acted as a facilitator in auctioning the lands and the said lands do not belong to the assessee. The contention of the assessee was not accepted by the Ld.CCIT for the reason that the VUDA is an independent entity, but not a selling agent of the Government. The submission of the assessee that it was not the owner of the lands was also not accepted by the Ld.CCIT, since VUDA had registered the lands to purchasers as a vendor and the absolute owner of the lands.

2.2. The Ld.CCIT also observed that apart from selling the lands in auction, the assessee also given the lands for development of commercial complexes.

2.3. The Ld.CCIT referred GO No.1401 dt.02.11.2007, wherein the Government categorized the land into two sections. One is Government lands which required to be sold by auction by District Collector, Visakhapatnam and the said auction would be conducted by VUDA and VUDA would receive service charges for it's efforts. The second being land that would be alienated in favour of VUDA, Visakhapatnam by the Government for development of town-ships. Thus, the Ld.CCIT contended that through GOs, land was alienated to VUDA for sale, therefore the ownership of the land by VUDA was beyond any doubt. The contents of the sale deeds also show that the lands belonged to VUDA.

2.4. The Ld.CCIT further found that assessee trust entered into joint venture agreement with M/s Radiant Developers Pvt. Ltd., Hyderabad for construction of houses on 27.08.2005. Similarly, it had entered into an agreement with M/s Global Entropolis Asia Pvt Ltd. for construction of houses on 16.02.2008, for the construction of commercial complexes with M/s Vaibhav Sky Scapes Pvt. Ltd. and for construction of shopping malls and multi-complexes with M/s Ambika Empire Pvt. Ltd., thus, viewed that the activity of VUDA is purely commercial in violation of its objects.

2.5. The Ld.CCIT is of the opinion that VUDA neither sold the land belonging to the State Government nor acted as an agent of the State Government and it has sold the lands belonging to the assessee and remitted the sale proceeds to the kitty of state Government against the objects and the sale proceeds ought to have been fully utilized for the purpose of it's objectives. The VUDA was granted registration with a condition that the surplus generated out of the activities should not be diverted for any other purpose and also should not be remitted to the Government account. The Ld.CCIT relied on the decision of ITAT Chandigarh reported in 103 ITA 988 in the case of Punjab Urban Planning and Development Authority.

2.6. The Ld.CCIT observed that the income of the VUDA consists of following sources :

(i) Entry fee on parks

(ii) General receipts

(iii) Rents on auditoriums / theatres/ g.h.

(iv) Rents on offices

(v) Rents on parks

(vi) Rents on shops

(vii) A.S. charges on deposit works

(viii) A.S. charges on Development charges

(ix) A.S. charges on hose cost receipts etc.

All these receipts and the activities mentioned above establish that the VUDA is indulging in commercial activity and not an entity engaged in the activities to advance the objects of the assessee. Therefore, viewed that the amended provisions of the Income Tax Act u/s 2(15) which has come into effect from 01.04.2009 are also squarely applicable to the assessee. According to amended provisions, in case of any trust or institution involves in carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to trade or commerce or business and such income exceeds Rs.25 lakhs, irrespective of the nature of use or application, the assessee would be disentitled for registration u/s 12AA of the Act. In the instant case, the Ld.CCIT found that the commercial receipts exceeded Rs.25 lakhs, therefore, held that the assessee is not entitled for benefits of exemption u/s 12A of the Act. Accordingly, the Ld.CCIT cancelled the registration already granted u/s 12AA of the Act w.e.f. 2006-07 onwards.

3. The Ld.Sr.Counsel, Shri S.Ravi Kumar (in short Ld.Counsel) along with Shri V.Satish appeared on behalf of the assessee Trust and argued the case. The Ld.Counsel submitted that the Ld.CCIT in his order dated 04.05.2012 cancelled the registration u/s 12AA(3) of the Act for the following reasons

(i) The assessee is engaged in the commercial activity and selling the vacant lands to the highest bidders and entering into joint venture for construction of buildings for commercial purposes which is not the object of the assessee

(ii) Secondly, the assessee acted as an agent to Government of Andhra Pradesh and it is not the scheme of the A.P. Urban Areas(Development) Act 1975(in short UDA act) to reduce VUDA in to mere Selling Agent for resource mobilisation to state.

(iii) Thirdly, the assessee has sold the lands indiscriminately belonging to the State Government and remitted the sale proceeds to Government accounts instead of utilising the funds for it's objective.

(iv) Fourthly, from 2008 onwards, the assessee has lost sight of it's objects, and acted like realtor.

(v) Lastly the assessee is hit by the amendment to section 2(15) of the Act which has come in to Force from 01/04/2009 and hence, not eligible exemption.

3.1. The Ld.Counsel submitted that as per sub section 3 of section 12AA, the Ld.CCIT is permitted to cancel the registration of an institution or trust which was already granted registration in two circumstances i.e., if the objects of the Trust are not genuine or activities are not being carried out in accordance with objects of the Trust or institution. The Ld.Counsel submitted that the Ld.CCIT has not given any finding that the activities of Trust are not genuine. Then the only ground left for cancellation of registration is under the impression that the assessee is not carrying on the activities in accordance with the objects of the Trust. The reason assigned for holding that the activities of the Trust are not carried out in accordance with the objects of the Trust, in the opinion of Ld.CCIT, is that the assessee institution is engaged in the commercial activity and acting as an agent to State Government to secure the funds, it engaged in indiscriminate sale of lands belonging to the assessee and remitted the proceeds to the kitty of the state against the objects of the assessee.

3.2. The Ld.Counsel of the assessee submitted that in pursuance of the objects, the assessee has carried out number of public utility services for development of the area such as construction of sports complex, LIG Housing Schemes for lower income group, construction of community hall, seva enclave, development of internal roads, widening of roads, indoor sports complex, construction of roads and drains, public toilets, infrastructure facilities, laying and widening of roads, development of greenery etc. The Ld.Counsel listed out various activities relating to general public utilities which are carried out by the assessee in various places of its jurisdiction including home for children, school for blind, women's college etc. It was also brought to our notice that it has developed 246 plots in Dakamarri village and out of which 162 plots were earmarked for low income groups and economically weaker sections. The Ld.Counsel also brought to our notice that the assessee has initiated the development of fly over at NAD junction on the directions of A.P.State Government and the total cost of the project is around Rs.150 crores and no financial assistance was provided by the State Government and the VUDA has incurred Rs.22.50 crores so far for the project. The Ld.Counsel further submitted the details of various activities carried out by the assessee Trust in tourism, amenities, International Fleet Review, restoration of roads, parks, civil structures and greenery in the aftermath of HudHud Cyclone, beautification of Visakhapatnam Airport. The Ld.Counsel further submitted the details of various ongoing projects and the projects which are proposed for development of the region and for the benefit of community as a whole and for weaker sections etc. and argued that it never lost sight of it's objectives and carrying on the work for furtherance of the objects.

3.3. In a detailed notes submitted on 17.09.2019, the Ld.Counsel submitted that the assessee was granted registration on 09.11.2006 w.e.f. 01.04.2003 and the objects were already mentioned in the Act of 1975 and section 20A was introduced in 1988 i.e. before granting the registration which is dealing with the sale of government lands. As per section 20A, the Government may affect the sale of vacant lands on such terms and conditions as may be prescribed for which section 20 does not come on its way. Therefore argued that sale of Government lands are governed by section 20A of A.P.Urban Development Act as per which the Government is free to sell its lands. In the process, Government has taken the help of the assessee and paid the service charges. Thus the assessee assisted the Government as facilitator. Referring to section 34 of AP Urban Development Areas Act, the Ld.Counsel submitted that the authority shall carry out such directions as may be issued to it from time to time by the Government for efficient administration of this Act and if there is any dispute, the decision of Government is final. Therefore, submitted that as per section 20A of the Act, the Government is permitted to sell the land by open auction and section 34 mandates the assessee to carry out the directions. In accordance with the directions issued by the Government, the assessee has sold the lands of the Government and remitted the sale proceeds back to the Government account as facilitator after deducting the expenses. Mere helping the Government to auction the lands cannot make the assessee to be branded as commercial organisation engaged in the commercial activities which is working for development and for public purposes. The Ld.Counsel further submitted that the fee collected by the assessee for sale of lands was utilised for the objects of the assessee trust. The Ld.Counsel further argued that the issue with regard to sale of

Government lands is violation of objectives of the assessee or not is not an enquiry to be made under section u/s 12AA(3) of the Act and it is to be verified while framing the assessment u/s 143(3) of the Act. The fact whether the assessee has sold the Government land or not is an issue which required to be examined at the time of assessment with the relevant records, and thus, argued that cancellation of registration on the presumption of sale of assessee's lands for the resource mobilsataion of the government is baseless and unjustified.

3.4. With regard to invocation of section 2(15), the Ld.Counsel argued that the CBDT has issued Circular on 27.05.2016 clarifying the circumstances in which the cancellation of registration u/s 12A of the Act. As per the clarification given by the CBDT, the registration u/s 12AA already granted should not be cancelled merely because the provision to section 2(15) comes into play. Therefore, argued that whether the assessee has taken commercial activity or not, whether the proviso to section 2(15) is applicable or not is not an issue to be adjudicated at the stage of 12AA(3) and it is at the stage of assessment. Hon'ble ITAT has consistently taken a view that enquiries regarding 2(15) and the commercial activities required to be enquired at the stage of assessment, but not at the stage of 12AA(3) of the Act. The Ld.Counsel further submitted that the assessee is neither engaged in the commercial activity nor making the profits and all surplus funds are utilised by the assessee for the public purpose. Hence, argued that the Ld.CCIT has cancelled the registration without appreciating the facts properly.

3.5. With regard to sale of lands to highest bidders, the Ld.Counsel submitted that VUDA required to sell the lands in open auction to the highest bidder. The procedure of auction is published in all newspapers and given a wide publicity to make known the public regarding sale of land and procedure for sale, thereby VUDA is following complete transparency. Selling the lands in open auction to the highest bidder is also supported by the decisions of Hon'ble Supreme Court in various cases including the case of Spectrum, therefore, submitted that there is no violation of APUDA Act in selling the lands to the highest bidders or entities also.

3.6. With regard to entering into joint venture for construction of buildings and commercial complexes and houses, the Ld.Counsel argued that overall development of areas require infrastructure facilities such as commercial complex, multiplexes etc., hence, VUDA had entered into joint venture for construction of buildings and commercial complexes for furthering its objectives. There is no violation of objectives in entering into joint ventures for construction of commercial complexes, buildings and multiplexes or houses. The Ld.CCIT has not elaborated how it has violated the objects by entering into development agreements for construction of commercial complexes.

3.7. With regard to sale of land indiscriminately, the Ld.Counsel submitted that VUDA is permitted to sell the surplus lands, the lands were sold after due approvals from the competent authority as provided by the Act and there is no indiscriminate selling of lands. While selling the lands as discussed earlier, the Ld.Counsel stated that transparent procedure is followed by giving wide publicity, so as to enable the public to participate in auction to acquire the lands and the sale proceeds are utilized for the advancement of objects and not diverted for any other purpose.

3.8. With regard to Ld CCIT's observation that the assessee from 2008 onwards, has lost sight of its objectives and acting like a realtor, the Ld.Counsel submitted that VUDA never lost sight of its objectives. It has carried out all the development activities discussed in this order and it has never acted like realtor. The activities carried out by VUDA development activity, welfare measures etc. are already discussed in this order.

3.9. With regard to collecting various fees, the Ld.Counsel argued that the assessee is permitted to collect the fees to procure revenue for its operations as per section 22 of the Act. Therefore, collecting fee for parks, rents for auditoriums / theatres, parking fee etc. cannot go against the interest of the assessee so long as the same are utilized for attaining the objects of the assessee.

4. The Ld.Counsel has taken us to the provisions of APUDA Act Section 3, Section5, Section 19, 20, 20A, 21 and 34 and argued that as seen from the provisions of above sections, activities of the APUDA discussed in the above paragraphs are within the four walls of APUDA Act for advancing the objects of the assessee. Therefore, there is no case of violating the provisions of APUDA Act or against the objects of the assessee, hence requested to set aside the order of the Ld.CCIT and restore the registration granted u/s 12AA of the Act. The Ld.Counsel also referred the following decisions in support of the submissions made by him.

(a) (2012) 19 ITR (Trib) 524 (Jaipur)

(b) (2010) 46 DTR 126

(c) (2012) 31 CCH 017 JodhTrib

(d) (2012) 81 CCH 171 ChenHC

(e) (2011) 133 ITD 485 (Del)

(f) (2013) 35 cch 286 BangTrib

(g) (2013) 84 CCH 091 DelHC

(h) (2013) 86 CCH 212 ChenHC

(i) (2013) 37 CCH 203 MumTrib

(j) (2013) 37 CCH 585

(k) (2013) 38 CCH 060

(l) (2014) 39 CCH 307 ChdTrib

(m) (2014) 165TTJ (Mumbai) 478

4.1. On the other hand, appearing for the Revenue, Sr.Standing Counsel, (in short Standing Counsel) Smt M.Kiranmayee, argued the case. The Ld.Standing Counsel argued that the objects of VUDA as per section 5 of AP Urban Areas (Development) Act, 1975 are to promote and secure the development of all or any of the areas comprised in the development area concerned according to the master plan.

4.2. Referring to section 18 of APUDA Act, the Ld.Standing Counsel submitted that section 18 provides that if any land is required for the purpose of development or any other purpose under the Act, the

Government may acquire such land and handover the same to the authority for the purpose for which it has been acquired, on payment by the authority.

4.3. Under section 19 of the APUDA Act, the authority subject to directions given by the Government under the Act, dispose of the land acquired under sec.18 of the Act either by developing it or without carrying on any developmental activity.

4.4. The Ld.Standing Counsel further submitted that u/s 20 of the APUDA Act, the Government may by notification place at the disposal of the authority all or any vacant lands belonging to or under control of the Government for the purpose of development in accordance with the provisions of the AP UDA Act. After such development of the government vacant lands and it shall be dealt with by the authority in accordance with rules and directions given by the government in this behalf. The Ld.Standing Counsel argued that as per section 18 of the APUDA Act, the Government may acquire land under compulsory acquisition for development or any other purpose under the Act and transfer the said land to the authority on payment of compensation. As per section 20 of the APUDA Act, the government may place at the disposal of the authority, vacant government lands for the purpose of development in terms of provisions of the Act and shall be dealt with by it in accordance with the rules and directions given by the Government in this regard.

4.5. Referring to section 22 of the APUDA Act, the Ld.Standing Counsel argued that the authority shall have and maintain its own fund to which shall be credited all monies received by the authority from the state government by way of grants, loans etc. and the monies borrowed from other sources other than government by way of loan or debentures, fees and charges received, from disposal of lands, buildings and other properties and the rentals etc.

4.6. Under sub section 2 of section 22, the fund shall be applied towards meeting the expenses incurred by the authority in the administration of the Act and for no other purpose. Under sub sec.4 of the Act, the government may make grants, loans and advances for the purpose of performance of functions of the authority. Under sub section 6, the authority shall maintain a sinking fund for repayment of loans borrowed. Therefore, the funds of the authority as maintained u/s 22 of the Act shall be used only for the purpose of performance of functions under the Act and the same cannot be diverted for any other purpose. The Ld.Standing Counsel argued that the Ld.CCIT referred G.O.Ms.No.1401, as per which the Government categorized the land in two sections, one is government lands which are required to be sold by auction by District Collector, Visakhapatnam and the said auction would be conducted by VUDA and VUDA would receive the service charges for this purpose. The second being land that would be alienated in favour of VUDA, Visakhapatnam by the Government for development of township. Thus through G.O, the land was alienated to VUDA for sale, hence, the ownership of the land is vested with the VUDA. The Government has specifically directed the VUDA to sell the lands in public auction and directed that the sale proceeds to be remitted to the Government for resource mobilization which is not permissible under the APUDA Act. Therefore, the Ld.Standing Counsel argued that the assessee became the owner of the large tracts of the land and sold the lands in public auction specifically identified by G.O.Ms.No.1401 and remitted the proceeds to the Government, against the provisions of APUDA Act. After selling large tracts of the land and remitting the sale proceeds to Government account, VUDA is taking shelter under G.O.Ms.No.1401 for exemption of its income from taxation which is against the provisions of APUDA Act. The Ld.Standing Counsel argued that the assessee stated that it had acted as an agent and the agent is not entitled for registration u/s 12AA of the Act. Further the Government can give funds to VUDA for furtherance of its objects, but it cannot take away the funds of the VUDA. The assessee is claiming that it had acted as an agent in resource mobilization of Government of Andhra Pradesh. However, as per the recitals of the sale deeds, the assessee has not mentioned as an agent, it was mentioned as absolute owner. Having acted as an agent, the assessee has also addressed the other issues, such as registration of land, litigation in various courts which is not the obligation of the agents. Therefore, argued that having mentioned in the sale deed as an absolute owner of the lands, the assessee cannot take the plea of an agent. Referring to paper book 3, page No.433 and 436 Clause (b) and (j), the Ld.Standing Counsel brought to our notice that the assessee registered the lands as an absolute owner. While registering the lands to Global Entropolis Asia Private Limited, in clause No.5.3 and 6.1 of the sale deed, assessee mentioned as absolute owner of the tracts of the lands. Referring to page No.391 and 393, in the case of Global Entropolis Asia Private Limited also VUDA claimed to be the absolute owner. Referring to page No.406 para No.4.2, the Ld.Standing Counsel brought to our notice that VUDA claimed to be the absolute owner of the land. From the recitals of the sale deeds and agreements, the Ld.Standing Counsel demonstrated that though the assessee claimed to be acted as an agent, but as per the recitals of the agreements or sale deeds, the assessee has clearly mentioned that it is an absolute owner of the lands, thus, the sale proceeds of land would become the property of the assessee and hence the remittance of the sale proceeds to the Government account is clear violation of objects of the assessee and against the provisions of section 22 of the APUDA Act. Referring to 488 of the paper book 3, the Ld.Standing Counsel submitted that it is established that the assessee has acted as an agent, therefore, disentitled for registration u/s 12AA of the Act. Referring to page No.475 and 477 of the paper book, the Ld.Standing Counsel argued that in the order passed by the ITAT in ITA No.76 & 77/Viz/2012 dated 09.11.2012 in the assessee's own case, observed that intention of the Government is not clear in categorizing the land into two categories and no material was brought on record by the assessee to bring out the intention of the Government which enables the tax authorities to decide the taxability of sale proceeds, accordingly set aside the order of the AO to reconsider the issue. Therefore argued that before the assessing authority also, the assessee failed to furnish the details, thus, there is no case for granting registration u/s 12AA of the Act. Referring to paper book 2, page No.181, 184 and 186, the Ld.Standing Counsel argued that

VUDA paid the consideration to the Government for acquiring the lands mentioned in the table given in the cited G.O. Referring to page No.185 and 187 of the paper book, the Ld.Standing Counsel argued that VUDA has paid the consideration for taking possession of the lands and hence, the VUDA ought to have utilized the funds for it's objects. Having not applied the funds for the objects and remitted the proceeds to Government account, the assessee acted against the objects of the Trust, therefore, argued that the assessee is disentitled for registration u/s 12AA(3) and the Ld.CCIT rightly cancelled the registration.

4.7. Responding to the argument of the Ld.Standing Counsel, the Ld.Counsel of the assessee submitted that page No.181 to 187 are not part of the lands mentioned in GO No.1401. Page No.234 deals with the Government lands which the VUDA had sold, acting as an agent and the Act nowhere forbids the assessee to act as an agent of the State Government and one single activity of the assessee to facilitate the Government and offering the services cannot make the assessee, disentitle for registration u/s 12AA(3) of the Act. Accordingly, requested to cancel the order passed by the Ld.CCIT and restore the registration u/s 12AA of the Act.

5. We have heard both the parties and perused the material placed on record and gone through the orders of the Ld.CCIT. The Ld.CCIT had cancelled the registration granted u/s 12AA(3) w.e.f. 2006 onwards. The assessee was granted registration u/s 12AA(3) in 2006 w.e.f. 01.04.2003. The reason for cancellation of registration of the assessee is under the impression that the assessee is engaged in commercial activity, acted as an agent of Government of Andhra Pradesh, sold the lands indiscriminately belonging to State Government, from 2008 onwards it had lost sight of the objects and acted like realtor and lastly for the reason that being engaged in the commercial activity, Ld.CCIT held that the assessee is hit by amendment to section 2(15) of the Act which has come into force w.e.f. 01.04.2009. In brief, the Ld.Counsel of the assessee argued that the assessee never lost sight of its object, carrying on the activities in accordance with the objects of the Society and the department has not brought on record any incidence which was violated by the assessee in furtherance of its objects. It has never diverted its funds for any other purpose and carrying on the activity as per it's objects and sale of lands was made as per the objects and the procedure laid down in the Act and amendment to section 2(15) has no application in the assessee's case, since, the assessee is carrying on the development

activities and no commercial activity was taken up. Ld.Counsel has also relied on the Circular No.21 of CBDT dt.27.05.2016. The gist of the argument of the Ld.Standing Counsel for the revenue is the assessee being owner of the lands, instead of utilizing the funds for the purpose of furthering the objects, it had remitted the sale proceeds to Government account which is against the objects of the assessee trust and the assessee acted as an agent and the agent is not entitled for registration. Further the assessee is the owner of the lands since, the lands were alienated to the assessee, hence, the funds ought to have been utilized for the purpose of objects, instead of remitting to Government account. We have carefully examined the arguments of both the parties. VUDA is constituted u/s 3 of the Urban Areas (Development) Act, 1975 and its objects are to promote, secure and development of areas in the jurisdiction according it's master plan. The objects of the Authority are defined in section 5 which reads as under :

> *Section 5*
>
> *5. **Object and powers of the Authority** :— The object of the Authority shall be to promote and secure the development of all or any of the areas comprised in the development area concerned according to plan and for that purpose, the Authority shall have the power to acquire, by way of purchase or otherwise, hold, manage, plan, develop and mortgage or otherwise dispose of and aid other property, to carry out by or on its behalf building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewerage and control of pollution, other services and amenities and generally to do anything necessary or expedient for purposes incidental thereof.*
>
> *(2) The Authority may, for the purpose of efficient performance of its functions,*

constitute as many committees as it thinks fit, in such mariner as may be prescribed, and provide by regulations made in this behalf for rules of procedure at the meeting of the Committees and allowances to members thereto.

As per the objects, the assessee has power to acquire the land by purchase or otherwise to carry out its objects.

5.1. Section 19 of the APUDA Act provides the procedure for disposal of the lands and section 19 reads as under:

Section19

(1) Subject to any directions given by the Government under this Act, the authority or, as the case may be, the local authority concerned may dispose of

(a) any land acquired by the Government and transferred to it, without undertaking or carrying out any development thereon ; or

(b) any such land after taking or carrying out such development as it thinks fit; to such persons in such manner and subject to such terms and conditions as it considers expedient for securing the development of the area concerned according to plan.

(2) The powers of the Authority, or as the case may be, of the local authority concerned with respect to the disposal of land under sub-section (l)shall be so exercised as to secure so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such

> *requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.*

According to which, subject to the directions given by the Government under this Act, the assessee may dispose of any land acquired by Government and transfer to it without undertaking and carrying out any development thereon. Any such land after taking or carrying out such development as it thinks fit to such persons in such manner and subject to such terms and conditions as it considers expedient for securing the development of the area concerned according to plan.

5.2. Section 20 provides for placement of Government vacant lands at the disposal of Authority on the terms and conditions agreed between the Government and the Authority, in the instant case, VUDA is the Authority. Section 20A provides for sale of Government land by public auction and their administration. As per section 20A, the Government is permitted to sell their vacant lands by public auction on such terms and conditions as may be prescribed. Section 22 of the Act provides for procedure for managing the funds of the assessee.

5.3. Section 34 gives authority to Government to give directions from time to time for efficient administration of the Act.

5.4. In the instant case, the Ld.CCIT viewed that the assessee has lost sight of the objects from the assessment year 2008 onwards and carrying on commercial activity. In this regard, the Ld.Counsel has elaborately discussed the activities carried out by the assessee for furtherance of the objects and argued that the assessee is continuously engaged in the activities for development of the area in its jurisdiction and carried on various activities which are discussed in detail in para No.3 of this order, such as construction of houses for low income groups, widening of roads, development of various areas as per the master plan, sports complex, maintenance of schools, parks, bridges etc. and given a note on the projects which were undertaken and the projects in progress vide note dated 04.10.2019 and argued that the assessee is continuously taking all possible steps for overall development of the areas entrusted to it for orderly growth of the area as per the objects. Thus submitted that the observation of the Ld.CCIT is misplaced and without any evidence or without any foundation. During the appeal hearing, the Ld.Standing Counsel did not controvert the developmental activities undertaken by the assessee, therefore, we hold that the observation of the Ld.CCIT that the assessee has lost sight of its objects is not based on proper appreciation of facts, hence, we are unable to accept the same.

6. The next issue for rejection of the registration is selling of vacant lands to the highest bidders in auction and entering into joint ventures for construction of buildings. As provided in section 19 of APUDA Act the assessee is permitted to dispose off the lands after development or without carrying out any development in such manner as per the terms and conditions mentioned therein.

6.1. Sub sec.3 of sec.19 allows the assessee to dispose the lands by sale. Therefore, the assessee is permitted to sell the lands in public auction which is one of the most popular and transparent methods approved by courts also. The Hon'ble Supreme Court in the case of Spectrum also approved the method of selling the properties to highest bidders. It is explained that the assessee is selling the lands earmarked for commercial ventures and high income groups to the highest bidders in public auction by giving wide publicity, but not the lands earmarked for civic amenities or for weaker sections. The Department did not explain how the sale of lands earmarked for high income groups and for commercial ventures in public auction violate the objects of the assessee. As long as the sale proceeds are utilized for advancement of the objects without diversion, it does not violate the objects of the assessee. The department did not place any material to show that the funds of the assessee other than the sale proceeds of land in GO No.1401 are diverted for other purposes. Therefore, we, are of the opinion that the same is not against the objects of the Society and do not violate the objects mentioned in APUDA Act.

7. Apart from the above, the Ld.CCIT observed that the assessee had entered into joint venture for construction of commercial buildings which is also treated to be not within the purview of objects of the society. Overall development of the area is the order of the day and for overall development of any city or town, commercial complexes, malls etc., have become the signs of development in the cities. Visakhapatnam is tier II city and private operators do not come forward for building such infrastructure facilities. Hence, it is necessary for VUDA to come forward for developing the malls and commercial complexes for the benefit of the public. Therefore, we are of the view that entering into joint venture for construction of buildings cannot be held to be against the object of the assessee society. The Ld.CCIT has not brought on record how the construction of commercial buildings are against the objects of VUDA. Therefore, we hold that construction of commercial complexes, Malls etc., and entering into joint ventures for construction of the houses does not violate the objects of APUDA Act.

8. The next contention of the Ld.CCIT as well as the Ld.Standing Counsel of the revenue is that the assessee is the owner of the lands alienated to VUDA, thus the assessee becomes the absolute owner of the lands, hence the assessee ought to have utilized the funds instead of remitting the funds back to Government. For this purpose, the Standing Counsel has referred page No.181 to 187 of the paper book and various pages of paper book No.3. More particularly, the agreement with Global Entropolis Asia Pvt. Ltd. We observe from the paper book that the development agreement entered with Global Entropolis Asia Pvt Ltd enclosed in page No.391 to 426 was cancelled vide cancellation deed dated 01.04.2008 which is furnished in page Number 427 to 432 of paper book and a fresh agreement was entered with Global Entropolis Pvt. Ltd. which is also enclosed in page No.433 to 445. The Ld.DR did not demonstrate whether this land in survey number 1/P Yendada Village is part of G.O.Ms.No.1401 dated 02.11.2007 or not. On cursory look of page No.232 of paper book No.2, wherein G.O.No.1401 dated 02.11.2007 is furnished, we find that land in Sy.No.1 of Yendada village is not part of the lands sold in public auction for resource mobilization of the State. The Department also did not place any material to show that the sale proceeds of the cited land were remitted to the Government. Therefore the sale of land

to Global Entropolis (P) Ltd., has no relevance to the cancellation of Registration u/s 12AA of the Act. Similarly, the Ld. Standing Counsel referred page No.181 to 187 of the paper book and argued that the assessee has paid the consideration for acquiring the lands, hence the assessee ought not to have remitted the sale proceeds to Government account. Perusal of page No.181 to 186, we find that the said lands do not find figure in G.O.No.1401 and were related to the orders dated 23.11.1992 and 26.09.1995 which are not relevant for cancellation of Registration and there is no evidence to show that the sale proceeds of subject lands were remitted to Government. Therefore, the same cannot be taken into consideration for deciding the validity of cancellation of Registration u/s 12AA(3) of the Act. The Ld.Standing Counsel also taken the help of page No.347 of the paper book and argued that the assessee was the owner of the land and Page No.347 of the paper book refers to the sale deed dated 09.03.2004 with Gandeva Properties Pvt. Ltd., which is also not related to the period of cancellation of the registration u/s 12AA(3) of the Act. Thus, the sale proceeds of lands mentioned by the Ld.Standing Counsel which were stated to be belonged to the assessee were neither proved to be remitted to the government nor the parts of the lands in GO No.1401, thus there is no impact on Registration u/s 12AA of the Act. Therefore, we are unable to accept the contention of the Ld.Standing Counsel that the assessee has sold the lands belonging to it and remitted the sale proceeds to Government account.

9. The next contention of the Department is that the assessee acted as an agent for sale of lands and the agent is disentitled for grant of registration u/s 12AA(3) of the Act. The assessee is the government institution constituted u/s 3 of APUDA Act, 1975 and as per section 20A of the Act, the Government is allowed to sell the vacant lands by public auction or otherwise on such terms and conditions as may be prescribed. Even the Ld.CCIT made observation in the order that the Government is permitted to sell their vacant lands by public auction. In general District Collector auctions the lands by public auction. In the instant case, the assessee sold the lands which does not belong to the assessee, but belonged to the Government for which the Govt. of Andhra Pradesh has issued the GO in G.O.Ms.No.1401. Government has given the lands to VUDA for which the VUDA did not make any payment and sold the lands for mobilization of resources to Government account as per para No.6 of G.O.No.1401. There is no evidence brought on record by the department in the order that VUDA

has sold the lands allotted to it for development purpose or for any other purpose. The Government has given the lands with a clear direction to auction and remit the proceeds to Government account as provided in para No.7 of G.O.No.1401 and the VUDA is permitted to collect service charges for the services rendered. Whether VUDA can act as an agent for sale of Government lands or not is not an issue in this case and the Ld.CCIT has not dwelled up on it. VUDA has been directed to sell the Government lands which will be utilized for the public purposes by the state, but not for any individual benefit or for particular community or class of the society. The Ld.Counsel argued that there is no prohibition placed against the assessee to act as an agent for selling the lands, being, it is one of the organizations of the Government and getting all the support from the Government. VUDA has also collected the service charges and utilized the same for it's objects. The Ld. Standing Counsel of the Revenue also did not place any evidence or material to show that the VUDA is barred from acting as an agent or in assisting the sale of Government's lands. When Government is giving the loans, funds, grants, loans and advances and giving all the support for advancement of it's objects, we do not find any reason to hold that VUDA is prohibited from helping the Government in selling the Government's vacant lands as per the specific directions of the Government and there is no case law brought on record by either parties to support or to prohibit the assessee to sell the lands of the Government. Therefore, we are of the considered opinion that assisting the Government, in sale of lands, after collecting the expenses does not make the assessee disentitle for registration u/s 12AA(3) of the Act.

10. The next contention of the department is that the assessee has carried on commercial activity, hence, the assessee is hit by the amendment to section 2(15) of the Act. In the instant case, the assessee is a Government institution and the department did not place any material to show that the assessee is engaged in the commercial activity. We have already held that the activities such as sale of lands by public auction, entering into joint development agreement for construction of commercial complexes, houses and malls are held to be for public utility services for furtherance of objects, hence, the activities of the assessee are within the purview of the Act and objectives. The assessee has neither established to have made the profit out of the above activities nor proved to be used for other purposes other than it's objects. There was no material placed by the department to establish that the assessee has made trade, commerce or commercial activity and the funds

are distributed among the shareholders of the individual persons or for the benefit of any individual or the persons or the association or the profits being remitted to Government account. In the instant case, whatever surplus generated was used for the activities of the assessee society, therefore, the same cannot be held to be the commercial activities. Even otherwise, through Circular No.21 of CBDT dated 27.11.2016, it has directed the field authorities not to cancel the registration of charitable institution already granted u/s 12AA of the Act just because the provision to section 2(15) comes into play. The process for cancellation of registration to be initiated strictly in accordance with the provisions of section 12AA(3) and 12AA(4) of the Act after carefully examining the provisions. The assessee also relied on the following decisions which support the assessee that sale of lands and collection of gross receipts exceeding Rs.25 lakhs does not automatically cancel the registration.

1. Rajasthan Housing Board Vs. Commissioner of Income Tax (2012) 19 ITR (Trib) 524 (Jaipur) held that "*cannot cancel registration given to assessee u/s 12AA. If gross receipts exceed Rs.10 lakhs or Rs.25 lakhs, then AO can examine and the allowability of exemption u/s 11.*"

2. H.P.Government Energy Development Agency Vs. Commissioner of Income Tax (2010) 46 DTR 126 (2010) 7 taxman.com 69, held that "*cancellation of Registration on 2 grounds : 1. Activities are not genuine 2. Activities are not being carried out with the objects of the trust.*

Objects of trust or institution fall within the ambit of Section 2(15) is not a condition for cancellation of registration."

3. Jodhpur Development Authority Vs. CIT (2012) 31 CCH 017 Jodh Trib, 27 taxmann.com 183 held that "*if profit arises from sale of property it does not lose the character of charitable purpose. Can sell property at market rate through auction after development on that property."*

4. CIT Vs. Sarvodaya Ilakkiya Panni (2012) 81 CCH 171 Chen HC (2012) 20 taxmann.com 546, held that "*cancel of trust registration was set aside as it could not be traced out to Sec.12AA(3) and did not carry out activities contrary to its object."*

10.1. From the above we find that there is no material placed before us to establish that the assessee is not carrying on the activities in accordance with the objects or the activities of the assessee are not genuine. The Ld.CCIT has cancelled the registration on presumptions and assumptions without having proper material. Therefore, we cancel the order of the Ld.CCIT passed u/s 12AA(3) of the Act and restore the registration granted to the assessee. Accordingly, appeal of the assessee is allowed.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 20th March, 2020.

Sd/-	Sd/-
(डि.एस. सुन्दर सिंह)	**(वी.दुर्गा राव)**
(D.S. SUNDER SINGH)	**(V. DURGA RAO)**
लेखासदस्य/ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam
दिनांक /Dated : 20.03.2020
L.Rama, SPS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to</u>:-

1. निर्धारिती/ The Assessee– Visakhapatnam Metropolitan Region Development Authority (Formerly known as Visakhapatnam Urban Development Authority), 8th Floor, Udyog Bhavan, Siripuram Jn., Visakhapatnam
2. राजस्व / The Revenue – The Chief Commissioner of Income Tax (OSD), Visakhapatnam
3. The Pr.Commissioner of Income Tax, Guntur
4. The Commissioner of Income Tax (Appeals)-1, Guntur
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam