Lucknow Development Authority , ... vs Acit (E), Lucknow on 10 March, 2022

IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW

BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No.185 & 186/Lkw/2019
Assessment year:2013-14
&
I.T.A. No.163 & 164/Lkw/2019
Assessment year:2014-15 & 2015-16
&
I.T.A. No.439/Lkw/2019
Assessment year:2016-17

M/s Lucknow Development Authority, Naveen Bhawan, Vipin Khand, Gomti Nagar, Lucknow. PAN:AAALL0016F (Appellant)	Vs. A.C.I.T. (Exemption), Lucknow. (Respondent)

Appellant By	Ms. Shweta Mittal, C.A.
Respondent by	Smt. Sheela Chopra, CIT (D.R.)
Date of hearing	24/01/2022
Date of pronouncement	10/03/2022

ORDER

PER BENCH:

This bunch of five appeals has been filed by the assessee against the separate orders of learned CIT(A)-IV, Lucknow dated 06/03/2019 for assessment year 2013-14, dated 27/02/2019 for assessment year 2014-15, I.T.A. Nos.185,186,163,164,439/Lkw/2019 dated 26/02/2019 for assessment year 2015-16 and dated NIL for assessment year 2016-17.

2. The grounds of appeals in these appeals are similar and crux of grounds of appeals is the action of

learned CIT(A) by which he has affirmed the action of the Assessing Officer whereby he has disallowed the exemption u/s 11 of the Act. The assessment in the years 2014-15 to 2016- 17 has been completed u/s 11 of the Act whereas assessment in the year 2013-14 has been completed u/s 147 read with section 143(3) of the Act. The assessment in the year 2013-14 was earlier completed u/s 143(3) of the Act wherein exemption u/s 11 was denied for the assessment year 2013-14 again the Assessing Officer completed the assessment u/s 148 of the Act and made further disallowances u/s 40(a)(ia) of the Act. These appeals were heard together therefore, for the sake of completeness a consolidated order is being passed. For the sake of completeness, the grounds of appeals in these appeals are reproduced below:

> ASSESSMENT YEAR 2013-14 (I.T.A. No.185)
>
> 1. The Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in passing the order which is unlawful, unjustified and against the principles of natural justice.
>
> 2. The Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in passing the order without giving adequate opportunity of being heard and without considering the written submission made before him.
>
> 3. That the Ld. Commissioner of Income-tax (Appeals) erred in law and on facts in denying exemption under section 11read with section 12, 12A and 13 on the grounds that the activities carried on by the appellant were profit making activities not falling under charitable purposes as envisage under section 2(15) of the Income-

tax Act.

I.T.A. Nos.185,186,163,164,439/Lkw/2019

4. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in disallowing the exemption u/s 11, 12 and 13 read with first Proviso to section 2(15) on the ground that the appellant is hit by the provisions of section 13(1)(c) read with section 13(3) of Income-tax Act, 1961.

5. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts by not treating the appellant as Charitable Institution, even though the same has already been adjudged to be so by the Hon'ble Allahabad High Court in its judgement dated 16.09.2013 in the case of Commissioner of Income-tax-I v. Lucknow Development Authority in ITA no. 149 of 2009 for A.Y. 2005-06 alongwith ITA No. 60 of 2010 for A.Y. 2006-07 in its own case.

6. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts by disregarding the following judgements in case of Moradabad Development Authority which was also constituted under the same Act as that of the appellant Authority and whose objects were the same as that of the appellant Authority:

a. Judgment of Hon'ble Allahabad High Court dated 03.05.2017 in ITA No. 3 of 2017 for the A.Y. 2009-10 b. Judgment of Hon'ble ITAT, Delhi dated 04.01.2018 in ITA Nos. 4631 and 4632/Del/2017 for A.Ys. 2012-13 and 2013-14 and c. Order of Ld. Commissioner of Income-tax (Appeals), Moradabad for A.Y. 2015-16 dated 28.01.2019

7. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming total addition of Rs. 3,32,43,01,768/- against the Computation of income at NIL as made by the appellant was founded on the following undisputed facts

(i) the appellant is an authority duly notified as such under the Urban Planning and Development Act, 1973, by the State Government, for attainment of objects of General Public Utility

(ii)the Hon'ble ITAT in its own case, in ITA No. 686/Luc/06, order dated 25.07.2005 has already held that the object of the appellant I.T.A. Nos.185,186,163,164,439/Lkw/2019 are the objects of General Public Utility falling in the definition of charitable purposes as given in section 2(15) of the I.T. Act

(iii)accordingly, the appellant has already been held to be eligible for registration under section 12A in terms of the aforesaid order of the Hon'ble ITAT

8. That the Ld. Commissioner of Income-tax (Appeals) was obliged to follow the rule of law relating to taxation and compute the income of the appellant on the basis of statement of income as based on the audit report in form 10-B, as was applicable in its case, by virtue of its being registered under section 12A of the Income-tax Act. (a)That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming addition of Rs. 41,94,07,414/- that was transferred to IDRF because appellant had been maintaining Infrastructure Development Reserve Fund (IDRF) as per the Notification dated 15.01.1998 , and money transferred to this fund were to be utilized for the purposes of projects as specified by a committee formed by the State Government itself under the said Notification, and the same could not be treated to be belonging to the appellant or the receipts of taxable nature in its hands and also because the money was collected under IDRF, to the extent the same belonged to appellant, had duly been accounted for in the audited books of accounts and shown in Balance Sheet. This amount is held under trust for being utilized as and when requisition was made by the committee formed by the State Govt., as per the principle laid down by the Hon'ble apex Court in the case of CIT (Central) Vs. Bijli Cotton Mills (P) Ltd., reported in (1979)116 ITR 60, and the same could not have been treated to be the income in the hands of Appellant liable for taxation.

9. The Ld. Assessing Officer has erred in law and on facts in making addition of Rs. 20,20,17,466/- on account of prior period expenses.

10. That the Ld. Assessing Officer has erred in law and on facts in making disallowance of Provision for Development expenses of Rs. 31,48,19,010/-.

11. The Ld. Assessing Officer has erred in law and on facts in making addition of Rs. 17,04,441/- on account of interest on late deposit of TDS.

I.T.A. Nos.185,186,163,164,439/Lkw/2019

12. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in wrongly setting aside the issue regarding verification of following expenses to the file of Ld. Assessing Officer despite of the fact that all the bill/ voucher were produced before him:

a.Audit fee of Rs. 2,00,00,000/-

b.Flood Controland Development expenses of Rs. 9,63,64,165/ c.Development of villages expenses of Rs. 2,09,07,745/-

13. The Ld. Assessing Officer has erred in law and on facts in passing assessment order which is contrary to the facts and law.

ASSESSMENT YEAR 2013-14 (I.T.A. No.186)

1. The Ld. Commissioner of Income-tax (Appeal) has erred in law and on facts in passing the order which is unlawful, unjustified and against the principles of natural justice.

2. The Ld. Commissioner of Income-tax (Appeal) has erred in law and on facts in passing the order without giving adequate opportunity of being heard and without considering the written submission made before him.

3. That the Ld. Commissioner of Income-tax (Appeal) has erred in law and on facts in upholding the re-opening of assessment u/s 147 of the Income-tax Act.

4. That the Ld. Commissioner of Income-tax (Appeals) erred in law and on facts in denying exemption under section 11read with section 12, 12A and 13 on the grounds that the activities carried on by the appellant were profit making activities not falling under charitable purposes as envisage under section 2(15) of the Income- tax Act.

5. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in disallowing the exemption u/s 11, 12 and 13 read with first Proviso to section 2(15) on the ground that the appellant is hit by the provisions of section 13(1)(c) read with section 13(3) of Income-tax Act, 1961.

6. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts by not treating the appellant as Charitable Institution, even though the same has already been adjudged to be so by the Hon'ble Allahabad High Court in its judgement dated I.T.A. Nos.185,186,163,164,439/Lkw/2019 16.09.2013 in the case of Commissioner of Income-tax-I v. Lucknow Development Authority in ITA no. 149 of 2009 for A.Y. 2005-06 alongwith ITA No. 60 of 2010 for A.Y. 2006-07 in its own case.

7. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts by disregarding the following judgements in case of Moradabad Development Authority which was also constituted under the same Act as that of the appellant Authority and whose objects were the same as that of the appellant Authority:

> a.Judgement of Hon'ble Allahabad High Court dated 03.05.2017 in ITA No. 3 of 2017 for the A.Y. 2009-10 b.Judgement of Hon'ble ITAT, Delhi dated 04.01.2018 in ITA Nos. 4631 and 4632/Del/2017 for A.Ys. 2012-13 and 2013-14 and c.Order of Ld. Commissioner of Income-tax (Appeals), Moradabad for A.Y. 2015-16 dated 28.01.2019

8. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming total addition of Rs. 1,53,77,66,959/- against the Computation of income at NIL as made by the appellant was founded on the following undisputed facts

(i) the appellant is an authority duly notified as such under the Urban Planning and Development Act, 1973, by the State Government, for attainment of objects of General Public Utility

(ii)the Hon'ble ITAT in its own case, in ITA No. 686/Luc/06, order dated 25.07.2005 has already held that the object of the appellant are the objects of General Public Utility falling in the definition of charitable purposes as given in section 2(15) of the I.T. Act

(iii)accordingly, the appellant has already been held to be eligible for registration under section 12A in terms of the aforesaid order of the Hon'ble ITAT

(iv) in pursuance of the said order dated 25.07.2005, the Ld. CIT had already issued certificate of registration under section 12A dated 17.01.2006 which covers the year under reference also.

9. That the Ld. Commissioner of Income-tax (Appeals) was obliged to follow the rule of law relating to taxation and compute I.T.A. Nos.185,186,163,164,439/Lkw/2019 the income of the appellant on the basis of statement of income as based on the audit report in form 10-B, as was applicable in its case, by virtue of its being registered under section 12A of the Income-tax Act. (a)That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming addition of Rs. 41,94,07,414/- that was transferred to IDRF because appellant had been maintaining Infrastructure Development Reserve Fund (IDRF) as per the Notification dated 15.01.1998 , and money transferred to this fund were to be utilized for the purposes of projects as specified by a committee formed by the State Government itself under the said Notification, and the same could not be treated to be belonging to the appellant or the receipts of taxable nature in its hands and also because the money was collected under IDRF, to the extent the same belonged to appellant, had duly been accounted for in the audited books of accounts and shown in Balance Sheet. This amount is held under trust for being utilized as and when requisition was made by the committee formed by the State Govt., as per the principle laid down by the Hon'ble apex Court in the case of CIT (Central) Vs. Bijli Cotton Mills (P) Ltd., reported in (1979)116 ITR 60, and the same could not have been treated to be the income in the hands of Appellant liable for taxation.

10. The Ld. Assessing Officer has erred in law and on facts in making addition of Rs. 20,20,17,466/- on account of prior period expenses.

11. That the Ld. Assessing Officer has erred in law and on facts in making disallowance of Provision for Development expenses of Rs. 31,48,19,010/-.

12. The Ld. Assessing Officer has erred in law and on facts in making addition of Rs. 17,04,441/- on account of interest on late deposit of TDS.

13. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in wrongly setting aside the issue regarding verification of following expenses to the file of Ld. Assessing Officer despite of the fact that all the bill/ voucher were produced before him:

a.Audit fee of Rs. 2,00,00,000/-

b.Flood Controland Development expenses of Rs. 9,63,64,165/ c.Development of villages expenses of Rs. 2,09,07,745/-

I.T.A. Nos.185,186,163,164,439/Lkw/2019

14. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming disallowance of expenses u/s 40(a)(ia) of Rs. 10,84,632/-.

15. That the Ld. Assessing Officer has erred in la w and on facts in disallowing contribution to P F Fund amounting to Rs. 6,85,45,243/- u/s 43B of the Act.

16. That the Ld. Assessing Officer has erred in la w and on facts in disallowing contribution to E W Fund amounting to Rs. 1,51,890/- u/s 43B of the Act.

17. The Ld. Assessing Officer has erred in law and on facts in passing assessment order which is contrary to the facts and law.

ASSESSMENT YEAR 2014-15 (I.T.A. No.163)

1. The Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in passing the order which is unlawful, unjustified and against the principles of natural justice.

2. The Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in passing the order without giving adequate opportunity of being heard and without considering the written submission made before him.

3. That the Ld. Commissioner of Income-tax (Appeals) erred in law and on facts in denying exemption under section 11read with section 12, 12A and 13 on the grounds that the activities carried on by the appellant were profit making activities not falling under charitable purposes as envisage

under section 2(15) of the Income- tax Act.

4. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in disallowing the exemption u/s 11, 12 and 13 read with first Proviso to section 2(15) on the ground that the appellant is hit by the provisions of section 13(1)(c) read with section 13(3) of Income-tax Act, 1961.

5. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts by not treating the appellant as Charitable Institution, even though the same has already been adjudged to be so by the Hon'ble Allahabad High Court in its judgement dated I.T.A. Nos.185,186,163,164,439/Lkw/2019 16.09.2013 in the case of Commissioner of Income-tax-I v. Lucknow Development Authority in ITA no. 149 of 2009 for A.Y. 2005-06 along with ITA No. 60 of 2010 for A.Y. 2006-07 in its own case.

6. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts by disregarding the following judgments in case of Moradabad Development Authority which was also constituted under the same Act as that of the appellant Authority and whose objects were the same as that of the appellant Authority:

> a. Judgment of Hon'ble Allahabad High Court dated 03.05.2017 in ITA No. 3 of 2017 for the A.Y. 2009-10 b. Judgment of Hon'ble ITAT, Delhi dated 04.01.2018 in ITA Nos. 4631 and 4632/Del/2017 for A.Ys. 2012-13 and 2013-14 and c. Order of Ld. Commissioner of Income-tax (Appeals), Moradabad for A.Y. 2015-16 dated 28.01.2019

7. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming total addition of Rs. 3,32,43,01,768/- against the Computation of income at NIL as made by the appellant was founded on the following undisputed facts

(i) the appellant is an authority duly notified as such under the Urban Planning and Development Act, 1973, by the State Government, for attainment of objects of General Public Utility

(ii)the Hon'ble ITAT in its own case, in ITA No. 686/Luc/06, order dated 25.07.2005 has already held that the object of the appellant are the objects of General Public Utility falling in the definition of charitable purposes as given in section 2(15) of the I.T. Act

(iii)accordingly, the appellant has already been held to be eligible for registration under section 12A in terms of the aforesaid order of the Hon'ble ITAT

(iv) in pursuance of the said order dated 25.07.2005, the Ld. CIT had already issued certificate of registration under section 12A dated 17.1.2006 which covers the year under reference also.

I.T.A. Nos.185,186,163,164,439/Lkw/2019

8. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming addition of Rs. 1,48,01,02,066/- by not treating the activities of the appellant as charitable in nature.

That the Ld. Commissioner of Income-tax (Appeals) was obliged to follow the rule of law relating to taxation and compute the income of the appellant on the basis of statement of income as based on the audit report in form 10-B, as was applicable in its case, by virtue of its being registered under section 12A of the Income-tax Act.

9. That the Ld. Commissioner of Income-tax (Appeals) was obliged to follow the rule of law relating to taxation and compute the income of the appellant on the basis of statement of income as based on the audit report in form 10-B, as was applicable in its case, by virtue of its being registered under section 12A of the Income-tax Act. (a)That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming addition of Rs.9,75,46,843/- that was transferred to IDRF because appellant had been maintaining Infrastructure Development Reserve Fund (IDRF) as per the Notification dated 15.01.1998 , and money transferred to this fund were to be utilized for the purposes of projects as specified by a committee formed by the State Government itself under the said Notification, and the same could not be treated to be belonging to the appellant or the receipts of taxable nature in its hands and also because the money was collected under IDRF, to the extent the same belonged to appellant, had duly been accounted for in the audited books of accounts and shown in Balance Sheet. This amount is held under trust for being utilized as and when requisition was made by the committee formed by the State Govt., as per the principle laid down by the Hon'ble apex Court in the case of CIT (Central) Vs. Bijli Cotton Mills (P) Ltd., reported in (1979)116 ITR 60, and the same could not have been treated to be the income in the hands of Appellant liable for taxation.

10. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming disallowance of Provision for Development expenses of Rs. 1,49,03,71,043/-.

11. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in wrongly setting aside the issue regarding verification of following expenses to the file of Ld. Assessing Officer despite of the fact that all the bill/ voucher were produced before him:

I.T.A. Nos.185,186,163,164,439/Lkw/2019 a. Audit fee of Rs. 2,00,00,000/-

b. Flood Control expenses of Rs. 10,00,00,000/- c. Development of villages expenses of Rs. 12,29,00,000/-

12. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming disallowance of Deposit Work of Rs 70,86,35,607/-.

13. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming disallowance of expenses u/s 40(a)(ia) of Rs. 45,71,338/-.

14. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming disallowance of Prior Period expenses of Rs. 29,12,948/-.

15. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming disallowance of Donation of Rs 2,50,000/-.

16. The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in passing order which is contrary to the facts and law.

ASSESSMENT YEAR 2015-16 (I.T.A. No.164) "1. The Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in passing the order which is unlawful, unjustified and against the principles of natural justice.

2. The Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in passing the order without giving adequate opportunity of being heard and without considering the written submission made before him.

3. That the Ld. Commissioner of Income-tax (Appeals) erred in law and on facts in denying exemption under section 11read with section 12, 12A and 13 on the grounds that the activities carried on by the appellant were profit making activities not falling under I.T.A. Nos.185,186,163,164,439/Lkw/2019 charitable purposes as envisage under section 2(15) of the Income- tax Act.

4. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in disallowing the exemption u/s 11, 12 and 13 read with first Proviso to section 2(15) on the ground that the appellant is hit by the provisions of section 13(1)(c) read with section 13(3) of Income-tax Act, 1961.

5. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts by not treating the appellant as Charitable Institution, even though the same has already been adjudged to be so by the Hon'ble Allahabad High Court in its judgment dated 16.09.2013 in the case of Commissioner of Income-tax-I v. Lucknow Development Authority in ITA no. 149 of 2009 for A.Y. 2005-06 along with ITA No. 60 of 2010 for A.Y. 2006-07 in its own case.

6. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts by disregarding the following judgments in case of Moradabad Development Authority which was also constituted under the same Act as that of the appellant Authority and whose objects were the same as that of the appellant Authority:

> a. Judgement of Hon'ble Allahabad High Court dated 03.05.2017 in ITA No. 3 of 2017 for the A.Y. 2009-10 b. Judgement of Hon'ble ITAT, Delhi dated 04.01.2018 in ITA Nos. 4631 and 4632/Del/2017 for A.Ys. 2012-13 and 2013-14 and c. Order of Ld. Commissioner of Income-tax (Appeals), Moradabad for A.Y. 2015-16 dated 28.01.2019

7. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming the total addition of Rs. 3,38,44,60,747/- against the Computation of income at NIL as made by the appellant was founded on the following undisputed facts

(i) the appellant is an authority duly notified as such under the Urban Planning and Development Act, 1973, by the State Government, for attainment of objects of General Public Utility

(ii)the Hon'ble ITAT in its own case, in ITA No. 686/Luc/06, order dated 25.07.2005 has already held that the object of the appellant I.T.A. Nos.185,186,163,164,439/Lkw/2019 are the objects of General Public Utility falling in the definition of charitable purposes as given in section 2(15) of the I.T. Act

(iii)accordingly, the appellant has already been held to be eligible for registration under section 12A in terms of the aforesaid order of the Hon'ble ITAT

(iv) in pursuance of the said order dated 25.07.2005, the Ld. CIT had already issued certificate of registration under section 12A dated 17.1.2006 which covers the year under reference also.

8. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming the addition of Rs. 1,04,20,59,240/- by not treating the activities of the appellant as charitable in nature. That the Ld. Commissioner of Income-tax (Appeals) was obliged to follow the rule of law relating to taxation and compute the income of the appellant on the basis of statement of income as based on the audit report in form 10-B, as was applicable in its case, by virtue of its being registered under section 12A of the Income-tax Act.

9. That the Ld. Commissioner of Income-tax (Appeals) was obliged to follow the rule of law relating to taxation and compute the income of the appellant on the basis of statement of income as based on the audit report in form 10-B, as was applicable in its case, by virtue of its being registered under section 12A of the Income-tax Act. (a)That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming the addition of Rs. 4,86,93,534/- transferred to IDRF because appellant had been maintaining Infrastructure Development Reserve Fund (IDRF) as per the Notification dated 15.01.1998 , and money transferred to this fund were to be utilized for the purposes of projects as specified by a committee formed by the State Government itself under the said Notification, and the same could not be treated to be belonging to the appellant or the receipts of taxable nature in its hands and also because the money was collected under IDRF, to the extent the same belonged to appellant, had duly been accounted for in the audited books of accounts and shown in Balance Sheet. This amount is held under trust for being utilized as and when requisition was made by the committee formed by the State Govt., as per the principle laid down by the Hon'ble apex Court in the case of CIT (Central) Vs. Bijli Cotton Mills (P) Ltd., reported in (1979)116 ITR 60, and the same could not have been treated to be the income in the hands of Appellant liable for taxation.

I.T.A. Nos.185,186,163,164,439/Lkw/2019

10. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming the disallowance of Provision for Development expenses of Rs. 2,29,37,07,973/-.

11. The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in passing order which is contrary to the facts and law.

ASSESSMENT YEAR 2016-17 (I.T.A. No.439)

1. The Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in passing the order which is unlawful, unjustified and against the principles of natural justice.

2. The Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in passing the order without giving adequate opportunity of being heard and without considering the written submission made before him.

3. That the Ld. Commissioner of Income-tax (Appeals) erred in law and on facts in denying exemption under section 11read with section 12, 12A and 13 on the grounds that the activities carried on by the appellant were profit making activities not falling under charitable purposes as envisage under section 2(15) of the Income- tax Act.

4. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in disallowing the exemption u/s 11, 12 and 13 read with first Proviso to section 2(15) on the ground that the appellant is hit by the provisions of section 13(1)(c) read with section 13(3) of Income-tax Act, 1961.

5. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts by not treating the appellant as Charitable Institution, even though the same has already been adjudged to be so by the Hon'ble Allahabad High Court in its judgement dated 16.09.2013 in the case of Commissioner of Income-tax-I v. Lucknow Development Authority in ITA no. 149 of 2009 for A.Y. 2005-06 alongwith ITA No. 60 of 2010 for A.Y. 2006-07 in its own case.

6. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts by disregarding the following judgements in case of Moradabad Development Authority which was also I.T.A. Nos.185,186,163,164,439/Lkw/2019 constituted under the same Act as that of the appellant Authority and whose objects were the same as that of the appellant Authority:

> a.Judgement of Hon'ble Allahabad High Court dated 03.05.2017 in ITA No. 3 of 2017 for the A.Y. 2009-10 b.Judgement of Hon'ble ITAT, Delhi dated 04.01.2018 in ITA Nos. 4631 and 4632/Del/2017 for A.Ys. 2012-13 and 2013-14 and c.Order of Ld. Commissioner of Income-tax (Appeals), Moradabad for A.Y. 2015-16 dated 28.01.2019

7. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming the total addition of Rs. 3,30,04,35,369/- against the Computation of income at NIL as made by the appellant was founded on the following undisputed facts

(i) the appellant is an authority duly notified as such under the Urban Planning and Development Act, 1973, by the State Government, for attainment of objects of General Public Utility

(ii)the Hon'ble ITAT in its own case, in ITA No. 686/Luc/06, order dated 25.07.2005 has already held that the object of the appellant are the objects of General Public Utility falling in the definition of charitable purposes as given in section 2(15) of the I.T. Act

(iii)accordingly, the appellant has already been held to be eligible for registration under section 12A in terms of the aforesaid order of the Hon'ble ITAT

(iv) in pursuance of the said order dated 25.07.2005, the Ld. CIT had already issued certificate of registration under section 12A dated 17.1.2006 which covers the year under reference also.

8. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming the addition of Rs. 3,30,04,35,369/- by not treating the activities of the appellant as charitable in nature. That the Ld. Commissioner of Income-tax (Appeals) was obliged to follow the rule of law relating to taxation and compute the income of the appellant on the basis of statement of income as based on the audit report in form 10-B, as was applicable in its case, by virtue of its being registered under section 12A of the Income-tax Act.

I.T.A. Nos.185,186,163,164,439/Lkw/2019

9. That the Ld. Commissioner of Income-tax (Appeals) was obliged to follow the rule of law relating to taxation and compute the income of the appellant on the basis of statement of income as based on the audit report in form 10-B, as was applicable in its case, by virtue of its being registered under section 12A of the Income-tax Act. (a)That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming the addition of Rs. 23,76,03,136/- transferred to IDRF because appellant had been maintaining Infrastructure Development Reserve Fund (IDRF) as per the Notification dated 15.01.1998 , and money transferred to this fund were to be utilized for the purposes of projects as specified by a committee formed by the State Government itself under the said Notification, and the same could not be treated to be belonging to the appellant or the receipts of taxable nature in its hands and also because the money was collected under IDRF, to the extent the same belonged to appellant, had duly been accounted for in the audited books of accounts and shown in Balance Sheet. This amount is held under trust for being utilized as and when requisition was made by the committee formed by the State Govt., as per the principle laid down by the Hon'ble apex Court in the case of CIT (Central) Vs. Bijli Cotton Mills (P) Ltd., reported in (1979)116 ITR 60, and the same could not have been treated to be the income in the hands of Appellant liable for taxation.

10. That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming the disallowance of Provision for Development expenses of Rs. 1,89,75,20,846/-.

11. That the Ld. Assessing Officer has erred in law and on facts in making addition of Rs. 17,04,91,220/- for deposit work.

12. That the Ld. Assessing Officer has erred in law and on facts in making addition of Liability for Construction Supply and Services of Rs 99,48,20,167/-

13. The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in passing order which is contrary to the facts and law.

2. The facts of the case, in brief, are that the assessee (LDA) was created by enactment of Uttar Pradesh Urban Development and Planning Act, 1973 by Notification No. 1892/XXXVI-2-21(DA)-72 dated 13.09.1974. In I.T.A. Nos.185,186,163,164,439/Lkw/2019 Uttar Pradesh Urban Development and Planning Act, it is mentioned that this Act is being enacted to tackle the problems of town planning and urban development. The main objective of the assessee is to develop houses at affordable cost for the public and to develop public utilities. The relevant provisions of the Uttar Pradesh Urban Development and Planning Act are as under:

> 1. The U.P. Urban Planning and Development Act 1973 empowers the State Government to declare any area within the state as development area by issuing a notification under section 3 of the UPUPD Act in Gazette. The Section 3 of the UPUPD Act reads as under:
>
> If in the opinion of the State Government any-area within the State requires to be developed according to plan it may, by notification in the Gazette declare the area to be a development area.
>
> 2. Section 4 of UPUPD Act states that the State Government on identification of area may constitute Development Authority for the purposes of the Act to promote and secure the development of the development area according to the Plan. Also, all the members of the Development Authority are either appointed by State Government or are ex-officio of different departments of State Government.
>
> 3. The objects of the Authority have been defined under section 7 UPUPD Act. The Section 7 reads as under:
>
> The objects of the Authority shall be promote and secure the development of the development area according to plan and for that purpose the Authority shall have the Power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:
>
> I.T.A. Nos.185,186,163,164,439/Lkw/2019 Provided that save as provided in this Act nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force.
>
> 4. Section 8 of the UPUPD Act allows the Authority to prepare Master Plan and Zonal Development plan.

5. Such plan needs to be approved by State Government before its execution as per Section 10 of the UPUPD Act. State Government may accept the plan without any modification or with such modification as it may consider necessary or reject the plan and direct the authority to prepare it afresh.

6. The procedure for the preparation as well as approval of the plan is also laid under section 11 of the UPUPD Act.

7. Section 16 of UPUPD Act prohibits the usage of land acquired the authority for any person other than the approved plan.

8. Section 17 and 18 of UPUPD Act provides the procedure and power for acquisition and disposal of land acquired for development.

9. Sub-section (2) of Section 20 of UPUPD Act debars the Authority to apply the funds for any purpose other than meeting the expenses in administration of UPUPD Act.

10. Section 41 of UPUPD Act deals with control of State Government of the Authority.

11. Sections 55, 56 and 57 of UPUPD Act deals with the power of the State Government to make rules, regulation and bye laws.

12. And finally, the dissolution clause, where the State Government is satisfied that the purpose for which the authority was established under the UPUPD Act has been substantially achieved, then the State Government, may by notification in the Gazette dissolve such authority u/s 58 of the UPUPD Act.

3. The assessee is registered u/s 12AA of the Income-tax Act. The registration has been granted by the Commissioner of Income Tax u/s 12AA I.T.A. Nos.185,186,163,164,439/Lkw/2019 of the Income Tax Act 1961, with effect from 01.04.2003 vide order dated 17.01.2006 which has never been revoked till date. The assessee filed its return of income declaring nil income return for Assessment Years 2013-14, 2014-15, 2015-16 and 2016-17 as it held a valid registration u/s 12AA of Income-tax Act issued by Commissioner of Income-tax vide order dated 17.01.2006 w.e.f. 01.04.2003 in view of order of the Tribunal dated 25.07.2005 in ITA No. 686/LUC/2003. This order of ITAT was later upheld by Hon'ble Allahabad High Court vide order dated 27.09.2013 in ITA No. 18 of 2006 and was never challenged by Revenue before Hon'ble Supreme Court. The 12A registration was never cancelled by Revenue u/s 12AA(3) of Income-tax Act. The cases of aforementioned years were selected for scrutiny and for the following reasons, stated in the assessment order, the Assessing Officer did not grant exemption u/s 11 of the Act.

A.Y. 2013-14 i. The assessee is not a charitable organization as in Uttar Pradesh Urban Planning & Development Act, 1973 words like charity, poor, economically weaker, subsidy/ subsidized, assistance, uplift are mentioned.

ii. The income is from disposal of immovable property, interest, rent, cess etc. and hence, its activities are on commercial lines akin to private contractor, real estate developers and colonizersand hence, not qualify test laid by Supreme Court in case of Surat Art Silk Cloth Manufacture Association (1997) 121 ITR 1.

iii. Local Authority definition under section 10(20A) of Income-tax Act by Finance Act, 2002 excluded Development Authority. iv. Assessee does not qualify the test laid by Supreme Court in case of Andhra Pradesh State Road Transport Corporation [(1986) 159 ITR 1] as in accordance with Section 58 of Uttar Pradesh Urban Planning & Development Act, 1973 all the properties, funds and dues on dissolution of LDA will vest with State Government and it would be in the discretion of State Government to utilize the same wherever it deems fit for which transfer of assets will be revocable u/s 11, 12 of IT Act.

I.T.A. Nos.185,186,163,164,439/Lkw/2019 v. Assessee is involved in activities of trade/ commerce/ business and hence hit by proviso to section 2(15) of Income-tax Act. After the assessment u/s 143(3), the case of assessee was selected for re- assessment proceedings and as its income was treated as Income from Business & Profession vide order u/s 143(3) of Income-tax Act, some further disallowances were made by applying provisions of section 40(a)(ia) and 43B of Income-tax Act.

A.Y. 2014-15 In additions to reasons for disallowance of claimed exemption u/s 11, 12, 13 read with section 2(15) mentioned in assessment order of AY 2013- 14, the provisions of section 13(3) of Income-tax Act were said to be applicable.

A.Y. 2015-16 In addition to reasons mentioned in assessment orders of AY 2013-14 and AY 2014-15, the Assessing Officer mentioned that the manner of application by trust needs to be examined by Assessing Officer and not Commissioner while granting registration.

A.Y. 2016-17 All the reasons mentioned in assessment order for AY 2015-16.

4. Aggrieved with the assessment orders, the assessee went in appeal before CIT(A), who upheld the order of Assessing Officer and while denying the exemption claimed u/s 11 read with section 2(15) of Income-tax Act, made the following observations:

> i. Irrevocable trust as assets and liability of appellant would be transferred to State Government and there is no restriction on the application of such funds by State Government ii. The assessee runs on commercial lines and is induced by profit motive. It even sells property under auction to its highest bidder. Its income includes income from sale of property, interest, rent, free hold charges, Map charges etc. The nature I.T.A. Nos.185,186,163,164,439/Lkw/2019 of its activity is trade, business and commerce akin to contractor, real estate developers, etc. iii. Mere grant of 12A registration does not qualify application of section 11 of Income-tax Act. It only indicates that assessee is entitled to benefit of exemption u/s 11 & 12.

iv. Applicability of section 13(3) and 13(1)(c) of Income-tax Act as appellant gave discount of 10% in value of property to its employees and 2% reservation in allotment once in his lifetime.

5. Aggrieved with the orders of CIT(A) the assessee is in appeal before us. Learned counsel for the assessee invited our attention to the detailed written submissions and made summarized arguments from written submissions. It was submitted that the activities of the assessee have not changed since its inception and it has been decided by the Tribunal in ITA No. 690/LUC/2003 dated 25.07.2005 and Hon'ble Allahabad High Court vide order in ITA No. 18 of 2006 dated 27.09.2013 and ITA No. 149 of 2009 for AY 2005-06 and ITA No. 60 of 2010 for AY 2006-07 dated 16.09.2013 in its own case that the activities of the assessee are charitable in nature. Learned counsel for the assessee, from the written submissions, invited our attention to the following sections of U.P. Urban Planning and Development Act, 1973 (hereinafter referred as UPUPDA) under which the assessee was incorporated by U. P. State Government.

i. Members are ex-officio Government Officers of U.P. State Government - Section 3 of UPUPDA.

ii. Object is town planning and urban development - Section 7 of UPUPDA.

iii. Submission of master plan/ zonal plan mandatory for approval from State Government - Section 10 of UPUPDA.

iv. Land and buildings cannot be used in contravention of plans-

Section 16 of UPUPDA.

v. Not a single penny can be used for purpose other than its objects -

Section 20 UPDA.

vi. Ultimate Power/ Control vest in the hands of State Government -

Section 29 and Section 41.

I.T.A. Nos.185,186,163,164,439/Lkw/2019 vii. State Government has power to make rules- Section 55 of UPUPDA.

viii. Without prior approval of State Government, no regulations and bye laws can be made - Section 56 and Section 57 of UPUPDA. Learned counsel for the assessee submitted that the assessee is engaged in providing houses and public utility services in the area of Lucknow and is empowered to acquire lands and develop them into plots and houses to be allotted to general public. Therefore, such an activity cannot be classified in the nature of trade, commerce or business. Reliance in this respect was placed on the judgment of Hon'ble Supreme Court in the case of Queen's Education Society, Civil Appeal no. 5167 of 2008, dated 16.03.2015. Learned counsel submitted that exemption

cannot be denied unless its purpose is of attainment of profit as held in the case of Dharmadeepti v CIT 114 ITR 454 (SC). Further, the excess income, if any in a year, is ploughed back for development purposes according to plan in subsequent years and is not distributable among members as in case of private real estate developers and colonizers. Hence, assessee exists solely for development purpose and not for profit making and cannot be construed to be engaged in business activity. Furthermore, reliance was placed on the judgment of Hon'ble Allahabad High Court dated 16/09/2013 in the case of assessee itself. It was submitted that though this case relates to the year before the insertion of proviso to section 2(15) but the Hon'ble Court, while deciding the issue, has taken cognizance of such amendment. The Learned counsel for the assessee submitted that the Hon'ble Court has observed that activities should be carried on commercial lines with intention of profit motive for holding those activities as business and where activities are carried out on non-commercial lines with no motive to earn profits, for fulfillment of its aims and objectives which are charitable in nature and in such process some profit is earned, as in the case of assessee, the same would not be hit by I.T.A. Nos.185,186,163,164,439/Lkw/2019 proviso to section 2(15). Reliance was also placed on the judgment of Hon'ble Allahabad High Court in case of Yamuna Expressway Industrial Development Authority (YEIDA) dated 21.04.2017 wherein the Hon'ble court held that YEIDA was engaged in charitable activity after in depth analysis on what would construe charitable activity and whether the income from disposal of immovable property, cess/ fee and other such considerations would cease it from having its objects of general public utility for grant of registration u/s 12AA of Income-tax Act. It was submitted that Hon'ble Court, in the case of YEIDA, has considered the insertion of proviso to section 2(15) of the Act and has followed the judgment of Hon'ble Allahabad High Court in the case of assessee itself. It was submitted that this order was common order for YEIDA and Greater Noida Industrial Development Authority (GNIDA). It was submitted that GNIDA had also applied before CBDT for certificate under 10(46) of Income-tax Act and its plea was rejected. The Hon'ble Delhi High Court in a Writ Petition (Civil) No. 732/2017 dated 26.02.2018 held that the activities of GNIDA were not commercial in nature and hence, directed CBDT to grant certificate for the same. While deciding the said matter it came to the notice of Hon'ble Court that GNIDA received money by way of disposal of immovable property, rent, cess/ fee, interest from FDR and even on deferred payment received from allottees, charges for water, sewage etc. CBDT vide notification dated 23.06.2020 granted the certificate. Its SLP against Delhi High Court order was rejected by Hon'ble Supreme Court vide order dated 25.11.2019. Similar Notification was issued in case of YEIDA as well by CBDT in compliance of order of Delhi High Court in its case which was passed following its own order in case of GNIDA (Supra). Further, the above order of Hon'ble Allahabad High Court in case of YEIDA was followed by Hon'ble Allahabad High Court in the case of Moradabad Development Authority for AY 2009-10 in ITA No. 3 of 2017 I.T.A. Nos.185,186,163,164,439/Lkw/2019 dated 03.05.2017. The said judgment is directly relatable to assessee as Moradabad Development Authority has been constituted under same Act as the assessee and hence, all its activities and objects are same. Further, reliance was placed on the following case laws:

1. Judgment of Hon'ble Allahabad High Court in case of Muzaffarnagar Development Authority (ITA 81 of 2012 dated 20.04.2015)

2. Judgment of Hon'ble Allahabad High Court in case of Hapur Pilkhuwa Development Authority & Others (657 of 2007 dated 29.08.2016)

3. Judgment of Hon'ble Gujrat High Court in case of Ahmedabad Urban Development Authority (ITA Nos. 423 to 425 of 2016 for A.Y. 2009-10 to 2011-12 dated 02.05.2017)

4. Judgment of Hon'ble Gujarat High Court in the case of Gandhinagar Urban Development Authority (ITA No. 79 of 2020 dated 25.02.2020)

5. Judgment of Hon'ble Gujarat High Court in the case of Surat Urban Development Authority (Tax Appeal No. 220 of 2020 dated 21.09.2020)

6. Judgment of Hon'ble Gujarat High Court in the case of Jamnagar Area Development Authority (Tax Appeal No. 221 of 2020 dated 21.09.2020)

7. Judgment of Hon'ble Karnataka High Court in case of Belgaum Urban Development Authority (ITA No. 5020 of 2012 dated 19.02.2019)

8. Judgment of Hon'ble Karnataka High Court in case of Hubli Dharwad Urban Development Authority

9. Judgment of Hon'ble Rajasthan High Court in the case of Jodhpur Development Authority reported in [2017] 79 taxmann.com 361 (Rajasthan).

It was submitted that though its' income is from disposal of immovable property, interest, rent, cess etc., it is not engaged in commercial activity with intent of making profit as upheld by jurisdictional High Court and hence, the assessee qualifies the test laid by Supreme Court in case of Surat Art Silk Cloth Manufacture Association (1997) 121 ITR 1. Learned I.T.A. Nos.185,186,163,164,439/Lkw/2019 counsel for the assessee further submitted that all the cases relied upon by Revenue to hold that activities of the assessee are commercial in nature, does not apply to the facts and circumstances of assessee. It was submitted by learned counsel that at the time of judgment of Andhra Pradesh State Road Transport Corporation [(1986) 159 ITR 1 (SC)], there was no provision in the Income-tax Act as to what would happen on dissolution or transfer of assets by a charitable trust. However, now the accreted income is made taxable in hands of assessee on dissolution / transfer in contravention of the provisions of section 115TD of Income-tax Act inserted by Finance Act 2016. As on date the assessee is operational and there is no notification from U.P. State Government of its intention to dissolve assessee (LDA). Learned counsel for the assessee, differentiating the case of Jammu Development Authority relied upon by revenue against it, submitted that the case of Jammu Development Authority was for cancellation of 12AA registration and in case of assessee, 12AA registration is valid as on date and was never revoked. It was submitted that in the case of Moradabad Development Authority, which is constituted under same Act as the assessee, similar question was admitted as question of law by the jurisdictional High Court and Hon'ble High Court, after considering submissions of both parties, have answered such question in favour of the

assessee, holding that exemption u/s 11 of Income-tax Act should be granted even post amendment of section 2(15) of Income-tax Act as the activities of Development Authority were not run-on commercial lines and there is no profit motive. Learned counsel for the assessee further submitted that this Bench of the Tribunal had recalled the order of Kanpur Development Authority (ITA No.332 & 333/Lkw/2013) and hence, the same cannot be equated to be decision of this court. Learned counsel for the assessee further submitted that section 13(3) is also not applicable in the present case as its members are ex-

I.T.A. Nos.185,186,163,164,439/Lkw/2019 officio appointed directly by State Government. Ultimate power vests with State Government whether it be for formation of Rules/ Regulations, approval of budget or dissolution of Authority and 10% discount in value of property and 2% reservation in allotment is provided to employees of assessee authority and employee does not come under purview of section 13(3) as held by Hon'ble High Court of Patna in the case of Commissioner of Income-tax vs. Tata Steel Charitable Trust reported in [1995] 78 taxman 98 (Pat.). It was submitted that Assessing Officer himself, in assessment year 2018-19 u/s 143(3), has allowed exemption u/s 11 of the Act and our attention was invited to paper book pages 361 to 363 where a copy of such assessment order was placed. Our attention was also invited to an order of learned CIT(A) in the case of the assessee itself for assessment years 2009- 10 and 2010-11, placed in paper book pages 368 to 373 and 374 to 379 respectively where learned CIT(A) has allowed exemption to the assessee u/s 11 of the Act which the Assessing Officer had denied. In view of these facts and circumstances and judicial precedents, it was prayed that exemption to the assessee u/s 11 be allowed and the additions made by Ld. Assessing Officer, be deleted. Learned counsel for the assessee further submitted that the assessee had been maintaining infrastructure development reserve fund wherein, in accordance with notification of Government, the assessee has been crediting the funds instead of routing through the profit & loss account as this amount has to be spent for the purposes of projects as specified by a committee framed by State Government and authorities below, while denying exemption u/s 11 have disallowed this amount also which is not in accordance with law and have further made certain disallowances, which is not in accordance with law and which needs to be deleted.

I.T.A. Nos.185,186,163,164,439/Lkw/2019

6. Learned D. R., on the other hand, vehemently supported the orders of the authorities below and submitted that the objects of the assessee may at first appear to be of general public utility, however, sale and purchase of property that too through auction or draw, charging interest on late payments, collecting fee & cess, make it a commercial transaction. Hence, in light of Surat Art Silk Cloth Manufacturers Associates (121 ITR 1 [1979]) within terms and conditions stipulated u/s 2(15), it cannot be said to be a charitable organization. Learned D. R. placed reliance in the case of Andhra Pradesh State Road Transport Corporation (1986) 159 ITR 1 and Shri Ramtanu Co-operative Housing Society Ltd & Another [1970] 3 SCC 323. She placed emphasis to the fact that registration once granted u/s 12AA of Income-tax Act does not grant assessee a license to claim exemption u/s 11 of the Income-tax Act, 1961. 12AA registration only indicates that trust/ institution is entitled to benefit of section 11 and 12 of the Act. The assessee however, will be entitled only if it complies with other requirements and hence, it is always open to Revenue to examine its claim of exemption u/s

11, 12 and 13. Reliance was placed on M. Visversarya Industrial Research & Development Centre (2012) 79 DTR 387(Bom.). She also added that the assessee gave 10% discount in value of property and 2% reservation in allotment to its employees and hence, there was violation of the provisions of section 13(3) of Income-tax Act. Reliance for this was placed on judgment of Awadh Educational Society of Hon'ble Allahabad High Court where exemption u/s 11 was denied as interest free loan was provided to treasurer. Emphasis was added to the judgment of Delhi High Court in case of Maruti Centre 208 taxman 236 where exemption was denied as benefit was directly/ indirectly provided to persons mentioned in section 13(3) in lieu of provisions of section 13(1)(c)(ii) of the Act. Also, reliance was placed on judgment of Hon'ble Supreme Court in case of Noida I.T.A. Nos.185,186,163,164,439/Lkw/2019 Entrepreneurs Association WP(Civil) 150 of 1997 wherein issue of misuse of power by CEO was examined. The Ld. DR placed heavy reliance on following judgments wherein exemption u/s 11 of Income-tax Act was denied and the activities similar to that of assessee were treated as commercial in nature:

i. ITAT, Amritsar Bench in case of Jammu Development Authority.

ii. ITAT, Lucknow Bench in case of Kanpur Development Authority She further added that the order of Hon'ble Allahabad High Court in case of Moradabad Development Authority (MDA) should not be followed in this case as the court in its findings simply relied on another judgment in case of Yamuna Expressway Industrial Development Authority (YEIDA) which was on rejection of 12AA registration and not on allowability of exemption u/s

11.

7. In her rejoinder Learned counsel for the assessee placed emphasis on the case of MDA and brought to the notice of this Bench the questions of law decided by Hon'ble Allahabad High Court in the judgment of MDA & YEIDA and submitted that these questions of law are similar to the issues involved in these appeals. With regard to reliance placed by the Revenue in case of Jammu Development Authority, it was submitted that the case of Jammu Development Authority is on cancellation of registration u/s 12AA and in case of assessee, the registration was never cancelled. As regards case law of Kanpur Development Authority, it was submitted that the said order has been recalled by Hon'ble Tribunal vide order dated 17/02/2018.

8. We have heard the rival parties and have gone through the material placed on record. The main objective of the assessee authority is to develop houses at affordable cost for the public and to develop public I.T.A. Nos.185,186,163,164,439/Lkw/2019 utilities. The assessee Authority was created by enactment of Uttar Pradesh Urban Development and Planning Act, 1973 by Notification No. 1892/XXXVI- 2-21(DA)-72 dated 13.09.1974. In Uttar Pradesh Urban Development and Planning Act, it is mentioned that this Act is being enacted to tackle the problems of town planning and urban development. The assessee Authority has been constituted by the State Government and assessee Authority has no power to take decision on application of funds in contravention to the provisions of the UPUPD Act. The Authority thus cannot be said to be running for profit motive. If any income is earned over and above expenditure, it is used for development work in the city of

Lucknow. Authority is just assisting State Government in development of towns which is for the welfare of the public.

9. As regards the Revenue's stand to compare the assessee with a private colonizer, we observe that the major source of income of the assessee authority is from the sale of plots, houses, shops, rent, sundry receipts and interest, still the assessee authority cannot be compared with a private Real Estate Developers for several reasons. Few such reasons are discussed below:

a. The appellant Authority is constituted by Uttar Pradesh Urban Development Act, 1973 for the development of Lucknow without profit motive. On the other hand, the private colonizers/ Real Estate Developers are embodied by private firms and companies for the development of a housing project undertaken by them with profit motive.

b. The appellant Authority consist of nominees of the State Government and are answerable to the State Government for any course of action taken by them beyond the powers delegated to them by the Act/ State Government, however, private colonizers/ Real Estate Developers consist of private players who are only answerable to each other for their actions.

I.T.A. Nos.185,186,163,164,439/Lkw/2019 c. The Authority is neither running for profit motive nor it is actually earning profit. However, in case of private colonizers/ Real Estate Developers, the difference between the actual cost and the sale consideration is exorbitant to earn maximum profits and no discounts are granted to weaker section.

d. The appellant Authority cannot utilize funds in any activity other than the main objects / administration of the Act under which it is constituted, however, no such restrictions are upon such private colonizers/ Real Estate Developers.

e. Books of accounts are audited by auditor appointed by State Government/ office of Authority General of India in case of LDA. On the other hand, audit in case of private colonizers/ Real Estate Developers is done by an auditor appointed by them and in some cases, it is even not compulsory by law.

f. In the case of the appellant Authority, no personal benefit of any person or entity is involved, all the decisions are made within the ambit of law for the overall development of the city, however, private colonizers/ Real Estate Developers, focus mainly on their personal benefits.

9.1 Due to these reasons the development work undertaken by the assessee authority cannot be compared with the development work undertaken by the private colonizers / Real Estate Developers. The assessee has also carried out various projects in the city of Lucknow for the welfare of general public which a private colonizer will never do.

i. Numerous parks in the city like Lohia Park in Gomti Nagar, Neebu Park, Hati Park, in Chowk and various other parks in Lucknow were build and are maintained by the appellant Authority. Further, the Gomti River Front developed in Lucknow is now being maintained by the appellant Authority. The parks developed by appellant Authority are open for public irrespective of the place where they live, however, a Real Estate Developer only develops the park that are in its premises and these parks are accessible to its customers only.

I.T.A. Nos.185,186,163,164,439/Lkw/2019 ii. Roads, sewage system, etc. which are build and street lights which are installed by the appellant Authority for the benefit of the public at large, however, Real Estate Developers only develops roads, installs lights inside their project areas, and if used by general public, it is considered as trespassing.

iii. All the plots/ flats/ houses allotted by appellant Authority of similar sizes cost the same to the buyer, however, the cost of plots/ flats/ houses of same size as of appellant Authority build by private players is exorbitantly high and also differ if, the property sold by private player are vastu compliant/ east facing/ park facing, etc. iv. The receipt of money is arising out of sole purpose of growth and development of the areas and if there are surplus funds, they cannot be distributed but are used in forth coming years for development of Lucknow city. No such restriction is upon the Real Estate Developers.

Therefore, from the development undertaken by the appellant Authority, public is benefited at large. It is clear that the benefits of development undertaken by the appellant Authority is not restricted to an individual or particular group of individuals for which its objects should be considered charitable under forth limb of section 2(15) of Income-tax Act. Words "other objects of general public utility" have been decided in catena of decisions. The said expression is widest of connotation. Words "general" in the said expression is pertaining to a whole class. If the primary purpose and the predominant object are to promote the welfare of the general public, the purpose would be charitable purpose. In this regard reliance is placed of following judgements of Hon'ble Supreme Court:

> i. Commissioner of Income-tax v. Ahmedabad Rana Caste Association [1983] 140 ITR 1 (SC) ii. Commissioner of Income-Tax Vs. Gujarat Maritime Board [2007] 295 ITR 561 (SC) iii. CIT v. Bar Council of Maharashtra (1981) 130 ITR 28 (SC) I.T.A. Nos.185,186,163,164,439/Lkw/2019 9.2 Further, in the case of Additional Commissioner of Income-Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 (SC) a Constitution Bench held that, if primary purpose and predominant object of a trust are to promote welfare of general public, the purpose would be charitable purpose. If primary or predominant object of an institution is charitable, any other object which might not be charitable, but which is ancillary or incidental to dominant purpose, would not prevent institution from being a valid charitable trust. Therefore, irrespective of the fact that LDA receipts include consideration from sale of property, rent, interest, etc., LDA has to be considered as charitable trust in light of abovementioned judgments of Hon'ble Supreme Court and Hon'ble Allahabad High Court in its own case since its predominant object are to

> promote welfare of general public and L.D.A. cannot be compared with and treated like a real estate developer. Treating L.D.A. like a real estate developer will defeat the very purpose of establishing L.D.A. by an Act of Legislatures.

9.3 From the above facts, it is clear that the Lucknow Development Authority is not engaged in carrying on any activity in the nature of trade, commerce or business or any activity in the nature of rendering any service in relation to any trade, commerce or business for a fee or any other consideration. The nature of activities of the assessee Authority, the purpose and manner of its formation and the objects for which it has been created goes to show that it is not engaged in carrying on any activity in the nature of trade, commerce or business. The objects of the assessee Authority do not, expressly or impliedly, provide for carrying on of trade, commerce or business. The L.D.A. is only rendering/ providing service to the general public on behalf of the Government without any profit motive or I.T.A. Nos.185,186,163,164,439/Lkw/2019 without earning profit. Lands, plots etc. acquired by the L.D.A. and allotted by it are allotted without earning profit after taking into account the direct and indirect expenses. Further, the L.D.A. is registered u/s 12AA of the Income-tax Act, as per the order of the Hon'ble ITAT dated 25.07.2005 in been granted by the Ld. Commissioner of Income Tax-I u/s 12AA of the Income Tax Act 1961, with effect from 01.04.2003 vide order dated 17.01.2006. Further, the registration u/s 12AA has never been revoked till date.

9.4 The argument of the Revenue is that after insertion comes out of the definition of charitable activities w.e.f. 01/04/2009, any activities in the nature of business or trade comes out by an organization will preclude the same for being an entity engaged in charitable activities. To examine the impact of insertion of proviso to Section 2(15), it is important to look at the intention with which the amendment was brought into force which is discussed below.

9.5 The main intent or purpose of the Legislature in bringing such an amendment is to exclude certain non-genuine NGOs which are carrying on activities in the nature of trade, commerce or business in the garb of advancement of public utilities and enjoying the exemption of income which is accrued because of such activities.In this regard reference can be made to the budget speech of the Hon'ble Finance Minister before the house which affirms the said interpretation, the abstract of which is given below:

> "Charitable purpose includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business I.T.A. Nos.185,186,163,164,439/Lkw/2019 or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under "charitable purpose". Obviously, this was not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected"

9.6 It can very well be seen from the above extract that the intent of the Finance Minister in bringing such an amendment is to target those non- genuine NGOs who carry on activities in the nature of

trade or business under the grab of charity. The appellant Authority is a Government body. It does not fall under the category of non-genuine NGOs. The Learned Assessing Officer has taken a narrow and myopic view, by holding that the assessee Authority is carrying on business, which needs to be corrected.

9.7 While dealing with cases such as of L.D.A., a Government body, a narrow and myopic view should not be adopted. While interpreting the terms trade, commerce or business, in the Commentary on Income Tax Law by Chaturvedi & Pithisaria, "business" has been defined / explained as under

> (Page 1321; Vol I; Fifth edition):
>
> (1) Business "The word "business" is one of large and indefinite import and connotes something which occupies the time, attention and labour of a person normally with the object of making profit [JesselM.R. In smith V. Anderson, (1880) 15 Ch D 247, 258;

State of Andhra Pradesh v. H. Abdul Bakshi& Bros, (1964) 15 STC 644, 547 (SC); CIT v. MotilalHirabaiSpng.And Wvg. Co. Ltd., (1978) 113 ITR 173 (GUJ); Bharat Development (P.)Ltd. V. CIT, (1982) 133 ITR 471,474/ (Del)]. The word means almost anything which is an occupation or duty requiring attention as distinguished from sport or pleasure and is used in the sense of an occupation continuously carried on for the purpose of profit [Rogers Pyatt Shellac & Co. v. Secretary of State, AIR I.T.A. Nos.185,186,163,164,439/Lkw/2019 1925 Cal 34=11TC 363]. Thus the word 'business' is a wider term than, and not synonymous with, trade; and means practically anything which is an occupation as distinguished from a pleasure [Halsbury's Laws of England, Third Edition, Vo1.38, page 10, quoted in CIT v. Upasana hospital, (19970 225 ITR 845,851 (Ker). Also see, CIT v. Delhi Transport Corporation, (1996) 134 Taxation 386, 392-93 (Del)]. 'Business' is a word which has more extensive I meaningthat trade. All trade is business but all business is not trade [Vijaya Bank v. A.N. Tewari, (1995) 83 Taxman 340,342 (Del)]."

The aforesaid Commentary further explains "business" as under on Page 1336:

> "Is profit-motive essential to constitute a 'business'? - "Business,without profit is not business, any more than a pickle is candy"[Abbot]. To regard an activity as 'business', there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure [Shah. J., in State of Andhra Pradesh v. H. Abdul Bakshi& Bros. , (1964) 15 STC644, 647(SC); StateofGuajrat v. Raipur Mfg. Co. Ltd. , (1967)19 STC 1 (SC) ; Director of Supplies and Disposals v. Member, Board of Revenue (1967) 20 STC 398 (SC); CST v. Anil Co-operative Credit Society, (1969) 24 STC 180, 192 (Gui);
>
> MahammadFaruq, In re (1938) 6 ITR 1, 7 (Ail); Bharat Development (P.) Ltd. v. CIT, (1982) 133 ITR 470,474 (Del); Government Medical Store Depot v. Superintendent of Taxes, (1986) Tax LR 2164 (SC) = (1985) 60 STC 296 (SC);

Government Medical Store Depot v. State of Haryana, (1986) 63 STC 198(SC))."

The expression "business" has further been defined in theCommentary on Income Tax Law by Chaturvedi&Pithisaria(Pages 1322 and 1323; Vol1 ; Fifth edition)as under:

> "The word 'business' is a word of large and indefinite import. It is something which occupies the attention and labour of a person for the purpose of profit. It has a more extensive meaning than the word 'trade'. An activity carried on continuously in an organized manner with a set purpose and with a view to earn profit is business [CIT v. M.P. Bazaz, (1993) I.T.A. Nos.185,186,163,164,439/Lkw/2019 200 ITR 131, 135, 136 (Ori)]. Also see, Khoday Distilleries Ltd. v. State of Karnataka, JT 1994 (6) SC 588, 625-26."

(ii) Meaning and Concept of "Trade" and "Commerce"

In the Commentary on Income Tax law by Chaturvedi & Pithisaria, "trade" and "commerce" have been defined as under

> (Page 1323; Vol 1; Fifth Edition):
>
> "Trade or Commerce- The definition of 'trade' does not find its place in the Act. The dictionary meaning of 'trade' as per dictionary of Webster's New Twentieth Century Dictionary, (Second edition), means amongst others, 'A means of earning one's living, occupation or work'. In Black's Law Dictionary also 'trade' means a business which a person has learnt or he carries on for procuring subsistence or profit; occupation or employment, etc. [CIT v. Assam Hard Board Ltd., (1997)224 ITR 31.8, 320 (Gauh)]. "Trade" in its primary meaning is the exchanging of goods for goods or goods for money; in its secondary meaning it is repeated activity in the nature of carried business on with a profit motive, the activity being manual or mercantile as distinguished from the liberal arts or learned professions or agriculture [State of Punjab v. Bajaj Electricals Ltd.,(1968) 70 ITR 730, 732 (Sc)]. If a person buys goods with a view to selling them at profit, it is an ordinary case of 'trade'. If the transactions are on a large scale, it is called 'commerce, [GannonDunkerley& Co. v. State of Madras, (1954) 5 STC 216,244 (Mad)],and it is the continuous repetition of such transactions which will constitute a "business"."

9.8 In the case of State of Punjab and Another v. Bajaj Electricals Ltd (1968) 70 ITR 730(SC), it has been held that essential condition for carrying on business, trade, commerce is making profit. The relevant portion of this judgment is reproduced below:

> "Liability to pay tax under Act 7 of 1956 arises if a person carries on trade by himself or through his agent, or follows a profession or is in employment within the State, and to otherwise. The expression "trade" is not defined in the Act. "Trade" in its primary meaning is the exchanging of goods for goods for I.T.A.

> Nos.185,186,163,164,439/Lkw/2019 money; in its secondary meaning it is repeated activity in the nature of business carried on with a profit motive, the activity being manual or mercantile, as distinguished from the liberal arts or learned professions or agriculture."

9.9 Similarly, Hon'ble Supreme Court in the case of Commissioner of Income-tax, Punjab v. Lahore Electric Supply Co. Ltd (1966)60 ITR 1 (S.C) has held as under:

> "Income Tax business Income-Carrying On of Business - Government Acquired Assessee Company's Undertaking In Regard To Supply Of Electricity-Mere fact That It Did Not Go Into Liquidation Would Not Establish That It Had Intention To Do Business-at The Relevant Time The Company Was Not Express And Intention To Resume Business-Thus, no Business was Carried On-facts That It had To Pay The Government Half Share Of Profits For Some time and That It Had To Return Deposits To Consumers Would Not Indicate That It was Carrying On Business-Business as Contemplated By S.10 Of 1922 Act Is An Activity Capable of Producing A Profit Which Can Be Taxed."

9.10 In the case of CIT V. K. S. Venkatksubbiah Reddiar (1996), 221 ITR 18,21 (Mad.), Hon'ble Madras High Court has, while holding that profit - motive is essential to constitute a business, observed as under:

> "It is, therefore, clear that the two essential requirements for any activity to be considered asbusiness are (i) it must be a continuous course of activity; and (ii) it must be carried on with a profit motive."

Similar findings have been made in the following case laws:

> (1) Barendra Prasad Ray v. ITO (1981) 129 ITR 295 (SC) (2) LalaIndra Sun In Re (1940) 8 ITR 187 (Alld) (3) NarasinghaKar& CO. v, CIT (1978) 113 ITR 712(Ori) I.T.A. Nos.185,186,163,164,439/Lkw/2019 9.11 From the aforesaid, it is clear that the appellant "Authority" is not engaged in carrying on any activity in the nature of trade, commerce or business or any activity in rendering any service in relation to any trade, commerce or business in as much as profit motive is one of the essential conditions of business, trade or commerce as stated above, whereas the L.D.A. has no profit motive. It has been running schemes for various sections of the society in pursuance of the Constitution of India under which every State Government is responsible for Town Planning and for the welfare of the public. Alongwith with affordable houses public utilities are developed as per the plan of the State Government. In recent times houses are being provided to economically weaker section of the society under various schemes of Pradhan Mantri Awas Yojna.

9.12 The objects and activities of the appellant Authority has not changed since grant of registration u/s 12AA of the Act. The funds can be utilized in accordance with approved budget by State

Government. The ultimate property/ funds of the appellant Authority vest with StateGovernment in case of dissolution by the State Government. The appellant Authority cannot act beyond the Statute through which it was incorporated.

10. As regards the objection of Revenue regarding surplus of income, we observe that the receipt of money by way of sale consideration, sundry receipts, interest, rent etc. is arising out of sole purpose of growth and development of the areas. Surplus of funds if any, cannot be distributed but are used in subsequent years for development of Lucknow city only. Therefore, surplus of funds should not be equated to profit motive.

10.1 In the judgment of Hon'ble Allahabad High Court in case of Commissioner of Income-tax vs. Krishi Utpadan Mandi Samite (2010) 1 ALJ I.T.A. Nos.185,186,163,164,439/Lkw/2019 817, their lordship held that charging cess /fee is for the purpose of carrying out object of Act i.e. Krishi Utpadan Mandi Samiti Adhiniyam, 1964. Where dominant purpose of trust is charitable, incidentally if some profit is made and such profit is used for charitable purposes, the said trust/institution does not cease to be established for "charitable purposes". The dominant object of Mandi Samiti is to regulate, procure and supply of agricultural and some other produce and to meet expenses required for achieving the said object. Legislature has empowered Assessee to levy/cess/fee. Whatever surplus remains in market fund would come back for carrying on the object for which Mandi Samities are established.

10.2 The aforesaid judgement of High Court has been confirmed by the Hon'ble Supreme Court in Appeal reported in (2012) 12 SCC 267.

If the predominant object is to carry out charitable purpose and not to earn profit, the purpose would not lose its charitable character merely because some profit arises from the activity [CIT v. Andhra Pradesh Road Transport Corporation (1986) 159 ITR 1 (SC), Thiagrajan Charities v. Addl. CIT (1997) 225 ITR 1010 (SC), Girijan Co-operative Corporation Ltd v. CIT (1989) 178 ITR 359 (AP)].

In view of above, it is held that the receipt of money by way of sale consideration, sundry receipts, interest, rent etc. is arising out of sole purpose of growth and development of the areas and not to earn profit.

11. We further find that in the case of assessee itself in assessment year 2005-06, the Hon'ble Allahabad High Court in a bunch of cases vide order dated 16/09/2013 has held the assessee to be engaged in charitable activities. Though the year involved in this case is before the insertion of proviso to section 2(15) but the Hon'ble High Court held that even after I.T.A. Nos.185,186,163,164,439/Lkw/2019 insertion of proviso to section 2(15), the assessee cannot be said to be engaged in carrying on business activities. The relevant findings of Hon'ble court are reproduced below:

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

It is undisputed fact that the assessee is a "Statutory Authority" which was established under the provisions of the Uttar Pradesh Planning and Development Act, 1973. In the instant case, prior to 1st April, 2003, the assessee were enjoying exemption under Section 10(20A) and Section 10(29). When these provisions were amended w.e.f. 1st April, 2003, then the necessity arose to register these institutions under Section 12A. In view of the objects, there is no good reason for holding that statutory bodies could not be treated as "charitable" within the meaning of Section 2(15). The object of the "Authority" is to provide shelter to the homeless people, therefore, there is no objectionable material to treat these institutions as noncharitable. The registration under Section 12A is mandatory to claim exemption under Sections 11 & 13, but registration alone cannot be treated as conclusive. It is always open to Revenue Authorities, while processing return of income of these assessees, to examine the claim of the assessees under Sections 11 & 13 and give such treated to these institutions as is warranted by the facts of the case. Revenue Authorities are always at liberty to cancel the registration under Section 12AA(3). Moreover, it may be mentioned that the benefit of Section 11 is not absolute or conclusive. It is subject to control of Sections 60 to 63. If it is found by keeping in view the provisions of Sections 60 to 63 that it is not so includible then such income does not qualify for any relief.

The contention that the assessee are earning profit has no merit as per the ratio laid down in the case Sarafa Association vs. CIT, [2007] 294 ITR 262 (MP), where it was observed that "the promotion of commercial trade is a charitable purpose under Section 2(15) of the Act". In the case of Director, ITO vs. Govinda, 315 ITR 237 (Mad), it was observed that the construction of commercial complex by charitable trust is eligible.

If the objects of the "Authority" is charitable as public utility then the benefit being a charitable trust is eligible as per the ratio I.T.A. Nos.185,186,163,164,439/Lkw/2019 laid down in the case of CIT vs. Gujarat Maritime Board, [2007] 295 ITR 561 (SC), where it was observed that:-

"... in Section 2(15), namely, "any other object of general public utility". From the said decisions it emerges that the said expression is of the widest connotation. The word "general" in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose [CIT vs. Ahmedabad Rana Caste Association, [1983] 140 ITR 1 (SC)]. The said expression would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the general public the purpose would be charitable purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so,

> if it seeks to promote the interest of those who conduct the said trade or industry [CIT vs. Andhra Chamber of Commerce [1965] 55 ITR 722 (SC)]. If the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity [Addl. CIT vs. Surat Art Silk Cloth Manufacturer Association [1980] 121 ITR 1 (SC)]."

Applying the ratio laid down in the case of CIT vs. Andhra Pradesh State Road Transport Corporation [1986] 159 ITR 1 (SC), where of in the present case, the "Autonomous Authority" was established for the purpose of predominant of development the area and provide to shelter to the homeless people within the State of U.P. The management and control of the Authority is essentially with the State Government and there is no profit motive as the income earned by the Authority is deployed for the development of the State.

Further, it may be mentioned that Section 12AA of the Act lays down the procedure for registration in relation to the conditions for applicability of Sections 11 & 12 as provided in Section 12A. Therefore, once the procedure is complete as provided in sub-section (1) of Section 12AA and a certificate is I.T.A. Nos.185,186,163,164,439/Lkw/2019 issued granting registration to the trust or institution the certificate is a document evidencing satisfaction about (i) the genuineness of the activities of the trust or institution, and (ii) about the objects of the trust or institution. Section 12A stipulates that the provisions of Sections 11 & 12 shall not apply in relation to income of a trust or an institution unless the conditions stipulated therein are fulfilled. Thus, granting of registration under Section 12AA denotes that the conditions laid down in Section 12A stand fulfilled.

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

Needless to mention that this Hon'ble Court in the case of CIT vs. M/s. U.P. Forest Corporation Ltd., in Income Tax Appeal No. 70 of 2009 observed that the Forest Corporation being an statutory entity is entitled for the registration under Section 12A of the Act. The said observations was upheld by the Hon'ble Apex Court vide its order dated 12.05.2011 in Special Leave Petition No. (Civil) No. 2590/2011.

We may also like to refer a C.B.D.T. Circular No. 11/2008 dated 19.12.2008, wherein the applicability of the commercial activities in respect of charitable purpose has been clarified. The said circular is reproduced as below:-

> "2.2. 'Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped,

disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under Section 11(4A) or the seventh proviso to Section 10(23C), which are that -

(i) the business should be incidental to the attainment of the objectives of the entity, and I.T.A. Nos.185,186,163,164,439/Lkw/2019

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

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

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

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

From the record, it also appears that the "Authority" had been maintaining infrastructure, development and reserve fund IDRF as per the notification dated 15.01.1998, the money transferred to this funds is to be utilized for the purpose of project as specified by the committed having constituted by the State Government under the said notification and the same could not be treated to be belonging to the "Authority" or the receipt is taxable nature in its hands. For this reason also, it appears that the funds are utilized for general utility.

Moreover, in the instant case, the Assessing Officer has not given any defective in computation of income as per Section 11 as submitted in Form-XB, but observed that the activities of the assessee are not charitable. The activities of the assessees are I.T.A. Nos.185,186,163,164,439/Lkw/2019 genuine. So, then it is so, then we find no reason to interfere with impugned orders passed by the Tribunal. The same are hereby sustained along with reasons mentioned therein.

The answer to the substantial questions of law are in favour of the assessee and against the department.

In view of above, all the appeals filed by the department are dismissed, as stated above."

Hon'ble Allahabad High Court in the case of Moradabad Development Authority, vide order dated 03/05/2017 had framed the following questions of law:

> "(a.) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified by upholding the order of Ld. CIT (A) by not considering the amended provision of Section 2(15) of the Income Tax Act, 1961. In which there is a provision for charging tax if total receipt of entities engaged in advancement of general public utility exceeds Rs.10 Lakh. Whereas the assessee has shown excess of income over expenditure of Rs.16,69,28,027/- 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.
>
> (b.) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified by ignoring the fact held 2 in 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 has held that the activities run on commercial lines do not fall within the ambit of charitable object.
>
> (c.) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in upholding the order of the CIT(A) and ignoring the fact that the activities of the authority are hit by Section 2(15) of Income Tax Act, 1961 and therefore the applicant is not entitled to get benefit of section 12AA of the Income Tax Act, 1961. The Applicant primarily is not carrying out any activity for advancement of any objective of general public utility, as such. The Applicant was purely involved in commercial activities for the purpose of making profit and charity, if any, was justi incidental to its business. The Authority was acquiring land from farmers and I.T.A. Nos.185,186,163,164,439/Lkw/2019 others at a low price, which was developed and sold at a premium to the perspective buyers. Apparently, on dissolution of the authority, all assets shall be transferred to the Government and there was no restriction on the use of these assets by the Government. Therefore the objects pursued by the applicant cannot be termed as charitable in view of the fact that the applicant, was a commercial organization (with no restriction as to the application of assets on dissolution or winding up) Therefore the applicant cannot be termed as charitable organization by any stretch of imagination.
>
> (d.) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in upholding the order of Ld. CIT(A) and giving the benefit of section 12A to the assessee as the activities of advancement of the object of general public utility by the appellant authority are undertaken/carried on in a totally commercial manner and activities of the assessee are similar to the Jammu 3 Development Authority wherein registration u/s 12A was not allowed by the Hon'ble ITAT, Amritsar Bench vide order dated 14.06.2012 in ITA No.30(Asr)/2011 in lieu of commercial nature of

> activities, and the same has already been confirmed by the Hon'ble High Court of Jammu & Kashmir vide order dated 07.11.2013 in ITA No.164/2012 as well as by the Hon'ble Supreme Court of India vide order dated 21.07.2014 in Special Leave to Appeal No.4990/2014. Hence the appellant authority is not entitled to registration under section 12A of the Income Tax Act, 1961."

11.1 The above questions of law have been decided against the Revenue and in favour of the assessee and while answering the questions, the Hon'ble Court has followed the judgment in the case of YEIDA. The questions of law, answered in favour of the assessee, if read as a whole, clearly state that the MDA is not doing any business activity and its activities are not hit by the proviso to section 2(15) of the Act. We find that MDA has been constituted under the same Act of Uttar Pradesh Urban Development and Planning Act, 1973 and its objects are similar to the objects of the assessee. Therefore, this judgment of Hon'ble Allahabad High Court in the case of Moradabad Development Authority is directly applicable to the assessee. The arguments of Revenue that in this case the issue before the I.T.A. Nos.185,186,163,164,439/Lkw/2019 court was not regarding denial of assessment u/s 11 of the Act but was on the issue of grant of registration u/s 12A of the Act is not correct.

11.2 To negate the arguments of the Revenue that the case law of Yamuna Expressway related to only for registration u/s 12A of the Act, it is important to visit the questions of law framed by Hon'ble Allahabad High Court in the case of Yamuna Expressway Industrial Development Authority, which for the sake of completeness are reproduced below:

> (i) Whether on the basis of the facts of the case and the law applicable, the Tribunal was justified in allowing the appeal and issuing a direction to the authority concerned to register the respondent as being entitled to exemption under the provisions of section 12AA of the Income Tax Act, 1961 and read with section 2(15) thereof ?
>
> (ii) Whether the findings recorded by the Tribunal to the effect that the respondent-assessee was not carrying out any activity of profit and it's predominant object of welfare of public at large are correct or not ?
>
> (iii) Whether the Income Tax Appellate Tribunal at New Delhi had the jurisdiction to entertain an appeal from the order of the CIT(E), Lucknow in exercise of power under section 12AA of the IT Act."

The analysis of the above questions of law, as framed by Hon'ble Court, reflects that first question was regarding entitlement of the assessee for registration u/s 12AA of the Act whereas the second question framed by Hon'ble Court is to the effect as to whether assessee was not carrying out any activity of profit. The Hon'ble Court, after having elaborate discussions on various aspects of various sections of registration, denial of registration u/s 11, 12 and 13, has decided the above three questions in favour of the I.T.A. Nos.185,186,163,164,439/Lkw/2019 assessee and against the Revenue. The argument of the Revenue that this judgment of YEIDA do not deal with the denial of exemption u/s 11 does not seem to be correct in view of the specific question framed by the Hon'ble Court as question No. 2. This judgment, which has been followed in the Moradabad Development

Authority, therefore, is quite relevant and the case of the assessee is duly covered by the judgment of Moradabad Development Authority. The case laws relied on by Revenue are not applicable to the facts of the case of the assessee. The case law of Jammu Development Authority relates to refusal to the assessee for registration u/s 12A of the Act whereas in the cases before us there exists registration u/s 12A of the Act and the issue involved here is regarding the Exemption u/s 11 of the Act. As regards the reliance placed by Revenue on the case law of Kanpur Development Authority, we find that the said order has been recalled by Lucknow Bench of the Tribunal vide order dated 17/02/2018. We further find that in the case of the assessee itself for assessment year 2018-19, the Assessing Officer himself has allowed exemption u/s 11 of the Act during proceedings u/s 143(3) vide order dated 15/06/2021, a copy of which is placed at pages 361 to 363. We further find that in the case of the assessee itself, for assessment year 2009-10 and 2010-2011, on an appeal filed by the assessee, the CIT(A), vide order dated 01/10/2021 and 16/09/2021 has allowed the appeal of the assessee and has granted exemption u/s 11 of the Act. As regards the argument of Revenue that assessee has violated the provisions of section 13, we find that the act of the assessee in allowing some rebate to it's employees and reservation of some plots for it's employees does not amount to violation of section 13 as section 13(1)(c) states that income of the trust or organization will not be exempt u/s 11, if any, of the funds or income of the trust is used or applied I.T.A. Nos.185,186,163,164,439/Lkw/2019 directly or indirectly for the persons referred to in sub section (3) of section

13. Sub section (3) of Section 13 is reproduced below:

> "(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely:--
>
> (a) the author of the trust or the founder of the institution;

[(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution upto the end of the relevant previous year exceeds [fifty thousand] rupees;]

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

[(cc) any trustee of the trust or manager (by whatever name called) of the institution;]

(d) any relative of any such author, founder, person, [member, trustee or manager] as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (b), [(c), (cc)] and (d) has substantial interest.

11.3 We find from the list of persons mentioned in sub section (3) that employees has not been included in this list. It is Department's own case that assessee had allowed benefits to employees.

11.4 The Hon'ble Patna High Court in the case of CIT vs. Tata Steel Charitable Trust 78 Taxman 98 (Pat) vide order dated 07/01/1993 has held that employees of the author of the trust do not fall in the specified category of persons referred to in section 13(3) of the Act. The relevant findings of the Hon'ble court are reproduced below:

> "As regards, the second condition, it seems that even if a trust has been created wholly for charitable purposes, when subsequently it is found that its income either enures or is used or applied directly or indirectly for the benefit of any person specified under sub-section (3) I.T.A. Nos.185,186,163,164,439/Lkw/2019 of section 13, then such trust becomes disentitled to claim any exemption under section 11. But the list of such persons as contained under section 13(3) does not include the employees of the author of the trust. The employees of the author of the trust do not fall within the specified categories of persons referred to in section 13(3). Even section 13(3)(d), which includes any relative of the author, can have no application in the case of the employees of the author because 'relative' means a person connected by birth or marriage with another person. The person having any other relationship pursuant to a contract like that of employer and employee cannot be said to be a relative. Therefore, the application of part of the income of the trust for the benefit of the employees of TISCO and their relatives could not disentitle the trust from claiming exemption under section 11(1)(a)."

11.5 The facts and circumstances of the case laws relied on by Revenue for the proposition that assessee violated the provisions of Section 13 do not apply to the facts of present cases as in the case of CIT vs. Awadh Educational Society, the assessee had given interest free loan to the treasurer of the society who is listed in the list of specified person u/s 13(3) of the Act whereas in the cases before us the assessee has given benefit to employees who are not specified persons as mentioned in section 13(3) of the Act.

11.6 In the case law of Maruti Centre for Excellence, the assessee was rendering training to its members who, in turn were giving donations to the assessee exceeding an amount of Rs.50,000/- therefore, those persons were the persons listed in sub-clause (b) of Section 13(3) and that is why that case law was decided in favour of the Revenue whereas in the present case, it is undisputed fact that the assessee was allowing discount to its employees, therefore, this case law is not applicable. As regards the applicability of case law of Noida Entrepreneurs Association, we find that in that case a CBI inquiry had been conducted and there were gross violation I.T.A. Nos.185,186,163,164,439/Lkw/2019 of funds of the assessee which is not in the present case. Therefore, in view of the above, we hold that the assessee had not violated the provisions of section 13(3) of the Act. In view of the above facts and circumstances and judicial precedents, we hold that the assessee is eligible for exemption u/s 11 of the Act and Assessing Officer is directed to allow the benefit of Section 11 to the assessee. In view of the above, ground No. 3 to 7 in I.T.A. No.185 and ground no. 3 to 8 in rest of the appeals are allowed. Ground No. 1 & 2 are general in nature and therefore, these grounds need no adjudication.

11.7 As regards ground No. 8 in I.T.A. No.185 and ground No. 9 in rest of the appeals, we find that the assessee has been transferring certain amounts to IDRF account and was directly reflecting that account in the balance sheet and was not routing through the profit & loss account. The Assessing Officer has also added back these amounts while denying exemption u/s 11 of the Act. We find that this issue has already been dealt by the Hon'ble Allahabad High Court in the case of assessee itself whereby vide order dated 16/09/2013, Hon'ble Allahabad High Court has held that the money transferred to this fund is to be utilized for the purpose of project as specified by the committee having constituted by the Government and the same could not be treated to be belonging to the authority or the receipt is taxable in its hand. Therefore, ground No. 8 in I.T.A. No.185 and ground No. 9 in rest of the appeals are allowed.

11.8 As regards the other disallowance, as agitated by the assessee vide various grounds, we find that these disallowances do not need any specific adjudication as even if these disallowances are upheld, the resultant increase in net income of the assessee will again be eligible for exemption I.T.A. Nos.185,186,163,164,439/Lkw/2019 u/s 11 of the Act. Therefore, these additions have become academic in view of our findings in relation to exemption u/s 11 of the Act. Therefore, ground No. 9 to 12 in I.T.A. No.185, ground No. 10-16 in I.T.A. No.186, ground No. 10 to 15 in I.T.A. No.163, ground No. 10 in I.T.A. No.164 and ground No. 10-12 in I.T.A. No.439 are dismissed as having become infructuous.

12. In the result, all the appeals are partly allowed.

(Order pronounced in the open court on 10/03/2022) Sd/. Sd/.

(A. D. JAIN)	(T. S. KAPOOR)
Vice President	Accountant Member

Dated:10/03/2022
*Singh

Copy of the order forwarded to :
1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar