

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.2838/Mum/2024
(Assessment Year: 2018-19)**

Maharashtra Industrial Development Corporation, Udyog Sarathi, Mahakali Caves Road, Andheri East, Mumbai- 400 093 PAN : AAACM3560C	vs	Commissioner of Income-tax (Exemptions), Mumbai Room No.601, 6 th Floor, Cumballa Hill MTNL TE Building, Pedder Road, Dr Gopalrao Deshmukh Marg, Cumballa Hill, Mumbai-400 026
APPELLANT		RESPONDENT

Assessee by : Shri S. Sriram
Respondent by : Smt. Sanyogita Nagpal (CIT DR)

Date of hearing : 26/12/2024
Date of pronouncement : 06/01/2025

ORDER

PER ANIKESH BANERJEE, JM:

Instant appeal of the assessee was filed against the order of the Ld. Commissioner of Income-tax (Exemption), Mumbai[for brevity the Ld. CIT(E)], passed under section 263 of the Income-tax Act, 1961 (in short, 'the Act') for Assessment year 2018-19, date of order 23/03/2024. Impugned order was emanated from the order of the National e-Assessment Centre, Delhi, order

passed under section 143(3) read with section 144B of the Act, date of order 21/04/2021.

2. The assessee has taken the following grounds of appeal:-

“Being aggrieved by the order of the Commissioner of Income-Tax (Exemptions), Mumbai, dated 23.03.2024, the Appellant begs to prefer the present appeal on the following grounds:

- 1. That in the given facts and circumstances of the case and in law, the Respondent erred in holding that the Assessing Officer concluded the assessment proceedings without making basic enquiries and verifications regarding the nature of Appellant's activities, whereas the same were specifically looked into by the Assessing Officer during the assessment proceedings.*
- 2. That in the facts and circumstances of the case and in law, the Respondent erred in concluding that the income in the form of deposit, lease premium, rent and interest, etc. is liable to tax in the hands of the Appellant.*
- 3. That in the facts and circumstances of the case and in law, the Respondent erred in not following the order 07.09.2018 passed by this Hon'ble Tribunal in the case of the Appellant itself for Assessment Year 2011-12, which categorically held that the income in the form of deposit, lease premium, rent and interest, etc., is not liable to tax in the hands of the Appellant.*
- 4. That in the facts and circumstances of the case and in law, the Respondent erred in concluding that the Appellant-corporation is undertaking commercial activities, and therefore, its activities would not be regarded as charitable activities within the meaning of Section 2(15) of the Income-tax Act, 1961.*
- 5. That in the facts and circumstances of the case and in law, the Respondent erred in its interpretation of the judgment of the Hon'ble Supreme Court in Ahmedabad Union Development Authority [Civil Appeal no. 21762 of 2017 dated 19.10.2022], wherein the Hon'ble Court has made a specific reference to the*

Appellant-corporation to say that the statutory corporations cannot be said to undertake commercial activities.

6. The Appellant craves leave to add, alter, amplify, modify or delete all or any of the aforesaid grounds at or before the hearing."

3. The brief facts of the case are that the assessee is a statutory corporation formed under the Maharashtra Industrial Development Act, 1961 (in short, 'MID Act'). It is engaged in development of industrial assets by providing basic infrastructural facilities like industrial land, road, streetlight, drainage system, water supply, etc. The assessee is registered as a charitable organization under section 12AA of the Act vide registration No. TR-37971 dated 24/05/2004. Till assessment year 2002-03, the assessee claimed exempted income under section 10(20A) of the Act as an authority for planning / development for improvement of cities / towns. The said exemption was being allowed by the revenue. The assessee applied and obtained registration as 'Charitable Institution' under section 12A of the Act. The assessee made a net surplus from its activity every year and claimed benefit under section 11 of the Act for all the years under consideration for this income. During the impugned assessment year, the assessment was completed under section 143(3) of the Act and during the assessment proceedings, the notice under section 142(1) was issued for examining the claim of exemption as a charitable institution under section 11 of the Act. Accordingly, the assessee filed the submission and also referred the order of the co-ordinate bench of ITAT, Mumbai-B in assessee's own case bearing **ITA 4474/Mum/2017** date of pronouncement **07/09/2018** where the Tribunal ruled out all the conditions and accepted the income received from deposit, lease

premium, rent, interest, etc., which are treated as exempted income and not income under the heads of income provided in the Act. So, in the order, the Bench further observed that exemption under section 11 is not applicable. It is retained only for the academic purpose, but the income receipts from different heads are not taxed in the hands of the assessee. In earlier years, the revenue has taken the stand that the assessee is not a valid trust, and the activities are commercial in nature; thus, the assessee is not eligible for claim of exemption under section 11 of the Act. Alternatively, the revenue has taken view in earlier years that the activities carried on by assessee is commercial in nature; hence, the Proviso inserted by Finance Act, 2008 in section 2(15) of the Act would be applicable to the case of the assessee. In the backdrop of this aforesaid observation, the revenue in earlier years concluded that since the gross receipts from aforementioned activities carried out by the assessee had exceeded the prescribed limit of Rs.25 lakhs, by virtue of Provision to section 2(15) of the Act could not be considered to be carrying on any charitable activity within the meaning of said statutory provision. The said issue was duly negated by the order of the co-ordinate bench in assessee's own case bearing **ITA No.4474/Mum/2017** dated **07/09/2018**. However, for other years, the assessee filed appeals before the coordinate bench of ITAT, Mumbai Benches in **ITA No.4326, 4327,4329,4331,4332,4475 and 4476/Mum/2017**, date of pronouncement **31/10/2018**, the bench accepted the appeal of the assessee and remand back the matter to the Id. AO to consider the said issue in the light of the assessee's own case in order dated 07/09/2018.

4. During the assessment proceedings, the assessee filed the order of the ITAT dated 07/09/2018. The Ld.AO made the following observation on the basis of the

documents received in pursuance of the notice under section 142(1) of the Act.

The observations of the Ld.AO in impugned assessment order is as follows: -

“3. Subsequently notices u/s 142(1) of the Act was issued on 15.12.2020 along with Questionnaire regarding above reasons were issued to the assessed for calling details and explanation along with documents at mentioned in the notice. In response to the notice u/s 142(1) the assessee submitted the requisite details/information and documents online on e-filing portal on 25.02.2001 and replied asunder:-

We now enclose herewith the details as requested in the annexure to the said notice.

- 1. The Corporation is established under the Act of assembly viz: Maharashtra Industrial Development Act (MID Act) and MID Rules. The section 14 of the said Act clearly states the objects of the Corporation: We enclose herewith the copy of the Act and Rules (Annex: 1)*
- 2. The address of the Head office Udyog Sarathi, Mahakal Caves Road Andheri East. Mumbai 400063. The list of Divisional offices is attached herewith (Annex 2)*
- 3. Attached herewith power of attorney in favor of the authorized representative duly executed and accepted.*
- 4. The MIDC is incorporated under the MIDC Act. The latest copy of the MID Act is attached herewith (Annex 3) The trust is not registered u/s 90G of the Act. Copy of the registration certificate u/s 12AA is attached herewith (Annex 4)*
- 5. The copy of the Audited account For AY 2017-18 and AY 2018-19 attached along with the revised return filed for AY 2018-19 (Annex 5)*
- 6.Details of Trustee's name and contact details and PAN are attached herewith. (annex 6)*

7. The MIDC has not received any Donations during the year

8.9 The details of Administrative expenses and expenses on the objects of the Trust is already given as a part of the revised computation of total income submitted along with the return.

1. 1. The MIDC does not hold investments as such except the surplus funds kept in a Fixed Deposits with the scheduled Banks and advances given as per the instructions of Government of Maharashtra,

11. The MIDC as not accumulated any surplus U/s 11(2) of the Act

12 In view of the answer at 11 above there is no question of exercise of potion u/s 11(1)(a) for utilization of income.

13. Copy of the details of depreciation claimed is attached herewith. (annex 7) The capital expenditure is claimed as application of income to the charitable purpose. The Assessee has claimed this benefit based on the judicial judgments.

14 MIDC has not received any Donation during the year locally Overseas. The Corporation does not have any FCRA registration.

15 The MIDC has not paid any sum to any person referred to in sub section (3) of the section13

16. The MIDC has not given any donations to any person or institution during the year.

17 Details of bank accounts are attached herewith. (Annex 3)

18. *The MIDC has not received or advanced any fresh loans during the year except advances given as per the instructions of Government of Maharashtra.*
19. *Copies of all etds returns for four quarters are attached herewith. All the data is reconciled with the books before submission of the returns. (Annex 9)*
20. *The MIDC has not reimbursed any expenses during the year*
21. *Copy of the Assessment order passed u/s 143(3) in respect of last five assessment years (Annex 10) are attached herewith. In respect of these assessment years the corporation is in appeal before ITAT. Mumbai High Court and Supreme Court. The cases have not reached the finality. However, the ITAT vide order 7.9.2018 has decided the issue related to deposits directly taken to Balance sheet in favour of the assessee corporation thereby the demands raised against the corporation are reduced to Nil.*
22. *The accounts of the Corporation are maintained at various divisional offices. If the specific details of expenses are identified the requisite details can be compiled and provided to you. We will discuss this at the time of personal hearing.*
23. *Copy of the Trial Balance is attached herewith as on 31.3.2017 and 31.3.2018. (Annex 11)*
24. *The AIR data is not received by us from your office as result we are unable to reconcile the same".*
- 4 *The assessee furnished point wise reply, which was examined carefully, the reply seems to be satisfactory. However, another notice u/s 142(1) dated 09.04.2021 annexed with certain queries on which the assessee did not comply was sent to the assessee company. The assessee furnished detailed reply on*

15.04.2021, which was examined thoroughly and found satisfactory to the queries made.

5. The reply and details uploaded by the assessee were carefully examined and no adverse inference is drawn from the Annexures attached with the reply in response to the questionnaire u/s 142(1). On the basis of material available on record, the explanation of the assessee on the issue is accepted. Accordingly, the assessment is being completed u/s 143(3) read with S.1448 of the Income Tax Act, 1961 on returned income at Rs.NIL. Tax computation sheet and the sum payable are determined as per the demand notice.”

5. The Ld.CIT(E) has taken the stand that the gross receipts are duly not taxed in the hands of the assessee and it is accepted by it but the verification was not made by the Ld.AO related to exemption under section 11 of the Act. The Ld.CIT(E) has further mentioned that the Ld.AO has not conducted any necessary verification on the issue. On perusal of activities conducted by the assessee, it can be understood that the activities of the assessee are not charitable in nature. Therefore, the Ld.CIT(E) observed that the entity engaged in commercial, or business activities and the provisions of section 2(15) of the Act need to be examined by the AO in the light of the nature of activities undertaken by the assessee. Accordingly, by assuming extraordinary jurisdiction of the CIT(E), by invoking provisions of section 263, the impugned assessment order was considered as erroneous and prejudicial to the interest of the revenue. So, the said assessment order was set aside for fresh assessment.

6. The Ld.AR filed written submission which is kept in the record. The Ld.AR argued and stated that the issue was already verified by the Ld.AO by issuance of

notice under section 142(1) dated 15/12/2020 annexed in paper book pages 23 to 26 and in this respect, the assessee made the submission in detail by submission dated 04/02/2021 against the notice under section 142(1) dated 15/12/2020 (pages 27- & 28 of the paper book). The issue was further enquired into by the Ld.AO by notice under section 142(1) dated 09/04/2021 which was further replied by the assessee by a submission on 15/04/2021 (pages 33 to 53 of the paper book). The Ld.AR further stated that after observing the direction of the higher authority and considering the order of the ITAT, Mumbai bench dated 07/09/2018, the Ld.AO considered that the collection charges received by the assessee is not under the purview of the tax and accordingly the effect of the exemption U/s 11 of the Act was negated. The Ld.AO strictly followed the order of the higher judicial forum. In this respect, the Ld.AR respectfully followed the order of the Hon'ble Supreme Court in case of **Malabar Industrial Co Ltd vs CIT** (2000) 243 ITR 83 (SC), the Hon'ble Supreme Court held that there must be two conditions namely that the order of assessment is erroneous and that the order is prejudicial to the interests of the Revenue which must be satisfied before the Commissioner may invoke his powers u/s. 263 of the Act. The Court held that every loss of tax cannot be said to be prejudicial to the interests of the revenue. If two views are possible, and the AO has adopted one of those views, the order of assessment cannot be prejudicial to the interests of the revenue. However, when the Assessing Officer does not apply his mind to the issue at hand or violates any of the principles of natural justice, the order shall be prejudicial to the interests of the Revenue. Also, an incorrect assumption of facts or incorrect application of law by the AO would make the order of assessment erroneous and prejudicial to the interests of the Revenue.

7. Further, the Hon'ble Bombay High Court in **NYK Line (India) Ltd v. DCIT** [2012] 346 ITR 361 (Bom) and **Idea Cellular Ltd. v. DCIT**[2008] 301 ITR 407 (Bom.) has held that when a question is raised by AO during the course of original assessment and adequately responded to by the assessee, even when the aspect is not dealt with in the assessment order, it would be deemed that the AO has expressed an opinion on the issue raised. Therefore, jurisdiction u/s 263 of the Act could not have been exercised in the present facts on account of no discussion on the concerned issue in the assessment order.

8. The Hon'ble Allahabad High Court in **N.N. Agrawal v. CIT** [1991] 189 ITR 769 (All) held that the order of the assessing authority cannot be said to be 'erroneous' if he/she merely follows a decision of a higher authority or Court on the same point in the case of the same assessee. Indeed, the orders of the Tribunal and the High Court are binding upon the AO and since he acts in a quasi-judicial capacity, the discipline of such functioning demands that he/she should follow the decision of the Tribunal or the High Court, as the case may be. He/She cannot ignore it merely on the ground that the Tribunal's order is subject matter of a revision in the High Court and that the High Court's decision is under appeal before the Supreme Court. Permitting him/her to take such a view would introduce judicial indiscipline, which is not called for even in such cases. It would lead to a chaotic situation. This decision was followed by Hon'ble Bombay High Court in **CIT v. Paul Brothers** (1995) 216 ITR 548 (Bom) to hold that where ITO's order is passed on the basis of a binding decision, revisional power under section 263 cannot be exercised to undo the said order.

9. The Ld.DR vehemently argued and filed a written submission. The relevant part of the written submission is reproduced as below:-

"4.2 Coming to the Hon'ble Tribunal's order dated 07-09-2018 in its own case for AY 2011-12, it is seen that the finding is restricted to a single issue, that is whether the lease premiums, rent and interest were received by the appellant as an owner of the land or on behalf of the State Government. This issue had been restored back for fresh examination to the A.O by the Hon'ble Tribunal vide its order dated 27-03-2015. The A.O in order u/s 143(3) r.w.s 254 had rejected the claim of the appellant that the same were not its income and the appellant's appeal had been dismissed by the CIT(A). When the matter travelled to the Hon'ble Tribunal, it gave it's finding in order dated 07-09-2018 in favour of the appellant that it was neither the owner of the lands under consideration nor "deemed owner" for the purpose of assessing of the income arising therefrom. (Kindly refer to para 15 of the said order on pages 119 and 120 of the paperbook-1).

4.3 The above order does not contain any adjudication on the issue of appellant's claim of exemption u/s 11 of the Act with regard to proviso to section 2(15) of the Act. Therefore, the appellant's claim in the written submission that in view of the above order the said issue is now academic in nature holds no ground. The second issue has no bearing on the first issue (of exemption u/s 11 of the Act) as the second issue is regarding incomes arising from the lands not owned by the appellant viz rent, lease premium, interest on deposits related to the lands not owned by the appellant but held on behalf of the State Government.

4.4 Lastly, the appellant has argued that the assessment order is not prejudicial to the interest of the Revenue as the issue stands squarely covered in its favour by the order dated 19-10-2022 of the Hon'ble Supreme Court in Ahmedabad Urban Development Authority (Civil Appeal No 21762 of 2017). It is seen from the return of income of the appellant for the impugned AY that the appellant has claimed an

amount of Rs 168,87,93,062/- as applied for charitable purpose in India u/s 11 of the Act. The appellant would not be entitled to the benefit of application of income had the exemption u/s 11 of the Act been denied by the A.O. in the assessment order. Therefore, the assessment order is clearly prejudicial to the interest of the Revenue.”

10. We have carefully considered the rival submissions and reviewed the documents placed on record. The invocation of Section 263 of the Act hinges upon two fundamental conditions:

The assessment order must be erroneous; and

It must be prejudicial to the interest of the Revenue.

In this case, the Ld. AO conducted a detailed verification of the relevant matters on various occasions, issuing notices under Section 142(1) of the Act, to which the assessee duly complied. A reasoned and speaking order was passed, with the Ld. AO's observations duly recorded in the order sheet. The impugned assessment order was framed by the Ld. AO in accordance with the decision of the ITAT, Mumbai Bench, in the assessee's own case (ITA No. 4474/Mum/2017, dated 07/09/2018). The primary issue under consideration was whether the lease premium and other charges received by the assessee on behalf of the Government of Maharashtra constituted taxable income. The assessee contended that these receipts were collected purely as an agent of the State Government and, therefore, could not be taxed in its hands. The Assessing Officer and the Commissioner of Income Tax (Appeals) had earlier concluded that the lands were transferred irrevocably to the assessee, thereby making the receipts taxable. However, upon review, the Coordinate Bench of the ITAT determined that the assessee was merely a custodian of these funds, which were received on behalf of

the State Government. It was noted that the ownership of the land remained with the State Government, and the assessee's role was confined to the development and management of industrial areas.

Consequently, the lease premiums and related charges were not treated as the income of the assessee and were held to be non-taxable. This decision was consistent with rulings in analogous cases, such as Karnataka Urban Infrastructure Development and Finance Corporation [(2006) 284 ITR 582 (Kar)] and CIT vs. Delhi State Industrial Development [(2007) 295 ITR 419 (Del)], where entities acting as agents of the government were not taxed on funds collected on the government's behalf. Accordingly, the ITAT allowed the appeal, ruling that the amounts collected by the assessee as lease premiums and related charges were not taxable in its hands.

Although the Revenue challenged the ITAT's order before a higher judicial forum, no adverse order has yet been passed against the ITAT's ruling in the assessee's own case dated 07/09/2018. Thus, the ITAT's decision remains binding on the Ld. AO.

The Ld. DR argued that while the ITAT considered the gross receipts as exempt in the hands of the assessee, it made no specific observations regarding Section 11, retaining it for academic purposes only. However, a critical aspect of the decision was that the assessee's role was purely custodial, with ownership of the collected funds (lease premiums, etc.) remaining with the State Government. As the assessee merely acted as an agent, the income could not be taxed in its hands, thereby obviating the need for a detailed analysis under Section 11.

The revenue's contention that the assessee's activities were commercial in nature was also examined. This issue was conclusively addressed by the Hon'ble

Supreme Court in ACIT (Exemption) vs. **Ahmedabad Urban Development Authority** [Civil Appeal No. 21762 of 2017, dated 19/10/2022], wherein it was held that similar activities did not constitute commercial activity.

Further, in the revisional order under Section 263 of the Act, the Ld. CIT(E) directed the Ld. AO to verify the exemption claimed under Section 11 of the Act. However, the nature of gross receipts had already been examined in the ITAT's ruling, which was duly followed by the Ld. AO. Despite issuing notices under Section 263, the Ld. CIT(E) was unable to identify any new income sources beyond what had already been disclosed by the assessee. Consequently, the Ld. AO adhered to the directions of the higher authority.

We respectfully rely on the rulings of the Hon'ble Supreme Court in **Malabar Industrial Co. Ltd**(supra), the Hon'ble Bombay High Court in **NYK Line (India) Ltd.**, and **M/s Paul Brothers** (supra), as well as the Hon'ble Allahabad High Court in **N.N. Agrawal** (supra), all of which underscore that Section 263 cannot be invoked merely on the basis of a change of opinion.

In our considered view, the direction to verify Section 11 is inapplicable in this case. Accordingly, the revisional order passed by the Ld. CIT(E) under Section 263 is unjustified and is hereby quashed.

11. In the result, the appeal of the assessee bearing **ITA No.2838/Mum/2024** is allowed.

Order pronounced in the open court on 06th day of January 2025.

Sd/-

(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 06/01/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**