

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.7806/Del/2017
Assessment Year: 2014-15

DCIT, Exemption Circle, Ghaziabad	Vs.	Aligarh Development Authority (ADA), Ramghat Road, Aligarh UP
PAN: AAALA0082G		
(Appellant)		(Respondent)

Appellant by	Sh. Ashok Gautam, Sr. DR
Respondent by	Sh. Deepak Singh, Advocate

Date of hearing	23.03.2021
Date of pronouncement	27.04.2021

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against order dated 06/09/2017 passed by the Learned Commissioner of Income-tax (Appeals)-Aligarh [in short 'the Ld. CIT(A)'] for assessment year 2014-15 raising following grounds:

1. *The Ld. Commissioner of Income Tax (Appeal) has erred in law and facts in deleting addition in respect of surplus of Rs.6,35,39,809/- made by the AO.*

2. *The Ld. Commissioner of Income Tax (A) has erred in law and facts in deleting addition made by the AO in respect of sum of Rs. 23,36,84,304/- received towards infrastructure Development*

Fund directly credited to the fund account without crediting the same towards income.

3. *The Ld. CIT(A) has erred in law and facts in deleting disallowance of Rs.10,34,026/- claimed as depreciation by the assessee.*

4. *The order of Ld. CITA() be cancelled and the order of the AO be restored.*

2. The Revenue has also preferred following additional ground of appeal:

“The Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts by allowing the benefit of section 11 to the assessee ignoring the facts that the assessee is engaged in activity in nature of trade, commerce or business.”

3. Briefly stated facts of the case are that the assessee being a development authority, filed its return of income for the year under consideration on 29/09/2014, declaring nil income. In the return of income, profit (surplus) declared of ₹ 6,35,39,809/- was claimed as exempt under the provisions of sections 11 and 12 of the Income-tax Act, 1961 (in short ‘the Act’). In the scrutiny assessment proceedings, the Assessing Officer examined, the activity of the assessee and concluded that its activities are in the nature of trade, commerce or business in view of the dominant activity of acquisition and sale of immovable properties. The Assessing Officer also observed that activity of the authority were being carried out with the motive for profit and thus the assessee was not entitled for exemption under section 11 of the Act. He, accordingly, assessed the surplus of ₹ 6,35,39,809/- as income from business. Further, he also observed that ₹ 23,36,84,304/-

received for 'infrastructure fund', was directly credited to a separate account of fund, without crediting the same towards income of the assessee. Therefore, the Assessing Officer also added this amount to the total income. Further, the Assessing Officer also made addition of ₹ 10,34,026/- by way of making disallowance for depreciation.

3.1 Aggrieved with the addition/disallowances made, the assessee filed appeal before the Learned CIT(A) who allowed the appeal of the assessee. Aggrieved with the finding of the Ld. CIT(A), the Revenue is in appeal before the Income Tax Appellate Tribunal (in short 'the Tribunal') raising the grounds and additional ground as reproduced above.

4. Before us, the parties appeared through Video Conferencing facility and the learned counsel of the assessee filed a paper-book.

5. The Learned DR relied on the order of the Assessing Officer and submitted that order of the Tribunal in the case of Khurja Development Authority (ITA No.4290 and 4291/Del/2014 and 5103/del/2016 might be followed.

6. On the contrary, Learned Counsel of the assessee submitted that finding of the Ld. CIT(A) might be upheld as he has followed orders of the Hon'ble Jurisdictional High Court in the case of the assessee itself.

7. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. As far as the additional ground and ground No. 1 of the appeal are concerned, the finding of the Learned CIT(A) are reproduced as under:

“5.2 These grounds relate to the issue of holding the activities of the appellant authority as charitable or otherwise. Similar issue was raised in the appeal for A.Y.2012-13 which was decided by me vide order passed u/s. 250 on 01.03.2017 in appeal No.09/2015-16/ Aligarh as under :-

“These grounds relate to the AO’s decision of not holding the appellant’s activities as activities towards charitable purposes. The AO has relied upon the decision of Hon’ble ITAT Amritsar Bench in the case of M/s Jalandhar Development Authority (supra). On the other hand, the appellant has relied upon the decision of jurisdictional Allahabad High Court in the case of CIT V/s Lucknow Development Authority (2014) 265 CTR (All) 0433. In the LDA case, the AO while passing the assessment order u/s 143(3) observed that the assessee was not eligible for the benefit of section 11 of the Act and assessed the entire income as business income. However, this finding was rejected by Hon’ble Allahabad High Court and the activities of the development authorities were held to be charitable in nature. This ruling of Hon’ble Allahabad High Court was followed by the same High Court in Income Tax Appeal No. 657 of 2007 in the case of Hapur Pilkhwa Development Authority and other authorities. Incidentally, the appellant was also one of the authorities for which the said order has been passed. Relying upon the aforesaid decision in the case of LDA, the Hon’ble court held that the activities of the developing authorities are of charitable nature and the authority is eligible to be registered u/s 12AA. As the Hon’ble Allahabad High Court upheld the Tribunal’s decision of allowing registration u/s 12AA for the appellant authority, no question can be raised to doubt the charitable character of the activities which the authority has undertaken. Since the appellant enjoys benefit of registration u/s 12AA, it can be presumed that the objects of the appellant are of charitable character.”

In view of the above, as the activities in the relevant previous year are similar to the activities undertaken during the previous year relevant to A.Y. 2012-13, it is prudent to hold that the appellant is engaged in the activities which are of charitable nature. Therefore, the appellant would be entitled to get the benefit of registration u/s 12AA. As such, in the assessment, the Assessing Officer’s only is to see whether the actual activities undertaken during the year are in accordance with the objects with regard to which the authority was granted registration u/s. 12 AA. There is no finding in the assessment order that the appellant authority has deviated from its charitable objects during the course of the activities performed during the relevant previous year. Since the appellant is registered u/s. 12 AA, it is automatically entitled for exemption u/s. 11 if other conditions are fulfilled. Since the appellant’s application of income plus accumulation of income for charitable purposes is more than the 85% of the total income, the whole income would get exempted u/s.

11. Thus, the income would have to be assessed at Nil as claimed in the return of income.

In light of the observations as narrated above, these grounds are being allowed.”

7.1 We find that Ld. CIT(A) has followed the finding of the Hon'ble Jurisdictional High Court in the case of the assessee in earlier year and held that the activity of authority of developing of land etc. are charitable in nature and eligible for registration under section 12AA of the Act. The Ld. CIT(A) has accordingly found the claim of the assessee for exemption under section 11 of the Act in order and also observed that assessee has applied more than 85% of the total income towards charitable purposes. The registration granted by the CIT under Section 12AA of Act is validly in operation in the relevant year and not withdrawn. Thus, the assessee was entitled for exemption under Section 11 subject to fulfilling the conditions contained therein. In view of binding precedent followed by the learned CIT(A), we do not find any error in the order of the Learned CIT(A) on the issue in dispute and accordingly we uphold the same. The additional ground and ground No. 1 of the appeal of the Revenue are accordingly dismissed.

8. As far as ground No. 2 of the appeal is concerned, the Ld. CIT(A) has observed as under:

“The AO has alleged that an amount of Rs. 23,36,84,304/- has been transferred directly to infrastructure development funds and has not been routed through the income and expenditure account. For this reason, separate addition of the same amount was made. In this regard, the appellant has submitted that as per government order, the appellant society has to transfer the major percentage of receipts under various heads to infrastructure development fund and it has no discretion to spend any part of the said fund on its own. The expenditure from the said fund is supervised by a committee

nominated by the state government. It has been explained that this income falls under “ diversion of income by overriding title” and is not includible in the total income. In my opinion, since the appellant is entitled for exemption u/s 11, the only relevant point is that 85% of the total income should be utilized towards charitable objects. Total income during the year including the income received towards infrastructure development fund is Rs. 33,37,97,968/- out of which Rs. 12,95,28,302/- has been utilized during the relevant previous year. In accordance with the provisions of section 11, 85% of the total receipts i.e. Rs. 28,37,28,272/- should have been utilized during the year. Thus, there is a shortfall of Rs. 15,41,99,970/-. The appellant has produced a copy of form-10 filed on 30.09.2014 which shows that an amount of Rs. 15,41,99,970/- has been requested to be carried forward for utilization in subsequent years. Thus, all the requirements for claiming exemption u/s 11 have been fulfilled. 'Also, it is observed that the income received towards the infrastructure development fund has been considered for working out the utilization u/s 11. Hence, the AO's conclusion that the income received under infrastructure development fund has not been considered is without any basis.

In view of the above, there is no justification for making any separate addition for the amount received towards infrastructure development fund and the AO is being directed accordingly. These grounds are therefore allowed.”

8.1 The claim of the Revenue is that amount of ₹ 23,36,84,304/- has not been considered for application of funds and therefore this issue might be restored back to the file of the Assessing Officer as decided in the case of Khurja Development Authority (supra). The Tribunal in the case of Khurja Development Authority (supra) restored this issue to the AO with following observations:

“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 ITA Nos. 4290, 4291/Del/2014 & 5103/Del/2016 maybe 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 fundings 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.”

8.2 However, we find that the Ld. CIT(A) has followed the provisions of the Act and Rules, 1962 (in short ‘the Rules’). According to the provisions of the Act, exemption under section 11 is allowed, if 85% of the funds received are applied for charitable purposes in the year under consideration and, if there is any short fall in application of such funds, the assessee has to follow the procedure prescribed for getting benefit of section 11 of the Act. The relevant Explanation-1 below section 11(1)(d) is reproduced as under:

“Income from property held for charitable or religious purposes.

11. (1)

Explanation 1.—For the purposes of clauses (a) and (b),—

- (1) in computing the fifteen per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;*
- (2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of eighty-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—*

(i) for the reason that the whole or any part of the income has not been received during that year, or

(ii) **for any other reason,**

then—

(a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, and

(b) in the case referred to in sub-clause (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount,

may, at the option of the person in receipt of the income (such option to be exercised before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income, in such form and manner as may be prescribed) be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately following the previous year in which the income was derived.”

8.3 The Ld. CIT(A) has noted that the assessee had produced before him prescribed form as laid down in the Rules, with the request for carry forward of the amount for utilization in subsequent years and, thus, has fulfilled the requirement as prescribed in Explanation –I to Section 11 of the Act. Before us, the learned DR failed to controvert this finding of the Learned CIT(A). In our opinion, in the instant case before us, the assessee has fulfilled the requirement of law and we do not find any reason for restoring the matter to the Assessing Officer. We do not find any error in finding of the Learned CIT(A) on the issue in dispute

and accordingly we uphold the same. The ground No.2 of the appeal of the Revenue is also dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 27th April, 2021

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 27.04.2021

RK/- (D.T.D.S.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi