

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E' NEW DELHI  
BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT  
AND  
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER  
I.T.A .No.-3005/DEL/2013  
**(ASSESSMENT YEAR-2009-10)****

ITO Ward 1(1), Moradabad <b>(APPELLANT)</b>	Vs	Moradabad Development Authority, Manth Road, Moradabad AAJFM7731M <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Ms. Sulekha Verma, CIT DR</b>
<b>Respondent by</b>	<b>Sh. Piyush Kaushik, Adv</b>

<b>Date of Hearing</b>	<b>21.04.2016</b>
<b>Date of Pronouncement</b>	<b>10.06.2016</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 01/03/2013 passed by CIT (A)- Bareilly.

2. The grounds of appeal are as under:-

- “1. That the Ld. Commissioner of Income Tax (appeal), Barreilly has erred in law as well as in facts by not considering the amended provisions of Section 2(15) of Income Tax Act 1961 which is applicable from the assessment year 2009-10 in which there is provision for charging tax if total receipt of entities engaged in advancement of general public utility exceeds Rs. 10 lakh.

*The assessee has shown excess of income over expenditure of Rs.19,69,28,027.00 by sales of Plots, shops and flats and its activities are in the nature of trade, commerce or business and amended provision of Section 2(15) of the Income Tax Act, 1961 is squarely applicable in this case.*

- 2. That the Ld. Commissioner of Income Tax (appeal), Barreilly has erred in law as well as in facts by not considering the case of M/s Safdurjung Enclave Educational Society Vs. Municipal Corporation Delhi (1992) 3 SCC 390, in which the Hon'ble Supreme Court of India had held that the activities run on commercial lines do not fall within the ambit of charitable object.*
- 3. That the Ld. Commissioner of Income Tax (appeal), Barreilly has erred in holding that the trust is entitled for exemption u/s 11 whereas the activities of the assessee during the year consideration are not in conformity with its main object and the decision of the Ld.CIT(A), Bareilly is against the amended provisions of Section 2(15) of the Income Tax Act, 1961.*
- 4. That the Ld. Commissioner of Income Tax (appeal), Barreilly erred in holding that income of the assessee is exempt as it is registered under section 12AA whereas the registration u/s 12AA does not confer blanket exemption of income.*
- 5. Any other ground which may be taken during the course of the appellate proceedings.*

3. The assessee was granted registration u/s 12AA of the Income Tax Act, 1961 w.e.f 1/4/2003. The A.O examined the eligibility of the assessee for exemption as per section 11 of the income tax Act, 1961. The A.O observed that income of the assessee does not fall u/s 11(1) (a) (b) or (C). It has been further observed by the A.O

that the provisions of the Section 11 (1) (d) and 12(1) are also not applicable to the income shown by the assessee. The A.O has also observed that during the year under consideration the activities of the assessee were not found to be in conformity with its object. The activities of the assessee during the year under consideration are to purchase/acquires land and sale them after making development thereon. It has also constructed house/flats/shops etc. on such plots and sold the same at marketable competitive price. Prima facie such activities appear to be commercial activities akin to those carried out by the property dealers, Builders and Developers. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of M/s Safdurjung Enclave Education Society Vs. Municipal Corporation Delhi (1992) 3 SCC 390, in which it has been held that the activities run on commercial lines do not fall within the ambit of charitable object. Assessment in this case was completed u/s 143(3) of Income Tax Act, 1961 vide Assessment Order dated 13/12/2011 on a total income of Rs.19,69,28,030.00 as against returned Nil Income.

4. The assessee filed appeal before the CIT(A) against the assessment order. The CIT(A) held that the status of the assessee in the earlier years was accepted as a charitable trust having income eligible for exemption u/s 11 of the Act and there was no change in the facts and circumstance of the cases during the year under consideration. The CIT(A) further observed that the A.O has never denied the fact that the assessee is registered u/s 12AA of the

Income Tax Act. The CIT(A) partly allowed the appeal of the assessee vide instant order.

5. The Ld. AR submitted that the present matter is covered by the decision of Co- ordinate bench of ITAT in assessee's own case for the preceding year Assessment Year 2007-08 in ITA No. 2276/Del/2011 dated 21/10/2011 which has been thereafter followed by ITAT in assessee's own case on identical issue in the succeeding year i.e. Assessment Year 2008-09 vide order dated 25/01/2012 ITA No. 2579/Del/2011. The Ld. AR further submitted that ITAT vide its order for Assessment Year 2007-08 (supra) held that the certificate of registration u/s 12A as granted from 1/4/2003 and the same has not been cancelled till date. Registration u/s 12A is not an empty formality as it has to be granted after satisfying that the objects are charitable in nature. Since the registration is in effect therefore the objects of assessee will have to be taken as charitable in nature. The ITAT further held that Legislature postulates that a charitable institution may have to carry on incidental business for attainment of its objective. The incidence of taxation is lifted where business is incidental to the attainment of objective & separate books of accounts are maintained. It has already been held that the business of construction is incidental to the attainment of the charitable objective of town planning. The only question to be seen is whether separate books of accounts are maintained for the construction activity. Only for this limited purpose the matter is set aside to the file of A.O. Thus the ITAT held that it was accepted that the

assessee is engaged in a charitable purpose. Therefore it is entitled to deduction u/s 11.

6. The Ld. AR submitted that the decision of Delhi High Court on the detailed interpretation of constitutional validity of the proviso to section 2(15) in the case of India Trade Promotion Organization vs. Director general of Income Tax (Exemption) & ors 371 ITR 333 (Del.) held that the said proviso applies in a situation where the main objective is essentially to carry on business for the purpose of profit. But the situation is different in the assessee's case where the main objective of 'town planning' has been held to be charitable. Registration u/s 12A was very much in existence during the subject year & further the ITAT in assessee's own cases for the preceding years has held that the activity of construction & sale of plots is only incidental to the objective of town planning which is a charitable activity as duly held by ITAT;

7. The Ld. AR further submitted that the Assessee being a development authority has been established under the UP Urban Planning & Development Act 1973. Under the said legislation various other development authorities in UP have been constituted for instance Lucknow Development Authority etc. All these authorities have identical objects as prescribed by UP Urban Planning & Development Act 1973. The Jurisdictional High Court (Allahabad High Court) in the case of CIT vs. Lucknow Development Authority vide its decision dated 16/9/2013 2013-TIOL-795-Hon'ble High Court-ALL after examining the said objects in light of

proviso to Sec 2(15) has held that development authorities will not be hit by the proviso to Sec 2 (15). The Ld. AR further submitted that even till date registration u/s 12A has not been cancelled by the department. Therefore, it will be very wrong on part of department to allege that the assessee is not entitled for exemption u/s 11 or the objects of the assessee are not charitable.

8. The Ld. DR relied upon the order of the Assessing Officer. The Ld. DR referred following case law and circulars:-

1. Jammu Development Authority Vs. Union of India, ITA No. 164/2012, judgment of Hon'ble High Court of Jammu and Kashmir.
2. M/s Jammu Development Authority Vs. CIT, Jammu, ITA No. 30 (Asr)/2011, decision of Hon'ble ITAT Amritsar Bench, Amritsar
3. CBDT Circular No. 11/2008, dated 19/12/2008 and Explanatory Notes of Finance Act, 2008 on Section 2(15).

The Ld. DR submitted that the decisions in case of Jammu Development Authority by the ITAT as well as by the Hon'ble Jammu & Kashmir High Court are relevant to the facts of the case. The Ld. DR further submitted that as per para 3 of the Circular, proviso to Section 2(15) will apply only to entities whose purpose is 'advancement of any other object of general public utility' i.e. the fourth limb of the definition of 'charitable purpose' contained in section 2(15). Hence, such entities will not be eligible for exemption under Section 11 or under Section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of

trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

9. We have heard both the parties and perused all the records. The status of the assessee in the earlier years was accepted by the Revenue as a charitable in nature having income allowable for exemption u/s 11 of the Act. There was no change in the facts and circumstances during the present assessment year. The Assessing Officer never denied the fact that the assessee is registered u/s 12AA of the Income-tax Act. During the year under consideration the activities of the assessee were charitable in nature and as per its object. The Assessing Officer relied on the judgment of the Hon'ble Supreme Court in case of Safdarjung Enclave Educational Society Vs. Municipal Corporation, Delhi (1992) 3 SCC 390 but the same is not applicable in the case as the charitable purpose and object was never changed at any time in case of assessee herein. Thus, exemption u/s 11 rejected by the Assessing Officer is not just and proper. In assessee's own case for the preceding year and the subsequent year, the Co-ordinate Bench of the ITAT has allowed the appeal of the assessee. The Delhi High Court in its decision in the case of India Trade Promotion Organization (Supra) has clearly given the interpretation of Constitutional validity of the proviso to Section 2 (15) of the Act. The Hon'ble Delhi High Court held that the said proviso applies in a situation where the main object is essentially to carry on business for the purpose of profit. But in assessee's case, the situation is different. The main object of town planner has been held to be charitable and at the time of registration u/s 12A was in very much existence. Thus, the Revenue has not made

out the case that the condition on which the registration was allowed has changed from earlier year or in subsequent year as well as in the present year. The reliance of the decision of the Jurisdictional High Court (Allahabad High Court) in case of CIT vs. Lucknow Development Authority vide its decision dated 16/9/2013 2013-TIOL-795-Hon'ble High Court-ALL is relevant. The Hon'ble Allahabad High Court after examining the said objects in light of proviso to Sec 2(15) has held that development authorities will not be hit by the proviso to Sec 2 (15). The reliance on the judgments by the Ld. DR are on different footing altogether. The reliance of the Board Circular is also not applicable in the present case as there was no change in the charitable purpose while doing the activity of development by the assessee. It is part of development only which is the object of the assessee since the beginning. Thus, the CIT(A) was correct in partly allowing the appeal of the assessee.

14. In the result, appeal is dismissed.

**The order is pronounced in the open court on 10th of June, 2016.**

**(G. D. AGRAWAL)**  
**VICE PRESIDENT**

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 10/06/2016

*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(Appeals)  
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	21/04/2016	PS
2.	Draft placed before author	22/04/2016	PS
3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	10.06.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	10.06.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		