Income Tax Appellate Tribunal - Lucknow

Astt. Commissioner Of Income Tax ... vs M/S U.P Awas Evam Vikas Parishad, ... on 8 June, 2022

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

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

I.T.A. No.630 & 631/Lkw/2016
Assessment Year:2009-10 & 2010-11

I.T.A. No.23 & 24/Lkw/2017
Assessment year:2009-10 & 2010-11

I.T.A. No.164 & 165/Lkw/2017
Assessment year:2011-12 & 2012-13

I.T.A. No.210 & 211/Lkw/2017
Assessment year:2013-14 & 2014-15

A.C.I.T. (Exemptions), Lucknow.	Vs. M/s U.P. Awas Evam Vikas Parishad 104, Mahatma Gandhi Marg, Lucknow. PAN:AAAJU0103A
(Appellant)	(Respondent)
Appellant By	Shri G. C. Srivastava, Special Counsel
	Smt. Sheela Chopra, CIT (D.R.)
Respondent by	Ms. Shweta Mittal, C.A.
Date of hearing	24/01/2022 & 17/05/2022
Date of pronouncement	08/06/2022

ORDER

PER BENCH:

This bunch of eight appeals has been filed by the Revenue against the separate orders of learned CIT(A), dated 02/08/2016, 31/08/2016, 27/10/2016, 31/08/2016, 21/12/2016, 21/12/2016, 31/01/2017 & Page 2 of 242 (UP AWAS EVAM VIKAS PARISHAD) 31/01/2017 respectively. The brief facts of these cases are that the assessee is a "Parishad" namely "The Uttar Pradesh Awas Evam Vikas Parishad" which has been incorporated by the Legislative Assembly vide Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam 1965. The scope of activities to be performed by the Parishad are strictly circumscribed by the provisions contained under section 15 of the said very enactment under the head "function of the board" and through the "Parishad" it is the Government of Uttar Pradesh

itself which has been carrying on the objects of general public utility, in due discharge of its functions, duties and thereby it has acquired the status of a State under Article 12 of the Constitution of India. The functions of the Parishad as described u/s 15 of the Act are reproduced below:

a) To frame and execute housing and improvement schemes and other projects.

b) To plan and coordinate various housing activities in the State and to ensure expeditious and efficient implementation of housing and improvement scheme in the State.

c) To provide technical advice for scrutiny of various projects under housing and improvement scheme sponsored or assisted by Central Govt. or State Govt.

d) To assume management of such immovable properties belonging to the State Government as may be transferred or entrusted to its purpose.

e) To maintain, use, allot, lease or otherwise transfer plots, building and other properties of the Board or of the State Government placed under the control and management of the Board.

f) To organize and run workshops and stores for the manufacture and stock piling of building materials.

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g) On such terms and conditions as may be agreed upon between the Board and the State Government, to declare houses constructed by it in execution of any scheme to be houses subject to the U.P. industrial Housing Act, 1955 (U.P. Act No. XXIII of 1955).

h) To regulate building operations.

i) To improve and clear slums.

j) To provide roads, electricity, sanitation, water supply and other civic amenities and essential services in areas developed by it.

k) To acquire movable and immovable properties for any of the purposes before mentioned.

l) To raise loans from market, to obtain grants and loans from the State Government the Central Government, Local Authorities and Public Corporations and to give grants and loans to Local Authorities. Urban bodies, corporations, hospitals etc.

m) To make investigation, examination or survey of any property or contribute towards the cost of any such investigation, examination or survey made by any local authority or the state Government.

n) To levy betterment fees.

o) To ful any other obligation imposed by or under this Act or any other law for the time being in force, and

p) To do all such other acts and things as may be necessary for the discharge of the functions before mentioned

2. The assessee has been granted exemption u/s 12A of the Act being a charitable organization for achievement of advancement of objects of general public utility. The assessee filed returns of income claiming its income as exempt u/s 11 of the Act. The Assessing Officer denied the exemption u/s 11 by holding that the assessee was hit by the proviso to section 2(15) of the Act as the assessee has been doing the activities which Page 4 of 242 (UP AWAS EVAM VIKAS PARISHAD) amounts to carrying on of business or trade. On appeal before learned CIT(A), the learned CIT(A) allowed the exemption u/s 11 of the Act by holding that the assessee was not hit by the proviso to section 2(15) of the Act. Against the orders passed by learned CIT(A), the Revenue has filed these appeals. The appeals in I.T.A. No.630 & 631 are against the orders passed by learned CIT(A) in which the Assessing Officer had passed order u/s 143(3) of the Act. While allowing relief to the assessee u/s 11, the learned CIT(A) had not disposed of the other grounds of appeals taken by the assessee and therefore, the assessee moved rectification applications u/s 154 of the I.T. Act and therefore, the learned CIT(A) passed further order u/s 154 of the Act and the other grounds of appeal were dismissed having become infructuous. The appeals in I.T.A. No.23 & 24 are against such rectified orders passed by learned CIT(A). The Revenue has filed appeals against both orders of learned CIT(A). In all these appeals common issues are involved and these appeals were heard together therefore, for the sake of convenience a common and consolidated order is being passed. The common issue involved is the exemption u/s 11 of the Act allowed by learned CIT(A) which the Revenue has challenged in these appeals.

3. The learned Special Counsel for the Revenue, at the outset, invited our attention to additional grounds of appeal filed on 05/02/2020 and further invited our attention to additional grounds of appeal filed on 19/03/2021 and submitted that these additional grounds are legal in nature and are coming out of the facts already on record therefore, the same may be admitted and adjudicated along with the original grounds of appeal. Learned counsel for the assessee submitted that the additional grounds of appeal filed vide letter dated 05/02/2020 are though available with her but the additional grounds filed on 19/03/2021 are not with her as the Revenue Page 5 of 242 (UP AWAS EVAM VIKAS PARISHAD) had not provided a copy of the same to her. On a query from the Bench Clerk, it was informed that the additional grounds of appeal, claimed to have been filed on 19/03/2021, are also not on record of the Tribunal and therefore, the Learned Special Counsel for the Revenue was questioned as to how the additional grounds of appeal claimed to have been filed vide letter dated 19/03/2021, which are not on record either with us or with the Learned counsel for the assessee, can be admitted. Learned Special Counsel for the Revenue fairly agreed that the additional grounds of appeal filed on 19/03/2021 are almost similar to the additional grounds filed on 05/02/2020 therefore, they may be admitted and adjudicated. From the grounds of appeal taken as additional grounds of appeal by the Revenue vide letter dated 05/02/2020, we observe that these grounds are legal in nature and are coming out of the material already on record and therefore, the same were taken on record and were admitted.

4. Learned Special Counsel for the Revenue submitted that the additional grounds of appeal are applicable to all the appeals filed by the Revenue and he read out the additional grounds of appeal which for the sake of completeness are reproduced below:

> "1. That the Ld. CIT(A) erred in having failed to consider the provisions contained in Section 13(8) introduced by the Finance Act, 2012 with retrospective effect from 01.04.2009.
>
> 2. That the Ld. CIT(A) failed to take into account the fact that the Assessee was not entitled to the benefit of Section 11 during the year for it had failed to comply with the provisions contained in Section 11(2) of the Act.
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> 3. That the Ld. CIT(A) erred in not taking into account the provisions contained in Section 13(1)(d) of the Act.] Page 6 of 242 (UP AWAS EVAM VIKAS PARISHAD)
>
> 4. That the Ld. CIT(A) erred in not taking into consideration provisions contained in Section 13(3) of the Act."

5. As regards the original grounds of appeal, it was submitted that besides common grounds of appeal regarding exemption u/s 11 of the Act for all the appeals, some other grounds have also been taken in two of the appeals in I.T.A. No.210 & 211 which are numbered as 1 to 8 in I.T.A. No.210 and 3 to 7 in I.T.A. No.211. However, learned Special Counsel did not advance any arguments on any of these grounds thus, these grounds are dismissed as not pressed. Therefore, we are left for adjudication with common grounds of appeal and additional grounds of appeal vide letter dated 05/02/2020. For the sake of completeness the common grounds of appeal, taken by the Revenue in I.T.A. No.24 are reproduced below:

> "1. Ld. Commissioner of Income Tax(A) has erred in law 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. 25 lakhs, and deleting the addition of Rs.5,11,38,89,559/- made on account of various disallowances, as the activities are in the nature of trade, commerce or business and amended provisions of section 2(15) of the Income Tax Act 1961 is squarely applicable in this case.
>
> 2. The order of Ld. CIT(A) be cancelled and the order of the A.O.
>
> restored."

6. Learned Special Counsel for the Revenue was first asked to proceed with additional grounds of appeal. In this respect he invited our attention to the written submissions filed by the Department on 29/12/2021 and submitted that the first ground relates to failure on the part of learned CIT(A) to consider the full and correct import of section 13(8) read with the proviso to section 2(15) of the Act vide Finance Act, 2010. Learned Special Page 7 of 242 (UP AWAS EVAM VIKAS PARISHAD)

Counsel for the Revenue in this respect invited our attention to legislative background regarding the definition of "charitable purpose" as amended with effect from 01/04/2009 and submitted that the primary purpose of introducing the amendment with effect from 01/04/2009 was with respect to any activity of advancement of any other object of general public utility wherein a rider was inserted that such activity should not involve carrying on of any activity in the nature of business/trade or commerce. It was submitted that intent of the legislature was clear whereby it wanted to separate charity from the business. Learned Special Counsel for the Revenue argued extensively on the provisions of section 2(15) along with the proviso to section 2(15) of the Act and also invited our attention to powers and functions of the assessee and relying on various case laws, argued extensively on additional grounds of appeal as well as on original grounds of appeal and concluded by saying that activities of the assessee necessarily involved carrying on of business or trade and therefore, the assessee was clearly hit by the proviso to section 2(15) of the Act. The crux of arguments of learned Special Counsel was that the assessee is engaged in the acquisition of land, construction of houses / housing projects in the same manner as any real estate developer will do and this is a commercial activity of the assessee and therefore, the activities carried on by the assessee are in the nature of trade, commerce or business within the meaning of provisions of section 2(15) of the Act which excludes such institutions from the ambit of being charitable institution. Learned Special Counsel further argued that the facts in the present cases necessarily has to be seen from the view point of section 13(8) which provides that the provisions of section 11 granting exemption of income shall not operate if the provisions of the first proviso to clause 15 of section 2 become applicable in the case of such person with effect from 01/04/2009. Learned Page 8 of 242 (UP AWAS EVAM VIKAS PARISHAD) Special Counsel in this respect placed reliance on the judgment of Hon'ble Jammu & Kashmir High Court in the case of Jammu Development Authority wherein the Hon'ble High Court has held that the assessee, engaged in similar activities, cannot be regarded as an institution or trust engaged in the achievement of object of general public utility in view of the insertion of proviso to section 2(15) with effect from 01/04/2009. It was submitted that Hon'ble Court has held that the object of general public utility shall not be a charitable purpose if it involves carrying on of activities in the nature of trade, commerce or business or rendering any services in relation to any business. It was submitted that the SLP filed before Hon'ble Supreme Court has also been dismissed by Hon'ble Supreme Court. Learned Special Counsel for the Revenue further heavily relied on the judgment of Hon'ble Kerala High Court in the case of Greater Cochin Development Authority where the appeal filed by assessee against the judgment of the Tribunal was dismissed by Hon'ble High Court and the Special Leave Petition filed by assessee was also dismissed by Hon'ble Supreme Court. It was submitted that in that case also the assessee was engaged in the similar activities and therefore, the findings of these case laws are applicable to the present assessee also. The Learned Special Counsel also placed reliance on some orders of the Tribunal where under similar facts and circumstances the various Benches of Tribunal has held that assessee was not eligible for exemption u/s 11 of the Act. Though at the same time the Learned Special Counsel admitted that some benches of the Tribunal have taken a contrary view and have granted exemption u/s 11 of the Act. It was submitted that in the present cases the judgment of Hon'ble Supreme Court in the case of Vegetable Products will not be applicable and assessee cannot be given the benefit of favourable judgment as there is no ambiguity in the language of Page 9 of 242 (UP AWAS EVAM VIKAS PARISHAD) provisions and the case law of Vegetable Products is applicable only where there are different opinions due to ambiguity in the language of such provisions.

7. As regards other additional grounds of appeal, Learned counsel for the assessee submitted that learned CIT(A), while allowing exemption u/s 11 of the Act, has not considered the provisions of section 11(2) of the Act, which necessitates that the exemption u/s 11 can be granted only if 85% of the surplus, earned during the year, is spent on charitable purposes. Learned Special Counsel submitted that this aspect has been totally ignored by both the authorities as the Assessing Officer straightforward disallowed the exemption u/s 11 and did not examine this aspect and learned CIT(A) also, while allowing exemption u/s 11, did not examine this aspect which is a very essential ingredient for allowing exemption u/s 11 of the Act. Therefore, it was prayed that the order of learned CIT(A), deserves to be set aside. Similarly, arguing additional ground No. 3, learned Special Counsel submitted that learned CIT(A) has also not taken into account the provisions of section 13(1)(d), which necessitates that the accumulated balance of surplus, if any, has to be invested in accordance with the provisions, as contained in section 11(5) of the Act. Learned Special Counsel submitted that any violation of provisions of section 13(1)(d) results into denial of exemption u/s 11 of the Act. Learned Special Counsel submitted that this aspect has not been examined by both the authorities therefore, in view of this aspect also, the order of learned CIT(A) deserves to be set aside. Arguing on additional ground No. 4, Learned Special Counsel submitted that the provision of section 13(3) of the Act specifically prohibits certain persons to take benefit of any assets of the association and if any benefit is taken by the persons, mentioned in the provision of section 13(3) of the Act, the benefit of section 11 cannot be allowed. It was submitted that the concessional allotment of plots and allotment of plot on priority basis to certain category of persons, attracts the provisions of section 13(3) of the Act and therefore also the exemption u/s 11 has wrongly been allowed by learned CIT(A) Page 10 of 242 (UP AWAS EVAM VIKAS PARISHAD) as this aspect has not been examined at all. In this respect Learned Special Counsel has relied on the following case laws:

(i) CIT II Lucknow vs. Awadh Educational Society in I.T.A. No.142 of 2007 by Hon'ble Allahabad High Court

(ii) DIT vs. Maruti Centre for Excellence [2012] 208 Taxman 236 (Delhi)

8. The written submissions filed by the Revenue have been made part of this order, which for the sake of completeness are reproduced below:

REVENUE'S SUBMISSIONS ON GROUND NO. 1 & ADDITIONAL GROUND NO. 1 RAISED VIDE LETTER DATED 05.02.2020

1. This ground of appeal relates primarily to the failure of the CIT(A) to consider the full and correct import of Section 13(8) read with the proviso to Section2(15) of the Act. Vide Finance Act, 2010, a second proviso was added, with retrospective effect from 01.04.2009.

Legislative Background

2. The definition of "Charitable Purpose" as introduced in the I.T. Act, 1961 read as under:-

"(15)- "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit"

3. This definition clearly stipulated that the objects of general public utility could not involve any activity which was for a profit. Thus, while charitable activities in relation to education, medical relief and relief of the poor had no qualifications but the residual clause of "any other object of general public utility had a pre- condition of an activity not being an activity for profit.

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4. However, this condition created some difficulties where the primary object was general public utility, but some incidental activities involved an activity for profit. Under the circumstance, there was an amendment to this sub-section vide Finance Act, 1983 which removed the words "not involving the carrying on of any activity for profit". The effect of this amendment was that this pre-condition was done away with.

5. However, at the same point of time, (vide Finance Act, 1983), another amendment was carried out in Section 11 which inserted clause (4A), providing that the exemption to a trust or an institution will not be available unless separate books of account are maintained in respect of a business activity carried on by the trust and that such business is incidental to the attainment of main objects of the trust.

6. Thus, the legislative intent was very clear right from the beginning that business and charity cannot go together and if at all a charitable institution is required to carry on some business activity, which is of an incidental character, then also, separate accounts have to be maintained for incidental business activities. However, if business activity is not incidental, but predominant, then exemption provided in Section 11(1) of the Act would not be available.

7. It is submitted that certain agencies of the state like local authorities, housing boards, urban development authorities, various boards (like tea board, coffee board, rubber board etc.), enjoyed blanket exemption from tax under Section 10 of the Act and their incomes did not form part of the taxable income. These provisions were contained in clauses (20), (20A),(22A), (23) etc. Of Section 10 of the Act.

8. However, these provisions were omitted vide Finance Act, 2002 with effect from 01.04.2003. Thus, a blanket exemption which was granted to the Respondent and similar other institutions created by the state governments, was taken away by a conscious decision of the Parliament. The intent was very clear and explicit that these institutions/authorities will henceforth pay their taxes as any other tax payer.

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9. The principle that such authorities should enjoy exemption merely because these were created as instruments of the state or these were engaged in public good was de-recognised by the Parliament. This further clarified that these authorities were not to get indirect support of the government through the route of tax- exemptions.

10. Such policy shifts can be driven by one or more considerations like the need for higher revenues, or preference for direct subsidization or budgetary support over the indirect support like tax exemptions etc. which is outside the realm of the present proceedings. The Parliament also did not provide that these authorities would be regarded as charitable institutions to continue to claim the benefits of total exemption.

11. However, these authorities began to claim the benefit of a regime of charitable institution and had the approval of tribunals and courts.

12. Considering these developments, Parliament intervened again and introduced the proviso to Section 2(15) vide Finance Act, 2008 and re-asserted the legislative intent that if an authority or institution is engaged in any activity in the nature of trade or commerce, it would not be regarded as a charitable institution. However, some relaxations were given in this regard to save the smaller institutions by providing that the proviso shall not apply if the total receipts from such activities are less than rupees twenty- five lakhs.

13. There was yet another legislative intervention when the Parliament introduced sub-section (8) of Section 13 vide Finance Act, 2012 with retrospective effect from 01.04.2009.

14. This amendment reiterated the legislative intent that if in any given year, the authority or the institution carries on any activity which is in the nature of trade or commerce and the receipt from which crosses the threshold of ten lakhs/twenty-five lakhs, the authority or the institution would lose the benefit of exemption.

Page 13 of 242 (UP AWAS EVAM VIKAS PARISHAD) Import of proviso to Section 2(15)

15. A bare reading of the proviso to Section 2(15) brings out the following aspects in no uncertain terms:-

i. The proviso applies to the residual clause of Section 2(15) viz.

> "advancement of any other object of general public utility". It does not apply to the relief of the poor, education, yoga, medical relief etc.;

ii. The advancement of any other object of general public utility shall not be regarded as a charitable activity, if it involves any activity which is in the nature of trade, commerce or business or rendering of any service in relation to trade/commerce/business for a fee;

iii. It is not necessary for the application of the proviso to Section 2(15) that the institution is engaged in business, but the proviso shall apply if the activity is in the "nature of trade, commerce or business". This unequivocally means that the institution may be a creation of the state or it may not be engaged in any "business" activity, but if its activities are in the "nature" of trade, commerce or business, the proviso would still apply. This distinction is of a very vital importance for the reason that if the Parliament intended the proviso to apply to only business as such, then the language would have been so used, instead of saying that the activity is in the "nature of trade, commerce or business". The choice of words in an enactment is of vital importance and the application of the proviso cannot be dispensed with on such findings as that the institution being an instrumentality of the state and serving a larger public good, cannot be regarded as carrying on any business activity. It may not be engaged in the business, but if its activities have the trappings of a business, it would be hit by the proviso. In other words, all the elements of the business, like profit motive etc., may or may not be there, but if the activity has a similar nature as in a trade, commerce or business, the proviso would apply. The similarity is not of the purpose or the motive, but the similarity is of the nature of the activity. Therefore, an institution may carry on the activity to earn the profit and appropriate it and the other institution may carry on same activity for other laudable motives but if the activities are of Page 14 of 242 (UP AWAS EVAM VIKAS PARISHAD) the "same nature", both would lose the exemption under the proviso; and iv. The proviso would apply "irrespective of the nature of use or application or retention of the income from such activity". This last limb of the proviso makes the true import of the proviso very clear. It stipulates that the use of the income from the activity is immaterial; the purpose for which the income is applied is immaterial; whether the income is applied or retained is also immaterial; what really matters for the application of proviso is that the activities have the "nature" of trade, commerce or business.

Certain relevant facts of the case

16. Some of the significant facts which may have bearing on the primary issue, whether or not the Respondent is entitled to the benefit of exemption under Section 11 and whether such benefit can be denied to the Respondent by virtue of proviso to Section 2(15) of the Act. The following facts are quite relevant in this regard:-

i. For the year under consideration, the sources from which major income was derived by the Respondent are as under:-

a) Realizations from the sale of property-Rs.426.06crores;
b) Interest received on instalment properties-Rs.180.66crores;
c) Interest on fixed deposits-Rs.105.82crores;
d) Receipts from EMOs related properties-Rs.14.30crores;
e) Interestonsavingsbankaccount-Rs.10.29crores;
f) Centage charges on deposit works-Rs.8.34 crores

ii. Similarly major expenses relate to cost of property stock sold-

Rs.260.08crores.

iii. The expenses on staff, including salary and wages come to approximately Rs. 81 crores. Expenses on maintenance of colonies and houses, is about Rs.21.65 crores and the Page 15 of 242 (UP AWAS EVAM VIKAS PARISHAD) administrative expenses amount to Rs. 11.71 crores. The Respondents derive a net income of Rs.424.13 crores during the year.

iv. The income and expenditure for the year clearly shows that the major activity is of acquiring the land, building the houses and getting sale proceeds on sale of these houses/land. This activity is definitely in the nature of trade, commerce or business.

v. The Respondent charges interest on delayed payments of sale consideration from 11 per cent to 13 per cent depending upon the value of the property. The revised interest rate ranges from 9.5 percent to 15 percent.

vi. The rates charged by the Respondent also shows that the activities of the Respondent are of the same nature as that of any entity carrying on trade, commerce or business. vii. There is also a commercial element in working out the cost of the units which are subjected to sale and the "costing guideline" filed by the Respondent shows that a part from expenses on land and cost of construction, the Respondent is also adding supervision charges at 12 percent of the cost, interest at 12percent for the period of construction, maintenance charges at 2 per cent and other charges at 8 per cent are levied. This is only to indicate that the determination of the sale price has all the elements of being an activity in the nature of trade, commerce or business. (Para 8 of A.O.'s order) viii. The Respondent has also put to auction certain properties which are detailed in Para 9 of A.O.'s order. Though details of all auction properties were not furnished, yet the A.O. after examining what ever little details were filed, came to the conclusion that these transactions are also guided by commercial considerations.

ix. The Respondents have not received any amount during the year by way of voluntary contributions or donations. All their receipts are either by way of proceeds from the sale of properties or receipts incidental to such sale, or income of interest etc. Therefore, the acquisition of land, construction of houses and sale thereof is the primary and the dominant object of the Respondent authority and this activity is not different from that of any real estate developer. The activity is in the nature of trade, commerce or business as stipulated Page 16 of 242 (UP AWAS EVAM VIKAS PARISHAD) in the proviso to Section 2(15). As per the proviso, it is immaterial how the receipts from these activities were used or applied. Therefore, by virtue of Section 13(8), the Respondent would not be entitled to exemption, as their activities are in the nature of those activities which are contemplated in the proviso to Section 2(15) of the Act.

17. Powers and functions of the Respondent: -

i. The Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 ("Regulation"), brought into existence the Respondent. Clause 15 of the Regulation defines the functions of this board, and the primary functions are to frame and execute housing schemes, to plan and coordinate various

housing activities, to manage certain immovable properties belonging to the State Government to maintain use, allot or otherwise transfer plots, buildings and other properties of the board, to regulate building operations and to provide roads, electricity, sanitation, water etc., in the areas developed by it. ii. It has also some other functions like promoting research for reduction of the cost of buildings, to execute work in the state on behalf of public institutions to supply and sell building material to maintain and operate any transport service or improve roads and any other function as may be considered necessary.

iii. Clause 17 of the Regulation specifically provides that the housing improvement schemes will imply acquisition by purchase, exchange or otherwise of any property, laying/re- laying of the land falling in the scheme, distribution/re- distribution of sites belonging to owners, improvement /clearance/dwellings of dwellings which are unfit for human habitation, and to ensure drainage, water supply or lighting in the area included in the scheme.

18. Vesting of assets and dissolution to the state government:- i. Clause 93 refers to the dissolution of the board and it stipulates that where the state government is of the opinion that it is no longer necessary to continue the board it may dissolve the board and on such dissolution all the members of the board including its chairman will vacate their office and all powers and functions which remain to be performed will thereafter be performed by such authority as the state Page 17 of 242 (UP AWAS EVAM VIKAS PARISHAD) government may appoint. The clause further provides that all the assets and liabilities shall vest in the state government.

19. It is obvious from various clauses of the Regulation that the Respondent was created by the state government and in the event of dissolution all the assets and liabilities go back to the state government. It does not have the character of an irrevocable trust or institution.

20. In the leading case of Surat Art Silk Cloth Manufacturers Association, [1980] 120 ITR 1, the Hon'ble Supreme Court observed as under:-

"Since the income and property of the assessee were liable to be applied solely and exclusively for the promotion of the objects set out in the Memorandum and no part of such income or property could be distributed amongst the Members in any form or utilized for their benefit either during its operational existence or on its winding up or dissolution as such the object was a charitable one."

21. As pointed out, on winding up, the entire reserve and surplus which has been swelling up over the years, goes back to the state government, which was its founder/ creator / promoter. This fails the test laid down by the Hon'ble Supreme Court in the above case and the Respondent cannot be held to be a charitable institution under Section 2(15) of the Act.

Applicability of the proviso to Section 2(15) as introduced by Finance Act, 2008

22. From the facts stated hereinabove, it is apparent that the authority is engaged in the acquisition of land, construction of houses/housing projects in the same manner as any real estate developer would do. This is the principal activity of the Respondent. It is not engaged in the development of

towns or cities. Its primary activity is the acquisition of land, construction of houses and its sale to the eligible entities. The provision for facilities like internal roads, drainage, water supply or electricity etc. are the necessary aspects for the development of any housing project and cannot be termed Page 18 of 242 (UP AWAS EVAM VIKAS PARISHAD) as development of any town, city, or area etc. The Respondent's dominant activity therefore, is construction of houses and its sale. This is also clearly evident from the financials of the Respondent board (Page6 of the order of assessment for A.Y.2009-10 which records income and expenditure account). Thus, the activity of the Appellant is in the nature of trade, commerce or business and it squarely falls within the proviso to Section 2(15) which excludes such institutions from the ambit of being a charitable institution. As already discussed, the use or application of the receipts or the income would not be relevant as very clearly provided in the said proviso itself.

29. The facts of the present case have to be necessarily seen in the light of the provisions contained in sub-section (8) of Section 13, discussed hereinabove, which provides that the provisions of Section 11 granting exemption of income shall not operate if the provisions of the first proviso to clause (15) of Section 2 become applicable in the case of such person in the said previous year (though the second proviso was introduced by the Finance Act, 2010, it was so done from retrospective effect from 01.04.2009, therefore, the use of the word "first proviso" is fully justified in the given context).

30. The mandate of Section 13(8) necessarily is that the nature of the activities actually carried out by an assessee claiming exemption under Section 11 will be examined in each A.Y. to see whether or not the provisions contained in the proviso to Section 2(15) is applicable. As pointed out hereinabove, the A.O. has examined the applicability of proviso with reference to receipts from different activities, the operations carried out during the year and came to the conclusion that the activities of the Respondent were in the nature of trade, commerce or business and thus hit by the proviso to Section 2(15) of the Act. No material whatsoever has been placed on record to indicate that the activities undertaken by the Respondent are different from those which are undertaken by other entities engaged in trade, commerce or business and thus the nature of Respondent's activity is different from that of trade, business or commerce.

31. The only argument given is that the Respondent having been created by the state, does not have any profit motive and the Page 19 of 242 (UP AWAS EVAM VIKAS PARISHAD) income derived from these activities would be utilized only for the development of the area. It is also contended by the Respondent that the activities undertaken by it are for the welfare of the people and these therefore cannot be regarded as being in the nature of trade, commerce or business. It is submitted that this defence of the Respondent goes against the very grain of the amendment brought out by the Finance Act, 2008. The motive in carrying out an activity may be very laudable, but if during the previous year activities undertaken are of such nature as have the trappings of trade, commerce or business, the entity would be hit by the proviso. The argument that the monies earned would only be utilised for public good or that the Respondent is the creation of the state, is wholly irrelevant. There are several entities set up or created by the central or the state government having separate corporate status and doing public good are charged to tax and it would be highly discriminatory to suggest that a corporation set up by the central/state government for generating power is charged to

tax but a board constituted by the state government for constructing houses is not. The submissions discussing judicial precedents on this issue and on the applicability /inapplicability of the decisions of jurisdictional High Court are annexed.

REVENUE'S SUBMISSIONS WITH REGARD TO ADDITIONAL GROUND OF APPEAL

1. Revenue filed additional grounds of appeal for all these years on 05.02.2020 raising the failure of the CIT(A) to consider provisions contained in Sections 13(8), 11(2), 13(1)(d) and 13(3) of the Act. Revenue also submitted grounds on 19.03.2021 as an abundant caution again pointing out the non-consideration of Sections 11(2) and 11(3) and also the specific items of disallowance relating to Infrastructure fund, Vambay Scheme Fund and Revolving fund.

2. These grounds primarily relate to the application of Section 11(2) and 11(3) of the Act.

3. The A.O., in his assessment order, made a number of additions on account of depletion in value of stock, receipts towards Infrastructure fund, receipts towards Vambay Scheme Fund and Page 20 of 242 (UP AWAS EVAM VIKAS PARISHAD) that towards Revolving fund apart from certain other additions which are not in dispute.

4. However, CIT(A) while dealing with various grounds, came to the conclusion that the Respondent was entitled to the exemption under Section 11 of the Act and he accordingly allowed grounds relating to the same. For other grounds of appeal he observed that since the income of the Respondent has to be computed as per Section 11 of the Act, the remaining grounds of appeal had become infructuous and separate adjudication of those grounds was not required.

5. The Revenue has not only preferred appeal on the primary ground that CIT(A) incorrectly allowed the exemption under Section 11, but also agitated the observation of the CIT(A) that once exemption in available under Section 11, other issues become irrelevant. This is not the correct state of law.

6. In previous part of our submission, it has been urged that the Respondent is not entitled to exemption under Section 11 because of the application of the provisions contained in Section 13(8) and the activities of the trust having been found to be in the nature of trade, commerce and business during the year. However, that is not the end of the matter. Even if it is found that the proviso to Section 2(15) is not applicable, still other conditions contained in Sections 11 and 13 will need to be satisfied before a complete exemption is granted.

7. In this regard, attention is kindly drawn to provisions contained in Section 11(2) of the Act, which provide that where 85 per cent. of the income is not applied for charitable purposes in India, during the previous year, it can be accumulated or set apart for application in future years provided that the assessee files a statement in Form 10 stating:-

i. The purpose for which the income is being accumulated; ii. The period for which it is accumulated, which shall in no case exceed five years;

iii. The money so accumulated is invested or deposited in a Page 21 of 242 (UP AWAS EVAM VIKAS PARISHAD) specified mode; and iv. A statement as prescribed is furnished before the due date of the filing of the return.

8. Sub section (3) of Section 11 provides that if such income which is accumulated is not utilized for the purpose for which it was so accumulated during the period given in the statement, then such income shall be deemed to be the income of such person of the previous year in which it is ceases to be so accumulated. A period of one year gets further allowed after the expiry of the given period.

9. A bare reading of the provisions contained in Sections 11(2) and 11(3) shows that the surplus generated during the previous year will not get exemption unless it is accumulated or set apart as discussed above and if the amount so accumulated is not utilised, within the given period it will be subjected to tax in the year following the expiry of the period.

10. In the given case, the A.O. did not make any separate addition on that account for the reason that he had come to a conclusion that the Respondents were hit by the proviso to Section 2(15) and it was not necessary to go into the other aspects of the case. The CIT(A) after having reversed the order of the A.O. ought to have gone into the question whether other conditions provided in Section 11 stand fulfilled or not. The Respondent has not utilised the amounts that were set apart in earlier years and became due for application during the year under consideration. It appears that the plea is that whatever has been spent is out of the accumulated amount for earlier years and the current years surplus is available for being set apart for future years. In this way the Respondent is seeking to enlarge the scope of Section 11(2) as if it is a facility for carrying on the accumulations in perpetuity and utilise it as a rolling fund. The law is very specific that the amount so set apart ought to be spent during the given period and for the purpose for which it was set apart. No such material is available on record to justify the claim of the Respondent.

11. A copy of Form 10 filed for A.Y.2007-08 appears on Page 297 of Respondent-Assessee's paper book. The same may be taken as a Page 22 of 242 (UP AWAS EVAM VIKAS PARISHAD) sample because Form No.10 for A.Y.2009-10 doesn't seem to have been filed as it is not readily available on record. The Respondent's may be directed to place the acknowledgement of Form 10 for A.Y. 2009-10, if so filed. However, granted such Form 10 was filed for the relevant year, it is submitted that the "purpose" for the accumulation of income is very vague and general in nature, whereas the law requires that the "purpose" of accumulation ought to be specific or else the whole purpose of enacting a provision gets defeated.

12. The amount of accumulation of surplus has been swelling over the years, which further indicates that the amounts accumulated earlier and due for application this year, have not been spent and thus it would be deemed to be income chargeable to tax under Section 11(2) of the Act. The provisions of Section 11(3) also provide that the amount accumulated under Section 11(2) has to be invested and remain invested in specified mode till it is spent. There is nothing to suggest that the amount set apart earlier and due for application in this year were withdrawn out of the investments in prescribed modes.

13. It is submitted that the Hon'ble High Court of Allahabad in Commissioner of Income Tax-I, Lucknow v. Lucknow Development Authority, Gomti Nagar,[2014] 265 CTR 433 (Allahabad) has observed as under:-

> "The registration under Section12A 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 the assessees under Sections 11 and 14 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."
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> Page 23 of 242 (UP AWAS EVAM VIKAS PARISHAD)
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> 14. In this view of the matter, it is submitted that since the Respondent has not utilised the amounts accumulated in the earlier years and which were due for application during the previous year, the corresponding amount is deemed to be the income of the year and is chargeable to tax. The CIT(A) or the AO may kindly be directed to make the addition of the amount even if the Respondent is found to be entitled to an over all exemption under Section 11(1) of the Act.

15. By virtue of the provisions contained in Section 13(1) of the Act, nothing contained in Section 11 shall operate so as to exempt any income if any part of such income or property of the institution has been applied or used directly or indirectly for the benefit of any of the persons referred to in Section 13(3). Section 13(3) got a clause inserted by Finance Act, 1972 to include manager of the institution by whatever name called. Hence, any benefit given to the manager or his relative in any form would disentitle the institution from the benefit of exemption.

16. In this case, after the additional grounds filed by Revenue came up for consideration, before this Hon'ble Bench, an opportunity was allowed to the Respondent by the Hon'ble Bench to provide relevant details whether any benefit has passed on to the employees, more particularly the manager or their relatives. As per the information available on record, it is seen that by way of a general circular the Respondent has given 5% concession on the total price of land/flats allotted to all its employees including senior employees. Thus, a benefit is being given to the employees and more particularly, the manager and their relatives. Though the Adhiniyam, 1965 under which the Respondent was created does not give any such authority, yet the board of the Respondent took a decision to grant such benefit to all the employees including those occupying managerial positions. In the case of their employees, the registration amount is also getting reduced. The AO called for specific information in this regard, but the Respondent did not provide complete information in this regard. No such disclosure has been given in the accounts. It is a matter of fact that such benefits are being given since 1988 but complete information in this regard is not being made available to the

Revenue.

17. In this regard, reliance is placed on the decision of the Page 24 of 242 (UP AWAS EVAM VIKAS PARISHAD) Hon'ble Andhra Pradesh High Court in the case of Talaprolu Bapanaiah Vidya Dharma Nidhi Trust v. CIT, (1987) 167 ITR 482 (AP), wherein it was held that:-

> "But section 13 excludes the application of section 11, provided the conditions prescribed there under are satisfied, namely, section 11shall not operate so as to exclude from total income of the previous year of the person in receipt of, in the case of a trust for charitable or religious purposes or charitable or religious institutions, any income thereof or any part thereof, if such income or any property of such trust or institution is used or applied directly or indirectly for the benefit of any person referred to in sub-section (3), namely, the author of the trust or the founder of the institution if any funds of the trust or the institution are, or continue to remain, invested for any period during the previous year in which the founder or the author has sub stantialinterest. Sub-section (2) of section 13 makes the matter explicit. It speaks that without prejudice to the generality of the provisions of clause(c), the income or the property of the trust or institution or any part of such income or the property so invested shall not be excluded. Admittedly, the author of the trust has invested the entire corpus of Rs.20,000 set apart for charitable purposes in 'Jaya Textiles' in which he has substantial interest. Therefore, the income derived is not liable to be excluded from chargeability to tax."

18. Further reliance is also placed on the decision of the Hon'ble High Court of Allahabad in the case of CIT-II, Lucknow v. Awadh Educational Society, I.T. Act No.142 of 2007, where in it was held that:-

> "5.After hearing the counsel for both the parties, it appears that the judgment and order passed by the Tribunal in the case of Vijeta Educational Society in I.T.A.No.425/Luc/05 for the same assessment year 2001- 2002 came before this Bench. After discussing the matter at length, this Bench observed that:
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> Page 25 of 242 (UP AWAS EVAM VIKAS PARISHAD) "Since, in the instant case, the interest was charged @10%, as alleged by the Assessee, it should have been reflected in the books of accounts of the Assessee as well as in the audit report but the same was not reflected in any document even subsequent document filed by the Assessee except the resolution, which cannot be relied and it can be considered an afterthought. In the instant case, the Assessee was liable to show this interest as income in the books of account as per mercantile system of accounting. Thus, the A.O. has rightly concluded that the Appellant has given interest free loan to Sri C.P. Singh in violation of the provisions of Section 13(1)(c) of the Income Tax Act and also giving loan without any adequate surety in violation of Section 13(2)(a) of the Act. In these circumstances, we are of the view that the A.O. has rightly denied the exemption to the Assessee under Section 11 of the I.T. Act.

It may be mentioned that in view of Clause (c) of Section 13(1) rendering the entire income of Trust or charitable institution on liable to tax even if only part of income is directed to be applied for the benefit of the specified persons. The legislature, however, also creates a fiction and enumerates in Clauses (a) to (h) of Sub-section (2)of Section 13, a list of circumstances in which the income shall be deemed to have been used or applied for the benefit of the specified persons. These clauses comprehend various types of benefits such as by way of interest free loans, loans without security, permission or licence to use land or other property without charging adequate recompense, excessive payment for service, sale of property for inadequate consideration and investment of the trust funds in concern belonging to the specified person or in which he has substantial interest as observed in the case of Talaprolu Bapanaiah Vidya Dharma Nidhi Trust v. CIT : (1987) 167 ITR 482 (AP). In the instant case, the beneficiary is not covered by the list of persons mentioned in Section 13(3) of the Act.

Page 26 of 242 (UP AWAS EVAM VIKAS PARISHAD) Hence, we set aside the impugned order passed by the Tribunal and restored the order passed by the A.O. The answer to the question is in negative i.e. in favour of the revenue and against the Assessee.

The appeal filed by the department is allowed."

6. The facts and circumstances are identical in nature, hence by following the order (supra), we set aside the impugned order dated 31st July, 2007 passed by the Tribunal-Respondent and restore the order of the A.O."

19. The Hon'ble Delhi High Court in the case of DIT v. Maruti Center for Excellence, [2012] 208 Taxman 236 (Delhi) has also held that the benefits of Section 11 of the Act cease even when the benefits are allowed directly or indirectly to the persons referred to in Section 13(1) read with Section 13(3) of the Act, despite the fact that her registration under Section 12A is available to the assessee. It was observed by the Hon'ble Court that:-

> "11. Section 13(1)(c)(ii) is a provision in the Act which deals with actual functioning and activities undertaken during the assessment year in question. The said Section has to be read along with Section 13(3). Section 13(1)(c)(ii) states that no part of the income or any property of the institution should be used or applied directly or indirectly for the benefit of any person referred to in sub-section (3). The words "directly or indirectly" are important and reflect the intention of the Legislature that income or property should not be even indirectly used for benefit of a member. The word 'indirectly' used in Section 13(3)(c)(ii) shows the expansive and comprehensive scope and intention behind incorporation of the said provision. The provision postulates and states that charity for self or closely related/associated persons as defined in Section 13(3) is an anathema and not acceptable. Income and the property of the charitable institution should be used for charitable activities which benefit third persons and should not directly or indirectly benefit the persons covered under Section13(3).

12. Section 13(3) of the Act, as noticed, consists of several sub-paras. These clauses refer to the author or founder of the trust/institution; in case of HUF any member of the family; trustee or the manager, any person who has made substantial contribution as stipulated; or any relative of the said persons or any concern in which any of the said persons have substantial interests. Reading of sub-clauses again indicates the broad and expansive coverage which the Legislature wanted to give to Section 13(3). The obvious intention is to prevent abuse and misuse of the provisions. However, care and caution must be taken not to expand the scope beyond the legislative intent. We should not be under stood to mean and imply that income or property of the institution cannot be paid or utilized by any person covered by Section 13(3) of the Act. What is postulated by Section 13(1)(c)(ii) is that the income or the property should not be used directly or indirectly for the benefit of the persons mentioned in Section 13(3). The term 'benefit' is important and shows that reasonable and fair payments made for the actual services rendered and provided by persons under Section 13(3) will be and are allowed. Justified and reasonable payments and adequate compensation for services rendered, goods supplied etc. Cannot be regarded as providing a "benefit" to a person under Section 13(3). What is prohibited and barred is application of income or use of the property of the institution directly or indirectly for "benefit" of a person mentioned in Section 13(3) i.e. he is paid beyond what is reasonable, adequate, commensurate and justified for the services rendered or goods supplied. The said person should not profit at the expense of the trust/institution. Charity should not become the primary or important source of business profits and a façade to promote business interest or secure advantage, for persons mentioned in Section 13(3) in the name of charity. The word "benefit" need not be restricted to direct material benefit, but is of wide significance comprehending whatever would be beneficial in any respect, materially or otherwise. Benefit can be pecuniary or non-pecuniary. This would be the correct legislative intent.

13. Under Section 13(1)(c)(ii) of the Act, the purpose of Page 28 of 242 (UP AWAS EVAM VIKAS PARISHAD) the society must be to benefit the public or sub-serve the object of general public. Thus, where the dominant motive of the application of income or property is to help the members of a society, and remotely and indirectly to benefit the public, it cannot be said that the institution meets the requirements of the said Section. Again, where the primary purpose is to benefit the private interests of persons under Section 13(3), provisions of Section 13(1)(c)(ii) are attracted. Thus, the general purpose or object as stated in the Memorandum may be a beneficial one, but it would violate Section 13(1)(c)(ii) read with Section 13(3), where the benefit is primarily confined to the members of the institution itself or employees of a particular firm or company covered under the ambit of 13(3), however large the number of beneficiaries may be. Where the institution/charity operates and uses its income/property for the benefit of its members, it violates Section 13(1)(c)(ii) and has to be denied the privilege bestowed. A word of caution, we are not concerned, and are not examining the question "business held under trust", the income of which subserves charity. We are answering and examining the actual utilization and deployment of income/property, i.e., the end use and not generation of income for the end use.

25. This to our mind may be relevant to determine and decide whether an institution was carrying on charitable activities and whether or not it is violating Section 13(1)(c)(ii) of the Act but this alone

is not the only or sole requirement to determine and decide the question/aspect of benefit. What the said Section postulates and requires is no benefit directly or indirectly must accrue to a person mentioned in Section 13(3) of the Act by application of income or use of property of the charitable institution. Thus, charging the same fee may be relevant but may not determinative for deciding whether or not direct or indirect benefit in the form of use of property or income of the institution, by a member has taken place during the relevant previous year. The issue/question is much broader and requires deeper scrutiny and verification. In the present case, it will require examination of the expenditure incurred on the training and whether this was Page 29 of 242 (UP AWAS EVAM VIKAS PARISHAD) a "benefit" to the persons mentioned in Section 13(3). For example, in case training was subsidized, then it can be said and argued that benefit was given to the member, even if same fee was charged from non-members. Further and importantly, Section 13(1)(c) (ii) will get attracted if the benefit was confined primarily and predominantly to the persons mentioned in Section 13(3)(b) and (e) and incidentally some benefit had percolated and flowed to the public/third persons."

20. It has been held by the Hon'ble Allahabad High Court in the Respondent's own case in M/s UP Awas Evam & Vikas Parishad, ITA No. 114 of 2010 dated 16.09.2013 that:-

> "The registration under section 12A is mandatory to claim exemption under Section 11 and 13 but registration alone cannot be treated as conclusive. It is always open to revenue authorities to examine the claim under Section 11 and 13 and give such treatment to this institution as is warranted by the facts of the case."

21. Lastly, the Hon'ble Patna High Court in the case of Budha Vikas Samity v. Commissioner of Income Tax-I, Patna, [2011] 199 Taxman 395 (Patna) has observed that:-

> 9. The learned authorities under the Act should have been mindful of the position that registration of an organization as a charitable institution under the provisions of section 12A of the Act leads to exemption from payment of Income-tax. Therefore, it goes without saying that such an organization will have to measure up to the strict parameters laid down in the Act to continue to enjoy the benefit of exemption from payment of Income-tax, failing which it may be deprived of its registration as a charitable institution and the benefit of exemption from payment of Income-tax. We regret to record that the learned authorities under the Act were not mindful of their responsibility, resulting in abdication of essential duties and functions, causing recurring loss of revenue.

th Date: 27 December, 2021 G.C. Srivastava Page 30 of 242 (UP AWAS EVAM VIKAS PARISHAD) Advocate Special Counsel for Revenue BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL, LUCKNOW 'B' BENCH In the matter of: UP Awas Evam Vikas Parishad A.Y.s 2009-10 to 2014-15 Judicial precedents on the issue

1. Certain coordinate benches of the Hon'ble ITAT have examined the aspect of this matter and have come to the conclusion that after the introduction of the proviso to Section 2(15), the benefit of

exemption would not be available.

2. The Hon'ble Bench of the ITAT, Amritsar in the case of Jammu Development Authority, reported in [2012] 23 taxmann.com 343 (Asr.) and appearing at Page 3 of Revenue's compilation of case laws, Vol-I has examined this issue and held that:-

> "7.6. Also, at the same time, section 10(20A) which related to income of and Authority constituted in India by or under any law enacted for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages which before the amendment was not included in computing the total income, was omitted. Consequently, the benefit conferred by clause (20A) on such an Authority was taken away. Thus, in view of the fact that section 10(20A) was omitted and an Explanation was added to section 10(20) of the Act, enumerating the "Local Authorities" contemplated by section 10(20), the assessee could not claim any benefit under those provisions after April 1, 2003. The assessee subsequently claimed that its objects falls under the provisions of section 2(15) of the Act and has 32 ITA No.30(Asr)/2011 complied with all the eligibility criteria for grant of registration under section 12A of the Act, which was allowed vide order Page 31 of 242 (UP AWAS EVAM VIKAS PARISHAD) dated 30.09.2009. It is at this juncture that the first proviso and second proviso were added by the Finance Act, 2008 w.e.f. 01.04.2009, as mentioned hereinabove. Therefore, after insertion of the said proviso, any institution carrying on of any activity in the nature of trade, commerce or business etc. as mentioned herein above, shall not be a charitable purpose. As per objects of the assessee, it is observed that the main object of the assessee is to promote and secure the development of local area and there is no charitable purpose or any activity for general public utility. The activities of the assessee are aimed at earning profit as it is carrying on activity in the nature of trade, commerce or business. Further profit making by the assessee is not mere incidental or by product of the assessee.

There is no real object of the assessee and there is no spending of the income exclusively for the purpose of charitable activities and profits of the assessee are not used for charitable purpose under the terms of the object and there is no obligation on the part of the assessee to spend on 'charitable purpose' only. Also as per clause 53 of the Jammu & Kashmir Development Act, on dissolution of all properties and funds to vest in the Government and for the purpose of realizing properties, the function of the Authority shall be discharged by the Government. We concur with 33 ITA No.30(Asr)/2011 the views of the Ld. CIT on transfer of the properties, funds and dues and liabilities etc. will vest in the Govt. There is no restriction, how the same are to be utilized by the Government. There are other objects like sale and purchase, which makes the Authority a commercial organization. Therefore, in the facts and circumstances of the case, even on dissolution or winding up by not having any restriction on application of asset for charitable purpose, the objects pursued by the assessee cannot be said to be a charitable in nature.

7.7 As regards the reliance on the decisions of various courts of law by the Ld. CIT, most of the decisions have been dealt by the Tribunal in the case of M/s. Jalandhar Development Authority vs. ITO (supra). In the facts and circumstances of the present case, we concur with the views of the ld. CIT that Jammu Development Authority is an Authority established with the motive of profit constituted under the Jammu & Kashmir Development Act, 1970 and that Page 32 of 242 (UP AWAS EVAM VIKAS PARISHAD) the activities of such Authority are hit by section 2(15) of the Act read with first and second proviso and are not in line with the objects of the Authority/Trust so far as the activities relating to purchase and sale of properties, as mentioned hereinabove. Hence, the activities are not genuine to the extent, mentioned hereinabove and the Ld. CIT, Jammu, has rightly being satisfied held that the Jammu Development Authority is not 34 ITA No.30(Asr)/2011 entitled to registration and accordingly cancelled the registration so granted. We find no infirmity in the order of the Ld. CIT, Jammu and the same is upheld. Thus, all the grounds of the assessee are dismissed."

3. The appeal against the order of the Hon'ble ITAT, Amritsar was filed before the Hon'ble High Court of Jammu and Kashmir, which vide its order dated 07.11.2013 in Jammu Development Authority v. Union of India & Anr., ITA No.164/2012 dismissed the appeal with the following observation:-

1. The instant appeal under Section 260-A of the Income Tax Act, 1961 (for brevity, the Act) is directed against order dated 14.06.2012 passed by the Income Tax Appellate Tribunal, Amritsar, upholding the order withdrawing the status of Charitable Institution given to the appellant-assessee under Section 12AA(1)(b)(i) of the Act. The Tribunal has reached a categorical conclusion that the assessee-Jammu Development Authority cannot be regarded as an institution or trust which may have been set up to achieve the objects enumerated under Section 2 of the Act particularly in view of the addition of first and second proviso made by the Finance Act, 2008 w.e.f. 01.04.2009 to Section 12 AA of the Act. There are findings of fact that the assessee-appellant has not been acting to advance any of the object concerning general public utility. Even otherwise the proviso which has been added by the Finance Act, 2008 w.e.f. 01.04.2009 stipulates that the advancement of any other object of the general public utility shall not be a charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business or a cess or fee or any other consideration.

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2. We find that no question of law much less a substantial question of law would emerge from the impugned order of the Income Tax Appellate Tribunal warranting admission of the appeal. The appeal is wholly without merit and is thus liable to be dismissed.

4. A further SLP to the Hon'ble Supreme Court filed was also been dismissed. The decision of the Hon'ble Coordinate Bench of the High Court of Jammu and Kashmir in Jammu Development Authority (supra) has therefore attained finality.

5. A Co-Ordinate Bench of the Hon'ble Tribunal at Cochin in Greater Cochin Development Authority v. Joint Director of Income- tax (OSD) (Exemption), Range-4, Kochi, reported in [2014] 49 taxmann.com 506 (Cochin-Trib.) observed as under:-

48. The major thrust of the learned Counsel for the assessee is that the assessee is of general public utility as it satisfies the need for housing accommodation for the section of the people of State of Kerala, specifically Cochin and is also doing planning and development of the cities, towns and villages. We are not agreeable with the argument of the learned Counsel because a charitable institution provides services for charitable purposes either at free of cost or on cost to cost basis and not for profit. In the present scenario, the similar activities are performed by big colonizers/developers who are earning a huge profit. If this income is exempted u/s.11, then we will open a Pandora box and anybody will claim the exemption from tax. If the activities of the assessee are analysed, it has turned into a huge profit- making agency for which it is taking money from the general public. In such a situation, we are of the view that no charity is involved and if any institution of public importance like schools, community centers are created/developed, the assessee is charging the cost of it from the public at large and the money is coming from the coffer of the Government. It can be said that objects/activities of the assessee are more of commercialized nature and we do not find any charity in it. At the same time, if these facilities are not provided, then nobody will purchase a plot. It can be said that it is a means of attracting the people so that maximum people may apply for the same and the hidden cost is already added, so no charity is involved. At best, the Page 34 of 242 (UP AWAS EVAM VIKAS PARISHAD) assessee can be said to be an authority created to help it to achieve certain objects. It can be said that it is the duty of the Government to create/provide all these facilities to public at large, which is being done through this agency in a particular area. At the same time, the funds which are provided to the assessee by the Government is again a public money or generated from the public itself, so where is the charity? If the activities of the assessee and the arguments of the learned Counsel are put in a juxtaposition, it can be said that the objects of the assessee, though claimed to be charitable, but actually are of purely commercial nature where profit motive is involved. It is a known fact that the assessee is acquiring the land at very low prices and selling the same land on very higher rates and is earning a profit there from. A new trend has also emerged that the assessee has started auctioning the plots by way of bidding at the market rate and sometimes more than that and charging interest on belated payments. In such a situation, we are of the view that no charity is involved. Rather the assessee has converted itself into a big business house. Similar development/infrastructure/facilities are also provided by private developers these days, then they will also claim the status of a charitable institution.

The Hon'ble Bench after relying on the decision in the case of Jalandhar Development Authority v. CIT [2010] 35 SOT 15 (Asr.) (URO), denied exemption to the assessee therein under Section11 of the Act.

6. The matter was thereafter carried to the Hon'ble High Court of Kerala and the Hon'ble High Court in M/s Greater Cochin Development Authority (GCDA) v. The Joint Director of Income Tax, (OSD) Kochi, ITANos.208,210/2014 held as under:-

> 11. Having clarified the factual position as above, we shall now deal with the case of the appellant and find out whether there is any substance in their contention that their activities would qualify to be a charitable purpose as defined in Section 2(15) of the Act. According to the counsel, the appellant was established by the Government of Kerala to satisfy the need for housing accommodation of various sections of the people and especially for planning and development in the cities, towns and villages.

Page 35 of 242 (UP AWAS EVAM VIKAS PARISHAD) It was therefore that they pointed out that they acquired land at nominal rates, developed the same and sell it to general public. It was also their case that they are executing several works of infrastructural development such as markets, water supply and sewerage, development of sports complexes, bridges, bus stand, swimming pools, community centers, public toilets, parks, cremation grounds, schools etc,.

12. We have already stated that for the assessment year, the total income assessed was Rs.8,00,94,700/-. It is undisputed that the appellant is charging fees for supervision and centage charges, permission for transfer of land, copy of records, cost of forms, cost of plans, booklets and that the income on this account during the assessment year 2009-10 was Rs.1,23,11,413/-. It is also undisputed that the appellant has developed several commercial centers and rented it out and that the appellant itself is responsible for the maintenance, upkeep and the provision of common facilities. The total receipts of such letting out and maintenance charges during the assessment year came to Rs.4,09,73,498/-. It is also admitted that the commercial space developed by the assessee is auctioned by it to the highest bidder. These activities that are carried on by the assessee are for consideration and purely on commercial lines and these are activities which any other real estate developer is engaged in. It was considering these admitted facts that the assessing officer and the appellate authorities have concurrently come to the conclusion that the activities carried on by the assessee are in the nature of trade, or commerce or business, and that the assessee is receiving consideration in return for its activities.

13. Considering the nature of the activities that are carried on by the assessee, the factual correctness of which is undisputed, we can only endorse the view taken by the statutory authorities that in view of the proviso to Section 2(15), the activities of the assessee do not qualify to be charitable purpose as defined therein. In such a scenario, the assessing officer was justified in disallowing the exemption claimed and assessing to tax the income of the assessee and the appellate authorities were justified in confirming the same. In such circumstances, we Page 36 of 242 (UP AWAS EVAM VIKAS PARISHAD) don't see any question of law arising in these appeals to be considered by this Court under Section 260(A) of the Income Tax Act.

7. The matter was thereafter carried to the Hon'ble Supreme Court, which after hearing the petitioner, was pleased to dismiss the SLP vide its order dated 04.09.2015 in The Greater Cochin Development Authority v. The Joint Director of Income Tax (OSD) (Exemption), Dy. No. 12667/2015 by holding that:-

> "Heard the learned counsel for the petitioner and perused the relevant material.

We do not find any legal and valid ground for interference. The special leave petitions are dismissed."

8. In the case of Andhra Pradesh State Seed Certification Agency reported in [2012] 28 taxmann.com 288(AP), the Hon'ble High Court after examining the proviso to Section 2(15) observed as under:-

19. The counsel for the petitioner submits that the petitioner is itself not engaging in any activity which is in the nature of trade, commerce or business and therefore it has to be held to be an agency whose activities are for "charitable purpose" under Section 2(15) of the Act and therefore entitled to the benefit under Section 10(23C)(iv) of the Act. The contention of the petitioner's counsel if accepted would mean that the words "any activity of rendering any service in relation to any trade, commerce or business" in the first proviso to Section 2(15) of the Act have to be ignored. This is not permissible because the High Court cannot substitute or ignore the wording in a provision in a statute. In Aswini Kumar Bose v. Arabinda Ghose AIR 1952 SC 368, the Supreme Court held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In Mahindra and Mahindra's case (supra), the Supreme Court held that the High Court cannot substitute the language in a statute or subordinate legislation.

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20. The Memorandum explaining the provisions in the Finance Bill, 2008 and the budget speech of the Minister of Finance for 2008-2009 delivered on 29-02-2008 extracted above clearly indicate that the first proviso to Section 2 (15) as extracted above was introduced by the Finance (No.2)Act, 2009 with effect from 01-04-2009 to exclude entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes from claiming to be engaged in activities for "charitable purpose".

9. In Bihar State Forest Development Corporation, reported in [1997] 224 ITR 757(Patna), the Hon'ble High Court of Patna observed as under:-

"11. In Surat Art Silk Cloth Mfrs. Association's case (supra), it has been held:

"...The income and property of the assessee were liable to be applied solely and exclusively for the promotion of the object set out in the memorandum and no part of such income or property could be distributed amongst the members in any form or utilised for their benefit either during its operational existence or on its winding up or dissolution. The assessee's income was derived primarily from two sources: (i) an annual subscription collected from its members at the rate of Rs. 3 per power loom, in regard to which it was conceded by the department that it was exempt from tax and (ii) commission of a certain percentage of the value of licences for import of foreign yarn and quotas for purchase of indigenous yarn obtained by the assessee for its members. This commission was credited separately in a building account and out of this amount the assessee constructed a building. The Tribunal held that the primary purpose for which the assessee was established was to

promote commerce and trade in art silk, silk yarn and cloth as set out in clause(a) and the other objects in clauses (b) to (e) were merely subsidiary objects; that the primary purpose was plainly advancement of an object of general public utility and did not involve the carrying on of any activity for profit within the meaning of section 2(15) of the Income-tax Act, 1961, because whatever activity was carried on by the assessee in fulfilment of the primary purpose was for advancement of an object of general public utility and not for Page 38 of 242 (UP AWAS EVAM VIKAS PARISHAD) profit; and that, therefore, the assessee's income was exempt from tax under section11(1)"(p.1) That is not the position in the present case before us.

12. In Andhra Pradesh State Road Transport Corpn.'s case (supra) the Court has held that:

"...the activity of the assessee was not carried on with the object of making profit... and that the amount left over after utilisation for the purpose set out in section 30 of the Road Transport Corporation Act as amended was to be made over to the State Government for the purpose of road development and that the amount so handed over to the State Government did not become part of the general revenue of the State but was impressed with an obligation that it should be utilised only for the purpose for which it was entrusted viz., road development, which was an object of general public utility."

Again that is not the case before us. Thus, the aforesaid two decisions are clearly distinguishable and do not apply to the facts of the present case. The objects with which the assessee was incorporated as a company may appear to be of general public utility for development of forestry, but then there were other objects as well which make the assessee a commercial organisation with no restriction as to how its income would be utilised. Thus, considering the principles set out in the aforesaid decision of the Supreme Court we find no difficulty in answering the first question in the affirmative, in favour of the revenue and against the assessee."

10. The Hon'ble Allahabad Bench of this Tribunal in the case of Allahabad Development Authority v. ACIT, Range-II, Allahabad, ITA 346/Alld/2015 observed as follows:-

> "15. There is no dispute that the assessee was carrying charitable purpose prior to the insertion of proviso to section 2(15).

16. Since the definition of charitable purpose got amended, it is incumbent on the part of the assessee to prove that it is not hit Page 39 of 242 (UP AWAS EVAM VIKAS PARISHAD) by the proviso to section 2(15). The contention of the department is that the assessee is carrying on activity in the nature of trade, commerce or business for a consideration, while the assessee contends that it is not hit by the proviso. The assessee is not carrying on any trade, commerce or business.

17. From the perusal of Section 2(15) after the insertion of the proviso, which is applicable only in the case where the assessee is engaged in the advancement of any other object of general public utility, the definition of charitable purpose got amended. The proviso as is apparent clearly states that the advancement of any other object of general public utility shall not be charitable purpose and subsequent to that it gives certain conditions if the institution fulfills those conditions as are

stipulated in the proviso, the institution will not be regarded to have been engaged for the advancement of any other object of general public utility for the purpose of Section 2(15) of the Income Tax Act and will no longer remain to have been engaged in charitable purposes. In fact, this proviso puts an embargo on the institution that in case the institution falls within the proviso, it will no longer be regarded to have been engaged for charitable purpose even if it is engaged in the advancement of any other object of general public utility. This proviso states that if the institution is engaged in carrying on of any activity in the nature of trade, commerce or business or any activity or rendering any service in relation to any trade, commerce or business for cess or fee or any other consideration, the institution shall not be regarded to have been involved in carrying on charitable purpose. This proviso in the last sentence further states that nature of use or application or retention of the income by the institution from such activity will not be a relevant consideration. In view of this specific provision, we are not concerned to look into how an institution has used, applied or retained its income, if the income has been received by the institution from any activity carried out in the nature of trade, commerce or business of from any activity of rendering any service in relation to trade, commerce or business. The institution will not be for charitable purposes.

18.The words used in the proviso are 'carrying on of any Page 40 of 242 (UP AWAS EVAM VIKAS PARISHAD) activity in the nature of trade, commerce or business" not the words 'carrying on trade commerce or business.' Using the words 'any activity in the nature of prior to 'trade, commerce or business in our opinion has a specific meaning while interpreting the proviso. These words cannot be ignored. This in our opinion mandates that the institution need not actually be carrying on trade, commerce or business but the activity carried on by him are similar to trade, commerce or business. The profit motive is required while a person is carrying on trade, commerce or business. The use of words 'carrying on any activity in the nature of trade, commerce or business' in our opinion will mean that there need not be profit motive in carrying on the activity by the institution. If we will interpret the words 'carrying on of any activity in the nature of trade, commerce or business' equivalent to the words 'carrying on trade, commerce or business'. In our opinion, there was no need of incorporating in the proviso, the words 'of any activity in the nature of prior to the words 'trade, commerce or business'. The legislature is fully aware that an institution which is incorporated for charitable purpose cannot have profit motive. Due to this reason, if we go to the background of Sec. 2(15), the Hon'ble Supreme Court interpreted Sec. 2(15) in the case of Addl. CIT Vs. Surat Art Silk Cloth Manufacturers Association 121 ITR 1 (relied on by Sr. Advocate), when the Section 2(15) contained the words "not involving the carrying on of any activity for profit" after "advancement of any other object of general public utility". Profit motive in respect of an institution cannot be main object but it may be ancillary and incidental to the main objects due to which Sec. 11 (4A) was also incorporated under the Income Tax Act initially y Finance Act, 1983 w.e.f. 1.4.1984. The Learned AR even though relied before us on the decision of Hon'ble Supreme Court in case of ACIT v. Surat Art Silk Manufacturers Association 121 ITR 1 (SC), but this decision is not applicable in the case of the assessee at all as it relates to the interpretation of Sec. 2(15) prior to its amendment by the Finance Act, 1983 when the words 'not involving any activity for profit' were there under Section 2(15) after the words 'advancement of any other objects of general public utility'. This decision does not define the words 'carrying on of any activity in the nature of trade, commerce or business or any activity or rendering any services in relation to any trade, comer or business. 'In this decision, Page 41 of 242

(UP AWAS EVAM VIKAS PARISHAD) the Hon'ble Supreme Court approving the finding of Justice Beg in the case of Sole Trustee, Loka Sikhshana Trust's case [1975] 101 ITR 234, 256 (SC) held as under:

"The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit making is the predominant object of the activity, the purpose though an object of general public utility would cease to be a charitable purpose. But where the predominant object off the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed by difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principle of management. We, therefore, agree with Beg. J. When he said in Sole Trustee, Loka Sikhshana Trust's case [1975] 101 ITR 234, 256 (SC) that:

"If the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity." The learned judge also added that the restrictive condition "that the purpose should not involve the carrying on of any activity for profit would be satisfied if profit making is not the real object." .....

24. The Learned Senior Counsel vehemently argued before us that whatever receipts or income the institution has received, that is for the purpose of carrying out urban development. This argument of the learned AR, in our opinion, does not have any leg to stand for deciding whether the proviso of Sec. 2(15) is applicable in the case of the assessee or not because the proviso clearly states that 'the nature of use or application or Page 42 of 242 (UP AWAS EVAM VIKAS PARISHAD) retention of the income from the activity carried on by the institution which are in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or businesses not relevant.

.....

28. We find that the meaning of the expressions "trade, commerce or business" was analysed by the Hon'ble Delhi High Court in the case of Institute of Chartered Accountants of India Vs. DGT (347ITR 99) and the relevant discussions have been extracted by the Hon'ble Delhi High Court in the case of GSI India Vs. DGIT (Exemption) (2014) (360 ITR 138) (Delhi) as under: -

"Scope of Trade, Commerce or Business"

15. The key words, namely; trade, commerce and business were enumerate and elucidate in Institute of Chartered Accountants of India v. Director General of Income Tax (Exemptions) Delhi (Supra) as

under: -"Trade, as per the Webster's New Twentieth Century Dictionary (2nd edition), means, amongst others, "a means of earning one's living, occupation or work. In Black's Law Dictionary, "trade" means a business which a person has learnt or he carries on for procuring subsistence or profit; occupation or employment, etc. The meaning of "commerce" as given by the Concise Oxford Dictionary is "exchange of merchandise, specially on large scale". In ordinary parlance, trade, and commerce carry with them the idea of purchase and sale with a view to make profit. If a person buys goods with a view to sell them for profit, it is an ordinary case of trade. If the transactions are on a large scale it is called commerce. Nobody can define the volume, which would convert a trade into commerce. For the purpose of the first proviso to section 2(15), trade is sufficient, therefore, this aspect is not required to be examined in detail.

The word "business" is the broadest term and is encompasses trade, commerce and other activities. Section 2(13) of the Income-tax Act defines the term "business" as under:

Page 43 of 242 (UP AWAS EVAM VIKAS PARISHAD) "2. Definitions.-. . .(13) 'business' includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture."

The word "business" is a word of large and indefinite import. Section 2(13) defines business to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The intention of the Legislature is to make the definition extensive as the term "inclusive" has been used. The Legislature has deliberately departed from giving a definite import to the term "business" but made reference to several other general terms like "trade", "commerce", "manufacture" and "adventure or concern in the nature of trade, commerce and manufacture". In Black's Law Dictionary, Sixth Edition, the word "business" has been defined as under:

"Employment, occupation, profession or commercial activity engaged in for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood, Union League Club v. Johnson 18 Cat 2d 275. Enterprise in which person engaged shows willingness to invest time and capital on future outcome. Doggett v. Burnet 62 App DC 103; 65 F. 2D 191. That which habitually busies or occupies or engages the time, attention, labour and effort of persons as a principal serious concern or interest or for livelihood or profit."

According to Sampath lyengar's Law of Income Tax (9th edition), a business activity has four essential characteristics. Firstly, a business must be a continuous and systematic exercise of activity. Business is defined as an active occupation continuously carried on. Business vocation connotes some real, substantive and systematic course of activity or conduct with a set purpose. The second essential characteristic is profit motive or capable of producing profit. To regard an activity as business, there must be a course of dealings continued, or contemplated to be continued, normally with an object of making profit and not for sport or pleasure (Bharat Development P. Ltd. v. CIT [1982] 133ITR 470 (Delhi)). The third essential characteristic is that a business transaction must be between two persons. Business is not a unilateral act. It is brought about by a transaction between two or more persons.

Page 44 of 242 (UP AWAS EVAM VIKAS PARISHAD) And, lastly, the business activity usually involves a twin activity. There is usually an element of reciprocity involved in a business transaction."

.....

35. We have gone through the order of the Lucknow Bench of Allahabad High Court in the case of Lucknow Bench of Allahabad High Court in the case of Lucknow Development Authority Vs. CI7) we noted that in that case the appeal relates to the assessment year 2003-04 to 2006-07 not to A.Y. 2009- 10, i.e., after insertion of proviso to Section 2(15). The question before the Hon'ble High Court were: "Whether keeping the facts and circumstances of the case, the Tribunal had committed substantially illegal by holding that the income of the assessee is exempted under Section 11 of the Income Tax Act, through there is no condition that no profit should be earned by its activities and the profit will not be distributed amongst the stake holders and the finding of the Tribunal with regard to exemption under Section 12 of the Act is also substantially illegal?"

"Whether by assuming registration under Section 12AA of the Income Tax Act and exempting income of the Assessee without considering the dispute in terms of Sections 11,12 & 13 of the Income Tax Act coupled with nature of activities, the Tribunal has acted arbitrarily or substantially illegal." "Whether the learned Income Tax Appellate Tribunal was correct in law in holding that without exhausting the provisions contained in section 143(2) of the Act the proceedings initiated by the Assessing Office by issuing notice u/s/ 148 of the Act were not valid in the given facts and circumstances of the case."

36. In that case the registration u/s. 12AA of the Income Tax Act was granted by the CIT in pursuance of its order dated 25.7.2005 the Assessing Officer while examining the issue during the course of the assessment took the view that entire activities of the assessee during the year under consideration are beyond the purview of charitable purposes and therefore the income earned by the assessee is not allowable for benefits available u/s. 11 of the Income Tax Act. The objects of the Lucknow Development Authority were similar to the objects of the Allahabad Development Authority but the Page 45 of 242 (UP AWAS EVAM VIKAS PARISHAD) definition of the charitable purpose during the impugned assessment year read as under: "charitable purpose includes relief of the poor education, medical relief and the advancement of any other object of general public utility"

37. The said definition was considered by the High Court in that case and after considering the said definition the Hon'ble High Court took the view that the assessee was entitled to exemption u/s. 11 for the relevant assessment year. This issue we noted before the High Court relate to the assessment year prior to the assessment year 2009-10 when the provision of Section 2(15) were amended by inserting proviso in Section 2(15) of the Income Tax Act. This is settled law in view of the decision of the Hon'ble Supreme Court in the case of CIT vs. Sun Engineering (P) Ltd., 198 ITR 197 that case has to be applied on the basis of facts and contents therein. Each A. Y. is independent and the law prevailing during the assessment year has been considered for deciding the case of that A.Y..."

11. Furthermore, the Hon'ble Coordinate Bench of the ITAT, Indore in the case of Indore Development Authority, ITA 366/Ind/2008 has observed that: -

> 52. To sum up, if the totality of facts/case-laws as narrated above and the arguments advanced by the Id. respective counsel are kept injuxta-position and analysed, in our humble opinion, the assessee is not engaged in activities of relief to poor, education, medical relief and/or advancement of any other objects of general public utility as defined in sec. 2(15) of the Act. Rather the assessee is actually not carrying out any activity of advancement of objects of general public utility which can be considered to be "charitable" rather the primary object of the assessee is to earn profit only. In other words, the purpose of the assessee is not an advancement of object of general public utility rather the activities involve activity of profit, therefore, these cannot fall within the purview of sec.

2(15) rather the assessee is engaged in active business and there is no restriction in its objects of making profit. There is a possibility that at the time of creation of these authorities like the present assessee i.e., Indore Development Authority, Punjab Urban Development Authority, Jalandhar Urban Development Authority or like any other may be pious but Page 46 of 242 (UP AWAS EVAM VIKAS PARISHAD) ultimately, these authorities turned into a commercial organization with the sole intention to earn maximum profit even at the cost of poor farmers whose lands are acquired, for namesake considered to be backbone of this great country, are paid negligible amount as compensation and after incurring development cost, the same land is sold at commercial rates. The helpless farmers sometimes have no means of even livelihood. Further, the profit motive of the assessee is not incidental to the objects of the assessee authority rather there is a systematic commercial activity with the intention to earn maximum profit. It is not the case that the assessee, after earning huge profit from such commercial activities, is spending such profit on charitable activities rather there is no obligation on the assessee to spend its earnings for charitable purposes. These authorities have become a great source of earning income in itself and the assessee authority is no exception to it. It is common knowledge/fact that the assessee authority is selling the developed plots on auction to the highest bidder and one such example is sale to Reliance near Sayaji Hotel as asserted by the learned CCIT DR which was not controverted by the assessee. Now a days because of this trend of auction, it has become very difficult for a common man to purchase a plot for shelter from the assessee authority. As far as the contention of the Id. Counsel for the assessee that the IDA is providing roads, schools, parks, clubs, etc., these facilities are provided by private builders rather these have become a source of attraction for getting maximum application that too on a high premium. Even when applications are invited by the assessee authority, lacs of people are applying and the cost of the application form which may be in thousand/thousands, is never returned to the applicants who do not get the plots. Even the security/advance money taken with the application forms is returned after a long time without interest to the persons not getting plots, resulting into huge profit to the assessee authority and loss the public at large. In such a situation, what chanty the assessee is doing is not known/beyond imagination. If registration is granted to the assessee, it will open a pandora box wherein every colonizer/builder will ask for registration under section 12AA of the Act, which would be very much indifference to the intention of the legislature. In fact, the assessee authority is working on commercial pattern like a big Page 47

of 242 (UP AWAS EVAM VIKAS PARISHAD) businessman. Even otherwise, if some plots are reserved for economically weaker sections of the society, firstly, there is no parameter that these are actually allotted to such poor persons and secondly, the hidden cost is already added to such plots. It is pertinent to mention here that the legislature in their wisdom amended sec. 2(15) through the Finance Act, 2008 in the case of Trade Association claiming both to be charitable institution and mutual organization by adding a proviso which states that "advancement of any other object of general public utility" shall not be a charitable purposes if it involves the carrying on of (a) any activity in the nature of trade, commerce or business or (b) any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of huge or application or retention or the income from such activity. By circular no. 11 of 2008 dated 19.12.2008, it has been further clarified whether the assessee has for its object, "the advancement of any other objects of general public utility" is a question of fact. If such assessee engages in any activity in the nature of trade, commerce or business or render any service in relation to trade, commerce or business, it would not be entitled to claim that its objects are of charitable purposes. In such a case, the objects of "general public utility" will only be a "mask" or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to such trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible, therefore, any misuse was intended to be removed by this circular. The very concept of "charity" denotes altruistic thought and action. It objects must necessarily be to benefit others rather than one's self. The action which follows from charitable thinking is always directed as benefit to others. It is this direction of thought and efforts and not the result what is done in term of financially measurable gain which determines that it is charitable [quoted from Sole Trustee Lok Shikshan Trust vs. CIT(101 ITR 234) (SC)]. Since the main predominant object of the assessee is profit making, therefore, we find no infirmity in the impugned order in denying registration u/s 12A/12AA of the Act to the assessee. Thus, on this issue, we affirm the stand taken by the Id. first appellate authority.

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12. It may thus be appreciated that the coordinate benches of the Hon'ble ITAT at Amritsar, Cochin, Indore and Allahabad hold the view that the activities of such entities are not charitable in nature, more so in view of the amended provisions of Section 2(15) of the Act. It also needs to be noted that the Hon'ble High Courts of 3ammu and Kashmir, Andhra Pradesh. Kerala and Patna have affirmed the views of these co-ordinate benches of the Hon'ble ITAT that these entities would not be entitled to exemption under Section 11. The Hon'ble Supreme Court has also dismissed SLPs filed against the orders of Hon'ble High Court of Jammu and Kashmir and Kerala.

13. There are certain decisions of the co-ordinate benches of the Hon'ble ITAT which are contrary to the above view. References to these decisions have been made in the written submissions of the Respondent. It is urged that in view of the express language employed in the proviso to Section 2(15) and there being no ambiguity in the express provisions of the law, the decisions rendered by co-ordinate benches in favour of Revenue ought to be followed. The principle laid down in the case of The Commissioner of Income- Tax, West Bengal-I, Calcutta v. M/s. Vegetables Products Ltd., 1973 AIR 927 would apply which reads as under: -

> "There is no doubt that the acceptance of one or the other interpretation sought to be placed on S. 271(1)(a)(i) by the parties would lead to some inconvenient result, but the duty of the court is to read the section, understand its language and give effect to the same. If the language is plain, the fact that the consequence of giving effect to it. may lead to some absurd result is not a factor to be taken into account in interpreting a provision. It is for the legislature to step in and remove the absurdity. On the other hand, if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted. This is a well 'accepted rule of construction recognised by this Court in several of its decisions. Hence all that we have to see is, what is the true effect of the language employed in s. 271 (1) (a) (i). If we find that language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favours the assessee, more particularly so because the provision relates to imposition of penalty."
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> Page 49 of 242 (UP AWAS EVAM VIKAS PARISHAD) Since there is no ambiguity in the provisions, it cannot be said that the decision in favour of the taxpayer should apply. Besides, since there is a conflict of decisions, amongst co-ordinate benches, the Hon'ble Bench may also consider whether it would be appropriate to refer the matter to a larger bench.

The applicability/inapplicability of the decisions rendered by the jurisdictional High Court

34. Lucknow Development Authority, (2013) 38 taxmann.com 246 (Allahabad) In this case, the Hon'ble High Court examined the charitable nature of the authority and ruled in favour of the Lucknow Development Authority. However, it needs to be emphasized that these were the assessments for A.Y.s 2003-04 to 2006-07 when the proviso to Section 2(15) was not in operation. The question of law before the Hon'ble High Court was following: -

> "Whether keeping the facts and circumstances of the case, the Tribunal had committed substantially illegal by holding that the income of the assessee is exempted under Section 11 of the Income Tax Act, though there is no condition that no profit should be earned by its activities and the profit earned will not be distributed amongst the stakeholders and the finding of the Tribunal with regards to the exemption under Section 12 of the Act is also substantially illegal?"

The question before the Hon'ble High Court does not even remotely refer to proviso to Section 2(15) of the Act. However, in paragraphs 26-28, there is a reference to proviso to Section 2(15) and the Hon'ble Court observes as under:

> 28. 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.

Page 50 of 242 (UP AWAS EVAM VIKAS PARISHAD) It is submitted with utmost respect that when the proviso was not on the statute in the years for which the appeal was being decided, and the question of law before the High Court also did not make any reference to the proviso, the observations of the High Court are mere stray observations and these do become ratio decidendi to constitute a binding precedent. Reference is invited to the decision of the Hon'ble Supreme Court in CIT v. Sun Engineering (P.) Ltd., 198 ITR 197, where the Hon'ble Supreme Court observed that a decision is a precedent for what it decides. A sentence or observation cannot be picked up and argued that observation becomes the binding precedent.

This aspect of the matter was also considered by the co-ordinate bench of ITAT in the case of Allahabad Development Authority (supra)/Kanpur Development Authority (supra), wherein it was observed that: -

> 35. We have gone through the order of the Lucknow Bench of Allahabad High Court in the case of Lucknow Bench of Allahabad High Court in the case of Lucknow Development Authority Vs. CIT, we noted that in that case the appeal relates to the assessment year 2003-04 to 2006-07 not to A. Y. 2009- 10, i.e., after insertion of proviso to Section 2(15). The question before the Hon'ble High Court were:
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> "Whether keeping the facts and circumstances of the case, the Tribunal had committed substantially illegal by holding that the income of the assessee is exempted under Section 11 of the Income Tax Act, through there is no condition that no profit should be earned by its activities and the profit will not be distributed amongst the stake holders and the finding of the Tribunal with regard to exemption under Section 12 of the Act is also substantially illegal?"
>
> "Whether by assuming registration under Section 12AA of the Income Tax Act and exempting income of the Assessee without considering the dispute in terms of Sections 11,12 & 13 of the Income Tax Act coupled with nature of activities, the Tribunal has acted arbitrarily or substantially illegal." "Whether the learned Income Tax Appellate Tribunal was correct in law in holding that without exhausting the provisions contained in Page 51 of 242 (UP AWAS EVAM VIKAS PARISHAD) section 143(2) of the Act the proceedings initiated by the Assessing Office by issuing notice u/s/148 of the Act were not valid in the given facts and circumstances of the case."
>
> 36. In that case the registration u/s. 12AA of the Income Tax Act was granted by the CIT in pursuance of its order dated 25.7.2005 the Assessing Officer while examining the issue during the course of the assessment took the view that entire activities of the assessee during the year under consideration are beyond the purview of charitable purposes and therefore the income earned by the assessee is not allowable for benefits available u/s. 11 of the Income Tax Act. The objects of the Lucknow Development Authority were similar to the objects of the Allahabad Development

> Authority but the definition of the charitable purpose during the impugned assessment year read as under:
>
> "charitable purpose includes relief of the poor education, medical relief and the advancement of any other object of general public utility"
>
> 37. The said definition was considered by the High Court in that case and after considering the said definition the Hon'ble High Court took the view that the assessee was entitled to exemption u/s. 11 for the relevant assessment year. This issue we noted before the High Court relate to the assessment year prior to the assessment year 2009-10 when the provision of Section 2(15) were amended by inserting proviso in Section 2(15) of the Income Tax Act. This is settled law in view of the decision of the Hon'ble Supreme Court in the case of CIT vs. Sun Engineering (P) Ltd., 198ITR 197 that case has to be applied on the basis of facts and contents therein. Each A. Y. is independent and the law prevailing during the assessment year has been considered for deciding the case of that A.Y..."

In view of the above, the decision of the Hon'ble Allahabad High Court does not help the case of the Respondent.

15. CIT(A)-I, Lucknow v. U.P. Housing & Development Board, ITA No. 114/2O10-

The judgment of the Hon'ble Allahabad High Court relates to A.Y.

Page 52 of 242 (UP AWAS EVAM VIKAS PARISHAD) 2003-04, and the question of law raised was as follows: -

> "Whether the learned Income Tax Appellate Tribunal was correct in law in holding that without exhausting the provisions contained in section 143(2) of the Act the proceedings initiated by the Assessing Officer by issuing notice u/s 148 of the Act were not valid in the given facts and circumstances of the case."

This question does not relate to the application of the proviso to Section 2(15) of the Act.

The connected appeals decided under the same judgement dealt with the proviso to Section 2(15) of the Act but, the decision was rendered against the Revenue with the following observation of the Hon'ble High Court: -

> "There is no material/evidence brought on record by the revenue which may suggest that the assesses 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.

In the present case, the A.O. has brought adequate material on record to show that the proviso is applicable.

16. CIT v. U.P. Awas Evam Vikas Parishad, Lucknow, ITA No. 16/2006 This appeal relates to registration under Section 12AA where the appeals filed by the Revenue stand dismissed. This judgement does not make any observation with regard to the proviso to Section 2(15). Even otherwise, this relies on the earlier order dated 16.09.2013 which is discussed in the preceding paragraph. This case is not at all relevant to the point in issue.

17. CIT v. Moradabad Development Authority, IT A No. 3/2017 Page 53 of 242 (UP AWAS EVAM VIKAS PARISHAD) This decision is not applicable to the facts of the present case for the following reasons: -

a. In the first place, the facts are materially different, in as much as in Moradabad Development Authority (supra), the predominant object is claimed to be town planning and development and the purchase and sale of land etc., is only an ancillary activity. But, in the present case, the one and only object is the development and execution of housing schemes, housing projects and the activity involves purchase acquisition of land, its development into plots of land or houses and sale thereof. These are being done on commercial lines. The mode and manner are sale and disposal of these plots/houses is the same which any builder would do. Unlike Moradabad Development Authority (supra), the present Respondent is not involved in the development of city or town planning etc., nor are they entrusted with any regulatory functioning.

b. The A.O. has pointed out the sources of receipt and the nature of activities in his order of assessment. He has also indicated how they are charging interest on commercial lines, which by itself may indicate that the activities are in the nature of trade, commerce or business.

c. The provisions of Section 13(8) were not examined by the ITAT in the case of Moradabad Development Authority. The relevance of the proviso at the time of granting of registration is to see that the objects do not suggest any activity in the nature of trade, commerce or business. However, the provisions contained in Section 13(8) stipulate that despite the registration given, holding the genuineness of the trust and of the objects, the A.O. can still go into the question whether the activities carried out during the "Previous Year" are in the nature of trade, commerce or business.

d. The Revenue has invoked the provisions contained in Section 13(8) in this case and the issue has also been raised before this Hon'ble Bench.

e. A decision which is passed ignoring a certain statutory provision which was not placed for consideration before the Hon'ble Bench cannot have a binding effect.

Page 54 of 242 (UP AWAS EVAM VIKAS PARISHAD) f. The decision in the case of Moradabad Development Authority (supra) records, after having reproduced the questions of law, as under: -

"4. Learned counsel for the parties at the outset stated that similar substantial questions of law have been considered and decided vide judgement dated 21.04.2017 in Income Tax Appeal No. 107 of 2016 (Commissioner of Income Tax (Exemption)), Lucknow v. M/s Yamuna Expressway Industrial Development Authority and these questions have been answered against Revenue.

5. For the reasons stated in our judgment dated 21.04.2017 in Income Tax Appeal No. 107 of 2016 (supra), questions raised in this appeal are also answered against Revenue.

6. Appeal is accordingly dismissed."

g. The decision in the case of (Commissioner of Income Tax (Exemption)), Lucknow v. M/s Yamuna Expressway Industrial Development Authority, ITA No. 107/2016 raises the issue of the correctness of registration under Section 12AA and the primary question of law raised before the Hon'ble High Court was as under: -

"1) 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 ?"

h. It is apparent that the question raised in appeal in the case of Moradabad Development Authority (supra) was with regard to the correctness of the finding whether during A.Y. 2009-10 Moradabad Development Authority was engaged in the activities which were in the nature of trade, commerce or business or whether, it could be hit by proviso to Section 2(15) of the Act. This question was entirely different from the question whether an organisation would be entitled to registration under Section 12AA of the Act.

Page 55 of 242 (UP AWAS EVAM VIKAS PARISHAD) i. The Hon'ble High Court in the case of M/s Yamuna Expressway Industrial Development Authority (supra) in Para 31 observed as under: -

"31. Reverting back to pivotal issue, we find that CIT(E), at the stage of registration, is not supposed to inquire into the conduct of charitable or other activities to be performed by a trust or institution which has submitted application for registration. That is an investigation to be gone subsequently at the time of assessment by Assessing Authority. In this regard, reliance is placed on Kerala High Court in Sree Anjaneya Medical Trust v. CIT, (2016) 382ITR 399 and Karnataka High Court in Commissioner of Income Tax and Others v. Sri Gururaja Seva Samithi decided on 03.07.2015 and some other authorities which we may discuss in detail at appropriate stage."

j. It is thus obvious that the enquiry by CIT under Section 12AA and that by the 'A.O.' under Section 13(8) at the time of assessment are two different fields of inquiry and it cannot be said that a decision rendered on the point of registration can apply by any logic to the order of the assessment which examines the nature of activities during that previous year. Thus, the questions of law in the two appeals were not similar. The case Moradabad Development Authority (supra) of could not be regarded as covered by the question answered in M/s Yamuna Expressway Industrial Development

Authority (supra).

k. Despite this glaring difference between the issues raised in two different appeals, the counsels for the "parties", "at the outset" stated that similar substantial questions of law have been considered and decided in M/s Yamuna Expressway Industrial Development Authority (supra) and answered against Revenue.

l. The statement of counsels for both the parties as recorded in Para 4 of the judgement of the Hon'ble High Court in Moradabad Development Authority (supra) is a consent given on a wholly wrong premises. A consent order may bind the parties to that order, but it will not act as a binding precedent even if the decision is rendered by the jurisdictional high court.

Page 56 of 242 (UP AWAS EVAM VIKAS PARISHAD) m. It may be useful to refer to the decision of a three-judge bench of the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi v. Gurnam Kaur, (1989) 1 SCC101 observed as follows: -

10. It is axiomatic that when a direction or order is made by consent of the parties, the court does not adjudicate upon the rights of the parties nor does it lay down any principle. Ouotability as "law" applies to the principle of a case, its ratio decidendi. The only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so, the direction made by this Court in Jamna Das case [Writ Petitions Nos. 981 -82 of 1984] could not be treated to be a precedent. The High Court failed to realise that the direction in Jamna Das case [Writ Petitions Nos. 981 -82 of 1984 7 was made not only with the consent of the parties but there was an interplay of various factors and the court was moved by compassion to evolve a situation to mitigate hardship which was acceptable by all the parties concerned.

n. In Moradabad Development Authority (supra), the counsel for the Revenue consented, albeit wrongly, that the question of law raised was similar to the one answered in M/s Yamuna Expressway Industrial Development Authority (supra).

o. Thus, the decision of the Hon'ble High Court in the case of Moradabad Development Authority (supra) does not apply to the facts of this case and is certainly not a binding precedent, while adjudicating the issue in the context of Section 13(8) of the Act for a given "previous year".

p. A tabular chart giving the factual distinction between the two cases is enclosed as enclosure to these submissions.

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18. To sum up: -

a. None of the decisions of the coordinate benches, relied upon by the Respondents take into consideration the fact that the proviso to Section 2(15) does not contemplate the actual carrying on of trade, commerce or business, but the stipulation is that the activities are in the nature of trade, commerce or business. This makes a world of difference.

b. These decisions referred to by the Respondent also do not consider the fact that the proviso to Section 2(15) very clearly states that the trust or institution shall not be regarded as- carrying on any other object of general public utility irrespective of, the retention, use or application of the income derived from such activities. Therefore, the entire basis of argument that the profits if any derived by the Respondent are applied for only the welfare measures is of no consequence. If the activities are in the nature of trade, commerce or business, the use or application of income will not alter the applicability of the proviso.

c. The specific words and expressions used in a statute cannot be overlooked or given a go-bye, while interpreting its applicability. No words or expressions can be regarded a superfluous or can be brushed aside merely on the reasoning that the Respondent is a creation of the state and that it was not created with the motive to earn profit.

d. The decisions in the case of the Respondent for earlier years (years prior to 01.04.2009) are again wholly out of context. With the introduction of proviso to Section 2(15) vide Finance Act, 2008 and more with the introduction of provisions of Section 13(8) vide Finance Act, 2012 with retrospective effect from 01.04.2009, the legislative intent is very clear. The determination whether or not the Respondent falls within the definition of a charitable institution has to be decided with reference to the amended provisions and the findings given for earlier years will not at all be relevant.

e. The argument of the Respondent that the activities have remained the same as in earlier years, where it has been held that the Respondent is not an organisation with profit motives Page 58 of 242 (UP AWAS EVAM VIKAS PARISHAD) is totally irrelevant for the reason that howsoever laudable the objects may be, it would not be regarded as a charitable organisation, if it is falling within the ambit and scope of proviso to Section 2(15) in general and falling within the mischief of Section 13(8) in a given previous year.

f. None of the decisions referred to by the Respondent, examine the scope and the applicability of the provisions contained in Section 13(8) and its overall impact on the final outcome of the decision.

g. As regards the decisions of the jurisdictional high court in the case of the Respondent, it has already been discussed hereinabove that these decisions do not address the questions arising in the present appeal, since the provisions of Section 2(15) or of Section 13(8) were not in force in those years.

h. Again, the reliance of the Respondent on the decisions in the case of Lucknow Development Authority (supra) or Moradabad Development Authority (supra) is also of no consequence for the reason that these were the cases where registration under Section 12AA was denied by the CIT and the Hon'ble High Court intervened to hold that the assessees were entitled to registration as a

charitable institution.

i. In the case of Moradabad Development Authority (supra), the decision is again not a precedent for the reason that both the parties consented to a totally incorrect statement that the question of law in Moradabad Development Authority (supra) for that year was similar to the one answered in M/s Yamuna Expressway Industrial Development Authority (supra). It is submitted that such an order will only act as binding in nature qua the parties to that case and will not have a binding effect. j. The objects with which the Respondent may have been formed by the state government, may be a relevant factor for the grant of registration under Section 12AA, but despite having this registration, the Respondent will have to, meet the requirement of Section 13(8) before they can enjoy the benefits of exemption under Section 11(1) of the Act. Thus, the fact that the Respondent was created and continues to be circumscribed by the conditions posed by the state, the fact that the state Page 59 of 242 (UP AWAS EVAM VIKAS PARISHAD) government has not given up its right to the property of the Respondent and the fact that its functioning is under the control of the state government is really of no consequence, if the activities of the Respondent are found to be hit by the proviso of Section 2(15) read with Section 13(8) for the year under consideration.

k. The argument that the proviso is applicable only in the cases of non-genuine NGOs is a misconceived proposition. The fundamental rules of the interpretation of the statute, more so a fiscal statute, provide that no intendment is required in interpreting a statute and the meaning as emerging from the plain language must necessarily be adopted. There is no ambiguity of any kind in the language employed in the proviso to Section 2(15). it uses very simple language and expression and therefore there is no room for any vagueness so as to derive any meaning different from the one flowing from the statute. The external aids to the interpretation of statute, like the speech of the finance minister etc., cannot form the basis to derive a meaning which is contrary to the one flowing to the plain language of the provision.

l. The reference to the decisions in the case of Surat Art Silk (supra) and Andhra Chamber of Commerce (supra) become out of context for these reasons.

m. It is not the case of Revenue that the Respondent is carrying on the business of real estate. But it is submitted by the Revenue that its activities in the given year are in the nature of trade, commerce or business. If the activities have the trappings of trade, commerce or business, then the proviso of Section 2(15) would come into operation, whether or not the Respondent is engaged in the "business or trade" per se.

n. The Respondents have also referred to certain decisions to contend that their predominant activity is public welfare and therefore, the incidental activities cannot determine their character, so as to hold that they are not charitable. In this regard, it is submitted that the Respondents never claimed at any stage that their ancillary activities had the elements of trade or business. In such an event, the provisions of Section 1K4A) would apply and the benefit of Section 11(1) would not Page 60 of 242 (UP AWAS EVAM VIKAS PARISHAD) be available since separate books of accounts have not been maintained.

o. The decisions referred to by the Respondent like the cases of Commissioner of Income Tax (Exemption) v. Gujarat Housing Board, Tax Appeal Nos. 184 of 2019 or Ahmedabad Urban Development Authority v. Assistant Commissioner of Income Tax (Exemption), Tax Appeal Nos. 423-425 of 2016 would not help the case of the Respondent. Unlike the case of Institute of Chartered Accountants of India v. Director General of Income Tax (Exemptions), Delhi, (2013) 217 Taxman 152 (Del.), Director of Income Tax (Exemption) v. Sabarmati Trust (2014) 223 Taxman 43(Gujrat), GSI India v. DGIT (Exemption) (2013) 219 Taxman 205 (Delhi), Commissioner of Income Tax-1 v. Kandla Port Trust, (2014) 225 Taxman 145 (Guj.), Bureau of Indian Standards v. Director General of Income Tax (Exemptions), (2013) 212 Taxman 210, the major receipts and expenses of the Respondent relate to those activities which have the trappings of trade, commerce or business. These were not cases where incidental receipts were involved.

p. In view of the foregoing, the case of the Respondent has to be examined with reference to the provisions contained in Section 13(8) read with Section 2(15) of the Act. In view of the specific provisions contained in the proviso to Section 2(15), the Respondent is not entitled to the exemption of income under Section 11(1) of the Act.

9. Learned counsel for the assessee, on the other hand, replying to the arguments of Learned Special Counsel, submitted that in the case of the assessee, the Hon'ble Allahabad High Court has already examined the activities of the assessee with respect to proviso to section 2(15) of the Act and in this respect our attention was invited to the order of Hon'ble High Court dated 18/07/2017. Learned counsel for the assessee further submitted that the following the judgment in the case of the assessee, the Hon'ble Allahabad High Court in the case of Moradabad Development Authority has also held similar views and held that the similar activities, as Page 61 of 242 (UP AWAS EVAM VIKAS PARISHAD) carried on by the assessee, are not hit by the proviso to section 2(15) of the Act.

10. As regards the arguments of learned Special Counsel of the Revenue that the activities carried on by the assessee involve carrying on of the business, it was submitted that the activities carried on by the assessee are similar to the activities being undertaken by the Lucknow Development Authority and in the case of the Lucknow Development Authority, this Bench of the Tribunal on 10/03/2022, has examined the activities with respect to profit motive and after elaborate discussions has held that such activities carried out by the assessee, though involved earning of profit, but still they cannot be compared with the activities carried out by private builder and therefore, are not hit by the proviso to section 2(15) of the Act.

11. As regards the reliance placed by Learned counsel for the assessee on the judgment of Hon'ble Jammu & Kashmir High Court in the case of Jammu Development Authority, Learned counsel for the assessee submitted that the issue involved in the Jammu Development Authority was regarding registration u/s 12A of the Act wherein the registration u/s 12A was not granted to the assessee and Hon'ble High Court had dismissed the appeal of assessee and on appeal, Hon'ble Supreme Court had dismissed the SLP filed by the assessee. Learned counsel for the assessee submitted that the issue involved in the present case is the exemption u/s 11 of the Act as in the present case there is no dispute regarding registration of the assessee u/s 12A which is already in existence. Therefore, the case law relied on by Special Counsel is not applicable to the facts and circumstances of the case.

Without prejudice it was submitted that in the case of Jammu Development Authority, Hon'ble High Court had not framed any question of law what to talk of substantial question of law and therefore, any order passed by Page 62 of 242 (UP AWAS EVAM VIKAS PARISHAD) Hon'ble Supreme Court by way of dismissing the SLP does not lay down any precedent as the said case is binding only to the particular facts and circumstances of that case.

12. As regards the reliance placed by Learned counsel for the assessee on the case of Greater Cochin Development Authority, it was submitted that in this case also the Hon'ble Kerala High Court had not framed any question of law and the SLP dismissed by Hon'ble Supreme Court therefore, does not lay down any law. In support of her arguments that such SLP dismissed by Hon'ble Supreme Court do not lay down any law, reliance was placed on the judgment of Hon'ble Punjab & Haryana High Court in the case of "The Tribune Trust" wherein the Hon'ble High Court has held that where the High Court had not framed any question of law, the dismissal of SLP by Hon'ble Supreme Court does not amount to laying of any law and in this respect our specific attention was invited to para 84 of such judgment.

13. As regards the reliance placed by Learned Special Counsel on the judgment of certain benches of the Tribunal taking a contrary view, learned counsel for the assessee placed her reliance on the following cases decided by various High Courts and Tribunals wherein it has been held that the similar activities carried on by different assessees, which are similar to the activities, as carried on by the assessee, are not hit by the proviso to section 2(15) of the Act:

i. Hon'ble ITAT, Agra in the case of Firozabad Shikohabad Development Authority vs. CIT-II, Agra for A.Y. 2014-15 in ITA No. 55/ Agra/ 2015 dated 07.02.2018 ii. Hon'ble ITAT, Agra in the case of Agra Development Authority in ITA No. 216/Agr/2016 for AY 2011-12, 177/Agr/2014 for AY 2009-10 and 239/Agr/2015 for AY 2010-11 dated 17.05.2021 Page 63 of 242 (UP AWAS EVAM VIKAS PARISHAD) iii. Hon'ble ITAT, Bangalore in the case of Bangalore Development Authority vs. Additional Commissioner of Income-tax, Bengaluru for A.Y. 2012-13 in ITA No. 1087 & 1104 (BANG) OF 2017 dated 22.03.2019 iv. Hon'ble Allahabad High Court in the case CIT v. Hapur Pilkhuwa Development Authority, Ghaziabad Development Authority, Kanpur Development Authority, Allahabad Development Authority, Aligarh Development Authority, Jhansi Development Authority and Gorakhpur Development Authority vide order dated 28.06.2016 v. Hon'ble ITAT, Mumbai in the case of Maharashtra Housing & Area Development Authority, Mumbai v. DCIT(Ex) in ITA No. 4133/M/2019 for AY 2015-16 dated 07.09.2021 vi. Hon'ble Gujrat High Court in case of Commissioner of Income-tax (Exemptions) vs. Gujrat Housing Board in Tax Appeal No. 184 of 2019 for AY 2012-13 dated 25.06.2019 vii. Hon'ble Gujrat High Court in the case of Ahmedabad Urban Development Authority vs. Assistant Commissioner of Income- tax (Exemption) in Tax Appeal Nos. 423 to 425 of 2016 for A.Ys. 2009- 10 to 2011-12 dated 02.05.2017.

viii. Hon'ble Gujrat High Court in the case of Surat Urban Development Authority vs. Assistant Commissioner of Income- tax (Exemption) in Tax Appeal Nos 220 of 2020 for AY 2011-12 dated 21.09.2020 13.1 Above all it was argued that the jurisdictional High Court of Allahabad in the case of assessee itself has decided this issue in favour of the assessee and therefore, assessee is eligible for exemption u/s 11 of the Act.

13.2 The learned AR further submitted that in the case of assessee itself for assessment year 2015-16, the case of the assessee was reopened u/s 148 and Assessing Officer has again examined the activities of the assessee Page 64 of 242 (UP AWAS EVAM VIKAS PARISHAD) and has granted exemption u/s 11 of the Act. The learned A.R. further placed reliance on the provisions of section 10(46) of the Act and submitted that CBDT itself has granted exemption u/s 10(46) on the similar activities being undertaken by different assessees. In this respect reliance was placed on the notifications issued by CBDT in the case of Yamuna Expressway Industrial Development Authority and Greater Noida Industrial Development Authority. The learned A.R. argued that CBDT has examined the activities of these organizations and has issued notifications exempting the income u/s 10(46) of the Act. It was submitted that activities being undertaken by assessee are similar to the activities being undertaken by the assessee. In view of all these facts and circumstances it was submitted that there is no infirmity in the order of learned CIT(A), which should be upheld and the appeals filed by the Revenue be dismissed.

14. Arguing on the additional grounds of appeal, Learned counsel for the assessee submitted that the first additional ground regarding violation of provisions of section 13(8) of the Act, is covered by the earlier arguments by which she has argued that the provisions of proviso to section 2(15) are not applicable to the assessee. As regards additional ground no. 2 regarding examination of the provisions of section 11(2) of the Act, Learned counsel for the assessee submitted that she do not have any objection if this aspect can be examined by the Assessing Officer. Similarly, regarding violation of provisions of section 13(1)(d) of the Act, Learned counsel for the assessee submitted that she does not have any objection if this aspect can also be examined by the Assessing Officer. As regards the last additional ground regarding violation of provisions, as contained in section 13(3) of the Act, Learned counsel for the assessee submitted that during the stay granting proceedings in assessment year 2017-18, the Tribunal had called Page 65 of 242 (UP AWAS EVAM VIKAS PARISHAD) for the information from the assessee through Assessing Officer regarding allotment of plots to the persons at a discounted value and assessee had duly filed such information after getting verified from the Assessing Officer and Tribunal was pleased to grant stay to the assessee for deposit of demand keeping in view the fact that the assessee had allowed discounted allotment to its employees only which are not covered by the definition of persons mentioned in section 13(3) of the Act. However, Learned counsel for the assessee submitted that she had no objection if the similar examination is done by the Assessing Officer again in the present years. However, it was submitted that the allotment of plots to employees, at a discounted value, should not be considered as violation of provisions of section 13(3) of the Act as the Tribunal, relying on the decision on Tata Steel Limited, has already held that employees do not fall under the definition of section 13(3) of the Act.

15. Learned counsel for the assessee requested that detailed written submissions filed by the assessee on 15/09/2021 and 17/05/2022 may also be taken on record, which for the sake of convenience are reproduced below:

> Written submissions dated 15/09/2021 as contained in paper book pages 398 to 482
> In addition to submission made earlier vide paper book dated 05.02.2020 following submission is being made in lieu of the contention made by the Ld. DR in last hearing:

(A) SECTION 2(15) A detailed submission along with reliance on judgements has been made on this issue in our paper book dated 05.02.2020. The words trade and commerce have not been defined in the Income-tax Act. Through page nos. 7 to 10 of our Page 66 of 242 (UP AWAS EVAM VIKAS PARISHAD) aforementioned submission we have tried to explain the meaning of the terms business, trade and commerce. The objects and activities of the appellant Parishad has been briefed in our above referred submission from page no. 3 to 7 and thereafter from page no. 17 to page no. 52 of above referred paper book we have discussed the non-applicability of the proviso to section 2(15) of Income-tax Act in case of the appellant Parishad. The above portion of the submission in addition to some other contentions in this regard are being submitted hereunder:

I. MEANING AND CONCEPT OF "BUSINESS", "TRADE"

AND "COMMERCE"

(i) Business In the Commentary on Income Tax Law by Chaturvedi & Pithisaria, "business" has been defined / explained as under (Page 1321; Vol I; Fifth edition):

"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 [Jessel M.R. In Smith Vs. Anderson, (1880) 15 Ch D 247, 258; State of Andhra Pradesh Vs. H. Abdul Bakshi & Bros, (1964) 15 STC 644, 547 (SC); CIT Vs. Motilal Hirabai Spng. And Wvg. Co. Ltd., (1978) 113 ITR 173 (GUJ); Bharat Development (P.) Ltd. vs. 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. Vs. Secretary of State, AIR 1925 Cal 341 ITC 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, V 01.38, page 10, quoted in CIT Vs. Upasana hospital, (19970 225 ITR 845,851 (Ker). Also see, CIT Vs. Delhi Transport Corporation, (1996) 134 Taxation 386, 392-93 (Del)]. 'Business' is a word which has more extensive I meaning the trade. All trade is business but all business is not trade [Vijaya Bank Vs. A.N. Tewari, (1995) 83 Taxman 340,342 (Del)]."

Page 67 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 vs. H. Abdul Bakshi & Bros., (1964) 15 STC 644, G47(SC); State of Guajrat vs. Raipur Mfg. Co. Ltd., (1967)19 STC 1 (SC); Director of Supplies and Disposals vs. Member, Board of Revenue (1967) 20 STC 398 (SC); CST vs. Anil Co-operative Credit Society, (1969) 24 STC 180, 192 (Gui); Mahammad Faruq, In re (1938) 6 ITR 1, 7 (Ail);

Bharat Development (P.) Ltd. vs. CIT, (1982) 133 ITR 470,474 (Del); Government Medical Store Depot vs. Superintendent of Taxes, (1986) Tax LR 2164 (SC) (1985) 60 STC 296 (SC); Government Medical Store Depot vs. State of Haryana, (1986) 63 STC 198(SC))." The expression "business" has further been defined in the Commentary on Income Tax Law by Chaturvedi & Pithisaria (Pages 1322 and 1323; Vol 1; 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) 200 ITR 131, 135, 136 (Ori)]. Also see, Khoday Distilleries Ltd. vs. 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, Page 68 of 242 (UP AWAS EVAM VIKAS PARISHAD) (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 vs. 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 vs. 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, [Gannon Dunkerley & Co. vs. State of Madras, (1954) 5 STC 216, 244 (Mad)], and it is the continuous repetition of such transactions which will constitute a "business"."

From the aforesaid, it is clear that the Parishad 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 Parishad has neither any profit motive. In this regard, further reliance is placed on the following judgments in which it is held that an essential condition for carrying on business, trade or commerce is making or producing profit.

1) State of Punjab and Another vs. Bajaj Electricals Ltd (1968) 70 ITR 730(SC) 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 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, Page 69 of 242 (UP AWAS EVAM VIKAS PARISHAD) as distinguished from the liberal arts or learned professions or agriculture."

2) Commissioner of Income-tax, Punjab vs. Lahore Electric Supply Co. Ltd (1966) 60 ITR 1 (S.C.) Catch note of this judgement is reproduced below:

"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.

3) In the case of CIT Vs. K.S. Venkatksubbiah Reddiari (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 as business are (i) it must be a continuous course of activity; and (ii) it must be carried on with a profit motive."

4) Barendra Prasad Ray vs. ITO (1981) 129 ITR 295 (SC)

5) Lala Indra Sun In Re (1940) 8 ITR 187 (Alld.)

6) Narasingha Kar & CO. vs, CIT (1978) 113 ITR 712(Ori.) From the aforesaid, it is clear that the Parishad "Parishad" 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 U.P.A.E.V.P. has neither any profit motive nor it is actually earning any profit.

Page 70 of 242 (UP AWAS EVAM VIKAS PARISHAD) II. FORMATION, AIMS AND OBJECTS OF THE PARISHAD The "Parishad" namely "The Uttar Pradesh Awas Evam Vikas Parishad" owes its existence to the Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam 1965 (U.P. Adhiniyam Sankhya 1 of 1966) as passed by Legislative Assembly of the State of Uttar Pradesh and assented by the President of India on 28.01.1966, published in U.P. Gazette Extra Ordinary dated 16.02.1966, the preamble being "An act to provide for establishment, incorporation and functioning of a Housing and Development Board in Uttar Pradesh".

The "Parishad" had been constituted by the State Government, merely as its delegate to undertake activities for "establishment, incorporation and funding of housing development board in the State of Uttar Pradesh, as per the preamble of Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam 1965 (U.P. Adhiniyam Sankhya 1 of 1966).

The scope of activities to be performed by the "Parishad" was strictly circumscribed by the provisions contained under section 15 of the said very enactment under the head "function of the board"; and Through the "Parishad" it was the Government of Uttar Pradesh itself that had been carrying on the objects of general public utility, in due discharge of its (state's) own functions, duties and thereby it had acquired the status of a State under Article 12 of the Constitution of India.

On a due consideration of the constitution of the Parishad as also the background of the same which shows that:

a) The "Parishad" is creature of Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam 1965 as passed by the legislative assembly and given assent to, by the President of India; and

b) The State Government had not given up its right to the property created after lapse of considerable period of time, the overall functioning and affairs of the "Parishad" continued to be within the purview, control and even dictates of the State Government, through its own cadre of Page 71 of 242 (UP AWAS EVAM VIKAS PARISHAD) civil service.

The functions of U.P. Awas Evam Vikas Parishad Adhiniyam, 1965 (U P. Adhiniyam Sankhya 1 of 1966) are prescribed u/s 15 of the Act and the same are reproduced as below:-

"Functions of the Board- (I) Subject to the provisions of this Act and the rules and regulations, the functions of the Board shall be- To frame and execute housing and improvement schemes and other projects.

a) To plan and coordinate various housing activities in the State and to ensure expeditious and efficient implementation of housing and improvement scheme in the State.

b) To provide technical advice for scrutiny of various projects under housing and improvement scheme sponsored or assisted by Central Govt. or State Govt.

c) To assume management of such immovable properties belonging to the State Government as may be transferred or entrusted to its purpose.

d) To maintain, use, allot, lease or otherwise transfer plots, building and other properties of the Board or of the State Government placed under the control and management of the Board.

e) To organize and run workshops and stores for the manufacture and stock piling of building materials.

f) On such terms and conditions as may be agreed upon between the Board and the State Government, to declare houses constructed by it in execution of any scheme to be houses subject to the U.P. industrial Housing Act, 1955 (U.P. Act No. XXIII of 1955).

g) To regulate building operations.

h) To improve and clear slums.

i) To provide roads, electricity, sanitation, water supply and other civic amenities and essential services in areas Page 72 of 242 (UP AWAS EVAM VIKAS PARISHAD) developed by it.

j) To acquire movable and immovable properties for any of the purposes before mentioned.

k) To raise loans from market, to obtain grants and loans from the State Government the Central Government, Local Authorities and Public Corporations and to give grants and loans to Local Authorities. Urban bodies, corporations, hospitals etc.

l) To make investigation, examination or survey of any property or contribute towards the cost of any such investigation, examination or survey made by any local authority or the state Government.

m) To levy betterment fees.

n) To ful□l any other obligation imposed by or under this Act or any other law for the time being in force, and

o) To do all such other acts and things as may be necessary for the discharge of the functions before mentioned." The above functions of the Parishad proves beyond doubt that its creation by the Legislature was and is only for making available better and necessary i nfrastructure facilities to the entire population in the State of Uttar Pradesh by providing roadways, electricity, sanitation, bridge, culverts, streets, lanes, by-lanes, causeways and other civic amenities in ful□lment of objectives as enshrined in the aforesaid Act.

It is further submitted that the management of the Parishad vests in the hands of the independent Board having members in the capacity of ex-officio Govt. Officers, Govt. of U.P. and representatives of public. It cannot be said that is for benefit for any person in control of the affairs of the institution. The concept of irrevocability of institution is absent. In this connection kind reference is invited to sections 92 and 93 of the Adhiniyam of 1965. As per sections 92 and 93, the entire control is in the hands of State Government over the Board (page nos. 50, 51 of the Adhiniyam, 1965 may be referred. The Parishad has no motive to earn profit and is just a limb of the State Government. Thus the very purpose of enactment of U.P. Awas Evam Vikas Parishad Adhiniyam, 1965 (U.P. Adhiniyam Sankhya 1 of 1955) was for advancement of various schemes of the Parishad for the development and improvement of housing activities in the State Page 73 of 242 (UP AWAS EVAM VIKAS PARISHAD) and to ensure expeditious and efficient implementation of housing and improvement schemes in the State to regulate building operations, to improve and clear slums, to provide roads,

electricity, sanitation, water supply and other civic amenities and essential services in the areas developed by it. In this connection, reference may be made to relevant provisions of U.P. Awas Evam Vikas Parishad Adhiniyam, 1965 (U.P. Adhiniyam Sankhya 1 of 1966). References to section 80 of the said Act were made, in which type of housing and improvement schemes had been laid down, which reads as under:-

Types of housing and improvement schemes -

A housing or improvement scheme shall be of one of the following types, or a combination of two or more or more of such types or of special features there of namely-

a) Grihsthan Yoina (house accommodation scheme)

b) Malin Bastl Sudhar Aur Nipatan Yojna (Slum improvement and clearance scheme).

c) Punarvas Yojna(Re-housing scheme)

d) Sarak Yojnatstreet scheme)

e) Bhavi Sarak Yojna (Deffered street scheme)

f) Prasar Yojna (expansion scheme)

g) Bhumi Wras Yojna (Land Development scheme)

h) Bazar Yojna (Market scheme)

i) Barh Yojna (Flood scheme) Not only this, the above housing and improvement schemes have been given detailed specifications in the subsequent section of the Act as section 19 provides Grihasthan Yojna, section 20 provides Malin Basti Sudhar aur Nipatan Yojna, section 21 provides Punarvas Yoina, section 23 provides Bhavi Sarak Yoina, section 24 provides Prasar Yoina, section 25 provides Bhoomi Vikas Yojna, section 26 provides Bazar Yojna- likewise. All these Yojanas referred to above and specifically mentioned in the Act of the Parishad go to establish without any doubt that all these activities were essentially for the welfare of the economically weaker section of the society in the entire State of U P with no intention of generating any surplus. The dominant object of the Parishad from the very beginning had been to frame and execute Page 74 of 242 (UP AWAS EVAM VIKAS PARISHAD) housing and improvement scheme for the benefit of poor economically backward people in the Stale of U.P.

Further as provided in section 16 of the U. P. Avas Evam Vikas Parishad Adhinlyam 1965, a housing or improvement scheme may be framed by the Board of its own motion or at the instance of a local authority and should be framed when so directed by the U. P Government. The matter provided for in housing and improvement schemes are elaborated in section 17 of the U. P. Avas Evam Vikas Parishad Adhinlyam, 1965. The section 31 regarding Abandonment, modification or sanction of

scheme specifically provides that schemes are to be sanctioned by the U. P. Government as submitted to it by the Board with or without modi□cation /alteration. The section 32 provides tor the commencement of the scheme. It is by way of notification in gazette and State Government has full control over it. Even any alteration in the scheme as per section 33 and execution of the scheme as per section 34 has to be with the consent of the State Government. Details are given in the respective sections as aforesaid.

It is reiterated that the State Government exercises total control over the activities of the Parishad as provided in section 92 and 93 of the Act Even the power to frame rules and regulation also vests with the State Government as provided in chapter XI of the Act.

III. PROFIT MOTIVE IS ESSENTIAL TO CONSTITUTE BUSINESS, TRADE OR COMMERCE In this regard it is submitted that the appellant Parishad main objective is to execute various housing and improvement schemes in lieu of the directions of the State/ Central Government. The objects and activities of the appellant Parishad has not changed since grant of registration u/s 12AA of the Act. There is no profit motive involved. The funds can be utilized in accordance with approved budget by State Government. The ultimate property/ funds of the appellant Parishad vest with State Government in case of dissolution by the State Government. The appellant Parishad cannot act beyond the Statute through which it was incorporated.

Page 75 of 242 (UP AWAS EVAM VIKAS PARISHAD) Further, with respect to the fact that the objects/ activities of the appellant Parishad are not commercial in nature, your honour's kind attention is being drawn towards clause 46 of section 10 which was inserted by Finance Act 2011. The clause reads as under:

"any specified income arising to a body or authority or Board or Trust or Commission (by whatever name called), or a class thereof which--

> (a) has been established or constituted by or under a Central, State or Provincial Act, or constituted by the Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public;
>
> (b) is not engaged in any commercial activity; and
>
> (c)is notified by the Central Government in the Official Gazette for the purposes of this clause.

Explanation.--For the purposes of this clause, "specified income" means the income, of the nature and to the extent arising to a body or authority or Board or Trust or Commission (by whatever name called), or a class thereof referred to in this clause, which the Central Government may, by notification in the Official Gazette, specify in this behalf;"

Thus, any Authority/ Board established by State Government involved in object of regulating or administering an activity for the benefit of general public and not engaged in any commercial

activity could seek for exemption of specified income under clause (46) of section 10 after approval from Central Government. The Yamuna Expressway Industrial Development Authority and Greater Noida Industrial Development Authority applied for exemption u/s 10(46) of Income-tax Act. Their applications were rejected.

The reason for denial of application of Greater Noida Industrial Development Authority given by CBDT is as under:

Page 76 of 242 (UP AWAS EVAM VIKAS PARISHAD) "3. The applicant (Greater Noida Industrial Development Authority) has been constituted under Section 3 of the Uttar Pradesh Area Development Act, 1976 (U.P. Act No. 6 of 1976).

4. The objects of the applicant are to undertake works relating to housing schemes and land development schemes and include acquisition, distribution, sale, letting of properties.

5. It is noticed that the applicant has been making huge profits out of its activity of acquiring land and selling it at much higher prices for residential, industrial, institutional and commercial purposes and the activities of the applicant are commercial in nature.

6. Vide Board's letter dated 13/11/2014, the applicant was asked to clarify as to how various activities of the authority are not commercial in nature. The applicant has furnished its reply. As regards query that the activities of the authority are commercial in nature, following reply has been submitted. • The authority is performing, apart from the activities related to the planned development of the area, all municipal functions like roads, water supply, street lighting and power supply, sewerage, drainage, collection treatment and disposal of industrial waste and town refuse and other community facilities, services or conveniences.

• Activities performed by the Authority are for the benefit of general public at large and by no stretch of imagination commercial in nature. All the amounts received by the Authority are utilized for the development of the Notified Area under its authority.

• Authority is mandated only to carry on the functions/objectives as detailed by Uttar Pradesh Industrial Development Act, 1976. •Authority is not mandated to carry on any commercial/business activity from the point of view of earning profits. • Authority is performing the Sovereign functions of planned development in the notified area and provision of municipal services in that area.

7. The term as used in Section 10(46)(b) that the body or authority or commission or board "is not engaged in any commercial activity" has not been defined anywhere in the Act.

8. The applicant has sought to distinguish its case stating that it is not engaged in commercial activities as there is no profit Page 77 of 242 (UP AWAS EVAM VIKAS PARISHAD) motive involved and as it is carrying out the Sovereign functions of planned development in the notified area and provision of municipal services in that area. The conditions prescribed for the purpose of Section 10(46) do not distinguish the cases on the basis of criteria like inherent profit motive or otherwise.

Hence, the condition prescribed that "(b) is not engaged in any commercial activity" does not seem to be fulfilled in the applicant's case and hence the basic requirements of sub clause (b) of clause (46) of Section 10 does not seem to be fulfilled in the applicant's case.

9. Thus the applicant does not fulfill the conditions as prescribed for grant of notification under the provisions of Section 10(46) of the Income Tax Act, 1961.

10. Thus, in view of the above, I am directed to convey that the applicant M/s Greater Noida Industrial Development Authority has not been found fit for notification u/s 10(46) of the Income Tax Act, 1961 by the Central Government and is hereby rejected." The aforementioned Authority aggrieved of the above order filed writ petition before Hon'ble Delhi High Court vide Writ Petition (Civil) No. 732/2017. The Hon'ble Delhi High Court passed the judgement on 26th February 2018 in favour of the Authority stating that its activities were not commercial in nature. The relevant portion of the order is reproduced below: "7. Impugned order holds that the expression "is not engaged in any commercial activity" has not been defined and for Section 10(46) no distinction can be drawn between commercial activity undertaken with profit motive or otherwise. The contention that the petitioner does not operate and function for profit or with intent to earn profit and carries on sovereign function in the notified area and provides municipal services were not relevant and germane to clause (b) to Section 10(46) of the Act. Hence, the petitioner would not fulfill the basic requirement of clause (b) to Section 10 (46) of the Act for grant of exemption notification. ....

....

10. As per Section 20 of the UPID Act, the petitioner is mandated Page 78 of 242 (UP AWAS EVAM VIKAS PARISHAD) to maintain its own funds, which shall consist of money received from the State Government by way of grants, loans, advances or otherwise or from other sources by way of loans and debentures. Funds can also consist of fees, tolls and charges received by the petitioner under the Act and money received from disposal of land, building and properties both movable and immovable and money by way of rents and profits. Sub-section (2) to Section 20 of the UPID Act stipulates that the funds shall be applied towards meeting the expenses incurred by the petitioner in administration of the UPID Act and for no other purposes.

11. To the aforesaid extent, there is no dispute or debate. The lis, which has to be decided by us, is whether acquisition and sale or leasing of land or built up structures by the petitioner in the context of the function it performs and its obligations under the UPID Act, would constitute and can be treated as "commercial activity". A careful reading of paragraph 8 of the impugned order dated 8th June, 2015 would show that the respondents have held that an activity which is continuous and has the effect of generating money is "commercial activity". It does not matter whether or not any profit intent or motive is involved. It does not also matter whether the primary function of the petitioner was planned development of the notified area and providing municipal services in the notified area and money/income generated from sale of land, rents or interest received was an integral part of the said function, duty and obligation of planned development of notified area and providing municipal services. It is undisputed that there are no share holders or members to whom dividend or surplus

generated is to be paid. Money and funds from sale, rent etc. are to be used for planned development and municipal services which are for general public good."

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13.In Black's Law Dictionary 8th Edition the word „commerce has been defined as exchange of goods or services especially on large scale involving transportation between cities, States and nations. In Advanced Law Lexicon, 3rd Edition 2005 Vol. I, at page 878 by P. Ramanatha Aiyar, the word „commerce has been defined as Page 79 of 242 (UP AWAS EVAM VIKAS PARISHAD) under:

> 'Commerce' is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including transportation, purchase, sale, and exchange of commodities between the citizens of one country and the citizens or subjects of other countries, and between the citizens of different provinces in the same State or country. Walton v. Missoury, 23 L Ed.347 (1875).

Buying and selling together, exchange of merchandise especially on a large scale between different countries or districts; intercourse for the purpose of trade in any and all its forms [Section 2 (13), Income Tax Act). (43 of 1961)] If we go by the aforesaid definition the word „commercial activity will be of extremely wide import and would cover any transaction or activity connected with exchange of goods or property of any type, be it buying, selling or even compulsory acquisition under the Land Acquisition Act, which is a statutory function and obligation.

14. However, this is not the only way the word „commercial activity can be defined for it can also be equally interpreted to mean business or trading activity as undertaken by an entity with profit motive as the primary aim rather than public interest and purpose. In Harendra H. Mehta Vs. Mukesh H. Mehta (1999) 5 SCC 108, referring to the Concise Oxford Dictionary, it was held that the word "commercial activity refers to being "engaged in or concerned with commerce" and it also has a second more restrictive meaning; namely:-

> "19.
>
> 1. engaged in, or concerned with, commerce.
>
> 2. having profit as a primary aim rather than artistic etc. value; philistine . (The Concise Oxford Dictionary)."

15. In Punjab University Vs. Unit Trust of India & Ors. (2015) 2 SCC 669, reference was made to Stroud's Judicial Dictionary, in which the word „commercial has been defined and it was held:

> "Commercial.--(1) „Commercial action includes any cause arising out of the ordinary transactions of merchants and traders and, without prejudice to the

> generality of the foregoing words, any cause relating to the construction of a Page 80 of 242 (UP AWAS EVAM VIKAS PARISHAD) mercantile document, the export or import of merchandise, affreightment, insurance, banking, mercantile agency and mercantile usage.
>
> (2) An incorporated canal company whose profits arose from tolls, was held a "commercial company , or a company associated for "commercial purposes , and, as such, liable to become bankrupt under the Joint Stock Companies Act, 1844."
>
> 23. Thus, the words "commercial purpose" would cover an undertaking the object of which is to make a profit out of the undertakings. In the present case the services of UTI were availed by the complainants for the betterment of their employees, that such an investment was made, and it is to be made clear that no benefit by way of profit was to accrue to the complainant, improving its balance sheet, in view of the definition of the word "commerce" given above, under no circumstances, could the appellant be said to be indulging in any "commercial" activity, thus excluding him from the definition of "consumer" as enshrined in the Act. The intent of the Universities in the present dispute is not profiteering and the same is for benevolent interest and there is no intention whatsoever that the investment is made for any commercial purpose or gain and therefore we find that the complainant Universities fall within the definition of "consumer" under the Act and the complaints are maintainable before the National Commission."

The aforesaid decision relates to the Consumer Protection Act. In the context of the said Act, the expression "commercial activity" was interpreted. Therefore, distinction can be made between commercial activity and discharge of statutory public functions which an authority or a Board may have to perform that are of general public importance and have a social and public purpose behind it.

16. Way back in 1970, a Constitution Bench of five Judges in Shri Ramtanu Co- operative Housing Society Limited and Another versus State of Maharashtra and Others, (1970) 3 SCC 323, had examined validity of Maharashtra Industrial Development Act, 1961 (3 of 1962) and in that context had referred to the functions performed by Maharashtra Development Corporation, which was to establish and manage industrial estate on selected basis and to Page 81 of 242 (UP AWAS EVAM VIKAS PARISHAD) develop industrial area selected by the State Government and for this purpose acquire and transfer land by way of sale, lease, etc. Contention of the petitioner therein that the Corporation established would be a trading one or a commercial corporation was rejected in the following words:-

> "16. The petitioners contended that the Corporation was a trading one. The reasons given were that the Corporation could sell property, namely, transfer land; that the Corporation had borrowing powers; and that the Corporation was entitled to moneys by way of rents and profits. Reliance was placed on the report of the Corporation and in particular on the income and expenditure of the Corporation to show that it was

making profits. These features of transfer of land, or borrowing of moneys or receipt of rents and profits will by themselves neither be the indicia nor the decisive attributes of the trading character of the Corporation. Ordinarily, a Corporation is established by shareholders with their capital. The shareholders have their Directors for the regulation and management of the Corporation Such a Corporation set up by the shareholders carries on business and is intended for making profits. When profits are earned by such a Corporation they are distributed to shareholders by way of dividends or kept in reserve funds. In the present case, these attributes of a trading Corporation are absent. The Corporation is established by the Act for carrying out the purposes of the Act. The purposes of the Act are development of industries in the State. The Corporation consists of nominees of the State Government, State Electricity Board and the Housing Board. The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing buildings, allotting buildings, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of sole purpose of establishment, growth and development of industries.

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19. There are two provisions of the Act which are not to be found in any trading Corporation. In the first place, the sums payable by any person to the Corporation are recoverable by it under this Act as an arrear of land revenue on the application of the Corporation. Secondly, on dissolution of the Corporation the assets vest in and the liabilities become enforceable against the State Government.

20. The underlying concept of a trading Corporation is buying and selling. There is no aspect of buying or selling by the Corporation in the present case. The Corporation carries out the purposes of the Act, namely, development of industries in this State. The construction of buildings, the establishment of industries by letting buildings on hire or sale, the acquisition and transfer of land in relation to establishment of industrial estate or development of industrial areas and of setting up of industries cannot be said to be dealing in land or buildings for the obvious reason that the State is carrying out the objects of the Act with the Corporation as an agent in setting up industries in the State. The Act aims at building an industrial town and the Corporation carries out the objects of the Act. The hard core of a trading Corporation is its commercial character. Commerce connotes transactions of purchase and sale of commodities, dealing in goods. The forms of business transactions may be varied but the real character is buying and selling. The true character of the Corporation in the present case is to act as an architectural agent of the development and growth of industrial towns by establishing and developing industrial estates and industrial areas. We are of opinion that the Corporation is not a trading one." ....

....

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34.One can urge that the interpretation given by us would mean and imply that Section 10 (46) and the provisions relating to charity under Section 2 (15) read with Sections 11 to 13 of the Act would overlap. Overlapping to some extent is possible. However, Section 10 (46) of the Act is a specific provision dealing with body or authority etc. created or constituted by the Central or State Government or under the Central or State enactment. Further, exemption under the said provisions could be restricted to only specified types or categories of income and not all incomes. The petitioner-assessee cannot be denied benefit of Section 10 (46) of the Act for the reason that it may well qualify and would be entitled to benefit under Section 2 (15) read with Sections 10 to 13 of the Act.

35. Allahabad High Court in Greater Noida Industrial Development Authority, (supra) after extensively referring to the statutory mandate and object for which the petitioner authority has been established and also the provisions of the Act i.e. the Income Tax Act, had observed that the petitioner was to provide amenities and facilities in industrial estate and in industrial area in the form of road, electricity, sewage etc. We have also referred to the functions and objectives for which the petitioner is established. The said activities necessarily require money and funds, which are received from the State Government. Petitioner, given the regulatory and administrative functions performed is required and charges fee, cost and consideration in the form of rent and transfer of rights in land, building and movable properties. Similarly payments have to be made for acquisition of land, creation and construction of infrastructure and even buildings. Carrying out and rendering the said activities is directly connected with the role and statutory mandate assigned to the petitioner. It has not been asserted and alleged that these activities were or are undertaken on commercial lines and intent. Petitioner does not earn profits or income from any other activity unconnected with their regulatory and administrative role. Income in the form of taxes, fee, service charges, rents and sale proceeds is intrinsically, immediately and fundamentally connected and forms part of the role, functions and duties of the petitioner.

36.Resultantly, the writ petition is allowed and the impugned order dated 8th June, 2015 is set aside and quashed. The Page 84 of 242 (UP AWAS EVAM VIKAS PARISHAD) petitioner's activities, it is held, are not "commercial activity" within the meaning of clause (b) to Section 10(46) of the Act. Directions are issued to the respondents to accordingly issue the necessary notification under the aforesaid Section in respect of the "specified income" within a period of three months from the date a copy of this order is received."

In lieu of above order the CBDT vide Notification No. 33/2020 dated 23rd June 2020 notified Greater Noida Industrial Development Authority as an authority constituted by the State Government of Uttar Pradesh and allowed exemption u/s 10(46) of Income- tax Act in respect of specified income. The relevant portion of CBDT Notification is reproduced below: "In exercise of the powers conferred by clause (46) of section 10 of the Income- tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, 'Greater Noida Industrial

Development Authority', (PAN AAALG0129L), an authority constituted by the State Government of Uttar Pradesh, in respect of the following specified income arising to that Commission, namely:--

(a) Grants received from the State Government;

(b) Moneys received from the disposal/90 years lease of immovable properties;

(c) Moneys received by the way of lease rent & fees or any other charges from the disposal/90 years lease of immovable properties;

(d) The amount of interest earned on the funds deposited in the banks;

(e) The amount of interest/penalties received on the deferred payment received from the Allotees of various immovable properties; and

(f)Water, sewerage and other municipal charges from the Allotees of various immovable properties."

Meanwhile, aggrieved of the order of Hon'ble Delhi High Court a Special Leave Petition was preferred before Hon'ble Supreme Court vide SLP (C) No. 27827/2019 which was dismissed on 25th November 2019.

Page 85 of 242 (UP AWAS EVAM VIKAS PARISHAD) Further, following the aforementioned judgement in case of Greater Noida Industrial Development Authority, similar order was passed by Hon'ble Delhi High Court in case of Yamuna Expressway Industrial Development Authority vide W.P. (Civil) No. 5603 of 2020 dated 23rd August 2020. Similar Notification was issued by CBDT in case of Yamuna Expressway Industrial Development Authority vide Notification No. 91/ 2020 dated 24th December 2020.

Further, similar order was passed by Hon'ble Delhi High Court in case of Yamuna Expressway Industrial Development Authority vide W.P. (Civil) No. 5603 of 2020 dated 23rd August 2020. The CBDT Notification 91/ 2020 dated 24th December 2020 was issued in lieu of above order in case of Yamuna Expressway Industrial Development Authority. The relevant portion of CBDT Notification is as under:

"In exercise of the powers conferred by clause (46) of section 10 of the Income- tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, 'Yamuna Expressway Industrial Development Authority', (PAN AAALT0341D), an authority constituted by the State Government of Uttar Pradesh, in respect of the following specified income arising to that Authority, namely:-

(a) Grants received from the State Government;

(b)Moneys received from the disposal of land, building and other properties, movable and immovable;

(c)Moneys received by the way of rent & fees or any other charges from the disposal of land, building and other properties, movable and immovable;

(d) The amount of interest earned on the funds deposited in the banks; and

(e) The amount of interest/penalties received on the deferred payment received from the Allottees of various movable or immovable properties."

Therefore, CBDT has allowed exemption u/s 10(46) for the incomes of Greater Noida Industrial Development Authority and Yamuna Expressway Industrial Development Authority which are engaged in similar activities as the appellant Parishad considering Page 86 of 242 (UP AWAS EVAM VIKAS PARISHAD) that the despite of receipt from disposal of land/ building, interest earned from bank, interest/ penalty received from deferred payment from allottee, rent, fee and other charges received from disposal of property, the aforementioned Authorities were not engaged in commercial activity.

In view of above, as our activities and receipts in lieu of such activities are similar to Greater Noida Industrial Development Authority and Yamuna Expressway Industrial Development Authority, such activities should not be treated as in nature of trade, commerce and business and exemption claimed u/s 11 of Income-tax Act be allowed to the appellant Parishad. IV. REVENUE CONTENTION THAT ACTIVITIES OF PARISHAD ARE AKIN TO PRIVATE REAL ESTATE DEVELOPERS AND PROVISO TO SECTION 2(15) ARE APPLICABLE IS BASELESS The appellant Parishad is involved in formulation of housing schemes either on own motion or on request by any local authority or on the direction of the State Government. The schemes are developed keeping in view the public purpose that it has to serve. The schemes are formulated with an idea of developing a complete township in an area not developed at all, keeping in mind disbursal of population and avoidance of overcrowded conditions in any area.

On seeking 12A registration post deletion of section 10(20A) of Income-tax Act w.e.f. 01.04.2003, the Ld. Commissioner of Income-tax while rejecting the application of appellant Parishad made allegation on Parishad for being involved in activities on commercial lines and that such activities were akin to private developers, who also conduct development of large chunk of areas.

Aggrieved of the order of Commissioner, appeal was preferred before Hon'ble ITAT, Lucknow vide ITA Nos. 686 (LUC)/2003. Hon'ble ITAT, Lucknow vide order dated 25th July 2005 in case of appellant Parishad allowed 12A registration holding that the appellant Parishad was not involved in commercial activities. The relevant portion of the order is reproduced below:

Page 87 of 242 (UP AWAS EVAM VIKAS PARISHAD) "16. It is argued by the learned Counsel that irrespective of the fact whether the assessee's income was exempt, under any other section if the assessee's activities were covered under charitable purposes, the assessee will be entitled the status of charitable institution and the provisions of section 11 of the Act will apply. On behalf of UP Awas Evam Vikas Parishad, Shri Kanchun Kaushal, the learned Counsel, took us to the objects, of the creation of UP Awas Evam Vikas Parishad and argued that the words "charitable purpose" were

defined in section 2(15) of the Act. The definition includes "and object of general public utility." He argued that the object of the Parishad was general public utility which was evident from the fact that the assessee, through the Government has power to acquire land to fulfil the objects of the Parishad. A private enterprise cannot acquire land for public purposes. He argued that as mentioned earlier, the acquisition of land has to be done by the Government. Thus, unless the Parishad satisfies the Government that the acquisition of the land is for public purposes, the State Government will not agree to acquire land. He also argued that as per clause 93 of the said Act, the entire property vests in Government. By filing various documents which are placed at pages 41, 42 and onwards the learned Counsel stated that the entire scheme was for general public utility and therefore, the activities of the Parishad will be charitable in nature and covered under section 2(15) of the Act. The ld. CIT was, therefore, not justified in refusing registration under section 12A of the Act.

....

....

26. A combined reading of the above provisions will go to show that the land can only be acquired and provided to the development authorities for plan development as approved by the State Government. He further argued that the withdrawal of section 10(20A) from the Income-tax Act, 1961 does not prevent the assessees from claiming exemption under section 11 of the Act as was claimed by the Finance Minister himself in a letter addressed to the then Chief Minister of UP. In nutshell, the learned Counsel argued that the assessees were entitled to registration under section 12AA of the Act.

Page 88 of 242 (UP AWAS EVAM VIKAS PARISHAD)
....

....

31. Actually the assessees before us, by way of getting themselves registered under section 12A of the Act, will ultimately claim exemption under section 11 of the Act. It will be out of place to mention that when section 10(20A) was omitted from the statute the then Chief Minister has requested the Finance Minister, Government of India to withdraw the deletion of the provisions of section 10(20A) of the Act from the statute. But the then Finance Minister, in his letter addressed to the then Chief Minister, Uttar Pradesh, has advised that such authorities could claim exemption under section 11 of the Act. Section 11 of the Act reads as under:

> "11. Income from property hold for charitable or religious purposes.--(1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income "

....

....

35. We have, therefore, first examined as to whether the assessees before us could take the benefit of sections 11 to 13 of the Act, read with section 12AA of the Act even after the deletion of section 10(20A) of the Act from the statute. We have seen that after the deletion of section 10(20A), the Chief Minister had written to the Finance Minister. The Finance Minister has clarified that such authorities could take the benefit of section 11 subject to fulfillment of certain conditions. The Finance Minister's letter indicted the view of the Income-tax Department itself and therefore, it cannot be pleaded that once the exemption under section 10(20A) was withdrawn, Authorities have no locus to claim exemption under section 11 of the Act. The issue had also arisen in the case of Market Committee v. CIT [2005] 3 SOT 98 (Delhi). The assessee was enjoying exemption under section 10(20) of the Act as local authority. After the deletion of section 10(20), the Page 89 of 242 (UP AWAS EVAM VIKAS PARISHAD) committee moved a petition before the ld. CIT for registration under section 12AA of the Act claiming that its activities were charitable in nature and fully covered by the definition mentioned in section 2(15) of the Act. The Delhi Bench of the Tribunal vide its order dated 14-3-2005 has directed the ld. CIT to register the institution under section 12AA of the Act. In the cases before us the income of the assessees was exempt under section 10(20A) of the Act. After the deletion under section 10(20A) from the statute, all the assessees have moved their CITs for grant of registration under section 12AA of the Act. In view of the Tribunal's order mentioned above, there is no bar for the assessees before us to move their CITs for grant of registration under section 12AA even after the deletion of section 10(20A) of the Act from the statute.

36. The second issue arises as to whether the activities of the assessees before could be said to be for "charitable purposes" as provided under section 11, read with section 2(15) of the Act. Section 2(15) of the Act has defined the words "charitable purposes". The section also includes "object of general public utility." We have, therefore, examined the term "object of general public utility." The Hon'ble Supreme Court in the case of Andhra Chamber of Commerce (supra) has observed as under :

> "That the expression 'object of general public utility', was not restricted to objects beneficial to the whole of mankind. An object beneficial to a section of the public is an object of general public utility. To serve a charitable purpose, it is not necessary that the object should be to benefit the whole of mankind or even all persons living in a particular country or province. It was sufficient if the intention was to benefit a section of the public as distinguished from specified individuals. . . .
>
> That if the primary purpose be advancement of objects of general public utility, it would remain charitable even if an incidental entry into the political domain for achieving that purpose, e.g., promotion of or opposition to legislation concerning that purpose, was contemplated. It was only for the purpose of securing its primary aims that it was mentioned in the memorandum of association that the Chamber might take steps to urge or oppose legislative or other measures affecting trade, commerce or manufactures.
>
> Page 90 of 242 (UP AWAS EVAM VIKAS PARISHAD) Such an object ought to be regarded as purely ancillary or subsidiary and not the primary object."

37. The Hon'ble Supreme Court in the case of Surat Art Silk Cloth Mfrs. Association (supra) also observed as under:

> "The test which has, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose, though an object of general public utility would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose, its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. If the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity. The restrictive condition that the purpose should not involve the carrying on of any activity for profit would be satisfied if profit- making is not the real object."
>
> It is not at all necessary that there must be a provision in the constitution of the trust or institution that the activity shall be carried on no profit no loss basis or that profit shall be proscribed. Even if there is no such express provision, the nature of the charitable purpose, the manner in which the activity for advancing the charitable purpose is being carried on and the surrounding circumstances may clearly indicate that the activity is not propelled by a dominant profit motived."

....

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41. Needless to say that as per clause 4 of Land Acquisition Act. the land could be acquired only for public purposes. Section 57 of the said Act also provides that Authorities could make its bye- laws with the approval of the State Government. Section 58 provides that in case of dissolution of the Authority, all the properties, funds and dues which are vested in or realizable by the Authority, shall vest in or to be realizable by the State Government. Various sections of the said Act make it abundantly clear that the activities of the Authorities were aimed at public purposes and not personal one. We, therefore, have no hesitation in holding that the activities of the assessee before us are for enhancement of general public utility and the ld. CIT was not justified in relating registration under section 12AA of the Act."

Later aforementioned order of Hon'ble ITAT, Lucknow was affirmed by Hon'ble Allahabad High Court vide ITA No. 16 of 2006 dated 27.09.2013. The relevant portion of the order is as under:

"Learned counsel for the assessee submits that the issue has already been discussed at Page No. 11 to 16 in the judgment and order dated 16.09.2013, passed in the assessees' case (Income Tax Appeal No. 149 of 2009 along with connected cases), where it was observed that the assessees are entitled for the benefit of Section 12AA of the Income Tax Act, 1961. This is only the disputed point in the present appeals.

After hearing all the parties and on perusal of the record, it appears that issue pertaining to the benefit under Section 12AA of the Act, is squarely covered by the judgment and order dated 16.09.2013 passed by this Court in the leading Income Tax Appeal No. 149 of 2009 and other bunch cases.

When it is so, then all the appeals filed by the Department are dismissed in terms of the judgment and order dated 16.09.2013 passed in ITA No.149 of 2009 and other bunch cases."

Therefore, in lieu of above order of Hon'ble ITAT, Lucknow, the Ld. Commissioner of Income-tax granted 12AA registration to appellant Parishad w.e.f. 01.04.2003.

Page 92 of 242 (UP AWAS EVAM VIKAS PARISHAD) Thereafter, First Proviso to Section 2(15), was introduced w.e.f. 01.04.2009. To analyse the amendment, one needs to look at the intention with which the amendment was brought into force which is discussed below:

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. A reference can be made to the budget speech of the Hon'ble Finance Minster 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 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"

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 Parishad Authority is a Government body. It does not fall under the category of non-genuine NGOs.

While dealing with cases such as of the Parishad, a Government body, a narrow and myopic view should not be adopted while interpreting the terms trade, commerce or business.

The effect of section 2(15) so substituted has been dealt with by the C.B.D.T. in its circular no. 11 of 2008, dated 19.12.2008 read with subsequent circular no.1 of 2009 dated 27.3.2009 reported in (2009) 308 ITR 5 (statute) and 310 ITR 42 (statute) Page 93 of 242 (UP AWAS EVAM VIKAS PARISHAD) respectively. The relevant portions of the said circulars are reproduced hereunder:

Circular No. 11 of 2008:

"3.2. In the final analysis, however, whether the assessee has for its object 'the advancement of any other object of general public utility' is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of 'general public utility' will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessees, who claim that their object is 'charitable purpose' within the meaning of Section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business."

Circular No. 10 of 2009:

"5.2 With a view to limiting the scope of the phrase "advancement of any other object of general public utility ", sub- section (15) of section 2 has been amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. Scope of this amendment has further been explained by the CBDT vide its Circular No. 11/2008 dated December 19, 2008." In essence, the substituted section 2(15) contains first proviso attached to it and it applies only to such assessee who is engaged in any activity in the nature of "trade, commerce or business". The "Parishad's" case is not covered by the said proviso. In this regard, attention is also invited to the following Page 94 of 242 (UP AWAS EVAM VIKAS PARISHAD) observations of Hon'ble Allahabad High court in the Parishad's own case in ITA No. 114 of 2010 in which Circular No.11/2008 has also been considered:

"Needless to mention that this Hon'ble Court in the case of CIT v. U.P. Forest Corpn. Ltd, Tax Appeal No. 70 of 2009 observed that the Forest Corporation being an statutory entity is entitled for the registration under Section 12A 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 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

(ii) separate books of account 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 fulfilment 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.

Page 95 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 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."

The criteria, conditions and tests laid down in the C.B.D.T. Circular No. 11/2008 dated 19.12.2008 are fulfilled in case of appellant Parishad.

Page 96 of 242 (UP AWAS EVAM VIKAS PARISHAD) Further, it is submitted that 12AA registration in case of appellant Parishad was cancelled by the Ld. Commissioner of Income-tax-I, Lucknow vide order dated 29.05.2012 holding appellant to be involved in activities in nature of trade, commerce or business. The Parishad filed appeal against the said order before Hon'ble ITAT, Lucknow vide ITA No. 405/LKW/2012. The said appeal was allowed by Hon'ble I.T.A.T. vide its order dated 30.01.2014 in favour of appellant Parishad. Aggrieved of the said order an appeal was preferred by revenue before Hon'ble Allahabad High Court vide ITA No. 15 of 2014 dated 18.07.2017. The question of law before the Court was as under:

"Whether under the facts and circumstances of the case, the learned ITAT was right in holding that the registration granted u/s 12A of the I. T. Act cannot be cancelled by the CIT under the provisions of section 12AA(3) of I. T. Act when the activities of the assessee were hit by the first and second proviso to section 2(15) of the I. T. Act w.e.f. 01.04.2009."

The Hon'ble Allahabad High while deciding the aforementioned question of law dismissed the revenue appeal. The relevant portion of the judgement is reproduced below: "4. Learned counsel for the parties at the outset could not dispute that issue raised in this appeal is squarely covered by this court's judgement in Income Tax Appeal No. 107 of 2016 Commissioner of Income Tax (Exemption), Lucknow vs. M/s Yamuna Expressway Industries Development Authority and other two connected appeals decided on 21.04.2017.

5. For the reasons stated in aforesaid judgement, the question raised in this appeal is answered against Revenue.

6. Appeal is accordingly dismissed."

From above it is clear that time and again it has been questioned before the Courts whether the activities of the appellant Parishad are at par with private colonizers / developers and whether in such a situation proviso to section 2(15) should be applicable. All the revenue's appeals till date on this issue has been dismissed. Following the jurisdictional high court decision, this issue as of now comes to rest that the proviso to section 2(15) of Income-tax Act is not applicable upon the appellant Parishad.

Page 97 of 242 (UP AWAS EVAM VIKAS PARISHAD) In view of the facts and circumstances of the case, the aforesaid judgement of Hon'ble Allahabad High Court in case of appellant Parishad and Circular No.11/2008 dated 19.10.2008, the Parishad was a statutory authority established with the objects to provide for development of certain areas and to provide shelter to homeless people within State of Uttar Pradesh and since the Parishad is conducting its affairs without any profit motive, it could not be said that the Parishad was involved in carrying on any business trade or commerce and

therefore, proviso to section 2(15) was not applicable in our case and the Parishad deserves to be treated as charitable institution existing solely for charitable purposes and its income deserves to be treated as exempt u/s 11, 12 and 13 of the Income-tax Act, 1961.

V. JUDGEMENTS OF JURISDICTIONAL HIGH COURT ON 2(15) OF INCOME-TAX ACT

1. IN PARISHAD's OWN CASE a. Commissioner of Income-tax-I, Lucknow v. U.P. Housing & Development Board in ITA No. 114 of 2010 of AY 2003-04 (Supra) dated 16.09.2013 b. Commissioner of Income-tax-I Vs. U. P. Awas Evam Vikas Parishad in ITA No. 15 of 2014 (Supra) dated 18.07.2017.

2. IN OTHER CASES In the following judgements, wherein the activities of the assessees were similar to the activates of Parishad Authority, the jurisdictional High Court has held that these are entitled to exemption under the provisions of Section 11, 12 and 13 read with Section 2(15) of the Income-tax Act, 1961 since their predominant object is of welfare of public at large.

a) Hon'ble Allahabad High Court in the case CIT v. Hapur Pilkhuwa Development Authority, Ghaziabad Development Authority, Kanpur Development Authority, Allahabad Development Authority, Aligarh Development Authority, Jhansi Development Authority and Gorakhpur Development Authority vide order Page 98 of 242 (UP AWAS EVAM VIKAS PARISHAD) dated 28.06.2016 dismissed revenue's appeal. The relevant portion of the judgment is as under:

> "8. Respondents HPDA is a body constituted under U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as 'U.P. Act, 1973'). It applied for granting registration under Section 12AA of Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") by submitting an application in Form 10A under Rule 17A of Income Tax Rules, 1962(hereinafter referred to as "Rules, 1962") on 27.12.2005.
>
> 9. Commissioner of Income Tax, Ghaziabad (hereinafter referred to as "CIT") vide order dated 21.06.2006 rejected application observing that HPDA is not an Institution working for charitable purposes since it was not registered under Indian Trusts Act, 1882 (hereinafter referred to as "Act, 1882") or Societies Registration Act, 1860 (hereinafter referred to as "Act, 1860"). Further its activities are also not charitable, per se as it sells land on commercial rates and to fudge profit it does not follow commercial accounting principles. HPDA preferred appeal i.e. ITA No. 2735 (Del) of 2006 which has been allowed by Tribunal vide orders impugned in these appeals.
>
> 10. Tribunal has followed its earlier decision dated 31.07.2007 passed in ITA No. 2903 (Del) of 2006 in respect to Ghaziabad Development Authority which is also a body constituted under U.P. Act, 1973 and held that it was also entitled for registration under Section 12A. Tribunal has also referred to an earlier judgment dated 25.07.2005 in ITA No. 690 (Luc) of 2003 wherein registration for similar body was directed to be allowed. This appeal is also before us.

11. It is not in dispute that HPDA is an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning development or improvement of cities, towns Page 99 of 242 (UP AWAS EVAM VIKAS PARISHAD) and villages or for both and was exempted from Tax under Section 10(20A) of Act, 1961.The said Section 10(20A) has been omitted by Finance Act, 2002 with effect from 01.04.2003. However, that fact is not relevant to answer the question of registration under Section 12A.

12. Registration Under Section 12A is permissible to a Trust or a Institution so as to exclude provisions of Section 11 and12 of Act, 1961. Section 11 and 12 talks of a Trust or Institution created wholly for charitable or religious purpose. We have to examine whether HPDA can be said to be an "Institution" created wholly for charitable purpose.

13.The term "charitable purpose" is defined in Section 2(15) of Act, 1961 and before Finance Act, 2008 whereby it was substituted with effect from 01.04.2009 and has been made much detailed, it read as under:

> "(15) "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility;" (emphasis added)

14. Now it has been substituted with effect from 01.04.2009 and reads as under:

15. "(15) "charitable purpose" includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historical interest and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or Page 100 of 242 (UP AWAS EVAM VIKAS PARISHAD) application, or retention, of the income from such activity;

Provided further that first proviso shall not apply if the aggregate value of the receipts from the activities referred to the rein is twenty five lakh rupees or less in the previous year."

(emphasis added)

16. "Advancement of any other object of general public utility" is a term of very wide connotation. There is no requirement for the purpose of Section 12 that Institution must be registered under Act, 1882 or Act, 1860. CIT added this condition on his own though we do not find any such condition provided under Section 12A or 12AA of Act, 1961. In order to consider whether creation of HPDA is for advancement of general public utility. Tribunal has looked into objects and purposes of U.P. Act, 1973 and also the purpose of acquisition of land by HPDA, which is only for public purpose and not

personal one.

17. Learned Counsel for appellant has submitted that Tribunal has ignored the fact that authority was engaged in activities other than those mentioned in its main object. It is further submitted that Tribunal has erred in coming to conclusion that authority carries on charitable work. It is submitted that Tribunal erred in considering definition of "charitable purpose" as defined under Section 2 (15) and definition of 'income' as given under Section 2 (24) read with Rule 17-A (a) and 1962CBDT instruction No.1024 dated 9.11.1976. Learned Counsel has relied on judgment of this Court in ITA No.231/2006, U.P. State Industrial Development Corporation Ltd. Vs. Commissioner of Income Tax-II, Kanpur, decided on 5.7.20016.

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18. We find it unnecessary to go for much research work and debate issue further for the reason that in respect to Page 101 of 242 (UP AWAS EVAM VIKAS PARISHAD) a similar authority, namely, "Lucknow Development Authority", which is also constituted under U.P. Act, 1973, a similar question, whether activities of Development Authority can be said to be 'charitable' as defined under Section 2(15) came up for consideration before a Division Bench in CIT Vs. Lucknow Development Authority 2014 (98) DTR (All) 183 and Court held as under:

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.....

20. We also find that another statutory body, namely, Krishi Utpadan Mandi Samiti constituted under U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as "Act, 1964") was also registered under Section 12AA of Act, 1961 and the question whether amount transferred to Mandi Parishad would constitute application of income for 'charitable purpose' under Section 11(1)(a) of Act, 1961 has been decided against Revenue by Supreme Court in Commissioner of Income Tax Vs. Krishi Utpadan Mandi Samiti 2012 (12) SCC 267 wherein Court has also confirmed this Court's judgment dated04.12.2009 passed by this Court at Lucknow in I.T.A. No. 102 of 2009.

21. In view of above, we answer above question against Revenue and confirm judgment of Tribunal impugned in all these appeals.

22. All the appeals are, accordingly, dismissed."

b) Judgement of Hon'ble Allahabad High Court in the case of CIT(Exemption), Lucknow vs. M/s Yamuna Expressway Industrial Development Authority dated 21.04.2017 in ITA No. 107 of 2016

c) Judgement of Hon'ble Allahabad High Court in the case of CIT(Exemption), Lucknow vs. M/s Greater Noida Industrial Development Authority dated 21.04.2017 in ITA No. 108 of 2016

d) Judgement of Hon'ble Allahabad High Court in the case of Page 102 of 242 (UP AWAS EVAM VIKAS PARISHAD) CIT(Exemption), Lucknow vs. M/s New Okhla Industrial Development Authority dated 21.04.2017 in ITA No. 114 of 2016 Hon'ble Allahabad High Court has passed a single order for all these appeals as they were connected. The relevant portion of the judgement is being reproduced below:

> "All these appeals were connected and by order dated 04.11.2016, admitted on the following substantial questions of law:
>
> "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 Parishad as being entitled to exemption under the provisions of Section 12-AA of the Income Tax Act, 1961 and read with Section 2 (15) thereof ?
>
> Whether the findings recorded by the Tribunal to
>
> (ii) the effect that the Parishad-assessee was not carrying out any activity of profit and it's predominant object of welfare of public at large are correct or not ?
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> ....
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> ....
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> 5. Before answering aforesaid questions, we may, in brief, examine characteristics of the three bodies, issue of registration whereof is involved in these appeals.
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> ....

32.Though arguments have been advanced in a much wider compass, but we find that real dispute is whether Parishads-authorities would satisfy term ''charitable purpose' as defined under Section 2(15) of Act, 1961 so as to entitle them for registration under Section 12A(1) of Act, Page 103 of 242 (UP AWAS EVAM VIKAS PARISHAD) 1961. Another argument has been raised that at the stage of considering application for registration, CIT (E) is not entitled to look into the question, whether activities of applicants seeking registration are charitable or not.

33.Under the definition of ''charitable purpose' parties are ad idem that all three IDA's at the best, would have to be covered by the words "advancement of any other object of general public utility".

34. It is also admitted that if fail, they are not entitled for registration. Endeavour on the part of Revenue, is that proviso inserted in Section 2(15) by Finance Act, 2008 with effect from 01.04.2009 excluding activities in the nature of trade, commerce or business or any service rendered in relation to trade, commerce or business for a cess or fee or any other consideration, excludes all the aforesaid three ''IDAs' from the purview of definition of ''charitable purpose' under Section 2(15) of

Act, 1961.

35. Explaining amended provision defining "charitable purpose", Central Board of Direct Taxes, (hereinafter referred to as "CBDT"), has issued Circular No.134/34/2008- TPL (Circular No.11/2008) dated 19th December, 2008. It is clarified therein that proviso to Section 2(15) will not apply to first 3 limbs, namely, relief of the poor, education or medical relief. It will apply only to entities whose purpose is "advancement of any other object of general public utility" i.e. 4th limb of definition of "charitable purpose". ....

....

48. In the context of Lucknow Development Authority (hereinafter referred to as "LDA") a statutory body constituted under U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as "UPUPD Act, 1973") in CIT Versus Lucknow Development Authority, Lucknow 2014 (2) ALJ 578, a question arose whether it would be entitled for registration under Section 12A/12AA. On behalf of Page 104 of 242 (UP AWAS EVAM VIKAS PARISHAD) Revenue, it was argued that LDA is engaged in activities of acquiring land, developing plots, constructing residential as well as commercial places and selling thereto. Sales are also undertaken through auction process and sold to highest bidder, to earn more and more profits. Said activities are trade in nature and liable to tax. Revenue sought to equate LDA with private colonizers and builder. On behalf of LDA various provisions of UPUPD Act, 1973 were placed. This Court held that expression "general' under Section 2(15) means pertaining to whole class.

Advancement of any object or purpose to benefit public or a section of public is distinguished from benefit to an individual or group of individuals. Expression "charitable purpose" would prima facie include all objects which promote welfare of general public.

....

....

51. We would now examine in the light of above "definition" as explained by CBDT vide Circular dated 19th December, 2008 and exposition of law, discussed above, whether an IDA constituted under a provincial enactment, on the subject of Industrial Development, would satisfy requirement of Section 2(15) of Act, 1961 and would not be disqualified by attracting proviso thereto.
....

....

67. The consideration on the part of CIT (E), it appears, is more influenced by concept of first three heads of charitable trusts. Apparently, it has lost objectivity in looking into thrust, ambit and spirit of 4th head i.e. advancement of any other object of "general public utility". This is a sheer ignoring scope and ambit of statutory provisions of UPID Act, 1976 beyond which Parishads-authorities cannot Page 105 of 242 (UP AWAS EVAM VIKAS PARISHAD) function, being statutory bodies

constituted under said Act. They have to function within the provisions of said Act.

68. CIT (E) has attempted to equate these "IDAs' with private builders and developers. Para-11 of said order is reproduced as under:-

"The law requires a conjunctive test whereby objects have to be charitable and genuineness of charitable activities should be established for registration of application u/s 12A. Mere recital of objects or activities without cogent or corroborative evidence are not sufficient by themselves to enable a registering authority to arrive at the satisfaction mandated by law. The applicant, in this case is primarily carrying out its business activities for making profit, just like any other private builder/developer. The applicant is neither a local authority, nor carrying out any charitable activity, as such. Like any other private builder or developer is acquiring land at a very low price and then developing the land along with other public utilities, in order to attract the buyers and sell the developed plots/flats with high margin or profit. In the instant case, the documents on record do not suffice to establish the genuineness of activities. The Applicant did not file any specific reply to queries raised and Books of accounts and Vouchers etc were also not produced under the pretext of being "Voluminous", so the claim of the Applicant regarding charitable activities could not be ascertained or verified. As such the findings of fact regarding its charitable activities or rather the lack thereof arrived at on the basis of the evidence filed and arguments addressed stand uncontroverted. This is fatal to the claim of the applicant."

69. This endeavour, in our view, is thoroughly misconceived and shows immature approach and misapplication to the issue in question. Observations made in para-11 of the order passed by CIT (E), in our view, are nothing but an irrational, illogical and misconceived approach so as to exclude Parishads-authorities from the ambit of definition of "charitable purposes".

70. In our view, Tribunal has rightly set at naught aforesaid illegality by setting-aside said order.

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71. Entire discussion, if we summarize, can be placed in a small arena of judicial analysis, that is, a body or institution which is functioning for advancement of objects of general public utility and its activities are not in the nature of trade, business or commerce and also not a sheer profit making, such institution is entitled to claim itself to be constituted for "charitable purposes" and seek registration under Section 12A(1) of Act, 1961.

....

....

79. One objection, which has been advanced seriously, is that Tribunal should not have directed to grant registration since competent authority is Commissioner, therefore, Tribunal should have directed Commissioner to consider registration. In our view, this submission also sans merit. Tribunal exercises coextensive appellate power against the order of Commissioner. It is the last

Court of fact. There is no restriction on the power of Tribunal. Section 254 of Act, 1961 empowers Tribunal to pass such orders as it deems fit. Therefore, in all the matters, where appeal is provided to Tribunal, its power is coextensive with the authorities whose orders are appealed before Tribunal. There is no reason to read power of Tribunal, in a manner so as to linger on a matter between different authorities, particularly when there is no such restriction under the statute and on the contrary, statute confers widest power upon Tribunal. Looking from all angles and giving our serious thoughts and utmost consideration to the arguments advanced on behalf of both sides and in the light of discussions made above, we have no hesitation in answering questions 1 and 2 in favour of Parishads-authorities and against appellant-Revenue."

e) Further, the Hon'ble Allahabad High Court following its judgement dated 21.04.2017 in Income Tax Appeal No.107 of 2016 (supra), pronounced the Judgement of Hon'ble Allahabad High Court in the case of CIT(Exemption), Lucknow vs M/s Moradabad Development Authority, Moradabad dated 03.05.2017 in ITA No. 3 of 2017 for the A.Y. 2009-10. The relevant portion of this Page 107 of 242 (UP AWAS EVAM VIKAS PARISHAD) judgement is reproduced below:

> "3. The substantial questions of law raised in this appeal are as under:
>
> "(a.) Whether on the facts and circumstances of the case the Hon'ble IT AT 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 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 just incidental to its business. The Authority was acquiring land from farmers and 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 Page 108 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 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." ....

....

4. Learned counsel for the parties at the outset stated that similar substantial questions of law have been considered and decided vide judgment dated 21.04.2017 in Income Tax Appeal No.107 of 2016 (Commissioner of Income Tax (Exemption)), Lucknow Vs. M/S Yamuna Expressway Industrial Development Authority and these questions have been answered against Revenue.

5. For the reasons stated in our judgment dated 21.04.2017 in Income Tax Appeal No.107 of 2016 (supra), questions raised in this appeal are also answered against Revenue.

6. Appeal is accordingly dismissed."

Page 109 of 242 (UP AWAS EVAM VIKAS PARISHAD) The aforesaid judgement of Allahabad High Court dated 03.05.2017 in the case of Commissioner of Income-tax (Exemptions) vs. Moradabad Development Authority has arisen from the judgement and order dated 10.06.2016 passed by Income Tax Appellate Tribunal, Delhi Bench "E" New Delhi in I.T.A. No. 3005/DEL/2013, for Assessment Year 2009-10. The relevant portion of this judgement is as under:

> "9. We have heard both the parties and perused all the records. The status of the assessee in the earlier years was accepted by the Revenue as a charitable in nature having income allowable for exemption u/s 11 of the Act. There was no change in the facts and circumstances during the present assessment year. The Assessing Officer never denied the fact that the assessee is registered u/s 12AA of the Income tax Act. During the year under consideration the activities of the assessee were charitable in nature and as per its object. The Assessing Officer relied on the judgment of the Hon'ble Supreme Court in case of Safdarjung Enclave Educational Society Vs. Municipal Corporation, Delhi (1992) 3 SCC 390 but the same is not applicable in the case as the charitable purpose and object was never changed at any time in case of assessee herein. Thus, exemption u/s 11 rejected by the Assessing Officer is not just and proper. In assessee's own case for the preceding year and the subsequent year,

the Co-ordinate Bench of the ITAT has allowed the appeal of the assessee. The Delhi High Court in its decision in the case of India Trade Promotion Organization (Supra) has clearly given the interpretation of Constitutional validity of the proviso to Section 2 (15) of the Act. The Hon'ble Delhi High Court held that the said proviso applies in a situation where the main object is essentially to carry on business for the purpose of profit. But in assessee's case, the situation is different. The main object of town planner has been held to be charitable and at the time of registration u/s 12A was in very much existence. Thus, the Revenue has not made out the case that the condition on which the registration was allowed has changed from earlier year or in subsequent year as well as in the present year. The reliance of the decision of the Jurisdictional High Court (Allahabad High Court) in case of Page 110 of 242 (UP AWAS EVAM VIKAS PARISHAD) CIT vs. Lucknow Development Authority vide its decision dated 16/9/2013 2013- TIOL-795-Hon'ble High Court-ALL is relevant. The Hon'ble Allahabad High Court after examining the said objects in light of proviso to Sec 2(15) has held that development authorities will not be hit by the proviso to Sec 2(15). The reliance on the judgments by the Ld. DR are on different footing altogether. The reliance of the Board Circular is also not applicable in the present case as there was no change in the charitable purpose while doing the activity of development by the assessee. It is part of development only which is the object of the assessee since the beginning. Thus, the CIT(A) was correct in partly allowing the appeal of the assessee.

14. In the result, appeal is dismissed."

f) Judgement of Hon'ble Allahabad High Court in the case of Muzaffarnagar Development Authority in ITA No. 81 & 82, 99 of 2012 dated 20.04.2015 In this regard, it is further submitted that Lucknow Development Authority whose case is covered in the judgement of Hon'ble Allahabad High Court in its judgement dated 16.09.2013 in ITA No. 114 of 2010 (supra) alongwith appellant's case is constituted by the same Act by which Moradabad Development Authority is constituted and its case is exactly similar to the case of Moradabad Development Authority. Thus, kind attention is invited to the fact this combined judgement of Hon'ble Allahabad High Court dated 16.09.2013 in ITA No. 114 of 2010 in the cases of Lucknow Development Authority and the appellant is further fortified and strengthened by its subsequent judgement in the case of Moradabad Development Authority dated 03.05.2017 in ITA No. 3 of 2017 for the A.Y. 2009-10 (supra).JUDGEMENTS OF OTHER COURTS ON 2(15) OF INCOME-TAXACT We place further reliance on the following judgements in support of our written submissions:

1) Hon'ble Gujrat High Court in case of Commissioner of Income- tax (Exemptions) vs. Gujrat Housing Board in Tax Appeal No. Page 111 of 242 (UP AWAS EVAM VIKAS PARISHAD) 184 of 2019 for AY 2012-13 dated 25.06.2019.Relevant Portion "2. The Revenue has proposed the following as the substantial question of law arising in this Tax Appeal:

"Whether the Appellate Tribunal has erred in law and on facts in setting aside the issue of deduction / exemptions u/s. 11 & 12 of the Act, without appreciating that the activities of the assessee authority are covered by first and second proviso to section 2(15) of the Act and thus not entitled to exemption

u/s 11 and 12 as per provisions of section 13(8) of the Act?"

4. It also appears that with respect to Gujarat Housing Board itself on the very same proposed question of law, a coordinate Bench of this Court dismissed the appeal relying on the decision of this Court in the matter of AUDA. It is brought to our notice that the issue is now pending before the Supreme Court. We may quote the order passed in Tax Appeal No.752 of 2018 in the case of Commissioner of Income Tax (Exemption) vs. Gujarat Housing Board, decided on 02.07.2018:

"[2.0] Heard Mrs. Mauna Bhatt, learned Advocate appearing on behalf of the revenue. At the outset, it is required to be noted that as such by the impugned order and after having noted the decisions of this Court in the case of Ahmedabad Urban Development Authority Vs. ACIT (Exemption) in ITA No.423 to 425 of 2016 dated 02/05/2017 and CIT Vs. Gujarat Industrial Development Corporation reported in (2017) 83 Taxmann.com 366 (Gujarat), learned Tribunal has restored the issue to the file of the Assessing Officer to conclude the issue de novo. No question of law arises. We do not propose to interfere with the impugned C/TAXAP/184/2019 ORDER order of remand. On the basis of the material on record, which may be before the learned Assessing Officer, the Assessing Officer may consider the applicability of the aforesaid two decisions vis-a-vis the activities being carried out by the assessee. Under the circumstances, present Tax Appeal deserves to be dismissed and is accordingly dismissed."

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5. In view of the aforesaid, the question proposed cannot be termed as a substantial question of law involved in this Tax Appeal. In the result, this appeal fails and is hereby dismissed."

The aforesaid order is in lieu of the judgement passed by the Hon'ble ITAT, Ahmedabad dated 16.11.2018 in ITA No. 3297/Ahd/2016 for the AY 2012- 13:

Relevant Portion "10. In view of the above discussions, as also bearing in mind entirety of the case, we deem it fit and proper to hold that the authorities below were in error in invoking proviso to Section 2(15) and declining the benefit of Section 11 to the assessee. We see no point in remitting the matter to the file of the Assessing Officer for examination de novo, in the light of the above legal position- as was the decision of the coordinate bench in immediately preceding assessment year, since all the related facts are on record and, unlike in the immediately preceding assessment year, it is not a case of ex-parte best judgment assessment order. Such an exercise will unnecessarily delay the matter reaching finality. In any case, no specific points, on which further examination is required, were pointed out to us. The grievances of the assessee are thus upheld and the Assessing Officer is directed to allow the benefits of exemption under section 11 to the assessee. The assessee gets the relief accordingly."

2) Hon'ble Gujrat High Court in the case of Ahmedabad Urban Development Authority vs. Assistant Commissioner of Income- tax (Exemption) in Tax Appeal Nos. 423 to 425 of 2016 for A.Ys. 2009- 10 to 2011-12 dated 02.05.2017.

Relevant Portion As common question of law and facts arise in this group of appeals and as such with respect to same assessee- Ahmedabad Urban Development Authority (hereinafter Page 113 of 242 (UP AWAS EVAM VIKAS PARISHAD) referred to as "AUDA") and arising out of the impugned common judgment and order passed by the learned Income Tax Appellate Tribunal (hereinafter referred to as the "ITAT") with respect to different assessment years, all these appeals are decided and disposed of together by this common judgment and order.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned ITAT passed in ITA No.712/AHD/2013 for AY 2009-10, by which, learned ITAT has held that the activities of appellant- assessee cannot be said to be for "charitable purpose" within the definition of Section 2(15) of the Income Tax Act and therefore, not entitled to deduction claimed under Section 11 of the Income Tax Act, the assessee has preferred the present Tax Appeal No. 423 of 2016 to consider the following questions of law.

> "(1) Whether the Income-tax Appellate Tribunal has erred in law and on facts in holding that the activity of the appellant was in the nature of trade, commerce or business and hence it cannot be regarded as activity for charitable purpose in view of the proviso to section 2(15) of the Income-tax Act, 1961?
>
> (2) Whether the Income-tax Appellate Tribunal has erred in law and on facts in disallowing the claim of exemption of the appellant under section 11 of the Income-tax Act, 1961, and assessing the income of the appellant under sections 28 to 44 of the Income-tax Act, 1961?"

. . . . . .

Shri Soparkar, learned Senior Advocate for the assessee has relied upon the decision of the Allahabad High Court in the case CIT v. Lucknow Development Authority [2013] 38 taxmann.com 246/219 Taxman 162 (All.) and the decision of the Rajasthan High Court in the case of CIT v. Jodhpur Development Authority [2017] 79 taxmann.com 361 by which, with respect to other development authorities, the Courts have held that activities Page 114 of 242 (UP AWAS EVAM VIKAS PARISHAD) carried out by such development authority cannot be said to be in the nature of trade, commerce or business and their activities is for charitable purpose is within the meaning of Section 2(15) and therefore, all such development authorities shall be entitled to exemption/deduction under Section 11 of the Income Tax Act.

It is submitted by Shri Soparkar, learned Senior Advocate for the assessee that that even otherwise the reasons assigned by the learned ITAT in the impugned judgment and order and while holding that the activities carried out by assessee can be said to be trade, commerce or business are not germane. It is submitted that, the considering the object and purpose for which AUDA has been constituted as Urban Development Authority and considering the activities carried out by the assessee which is statutory in nature and to carry out the development as per the Gujarat Town Planning Act, the activities carried out by the assessee cannot be said to be in the nature of trade,

commerce or business and therefore, the proviso to Section 2(15) of the Act shall not be applicable and therefore, assessee-AUDA shall be entitled to exemption/deduction under Section 11 of the Act.

Making above submissions and relying upon above decisions, it is requested to allow the present Appeals and held that the activities carried out by the assessee cannot be said to be in the nature of trade, commerce or business and therefore, proviso to Section 2(15) of the Act shall not be applicable and activities of the assessee can be said to be in the nature of public utility services and therefore, can be said to be charitable purpose within the meaning of Section 2(15) of the Act and therefore, the assessee AUDA is entitled to exemption/deduction under Section 11 of the Act as claimed. .....
.....

It is further submitted by Shri Bhatt, learned Senior Advocate for the Revenue that the business model of the assessee has been aptly been discussed by the Tribunal. It is submitted that main excerpts are as under:

> A. "Whenever a town planning scheme is conceived, the Page 115 of 242 (UP AWAS EVAM VIKAS PARISHAD) land belonging to various persons/entities are put into a common pool, and thereafter, the scheme in a planned way is drawn.

B. 40% of the land is to be taken from the land owners and the same is to be used as (i) fifteen per cent for roads, (ii) five per cent for parks, play grounds, gardens and open space, (iii) five per cent for social infrastructure such as school, dispensary, fire brigade, public utility place as earmarked in the Draft Town Planning Scheme, and (iv) fifteen per cent for sale by appropriate authority for residential, commercial or industrial use depending upon the nature of development. 15% land would vest in the Assessee, i.e. AUDA.

C. However, such land of 15% of share retained out of 40% appropriated from the original land owners is not free of cost. The cost is incurrence of expenditure on the development of remaining 85% of the land. The land owners have sacrificed their 40% land, the potentiality of 60% would increase. In other words, relinquishment value, representing 40% of the land by the land owners, would be compensated by enhancing the value of balance 60% land being developed land in a township. As per Section 52(3) of the T.P. Act, the Town Planning Officer shall estimate the cost of this scheme (development) and the contribution to be levied on each owner of the plan is to be notified. It is wrong to suggest that the Assessee got the land free of cost. The cost of land is embedded in the expenditure required to be incurred on development of scheme.

D. Supposing, after notification of the scheme, the law had stipulated and the government had decided to outsource the development work to a third party (a infrastructure company with similar rights and entitlement as given to AUDA), could it be urged that infrastructure development company doing similar work, as AUDA was not engaged in the activity in the Page 116 of 242 (UP AWAS EVAM VIKAS PARISHAD) nature of trade?

E. The most crucial factor which proves that the Assessee has been working with profit motive is that the Town Planning Officer is well aware about the cost of development. In spite of that the Assessee has never sold the 15% of the land on cost basis. For example, the Assessee has developed 1500 sq. yards of land in a scheme, the cost to develop a scheme is Rs.60000/-. The Assessee should have allotted 15% of 1500 sq. yards of land at the rate of 400 per sq. yards to the needy persons/institutions by draw of lots. Instead of this, the Assessee has fixed a base price, and thereafter, put the land on auction. It allotted the land to the highest bidder. It has sold the land keeping in view the profit in mind.

F. It may be noted that huge profits have been made by the Assessee in these years out of the above-said real estate development activity. If that be so, where is the element of charity? The activity of developing roads, park or laying of sewerage land are not to be seen representing a charitable act as the assessee levies charges for their use from the plot owners. Moreover, it has claimed depreciation on these assets on business lines, and if an independent infrastructure company would be given such rights, it could not be held that the same is for charitable purposes. These are just to demonstrate that the Assessee shall perform the activity of advancement of any other objects of general public utility. But auction of land to the highest bidder is an activity, which is specifically, keeping in view, the profit in mind and the levy of cess/charges/fees are designed in lines of an professional and business oriented infrastructure development real estate entity.

G. It may be noted that there are surplus and reserves which are continuously swelling. These are generated by the Assessee by way of this activity sale/lease of land and charging fees. The Assessee has not been Page 117 of 242 (UP AWAS EVAM VIKAS PARISHAD) charging nominal fees or selling the land at a nominal rate. It has been making money by putting the land on auction after taking a reserve price. This activity cannot be said to be a charitable activity.

It is submitted that having noted the above facts and activities of the assessee which is in the nature of trade or business, the learned Tribunal has rightly applied proviso to Section 2(15) of the Act and has rightly held that the activities of the assessee cannot be said to be "charitable purpose". . . . . .

12. From the aforesaid provisions of the Town Planning Act, it can be gathered that Assessee has been constituted as Urban Development Authority under the provisions of Section 22 of the Town Planning Act. The purpose and object of constitution of the Urban Development Authority is proper development or re development of urban area. Even Urban Development Authority consists of (i) a Chairman to be appointed by the State Government; (ii) such persons, not exceeding [four in number] who are members of the local authority or authorities functioning in the urban development area, as may be nominated by the State Government; (iii) Three officials of the State Government, to be nominated by that Government, ex- officio; (iv) the Presidents of the district panchayats functioning in the urban development area, or, as the case may be, part thereof, ex-officio; (v) the Chief Town planner or his representative, ex-officio; (vi) the Chief Engineer or Engineers (Public Health) of the local authority or authorities functioning in the urban development area or his or their nominee or nominees, ex-officio; 5[(vi-a) the Municipal Commissioner of the

Municipal Corporation, if any, functioning in the urban development area, ex-officio;] (vii) a member secretary to be appointed by the State Government who shall also be designated as the Chief Executive Authority of the Urban Development Authority. Thus, the constitution of the Urban Development Authority is subject to the control of the State Government. The powers and functions of the Urban Development Authority as contained in Section 23 are Page 118 of 242 (UP AWAS EVAM VIKAS PARISHAD) reproduced herein above. Considering Section 40 of the Town Planning Act, the Town Planning Scheme prepared by the Urban Development Authority which has been prepared subject to sanction by the State Government for development of the Urban Development Area, also provide for roads, open spaces, gardens, recreation grounds, schools, markets, green-belts, dairies, transport facilities, public purposes of all kinds; drainage, inclusive of sewerage, surface or sub-soil drainage and sewage disposal; Lighting; Water supply etc. The Town Planning Scheme also provide for historical or national interest or natural beauty, and of buildings actually used for religious purposes. The Scheme are also provide for reservation of land to the extent of ten percent, or such percentage as near thereto as possible of the total area covered under the scheme, for the purpose of providing housing accommodation to the members of socially and economically backward classes of people. As per Section 40(i)(jj) for the aforesaid purposes certain percentage of total area covered under the scheme are allotted earmarked. Fifteen percent of total area is allotted for the purpose of roads, five percent for parks, play grounds, gardens and open space, five percent for social infrastructure such as school, dispensary, fire brigade, public utility place as earmarked in the Draft Town Planning Scheme and Fifteen percent for sale by appropriate authority for residential, commercial or industrial use depending upon the nature of development. Last Fifteen percent is earmarked under the Town Planning Scheme for sale, by appropriate authority for residential, commercial or industrial use. The appropriate authority/Urban Development Authority is permitted to sale the said plots/lands to the extent of 15% of the total area to meet with the expenditure towards drainage, roads, gardens, schools, markets, water supply etc. So that maximum price can be fetched and the same can be utilized for the development of the Urban Development Area and so as to avoid any allegation of favoritism and nepotism, the plots are sold by public auction. It is required to be noted the entire amount realized by the assessee being Urban Development Authority either by selling plots or by recovery of some fees/charges, Urban Authority is required to use only for the purpose of development in the Urban Development Area and not for any other purpose. The learned Tribunal has observed and held that as the assessee is selling the plots, to the extent Page 119 of 242 (UP AWAS EVAM VIKAS PARISHAD) of 15% of total area, by public auction and gets maximum amount, it amounts to profitering and therefore, the activities of the Assessee can be said to be in the nature of business. However, while holding so, learned Tribunal has not properly appreciated the object and purpose of permitting the Urban Development Authority to sale the plots, maximum to the extent of 15% of the total area i.e. to meet with the expenditure for providing them infrastructural facilities like gardens, roads, lighting, water supply, drainage system etc. The learned Tribunal has also not properly appreciated the reasons for selling the plot by holding public auction i.e.; (1) to avoid any further allegation of favoritism and nepotism and (2) so that maximum market price can be fetched, which can be used for the development of the Urban Development Area. .....
.....

In the case of Lucknow Development Authority, Gomti Nagar (supra), it is held by the Allahabad High Court that the activities of the authority cannot be said to be in the nature of trade, commerce or business and/or profiteering and therefore, proviso to Section 2(15) of the Act shall not be applicable.

Similar, view has been expressed by the Rajasthan High Court in the case of Commissioner of Income Tax-I, Jodhpur vs. Jodhpur Development Authority, Jodhpur -Tax Appeal No. 63 of 2012 decided on 5.7.2016.

14. Considering the aforesaid facts and circumstances and more particularly, considering the fact that the assessee is a statutory body - Urban Development Authority constituted under the provisions of the Act, constituted to carry out the object and purpose of Town Planning Act and collects regulatory fees for the object of the Acts; no services are rendered to any particular trade, commerce or business; whatever the income is earned/received by the assessee even while selling the plots (to the extent of 15% of the total area covered under the Town Planning Scheme) is required to be used only for the purpose to carry out the object and purpose of Town Planning Act and to meet with expenditure while providing general utility service to the public such as Page 120 of 242 (UP AWAS EVAM VIKAS PARISHAD) electricity, road, drainage, water etc. and even the entire control is with State Government and even accounts are also subjected to audit and there is no element of profiteering at all, the activities of the assessee cannot be said to be in the nature of trade, commerce and business and therefore, proviso to Section 2(15)of the Act shall not be applicable so far as assessee is concerned and therefore, the assessee is entitled to exemption under Section 11 of the Income Tax Act. Therefore, the question no.1 is to be held in favour of the assessee and against the revenue.

15. Now, so far as another question which is posed for the consideration of this Court i.e. whether while collecting the cess or fees, activities of the assessee can be said to be rendering any services in relation to any trade, commerce or business is concerned, for the reasons stated above, merely because the assessee is collecting cess or fees which is regulatory in nature, the proviso to Section 2(15)of the Act shall not be applicable. As observed herein above neither there is element of profiteering nor the same can be said to be in the nature of trade, commerce or business. At this stage, decision of the Division Bench of this Court in the case of Sabarmati Ashram Gaushala Trust (supra) is required to be referred to. In the case before the Division Bench, the assessee Trust-Sabarmati Ashram Gaushala Trust was engaged in the activity of breeding milk cattle; to improve the quality of cows and oxen and other related activities. The Assessing Officer denied the exemption to the trust under Section 11 of the Act on the ground that considerable income was generated from the activities of milk production and sale and therefore, considering the proviso to Section 2(15) of the Act, the said Trust- assessee was denied the exemption under Section 11 of the Act. While holding that the activities of the assessee trust still can be said to be for charitable purpose within the meaning of Section 2(15) of the Act and same cannot be said to be in the nature of trade, commerce or business for which proviso to Section 2(15) of the Act is required to be applied. In paras 6, 7, 8 and 12, it is observed and held as under:

Page 121 of 242 (UP AWAS EVAM VIKAS PARISHAD) "6. The legal controversy in the present Tax Appeal centers around the first proviso. In the plain terms, the proviso provides for exclusion from the main object of the definition of the term Charitable purposes and applies only to cases of advancement of any other of general public utility. If the conditions provided under the proviso are satisfied, any entity, even if involved in advancement of any other object of general public utility by virtue to proviso, would be excluded from the definition of charitable trust. However, for the application of the proviso, what is necessary is that the entity should be involved in carrying on activities in the nature of trade, commerce or business, or any activity of rendering services in relation to any trade, commerce or business, for a cess or fee or any other consideration. In such a situation, the nature, use or application, or retention of income from such activities would not be relevant. Under the circumstances, the important elements of application of proviso are that the entity should be involved in carrying on the activities of any trade, commerce or business or any activities of rendering service in relation to any trade, commerce or business, for a cess or fee or any other consideration. Such statutory amendment was explained by the Finance Ministers speech in the Parliament. Relevant portion of which reads as under:

I once again assure the House that genuine charitable organizations will not in any way be affected. The CBDT will, following the usual practice, issue an explanatory circular containing guidelines for determining whether any entity is carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business. Whether the purpose is a charitable purpose will depend on the totality of the facts of the case. Ordinarily, Chambers of Commerce and similar organizations rendering services to their members would not be affected by the amendment and their activities would continue to Page 122 of 242 (UP AWAS EVAM VIKAS PARISHAD) be regarded as advancement of any other object of general public utility.

7. In consonance with such assurance given by the Finance Minister on the floor of the House, CBDT issued a Circular No. 11 of 2008 dated 19th December 2008 explaining the amendment as under:

3. The newly inserted proviso to section 2 (15) will apply only to entities whose purpose is advancement of any other object of general public utility ie., the fourth limb of the definition of charitable purpose contained in section 2 (15). Hence, such entities will not be eligible for exemption under section 11 or under section 10 (23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on any activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

There are industry and trade associations who claim exemption from tax under section 11 on the ground that their objects are for charitable purpose as these are covered under any other object of general public utility. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants. Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their

activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2 (15) owing to the principle of mutuality. However, if Page 123 of 242 (UP AWAS EVAM VIKAS PARISHAD) such organizations have dealings with non-members, their claim to be chargeable organizations would now be governed by the additional conditions stipulated in the proviso to section 2 (15).

In the final analysis, however, whether the assessee has for its object the advancement of any other object of general public utility is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of general public utility will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessees, who claim that their object is charitable purpose within the meaning of section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business.

8. What thus emerges from the statutory provisions, as explained in the speech of Finance Minister and the CBDT Circular, is that the activity of a trust would be excluded from the term charitable purpose if it is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business for a cess, fee and/or any other consideration. It is not aimed at excluding the genuine charitable trusts of general public utility but is aimed at excluding activities in the nature of trade, commerce or business which are masked as charitable purpose.

12. All these were the objects of the general public utility and would squarely fall under section 2 (15) of the Act. Profit making was neither the aim nor object of Page 124 of 242 (UP AWAS EVAM VIKAS PARISHAD) the Trust. It was not the principal activity. Merely because while carrying out the activities for the purpose of achieving the objects of the Trust, certain incidental surpluses were generated, would not render the activity in the nature of trade, commerce or business. As clarified by the CBDT in its Circular No. 11/2008 dated 19th December 2008 the proviso aims to attract those activities which are truly in the nature of trade, commerce or business but are carried out under the guise of activities in the nature of public utility."

Applying the aforesaid decision to the facts of the case on hand and the object and purpose for which the assessee is established/constituted under the provisions of the Gujarat Town Planning Act and collection of fees and cess is incidental to the object and purpose of the Act, even the case would not fall under second part of proviso to Section 2(15) of the Act.

Considering the aforesaid facts and circumstances of the case, we are of opinion that the learned Tribunal has committed a grave error in holding the activities of the assessee in the nature of trade, commerce or business and consequently holding that the proviso to Section 2(15) of the Act shall be applicable and therefore, the assessee is not entitled to exemption under Section 11 of the Act. For the reasons stated above, it is held that the proviso to Section 2(15) of the Act shall not be applicable

so far as assessee- AUDA is concerned and as the activities of the assessee can be said to be providing general public utility services, the assessee is entitled to exemption under Section 11 of the Act. Both the questions are therefore, answered in favour of the assessee and against the revenue.

16. In view of the above and for the reasons stated above, the impugned order passed order passed by the learned Tribunal in respective appeals for different assessment year are hereby quashed and set aside. Accordingly, all these appeals are allowed and answered both the questions in favour of assessee and against the revenue. No costs."

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3) Hon'ble Gujrat High Court in the case of Surat Urban Development Authority vs. Assistant Commissioner of Income- tax (Exemption) in Tax Appeal Nos 220 of 2020 for AY 2011- 12 dated 21.09.2020

4) Hon'ble ITAT, Agra in the case of Firozabad Shikohabad Development Authority vs. CIT-II, Agra for A.Y. 2014-15 in ITA No. 55/ Agra/ 2015 dated 07.02.2018 observed and held as under:

"16. Following the decision of the Hon'ble Allahabad High Court in the case of Lucknow Development Authority (supra) on identical facts, therefore, we accept the grievance of the assessee authority as justified. The decision cited by ld. DR is distinguishable on facts because the activities of that authority were carried out with profit motive but not with the pre- dominant object of welfare of the people at large within the meaning of newly introduced proviso to section 2(15) of the Act., hence not applicable to the present case i.e. the assessee authority.

17. In view of above, we hold that the assessee authority has been created with the object of general public utility which is a charitable object within the meaning of Section 2(15) and the proviso to Section 2(15) is not applicable because assessee authority is not carrying out activities with any profit motive but the pre-dominant object is welfare of the people at large. Therefore, the CIT is directed to grant registration u/s. 12AA of the Act to the assessee authority.

18. In the result, appeal of the assessee is allowed."

5) Hon'ble ITAT, Delhi in the case of Haridwar Development Authority in ITA No. 4616/Del/2017 for AY 2007-08 and ITA No. 4617/Del/2017 for AY 2008-09 dated 30.06.2021 Relevant Portions "3.6 We would like to stress upon the fact that assessing officer has not brought on record any new or distinguishing feature to counter the facts which were there before ITAT at the time of deciding the appeal against cancellation of registration u/s 12AA of the Act. Undisputedly, it is not a case Page 126 of 242 (UP AWAS EVAM VIKAS PARISHAD) where there is any change in object of the assessee authority or any allegation that assessee was engaged in any activity beyond its objects and as such there is compelling reason for us to deviate from finding given by Coordinate Bench. We also take note that CIT(A), while deciding this issue in favour of assessee, has placed reliance on various decisions rendered by Coordinate benches of ITAT and Hon'ble High Courts in other cases of statutory authorities formed with similar objects which in our view supports the case of the assessee

authority.

3.7 We also draw strength from ratio laid down in following decisions:

i. ITO (E) v. Saharanpur Development Authority (ITA No. 4113/D/17) (24/03/2021) (Delhi-Trib) ii. Jhansi Development Authority v. DCIT 2021] 123 taxmann.com 247 (Agra - Trib.) iii. CIT v. Ghaziabad Development Authority (ITA No.2400/D/14) Delhi-Trib) iv. Gujarat Industrial Development Corporation v. ACIT (ITA No. 278/Ahd/13) (Ahmedabad-Trib.) v. Bangalore Development Authority v. Addl. CIT [2019] 104 taxmann.com 266 (Bangalore- Trib.) vi. Gujarat Housing Board (GHB) v. DCIT(E) (ITA No. 3297/Ahd/2016) (Ahmedabad-Trib.)vii. Moradabad Development Authority v. ACIT (Exemption) (ITA No. 4631 & 32/D/17) (Delhi-Trib) viii. Firozabad Shikohabad Development Authority v. CIT [2018] 169 ITD 202 (Agra - Trib.) DCIT (E) vs. Haridwar Development Authority ix. Ahmedabad Urban Development Authority v. ACIT [2017] 396 ITR 323 (Guj High Court) x. CIT v. Jodhpur Development Authority [2016] 287 CTR 473 (Raj HC) xi. CIT v. Lucknow Development Authority [2014] 265 CTR 433 (All HC) xii. New Okhla Industrial Development Authority v. CIT(E) (ITA No. 172/Del/2016) (Delhi-Trib.) 3.8 In view of above and respectfully following the decision of Hon'ble Allahabad High Court and Coordinate bench in asssessee's own case, we are of the considered view the assessee authority is carrying out charitable activities with object of general public utility in accordance with section 2(15) of the Act and same cannot be termed as commercial or of business nature for the purpose of proviso to section 2(15) of the Act. Accordingly, we find no Page 127 of 242 (UP AWAS EVAM VIKAS PARISHAD) reason to interfere with the order of Ld. CIT (A) allowing benefit of application and exemption u/s 11 of the Act. As a result, the grounds raised by the revenue are dismissed."

3.9 As we have already decided this issue in favour of assessee in AY 2013- 14 and 2014-15 and in absence of any change of facts or circumstances, we uphold the order of the Ld. CIT (A) allowing the claim of exemption u/s 11 of the Act."

6) Hon'ble ITAT, Agra in the case of Agra Development Authority in ITA No. 216/Agr/2016 for AY 2011-12, 177/Agr/2014 for AY 2009-10 and 239/Agr/2015 for AY 2010-11 dated 17.05.2021

7) Hon'ble ITAT, Agra in case of Jhansi Development Authority in ITA No. 256/Agra/2014 and 149 to 151/Agra/2017 for A.Ys. 2010-11 to 2013-14 dated 13.01.2021.

The relevant portion is reproduced below:

"56. It is the settled proposition of law that when two views are possible, the view favorable to assessee should be followed. Hence respectfully Following the decision of the Gujarat High Court in the matter of. SUDA (supra) and in the matter Karnataka Industrial Area Development Board [2020] 121 taxmann.com 88 (Karnataka), we allow Ground no.3 of the appeal of the assessee.

57. As we have decided Ground No. 3, in favour of the assessee and against the revenue, all the remaining grounds raised in the assessee appeal are also required to be allowed, being consequential in nature, as the assessee had derived all its income only on account of charitable

activities undertaken by it pursuant to its object and for the welfare the general public, which were not in the nature of trade , commerce or business. The income even if any earned by way of the interest income on the fixed deposit is also required to be exempted under section 11 of the Act, as there is no other source of income of the assessee other than doing the charitable activities. For the purpose of exemption of interest income we may rely upon the full bench decision of Karnatka Page 128 of 242 (UP AWAS EVAM VIKAS PARISHAD) High Court in the matter of Hewlett Packard Global Soft Ltd.*2017] 87 taxmann.com 182 (Karnataka) (FB), which on examining the exempt income under section 10, had allowed the exemption even on interest income, if there is no other source of income except the exempt income , as in present case , wherein it was held as under :

....

....

Hence respectfully following the decision of High courts (supra) in the matter of SUDA (supra), Karnataka Industrial Area Development Board(supra) and Hewlett Packard Global Soft Ltd.(supra), the appeal of the assessee is allowed.

In the result the appeal of the assessee is allowed and the appeal of the revenue is dismissed."

8) Hon'ble ITAT, Delhi vide order dated 04.01.2018 in the case of Moradabad Development Authority in ITA Nos. 4631 and 4632/Del/2017 for A.Ys. 2012-13 and 2013-14.

The relevant portion is reproduced below:

"4. It is, ergo, palpable that the assessee has been allowed exemption u/s 11 of the Act consistently in the past, either by the AO himself or by virtue of the orders of the Tribunal as affirmed by the Hon'ble High Court. This settled position ought not to have been ordinarily disturbed. The authorities below have chosen to deviate from the earlier consistent ITA Nos. 4631 & 4632/Del/2017 view by harping on the dismissal of SLP against the judgment of the Hon'ble J & K High Court in Jammu Development Authority. There are two reasons for not accepting the Departmental stand. Firstly, the issue before the Hon'ble Jammu and Kashmir High Court was cancellation of registration by the CIT u/s 12AA(3) of the Act and not the denial of exemption, as is prevailing in the extant case. Admittedly, the assessee's registration has not been cancelled by the Commissioner. Further, it is a settled legal position that a summary dismissal of SLP cannot be construed as a Page 129 of 242 (UP AWAS EVAM VIKAS PARISHAD) declaration of law by the Hon'ble Supreme Court under Article 141 of the Constitution. A mere dismissal of SLP without giving any reasons, cannot be equated with exposition of law by the Hon'ble Supreme Court so as to indicate the imprimatur on the reasoning and/or the ratio decidendi of the High Court in the judgment. In such circumstances, there is no merger of the judgment of the Hon'ble High Court. The Hon'ble Apex Court in Hemalatha Gargya vs. CIT (2003) 259 ITR 1 (SC), has held that dismissal of SLP in limine: "could not operate as a confirmation of the reasoning in the decision sought to be appealed against.....". Similar view has been taken by the Hon'ble Summit court ITA Nos.4631 & 4632/Del/2017 in Kunhayammed & Ors vs. State of Kerala and Anr (2000) 245 ITR 360 (SC), in which their Lordships

have held that an order refusing special leave to appeal does not stand substituted in place of order under challenge. In the hue of the above discussion, it is amply vivid that the mere dismissal of SLP by the Hon'ble Supreme Court against the judgment of the Hon J&K High Court in the case of Jammu Development Authority cannot be construed as having the effect of elocution of law by the Hon'ble Supreme Court on the subject against the assessee. In other words, the view point of the Department that the mandate of the Hon'ble jurisdictional High Court on the issue has ceased its binding force and hence preference should be given to the judgment of the Hon'ble J & K High Court as SLP against the same has been dismissed, cannot be countenanced. We, therefore, hold that the decision taken by the Hon'ble jurisdictional High Court in several cases including that of the assessee itself holds the field and, accordingly, the benefit of exemption u/s 11 of the Act cannot be denied. The impugned order on the issue is overturned and it is directed to grant exemption u/s 11 of the Act."

9) Hon'ble ITAT, Bangalore in the case of Bangalore Development Authority vs. Additional Commissioner of Income-tax, Bengaluru for A.Y. 2012-13 in ITA No. 1087 & 1104 (BANG) OF 2017 dated 22.03.2019 Headnote Page 130 of 242 (UP AWAS EVAM VIKAS PARISHAD) Section 2(15), read with section 11, of the Income-tax Act, 1961 - Charitable purpose - (Object of general public utility) - Assessment year 2012-13 - Whether relief for poor does not necessarily mean giving something free of cost to poor and it also includes providing them things at a concessional rate

- Held, yes - Whether assessee, a statutory body, constituted by an enactment of State Government, for setting up of residential layouts to ensure planned urban development of city and also to accomplish a social objective of providing plots and sites to economically weaker section of society at affordable and reasonal rates, could be said to be providing general public utility services within meaning of section 2(15) and, thus, its claim for exemption under section 11 was to be allowed - Held, yes [Paras 5.9.1 and 5.9.5] [In favour of assessee]

10) Institute of Chartered Accountants of India vs. Director General of Income-tax (Exemptions), Delhi (2013) 217 Taxman 152 (Del.) The head note of this judgment is reproduced below-

"Section 2(15), read with sections 10(23C)(vi), 11 and 13, of the Income Tax Act, 1961 - Charitable/religious purpose- Charitable/religious institution [Registration] - Assessment Year 200-07 to 2011 - 12 - Whether, Purport of first proviso to section 2(15) is not to exclude entities which are essentially for charitable purpose but are conduction some activities for a consideration or fees, but to exclude organizations which are carrying on regular business from scope of charitable purpose - Held, yes - Whether, therefore, where dominant objective of assessee - institute was to regulate profession of Chartered Accountancy in India, and conducting extensive educational program, conducting coaching classes and campus placements, for fees, could not be held as business, but only as in aid of its objects - Held, yes - Whether, where functions performed by assessee institute were in genre of public welfare and not for any private gain or profit, it could not be said that assessee was involved in carrying on any business, trade or commerce and therefore, registration under section 10(23C)(vi) could not be denied - Held, Yes [In favour of assessee]."

Page 131 of 242 (UP AWAS EVAM VIKAS PARISHAD) The Relevant portion of this judgment is also reproduced below-

"The expressions "trade", "Commerce" and "business" as occurring in the first proviso to section 2(15) of the Act must be read in the context of the intent and purport of section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organised manner. The purpose and the dominant object for which an institute carries on its activities is material to determine whether the same is business or not. The purport of the first proviso to section 2(15) of the Act is not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of "charitable purpose". The purpose of introducing the proviso to Section 2(15) of the Act can be understood from the budget Speech of the Finance Minister while introducing the Finance Bill 2008. The relevant extract to the Speech is as under:

' ....."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 or providing services in relation to any trade, commerce or business or 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.' The expressions "business", "trade" or "commerce" as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organization is charitable any incidental activity for furtherance of the object would not fall within the expressions "business", "trade" or "commerce"."

11) Director of Income-tax (Exemption) vs. Sabarmati Ashram Gaushala Trust (2014) 223 Taxman 43 (Gujrat) Page 132 of 242 (UP AWAS EVAM VIKAS PARISHAD) The headnote of this judgement is reproduced below:

"Section 2 (15), read with section 11, of the Income-tax Act, 1961 {Charitable purpose subject of general public utility/Profit motive} Assessment year 2009- 10 Assessee trust was registered with object of breeding cattle and to improve quality of cows and oxen - It generated considerable income from activity of milk production and the Assessing Officer denied benefit of exemption under section 11 on ground that it was earning profit over years and activities were commercial in nature and Commissioner (Appeals) confirmed same- Tribunal reversed decision of revenue authorities holding that assessee was entitled to exemption under section 11 and since aims and objects of assessee-trust were charitable and profit earned from said activities were incidental in nature, it was not hit by section 2 (15)- Whether objects of Trust clearly established that same were for general public utility and profit making was neither aim nor object of trust - Held, yes- whether mere because while carrying out activities for purpose of achieving objects of trust certain incidental surpluses were generated, would not render activity in nature of trade, commerce or business- Held ,yes - Whether thus order of Tribunal were to' be upheld - Held, yes {Paras 12 & 14} { In favour of assessee}"

12) GSl lndia vs. DGIT (Exemption) (2013) 219 Taxman 205 (Delhi) The headnote of this judgement is reproduced below:

"Section 2(15), read with section 10(23C), of the Income-tax Act, 1961 - Charitable purpose - Objects of general public utility - Profit motive - Whether profit motive is determinative and a critical factor to discern whether an activity is business, trade or commerce - Held, yes - Petitioner was registered as a charitable society - It had acquired intellectual property rights qua bar coding system from 'G' and charged registration and annual fees from third parties to permit use of coding system - Petitioner applied for registration under section 10(23C)(iv) - Director General (Exemption) denied approval of same on ground that activity of petitioner was in nature of Page 133 of 242 (UP AWAS EVAM VIKAS PARISHAD) trade, commerce or business and that petitioner had not maintained separate books of account for business activity - Whether charging a nominal fee to use coding system and to avail advantages and benefits therein was neither reflective of business aptitude nor indicative of profit oriented intent - Held, yes - Whether thus contention of revenue that petitioner charged fee and, therefore, was carrying on business, had to be rejected - Held, yes - Whether since petitioner was not carrying on any business, trade or commerce, question of requirement of separate books of account for business, trade or commerce was redundant - Held, yes. Whether petitioner could not be denied benefit of registration under section 19(23C)(iv) - Held, yes [Paras 21, 24, 25,30 & 33] [In favour of assessee]"

13) Commissioner of Income-tax -1 vs. Kandla Port Trust (2014) 225 Taxman 145 (Guj.) The head note of this judgement is reproduced below:

Section 2(15); read with section 12A, of the Income Tax Act, 1961- Charitable purpose (Objects of general public utility- Ports Trust)-Assessee Trust was constituted under Major Ports Trusts Act, 1963 - assessee tiled an application seeking registration under section 12A contending that activities of port trust were for benefit of general public and were covered under definition of charitable purpose under section 2(15)- Commissioner rejected assessee's application holding that activities carried on by assessee were in nature of commercial activities and not for charitable purpose - Tribunal, however, granted registration to assessee trust - It was noted that assessee trust was constituted for administration, control and management of various port activities which was an activity of general public utility - Further, that there was no profit making was equally clear from provisions of Act of 1963- Whether in view of aforesaid, Tribunal was justified in granting registration to assessee trust - Held, yes (Para 22)"

14) Bureau of Indian Standards vs. Director General of Income- tax (Exemptions) (2013) 212 Taxman 210/(2012) 27 taxmann.com 127 (Delhi) The head note of this judgement is reproduced below:

Page 134 of 242 (UP AWAS EVAM VIKAS PARISHAD) "Section 2(15), read with section 10(23C), of the Income-tax Act, 1961 - Charitable purpose - Object of general public utility

- Whether public utility activity of evolving, prescribing and enforcing standards involves carrying on of trade or commerce activity - Held, no Whether, therefore, activities of Bureau of Indian

Standards (BIS) in prescribing of standards of goods/articles and enforcing those standards through accreditation and continuing supervision through inspection, etc., cannot be considered as trade, business or commercial activity merely because testing procedures involves charging of fees - Held, yes [Para 16] [In favour of assessee]" The concluding part of the judgement is also reproduced below for ready reference:

"In these circumstances, "rendering any services in relation to trade, commerce or business" cannot, in the opinion of the Court, receive such a wide construction as to enfold regulatory and sovereign authorities, set up under statutory enactments, and tasked to act as agencies of the State in public duties which cannot be discharged by private bodies. Often, apart from the controlling or parent statutes, like the BIS Act, these statutory bodies (including BIS) are empowered to frame rules or regulations, exercise coercive powers, including inspection, raids; they possess search and seizure powers and are invariably subjected to parliamentary or legislative oversight. The primary object for setting up such regulatory bodies would be to ensure general public utility. The prescribing of standards, and enforcing those standards, through accreditation and continuing supervision through inspection etc, cannot be considered as trade, business or commercial activity, merely because the testing procedures or accreditation involves charging of such fees. It cannot be said that the public utility activity of evolving, prescribing and enforcing standards, "involves" the carrying on of trade or commercial activity.

In view of the above discussion, the Court is of opinion that the impugned order of the Director of Income Tax dated 24.2.2012 is contrary to law. It is hereby quashed. The Parishads are directed to process the case of BIS and issue the exemption hitherto enjoyed by it, under Section 10(23) of Page 135 of 242 (UP AWAS EVAM VIKAS PARISHAD) the Act, within 10 weeks from today. The Petition is allowed in the above terms; no costs."

15) CIT v. State Urban Development Agency (SUDA) (2013) 218 Taxman 146 (Allahabad) The head note of this judgement is reproduced below:

"ll. Section 2(15) of the Income-tax Act, 1961 - Charitable purpose [General public utility] Whether after 1-4-1984, even if there is some profit in activity carried by trust/institution, so long as dominant object is of general public utility, trust/ institution would be considered as established for charitable purpose - Held, yes [Para 11] [In favour of assessee] Words and phrases: Expression 'any other object of general public utility' as occurring in section 2(15) of the Income-tax Act, 1961 Expression 'property' as occurring in section 11 of the Income-tax Act, 1961)"

In view of above facts, circumstances of the case and judgements, the proviso to section 2(15) of Income-tax Act are not applicable upon the appellant Parishad and for this reason the exemption u/s 11, 12 and 13 deserves to be allowed.

VI. NON APPPLICABILITY TO SECTION 13(8) OF INCOME-TAX ACT AND JUDGEMENTS THEREON It is submitted that unlike other charitable trusts or institutions in whose cases the provisions of section 2(15) are applicable, the Authority is an organization constituted by State Government to provide affordable houses to all sections of society without profit motive. Hence, its

being 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 does not arise. Further, the jurisdiction High Court has already decided that the proviso to section 2(15) of Income-tax Act are not applicable upon the appellant Authority vide ITA No. 31 of 2010 (Supra).

Sub-section (8) to Section 2013 was inserted by Finance Act, 2012 with retrospective effect from 01.04.2009. The said sub- section is reproduced below:

Page 136 of 242 (UP AWAS EVAM VIKAS PARISHAD) "(8) Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year."

Thus, the provisions of section 13(8) of Income-tax Act would be applicable only in the year the proviso to section 2(15) becomes applicable. Further, for clarity the relevant portion of Memorandum explaining the Finance Bill 2012 is reproduced below:

"Sections 11 and 12 of the Act exempt income of any charitable trust or institution, if such income is applied for charitable purposes in India and such institution is registered under section 12AA of the Act. Section 10(23C) of Income Tax Act also provides exemption in respect of approved charitable funds or institutions.

Section 2(15) of the Act provides definition of charitable purpose. It includes "advancement of any other object of general public utility" as charitable purpose provided that it does not involve carrying on of any activity in the nature of trade, commerce or business.

The 2nd proviso to said section provides that in case where the activity of any trust or institution is of the nature of advancement of any other object of general public utility, and it involves carrying on of any activity in the nature of trade, commerce or business; but the aggregate value of receipts from the commercial activities does not exceed Rs. 25,00,000/- in the previous year, then the purpose of such institution shall be considered as charitable, and accordingly, the benefits of exemption shall be available to it.

Thus, a charitable trust or institution pursuing advancement of object of general public utility may be a charitable trust in one year and not a charitable trust in another year depending on the aggregate value of receipts from commercial activities. There is, therefore, need to expressly provide in law that no exemption would be available for a previous year, to a trust or institution to which first proviso of sub-section 2(15) become applicable for that particular previous year.

Page 137 of 242 (UP AWAS EVAM VIKAS PARISHAD) However, this temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval or rescinding of notification issued in respect of trust or institution. Therefore, there is need to ensure that if the purpose of a trust or institution does not remain charitable due to application of first proviso on account of commercial receipt threshold

provided in second proviso in a previous year. Then, such trust or institution would not be entitled to get benefit of exemption in respect of its income for that previous year for which such proviso is applicable. Such denial of exemption shall be mandatory by operation of law and would not be dependent on any withdrawal of approval or cancellation of registration or a notification being rescinded. It is, therefore, proposed to amend section 10(23C), section 13 and section 143 of the Act to ensure that such organization does not get benefit of tax exemption in the year in which it's receipts from commercial activities exceed the threshold whether or not the registration or approval granted or notification issued is cancelled, withdrawn or rescinded. This amendment will take effect retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009-10 and subsequent assessment years." Thus, where the receipts of the assessee engaged in activities covered under advancement of general public utility gets involved in an activity in nature of trade, commerce and business and earns commercial receipts above threshold limit specified u/s 2(15) of Income-tax Act, provisions of section 13(8) of Income- tax Act would be applicable.

However, in the case of appellant Authority the provisions of section 13(8) of Income- tax Act would not be applicable in the any year as the appellant Authority is not involved in an activity of trade, commerce and business and thus it's receipts cannot be construed to be commercial receipts for which it is not hit by the proviso to section 2(15) of Income-tax Act. Similar stand was taken by the Hon'ble Allahabad High Court in case of appellant wherein it was decided that the proviso to section 2(15) was not applicable in case of appellant Authority. Similar decision has been made by Hon'ble Allahabad High Court in case of other Page 138 of 242 (UP AWAS EVAM VIKAS PARISHAD) Development Authorities which were constituted under same Act as the appellant Authority. Thus, as the objects / activities has not changed since 12AA registration was granted to appellant Authority, it's activities cannot be said to come under the ambit of section 2(15) of Income-tax Act in any year and thus, the provisions of section 13(8) would not be applicable in case of appellant Authority. In this regard reliance is placed on following judgements:

i. Hon'ble Gujrat High Court in case of Commissioner of Income-tax (Exemptions) vs. Gujrat Housing Board in Tax Appeal No. 184 of 2019 for AY 2012-13 dated 25.06.2019.

Relevant Portion "2. The Revenue has proposed the following as the substantial question of law arising in this Tax Appeal:

> "Whether the Appellate Tribunal has erred in law and on facts in setting aside the issue of deduction / exemptions u/s. 11 & 12 of the Act, without appreciating that the activities of the assessee authority are covered by first and second proviso to section 2(15) of the Act and thus not entitled to exemption u/s 11 and 12 as per provisions of section 13(8) of the Act?"

4. It also appears that with respect to Gujarat Housing Board itself on the very same proposed question of law, a coordinate Bench of this Court dismissed the appeal relying on the decision of this Court in the matter of AUDA. It is brought to our notice that the issue is now pending before the Supreme Court. We may quote the order passed in Tax Appeal No.752 of 2018 in the case of Commissioner of Income Tax (Exemption) vs. Gujarat Housing Board, decided on 02.07.2018:

"[2.0] Heard Mrs. Mauna Bhatt, learned Advocate appearing on behalf of the revenue. At the outset, it Page 139 of 242 (UP AWAS EVAM VIKAS PARISHAD) is required to be noted that as such by the impugned order and after having noted the decisions of this Court in the case of Ahmedabad Urban Development Authority Vs. ACIT (Exemption) in ITA No.423 to 425 of 2016 dated 02/05/2017 and CIT Vs. Gujarat Industrial Development Corporation reported in (2017) 83 Taxmann.com 366 (Gujarat), learned Tribunal has restored the issue to the file of the Assessing Officer to conclude the issue de novo. No question of law arises. We do not propose to interfere with the impugned order of remand. On the basis of the material on record, which may be before the learned Assessing Officer, the Assessing Officer may consider the applicability of the aforesaid two decisions vis-a-vis the activities being carried out by the assessee. Under the circumstances, present Tax Appeal deserves to be dismissed and is accordingly dismissed."

5.In view of the aforesaid, the question proposed cannot be termed as a substantial question of law involved in this Tax Appeal. In the result, this appeal fails and is hereby dismissed."

ii. Hon'ble Gujrat High Court in the case of CIT(Exemption) v. Jamnagar Area Development Authority in (2020) 120 taxmann.com 140 Headnote Section2(15), read with section 11, of the Income-tax Act, 1961 - Charitable purpose (Object of general public utility) - Assessment year 2009-10 - Assessee was an Urban Development Authority constituted under section 5 of the Gujarat Town Planning and Urban Development Act, 1976 for framing and implementing Town Planning Scheme in area which do not fall within any other local authority - It also carried out object and purpose of Town Planning Act - Assessing Officer observed that assessee was engaged in Area Development and Town Planning and was not carrying out any charitable Page 140 of 242 (UP AWAS EVAM VIKAS PARISHAD) activities and earned profit was squarely covered by provisos to section 2(15), read with section13(8) and was not eligible for exemption claimed under section 11 - Whether functions of assessee were for charitable purposes and for general public utility and merely because while carrying out activities for purpose of achieving objects of trust, certain incidental surpluses were generated, it would not render its activity in nature of trade, commerce or business and consequently, assessee was entitled to exemption under section 11 - Held, yes [Paras 5 and 6] iii. Hon'ble Gujrat High Court in the case of Pr.

CIT(Exemption) v. Surat Urban Development Authority in (2020) 120 taxmann.com 407 Headnote Section2(15), read with sections11 and 12AA, of the Income-tax Act, 1961 - Charitable purpose (Objects of general public utility) - Assessment year 2011-12 - Assessee was an Urban Development Authority constituted under section 22 of Gujarat Town Planning and Urban Development Act, 1976 - Powers and function of Urban Development Authority included, inter alia, to undertake preparation of development plans, carry out surveys in urban development area for preparation of development plans or town planning schemes and execute works in connection with supply of water, disposal of sewerage and provision of other services and amenities; and to levy and collect such fees for execution of works - Assessing Officer denied exemption under section 11 to assessee on ground that assessee was not carrying out any charitable activities and was squarely covered by provisos first and second to section 2(15) read with section13(8) - Whether functions of assessee were for

charitable purposes and for general public utility and therefore, assessee was entitled to exemption under section 11 - Held, yes [Paras 5 to 7] Page 141 of 242 (UP AWAS EVAM VIKAS PARISHAD) VII. NON-APPLICABILITY OF SECTION 13(3) OF INCOME-TAX ACT The Parishad vide GO no. 1490/PS/HC dated 24.12.1988 is liable to grant discount of 5% on the value to the property once in the lifetime to its employee/ officers. Further, Parishad is also liable to grant reservation of 2% in allotment not only to its own employees but also employees of Development Authority/ Jal Nigam, Municipality and employees of other Local Bodies by virtue of Rule 36 of U.P. Awas Evam Vikas Parishad (Disposal of Residential & Non-Residential Properties), 1988.

Further, it is submitted that the specified persons as per the section 13(3)(cc) are only manager of institution by whatever name they may be called in the institution. The clause (cc) of section 13(3) was inserted by Finance Bill 1972. The relevant portion of the Memorandum explaining the provisions in the Finance Bill, 1972 is reproduced below:

"25. In order to ensure that the tax exempt funds of charitable and religious trust or institutions are applied to the purposes of such trusts and institutions and are not diverted for the benefit of the author of the trust, founder of the institution, persons who have made substantial contributions or who manage the affairs of the trust or institution, the Bill seeks to make the following amendments in the scheme of tax exemption of such trusts and institutions:-

....

....

(d) Where the voluntary contributions are received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes, such contributions will qualify for exemption from income-tax only if the conditions speci□ed in section 11 regarding application of income or accumulation thereof are satis□ed and no part of the income enures and no part of the income or property of the trust or institution is applied for the bene□t of persons speci□ed in section 13(3) of the Income-tax Act, i.e.. author of the trust, Page 142 of 242 (UP AWAS EVAM VIKAS PARISHAD) founder of the institution, a person who has made substantial contribution to the trust or institution, the relatives of such author, founder, person, etc. In other words income by way of voluntary contributions will ordinarily quality for exemption from Income-tax only to the extent it is applied to the purposes of the trust during the relevant account year or within three months next following. Such charitable or religious trusts with however, be able to accumulate income from voluntary contributions for future application to charitable or religious purposes for a maximum period up to ten years without forfeiting exemption from tax, if they comply with certain procedural requirements laid down in section 11 in this behalf. These requirements are that (1) the trust or institution should give notice to the Income-tax Officer, specifying the purpose for which the income to be accumulated and the period for which the accumulation is proposed to be made and (2) the income so accumulated should be invested in Government or other approved securities or deposited in post office savings bank, scheduled banks, co-operative banks or approved □nancial institutions.

(iii) The list of persons referred to in sub-section (3) of section 13 of the Income- tax Act is being enlarged by including therein trustees of trusts, managers of institutions, their relatives and concerns in which such trustees, managers and relatives have a substantial interest. The effect of this amendment will be that where any income of the trust or institution created or established after 31.3.1962 (i.e., after the coming into force of the Income- tax Act, 1961) ensures for the bene□t of trustees, managers, etc., the trust or institution will forfeit exemption from tax. Likewise, where any income or property oi the trust or institution is used or applied during the relevant account year for the direct or indirect bene□t of trustees, managers. etc. exemption from income-tax will be forfeited irrespective of whether the trust or institution was created or established before or after the commencement of the Income-tax Act."

From the plain reading of the Memorandum explaining the provisions in the Finance Bill, 1972 it is clear that the legislatures did not intent to include employees of the institution/ trust under the purview of section 13(3)(cc) of the Income-tax Act. The scope of section 13(3) was widened for plugging loopholes in the law so Page 143 of 242 (UP AWAS EVAM VIKAS PARISHAD) that the tax exempt funds of charitable and religious trusts or institutions are applied to the purposes of such trusts and institutions and are not diverted for the benefit of the author of the trust, founder of the institution, persons who have made substantial contributions or who manage the affairs of trust or institution.

Further, the word manager of institution (by what ever name it may be called) has been used in the clause (cc) of sub-section (3) of section 13 of Income-tax Act to cover all the persons who have control over the affairs of the institution and not the persons who are appointed for carrying on of day to day business such as officers and employees of such institution. The real test to be applied is, who has the controlling and directing power or rather or to put it in a different language there is always a seat of power or the head and brain, and what has got to be ascertained is where is this seat of power or the head and brain. An institution has got to work through officers and servants, but it is not the officers and servants that constitute the seat of power or the controlling and directing power. It is that authority to which the servants and officers are subject, it is that authority which controls and manages them, which is the central authority. In case of the Parishad such power partially vests in its Board. The Board consists of following members by virtue of sub-section (5) of section 3 of U. P. Avas Evam Vikas Parishad Adhiniyam, 1965:

(5) The Board shall consist

(a) The Minister, Housing and Urban Planning Department Uttar Pradesh- Adhyaksh ex officio,:

(a-1) The Principal Secretary/Secretary to the Government of Uttar Pradesh in Housing and Urban Planning Department- Karyakari Adhyaksh/Sadasya-ex officio,]

(b)Three Upadhyaksh who shall be the non-official members appointed by the State Government.

(c)the Principal Secretary/Secretary to the Government of Uttar Pradesh in the Finance Department, ex-officio member;

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(d)the Principal Secretary/Secretary to the Government of Uttar Pradesh in the Urban development, ex-officio member;

(e) the Principal Secretary/Secretary to the Government of Uttar Pradesh in the Bureau of public Enterprises Department ex-officio member;

(f) the Chief Town and Country Planner, Uttar Pradesh, ex-officio member;

(g) The Director, Central Building Research Institute Roorkee - ex officio member.

(h)The Housing Commissioner, Uttar Pradesh Avas Evam Vikas Parishad-ex officio member.

(i)The Chief Engineer, Uttar Pradesh Avas Evam Vikas Parishad-ex officio member.

The Finance Controller, Uttar Pradesh Avas Evam Vikas

(j) Parishad-ex officio member.

(k) The Chief Architect Planner, Uttar Pradesh Avas Evam Vikas Parishad-ex officio member.] Further, the Board may appoint such officers and servants as it considers necessary for efficient performance of its functions by virtue of section 8 of the Adhiniyam. The Housing Commissioner who is appointed by the State Government under the provision of section 7 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (UPAEVPA) has control over the all officers and servants of the Board by virtue of section 11 of said Adhiniyam. Thus, the officers and servants do not hold the ultimate controlling power and hence cannot be equated as Managers under the provision of section 13(3)(cc) of Income-tax Act.

Page 145 of 242 (UP AWAS EVAM VIKAS PARISHAD) Here it is pertinent to mention that even the Board does not have the ultimate control. The functions of the Board are defined under section 15 of the Adhiniyam which was constituted after the approval of U. P. Legislative Assembly and U. P. Legislative Council. Further, the power to make Rules vest with State Government u/s section 94 of the U.P. Awas Evam Vikas Parishad Adhiniyam, 1965. Further, as per section 92 of said Adhiniyam the State Government has control over the Board and if the Board acts beyond its power, State Government can always dissolve the board by virtue of section 93 of U.P. Awas Evam Vikas Parishad Adhiniyam, 1965. Further, the budget of the Parishad every year is approved by the State Government by virtue of section 63 of Adhiniyam. Therefore, the ultimate power vest with State Government and no individual or group of persons in case of the Parishad.

Thus, although the Board is given a large amount of discretion and a considerable amount of authority, but the mere doing of affairs of Parishad does not constitute these managers the controlling and directing power. Their power-of-attorney can be cancelled at any moment by dissolution of the Board by the State Government. The Board has to carry out any orders given to

them from the Government, they must submit to Government an explanation of what they have been doing, and throughout the time that they are working is in a vigilant eye of the State Government.

Therefore, by no means the employee defined u/s 8 of the Adhiniyam are covered under the ambit of section 13(3) of the Income-tax. No concession or reservation in allotment of any property has been given by the Parishad to any person defined in section 3(5) of Adiniyam or even the Housing Commissioner in any year. Further, the Ld. Assessing Officer has first held that the Parishad has violated the provisions of section 13(3) in A.Y. 2017-18 and even the Ld. Commissioner of Income-tax (Appeals) has never adopted such view before A.Y. 2015-16. Here it would be pertinent to note that the Ld. Commissioner of Income-tax (Appeals) who held that the violation of section 13(3) has been committed by Parishad in A.Y. 2015-16 to A.Y. 2017-18, did not hold similar view while allowing the exemption claimed u/s 11 of Income-tax Act in A.Y. 2007-08 and A.Y. 2008-09 vide appellate order dated 15.11.2018 and neither the Ld Assessing Officer Page 146 of 242 (UP AWAS EVAM VIKAS PARISHAD) raised such issue in his remand report. Further, when the Ld. Commissioner of Income- tax (Appeals) raised this issue first in A.Y. 2015-16, we had made a submission that the employees of Parishad are not covered u/s 13(3) and hence, no violation has been made. The said submission was pleaded to be accepted in A.Y. 2017-18 during the hearing before the Ld. Commissioner of Income-tax (Appeals). With respect to our contention that the legislatures never intended to include the employees, we further place our reliance on judgement of Hon'ble Patna High Court in case of Tata Steel Charitable Trust wherein it was observed and held as under:

"11. Now, coming to the second condition, as said above, 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) of Section 13 of the Act then such trust becomes disentitled to claim any exemption under Section 11 of the Act. 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. (See New Lexicon Webster's Dictionary). 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 cannot disentitle the trust from claiming exemption under Section 11(1)(a) of the Act."

Further, the Hon'ble Commissioner of Income-tax (Appeals), Moradabad in the appellate order dated 28.01.2019 in case of Moradabad Development Authority for A.Y. 2015-16 when similar issue was raised before her held as under:

"The AO has not speci□ed as to how the bene□ciaries are the persons mentioned in section 13(3) of the Income Tax Act. 1961.

Page 147 of 242 (UP AWAS EVAM VIKAS PARISHAD) No speci□c instances are given by him. Further, on an apparent reading of section 13(3) read with the scheme of UP government, it does not appear that the scheme is intended to give bene□t to the persons mentioned in section 13(3)."

Therefore, the employees/ officers referred in the G.O. cannot be construed as Adhyaksh or member of the Board of Parishad and for this reason even if any benefit is given by Parishad for social upliftment of its employees/ officers cannot be equated with the benefits given to persons defined under section 13(3) of Income-tax Act. In view of the aforesaid facts, the contention of the revenue on applicability of provisions of section 13(1)(c) read with section 13(3) of Income-tax Act, 1961, is unlawful, wrong and illogical.

VIII. MERE FILING OF SLP BEFORE HON'BLE SUPREME COURT DOES NOT CONSTRUE THAT THE ORDER OF HON'BLE HIGH COURT IS STAYED AND/OR KEPT IN ABEYANCE AND HENCE, DOES NOT MAKE ORDER OF HON'BLE HIGH COURT BAD IN LAW For violating the principle of judicial precedent, the revenue has also taken a stand that it does not accept the order of Hon'ble Allahabad High Court in case of YEIDA, Moradabad Development Authority as it has filed an SLP before Hon'ble Supreme Court. In this regard it is submitted that the revenue is entitled to challenge the view taken by its judicial precedent before the higher forum but mere filing of SLP before the Hon'ble Supreme Court does not mean that the stay has been granted. Therefore, merely filing of an SLP before Hon'ble Apex Court does not make the order of the Hon'ble Allahabad High Court bad-in-law and license to the revenue to proceed on the basis that the order is stayed and/or in abeyance. In this regard reliance is also placed on judgement of Hon'ble Bombay High Court in the case of Pr. Commissioner of Income-tax vs. Associated Cables Pvt. Ltd. in ITA No. 293 of 2016 dated 03.08.2018 where their lordships observed and held as under:

> "8. Mr. Pinto, next submits that the decision of this Court in Hindustan Unilever (supra) is not correct. However, no submissions in support thereof are made. Therefore, no Page 148 of 242 (UP AWAS EVAM VIKAS PARISHAD) reason has been shown to us at the final hearing, why the decision is Hindustan Unilever Ltd. (supra) is not to be followed. Merely filing of an SLP from the order of Hindustan Unilever Ltd. (supra) would not make the order of this Court bad in law or give a license to the Revenue to proceed on the basis that the order is stayed and/or in abeyance. The Revenue is entitled to challenge the view taken by us following our decision in Hindustan Unilever (supra) by challenging this decision in the Apex Court. However, in the present facts, at this stage, there can be no question of our not following the order in Hindustan Unilever (supra). It may be pointed out that the Delhi High Court in Motor and General Fine Ltd. Vs. Income-Tax Officer, 393 ITR 60 has also adopted the view of the Gujarat High Court in General Motors (supra).
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> 9. In the above view, as the question raised herein stands finally concluded by the decision of this Court in Hindustan Unilever (supra) against the Revenue. Thus, Appeal dismissed."

IX. DISMISSAL OF SLP CANNOT BE CONSTRUED AS DECLARATION OF LAW BY THE HON'BLE SUPREME COURT It is a settled legal position that a summary dismissal of SLP cannot be construed as a declaration of law by the Hon'ble Supreme Court under Article 141 of the Constitution. A mere dismissal of SLP without giving any reasons cannot be equated with exposition of law by the Hon'ble Supreme Court so as to indicate the imprimatur on the reasoning and/or the ratio decidendi of the High Court in the judgment. In such circumstances, there is no merger of the judgment of the Hon'ble High Court. In this regard reliance is placed on following judgements:

1. Hon'ble Apex Court in Hemalatha Gargya vs. CIT (2003) 259 ITR 1 (SC), has held that dismissal of SLP in limine:

"could not operate as a confirmation of the reasoning in the decision sought to be appealed against ".

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2. Hon'ble Supreme Court in ITA Nos. 4631 & 4632/Del/2017 in Kunhayammed & Ors vs. State of Kerala and Anr (2000) 245 ITR 360 (SC), in which their Lordships have held that an order refusing special leave to appeal does not stand substituted in place of order under challenge.

In the hue of the above discussion, it is amply vivid that the mere dismissal of SLP by the Hon'ble Supreme Court against the judgment of the Hon'ble J & K High Court in the case of Jammu Development Authority cannot be construed as having the effect of elocution of law by the Hon'ble Supreme Court on the subject against the appellant Parishad. The same view has been held and observed by the Hon'ble ITAT, Delhi in the case of Moradabad Development Authority in ITA Nos. 4631 and 4632/Del/2017 for A.Ys. 2012-13 and 2013-14 while granting exemption u/s 11 of Income-tax Act, 1961 following the judgement of Hon'ble Allahabad High Court in their own case. The relevant portion is reproduced below:

> "4. It is, ergo, palpable that the assessee has been allowed exemption u/s 11 of the Act consistently in the past, either by the AO himself or by virtue of the orders of the Tribunal as affirmed by the Hon'ble High Court. This settled position ought not to have been ordinarily disturbed. The authorities below have chosen to deviate from the earlier consistent ITA Nos. 4631 & 4632/Del/2017 view by harping on the dismissal of SLP against the judgment of the Hon'ble J&K High Court in Jammu Development Authority. There are two reasons for not accepting the Departmental stand. Firstly, the issue before the Hon'ble Jammu and Kashmir High Court was cancellation of registration by the CIT u/s 12AA(3) of the Act and not the denial of exemption, as is prevailing in the extant case. Admittedly, the assessee's registration has not been cancelled by the Commissioner. Further, it is a settled legal position that a summary dismissal of SLP cannot be construed as a declaration of law by the Hon'ble Supreme Court under Article 141 of the Constitution. A mere dismissal of SLP without giving any reasons, cannot be equated with exposition of law by the Hon'ble Supreme Page 150 of 242 (UP AWAS EVAM VIKAS PARISHAD) Court so as

to indicate the imprimatur on the reasoning and/or the ratio decidendi of the High Court in the judgment. In such circumstances, there is no merger of the judgment of the Hon'ble High Court. The Hon'ble Apex Court in Hemalatha Gargya vs. CIT (2003) 259 ITR 1 (SC), has held that dismissal of SLP in limine: "could not operate as a confirmation of the reasoning in the decision sought to be appealed against ". Similar view has been taken by the Hon'ble Summit court ITA Nos.4631 & 4632/Del/2017 in Kunhayammed & Ors vs. State of Kerala and Anr (2000) 245 ITR 360 (SC), in which their Lordships have held that an order refusing special leave to appeal does not stand substituted in place of order under challenge. In the hue of the above discussion, it is amply vivid that the mere dismissal of SLP by the Hon'ble Supreme Court against the judgment of the Hon J&K High Court in the case of Jammu Development Authority cannot be construed as having the effect of elocution of law by the Hon'ble Supreme Court on the subject against the assessee. In other words, the view point of the Department that the mandate of the Hon'ble jurisdictional High Court on the issue has ceased its binding force and hence preference should be given to the judgment of the Hon'ble J&K High Court as SLP against the same has been dismissed, cannot be countenanced. We, therefore, hold that the decision taken by the Hon'ble jurisdictional High Court in several cases including that of the assessee itself holds the field and, accordingly, the benefit of exemption u/s 11 of the Act cannot be denied. The impugned order on the issue is overturned and it is directed to grant exemption u/s 11 of the Act."

DOCTRINE OF JUDICIAL DISCIPLINE IS REQUIRED TO BE APPLIED Further, it is submitted that as the aforementioned judgements are pronounced by Hon'ble Allahabad High Court, Lucknow Bench, allied doctrine of judicial discipline requires to be considered. In this regard our reliance is placed on the judgement of Hon'ble Supreme Court in the case of Union of India vs. Kamalakshi Finance Corporation Ltd. AIR 1992 SC 711 wherein It has been observed that judicial discipline requires that decision of higher authority should to be followed in the case of quasi-judicial Page 151 of 242 (UP AWAS EVAM VIKAS PARISHAD) authority and, therefore, a lower officer is bound to follow the decision of the higher authority. Since the Statute is an All India Statute, decisions are considered as binding on the law point decided on the principle of judicial discipline. Further, in the judgement of Hon'ble Gujarat High Court in the case of Arvind Board & Paper Products Ltd. vs. CIT (1982) 137 ITR 635 it was held as under:

"In Income tax matters which are governed by an All India Statute, when there is a decision of a High Court interpreting a statutory provision, it would be a wise judicial policy and practice not to take a different view."

Further, sometimes, an argument is made and also put on record that the Department has not accepted the decision of the Court and an Appeal has been preferred by them. However, courts have repeatedly held that phraseology of not accepting the decision is obnoxious and un-parliamentary in respect of the order of the higher authority. Unless, in Appeal the order of the higher authority is stayed, it operates as a valid binding decision for the lower authority not only in the case of the same assessee but also in other cases where the same law point is involved.

In this regard reliance is placed on following judgements:

1. Judgement of Hon'ble Madhya Pradesh High Court in the case of Agrawal Warehousing And Leasing vs Commissioner Of Income-tax in 2002 257 ITR 235 MP Relevant Portion "Obviously, the Commissioner of Income-tax (Appeals) not only committed judicial impropriety but also erred in law in refusing to follow the order of the Appellate Tribunal. Even where he may have some reservations about the correctness of the decision of the Tribunal, he had to follow the order. He could and should have left it to the Department to take the matter in further appeal to the Tribunal and get the mistake, if any, rectified."

2. Judgement of Hon'ble Gujarat High Court in the case of K. L.

Page 152 of 242 (UP AWAS EVAM VIKAS PARISHAD) Parmar vs. C. M. Lenya - 1994 (2) GLH 182 (para 4) Relevant Portion "It cannot be gainsaid that the judgments of this Court have binding effect throughout the State of Gujarat. It cannot be gainsaid that the Parishad could not have bypassed or disregarded the judgments of this Court. It transpires from the communication to this petition that copies of the aforesaid three judgments were supplied to him. In that view of the matter, the Parishad herein could not have bypassed or disregarded the said judgments except at the peril of contempt of this Court. This cannot be said to be a mere lapse on his part. There appears to be deliberate design on his part to disregard the aforesaid three judgments of this Court. In fact, as transpiring from the aforesaid three judgments, the same were rendered in the cases arising from the action taken by the same Authority. In that view of the matter, even if the petitioner had not submitted the copies of the aforesaid three judgments with his communication, the Parishad was duty bound to be in know of these three judgments. He was required to follow them. The way he has bypassed and disregarded the aforesaid three judgments of this Court, he could be said to have committed Contempt of this Court."

3. Judgement of Hon'ble Bombay High Court in case of Legrand (India) Pvt. Ltd. vs. Union of India 2007,where the Hon'ble High Court has held as under:

a) It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the state;

b) The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such proceeding;

c) If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a willful Page 153 of 242 (UP AWAS EVAM VIKAS PARISHAD) disregard of the law laid down by the High Court and would amount to Civil Contempt as defined in S. 2(b) of the Contempt of Courts Act, 1971."

4. Judgement of Hon'ble Supreme Court in the case of Palitana Sugar Mills (P) Ltd. vs. State of Gujarat - AIR 2007 SC 1701 Relevant Portion "It is well settled that the judgments of this Court are binding on all the authorities under Article 141 of the Constitution and it is not open to any authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this Court and/or the judgment of this Court in the earlier proceedings had only collaterally or incidentally decided the issues raised in the show cause notices. Such an attempt to belittle the judgments and the orders of this Court to say the least is plainly perverse and amounts to gross contempt of this Court... Courts have held in a catena of decisions that where in violation of an order of this Court, something has been done in disobedience, it will be the duty of this Court as a policy to set the wrong right and not to allow the perpetuation of the wrong doing. In our opinion, the inherent power will not be available under section 151, CPC as available to us in such a case but it is bound to be exercised in that manner in the interest of justice and public interest."

X. ORDERS UNDER FACELESS ASSESSMENT & APPEALS The Ld. Assessing Officer, National Faceless Assessment Centre in case of Lucknow Development Authority for AY 2018-19 have allowed exemption u/s 11 of Income-tax Act and made assessment at returned income. The copy of order is enclosed.

The Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre has allowed exemption u/s 11 in case of Lucknow Development Authority for AY 2004-05. The copy of order is enclosed.

In view of the aforesaid facts, circumstances, CBDT Circular No. 11/2008, judgements mentioned in earlier submissions and in this Page 154 of 242 (UP AWAS EVAM VIKAS PARISHAD) submission and judgement of Hon'ble Supreme Court in the case of Andhra Pradesh Road Transport Corporation and judgement of Hon'ble Allahabad High Court in case of appellant Authority in ITA Nos. 12 of 2006 for 12AA registration dated 27.09.2013, 31 of 2010 for AY 2004-05 dated 16.09.2013, Moradabad Development Authority in ITA No. 3 of 2017 for A.Y. 2009-10 dated 03.05.2017 and judgement of Hon'ble Gujrat High Court in the case of Ahmedabad Urban Development Authority dated 02.05.2017 and Surat Urban Development Authority dated 21.09.2020, Hon'ble ITAT, Delhi in the case of Moradabad Development Authority in ITA Nos. 4631 and 4632/Del/2017 for A.Ys. 2012-13 and 2013-14 dated 04.01.2018 and judgement of Hon'ble ITAT, Agra in the case of Firozabad Shikohabad Development Authority vs. CIT-II, Agra in ITA No. 55/ Agra/ 2015 dated 07.02.2018 and judgement of Hon'ble ITAT, Agra in case of Agra Development Authority in ITA No. 215/Agr/2016 for AY 2011-12 dated 17.05.2021 and Jhansi Development Authority in ITA No. 256/Agra/2014 for AY 2010-11 dated 13.01.2021 and order of Hon'ble ITAT, Delhi in case of Haridwar Development Authority dated 30.06.2021 and order of Ld. Assessing Officer, National Faceless Assessment Centre for AY 2018- 19 and order of Ld. Commissioner of Income- tax (Appeals), National Faceless Appeal Centre for AY 2004-05 and also the fact that since beginning there was no change in the charitable activities and main objects of Parishad, the Parishad deserves to be treated as charitable institution engaged in charitable activities in pursuit of charitable purposes and its income deserves to be treated as exempt u/s 11 read with section 2(15), 12 and 13 of the Income-tax Act, 1961 and delete the addition of Surplus (reflecting in the audited Income & Expenditure account) made by the Ld. Assessing Officer.

Prayer It is most respectfully prayed that the Hon'ble Income Tax Appellate Tribunal may kindly be pleased to treat the Parishad as institution existing solely for charitable purposes and grant the exemption u/s 11 read with section 2(15), 12 and 13 of Income- tax Act.

Page 155 of 242 (UP AWAS EVAM VIKAS PARISHAD) Supplementary written submissions on additional grounds: In addition to submission made earlier vide paper book dated 05.02.2020 and 15.09.2021 following submission is being made regarding additional grounds taken by the revenue:

I. REGARDING NON APPPLICABILITY TO SECTION 13(8) OF INCOME-

TAX ACTAND JUDGEMENTS THEREON It is submitted that unlike other charitable trusts or institutions in whose cases the provisions of section 2(15) are applicable, the Authority is an organization constituted by State Government to provide affordable houses to all sections of society without profit motive. Hence, its being 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 does not arise. Further, the jurisdiction High Court has already decided that the proviso to section 2(15) of Income-tax Act are not applicable upon the appellant Authority vide ITA No. 31 of 2010 (Supra).

Sub-section (8) to Section 2013 was inserted by Finance Act, 2012 with retrospective effect from 01.04.2009. The said sub-section is reproduced below:

"(8) Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year."

Thus, the provisions of section 13(8) of Income-tax Act would be applicable only in the year the proviso to section 2(15) becomes applicable. Further, for clarity the relevant portion of Memorandum explaining the Finance Bill 2012 is reproduced below:

"Sections 11 and 12 of the Act exempt income of any charitable trust or institution, if such income is applied for charitable purposes in India and such institution is registered under section 12AA of the Act. Section 10(23C) of Income Tax Act also provides exemption in respect of approved charitable funds or institutions.

Page 156 of 242 (UP AWAS EVAM VIKAS PARISHAD) Section 2(15) of the Act provides definition of charitable purpose. It includes "advancement of any other object of general public utility" as charitable purpose provided that it does not involve carrying on of any activity in the nature of trade, commerce or business.

The 2nd proviso to said section provides that in case where the activity of any trust or institution is of the nature of advancement of any other object of general public utility, and it involves carrying on of any activity in the nature of trade, commerce or business; but the aggregate value of receipts from the commercial activities does not exceed Rs. 25,00,000/- in the previous year, then the purpose of such institution shall be considered as charitable, and accordingly, the benefits of exemption shall be available to it.

Thus, a charitable trust or institution pursuing advancement of object of general public utility may be a charitable trust in one year and not a charitable trust in another year depending on the aggregate value of receipts from commercial activities.

There is, therefore, need to expressly provide in law that no exemption would be available for a previous year, to a trust or institution to which first proviso of sub-section 2(15) become applicable for that particular previous year.

However, this temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval or rescinding of notification issued in respect of trust or institution.

Therefore, there is need to ensure that if the purpose of a trust or institution does not remain charitable due to application of first proviso on account of commercial receipt threshold provided in second proviso in a previous year. Then, such trust or institution would not be entitled to get benefit of exemption in respect of its income for that previous year for which such proviso is applicable. Such denial of exemption shall be mandatory by operation of law and would not be dependent on any withdrawal of approval or cancellation of registration or a notification being rescinded.

It is, therefore, proposed to amend section 10(23C), section 13 and section 143 of the Act to ensure that such organization does not get Page 157 of 242 (UP AWAS EVAM VIKAS PARISHAD) benefit of tax exemption in the year in which it's receipts from commercial activities exceed the threshold whether or not the registration or approval granted or notification issued is cancelled, withdrawn or rescinded.

This amendment will take effect retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009- 10 and subsequent assessment years."

Thus, where the receipts of the assessee engaged in activities covered under advancement of general public utility gets involved in an activity in nature of trade, commerce and business and earns commercial receipts above threshold limit specified u/s 2(15) of Income-tax Act, provisions of section 13(8) of Income-tax Act would be applicable.

However, in the case of appellant Authority the provisions of section 13(8) of Income-tax Act would not be applicable in the any year as the appellant Authority is not involved in an activity of trade, commerce and business and thus it's receipts cannot be construed to be commercial receipts for which it is not hit by the proviso to section 2(15) of Income-tax Act. Similar stand was taken by the

Hon'ble Allahabad High Court in case of appellant wherein it was decided that the proviso to section 2(15) was not applicable in case of appellant Authority. Similar decision has been made by Hon'ble Allahabad High Court in case of other Development Authorities which were constituted under same Act as the appellant Authority. Thus, as the objects / activities has not changed since 12AA registration was granted to appellant Authority, it's activities cannot be said to come under the ambit of section 2(15) of Income-tax Act in any year and thus, the provisions of section 13(8) would not be applicable in case of appellant Authority. In this regard reliance is placed on following judgements:

i. Hon'ble Gujrat High Court in case of Commissioner of Income-tax (Exemptions) vs. Gujrat Housing Board in Tax Appeal No. 184 of 2019 for AY 2012-13 dated 25.06.2019.

Relevant Portion "2. The Revenue has proposed the following as the substantial question of law arising in this Tax Appeal:

Page 158 of 242 (UP AWAS EVAM VIKAS PARISHAD) "Whether the Appellate Tribunal has erred in law and on facts in setting aside the issue of deduction / exemptions u/s. 11 & 12 of the Act, without appreciating that the activities of the assessee authority are covered by first and second proviso to section 2(15) of the Act and thus not entitled to exemption u/s 11 and 12 as per provisions of section 13(8) of the Act?"

4. It also appears that with respect to Gujarat Housing Board itself on the very same proposed question of law, a coordinate Bench of this Court dismissed the appeal relying on the decision of this Court in the matter of AUDA. It is brought to our notice that the issue is now pending before the Supreme Court. We may quote the order passed in Tax Appeal No.752 of 2018 in the case of Commissioner of Income Tax (Exemption) vs. Gujarat Housing Board, decided on 02.07.2018:

"[2.0] Heard Mrs. Mauna Bhatt, learned Advocate appearing on behalf of the revenue. At the outset, it is required to be noted that as such by the impugned order and after having noted the decisions of this Court in the case of Ahmedabad Urban Development Authority Vs. ACIT (Exemption) in ITA No.423 to 425 of 2016 dated 02/05/2017 and CIT Vs. Gujarat Industrial Development Corporation reported in (2017) 83 Taxmann.com 366 (Gujarat), learned Tribunal has restored the issue to the file of the Assessing Officer to conclude the issue de novo. No question of law arises. We do not propose to interfere with the impugned order of remand. On the basis of the material on record, which may be before the learned Assessing Officer, the Assessing Officer may consider the applicability of the aforesaid two decisions vis-a-vis the activities being carried out by the assessee. Under the circumstances, present Tax Appeal deserves to be dismissed and is accordingly dismissed."

5. In view of the aforesaid, the question proposed cannot be termed as a substantial question of law involved in this Tax Appeal. In the result, this appeal fails and is hereby dismissed."

Page 159 of 242 (UP AWAS EVAM VIKAS PARISHAD) ii. Hon'ble Gujrat High Court in the case of CIT(Exemption) v.

Jamnagar Area Development Authority in (2020) 120 taxmann.com 140 Headnote Section2(15), read with section 11, of the Income-tax Act, 1961 - Charitable purpose (Object of general public utility) - Assessment year 2009-10 - Assessee was an Urban Development Authority constituted under section 5 of the Gujarat Town Planning and Urban Development Act, 1976 for framing and implementing Town Planning Scheme in area which do not fall within any other local authority - It also carried out object and purpose of Town Planning Act - Assessing Officer observed that assessee was engaged in Area Development and Town Planning and was not carrying out any charitable activities and earned profit was squarely covered by provisos to section 2(15), read with section13(8) and was not eligible for exemption claimed under section 11

- Whether functions of assessee were for charitable purposes and for general public utility and merely because while carrying out activities for purpose of achieving objects of trust, certain incidental surpluses were generated, it would not render its activity in nature of trade, commerce or business and consequently, assessee was entitled to exemption under section 11 - Held, yes [Paras 5 and 6] iii. Hon'ble Gujrat High Court in the case of Pr. CIT(Exemption) v. Surat Urban Development Authority in (2020) 120 taxmann.com 407 Headnote Section2(15), read with sections11 and 12AA, of the Income-tax Act, 1961 - Charitable purpose (Objects of general public utility) - Assessment year 2011-12 - Assessee was an Urban Development Authority constituted under section 22 of Gujarat Town Planning and Urban Development Act, 1976 - Powers and function of Urban Development Authority included, inter alia, to undertake preparation of development plans, carry out surveys in Page 160 of 242 (UP AWAS EVAM VIKAS PARISHAD) urban development area for preparation of development plans or town planning schemes and execute works in connection with supply of water, disposal of sewerage and provision of other services and amenities; and to levy and collect such fees for execution of works - Assessing Officer denied exemption under section 11 to assessee on ground that assessee was not carrying out any charitable activities and was squarely covered by provisos first and second to section 2(15) read with section13(8) - Whether functions of assessee were for charitable purposes and for general public utility and therefore, assessee was entitled to exemption under section 11 - Held, yes [Paras 5 to 7] II. REGARDING NON-APPLICABILITY OF SECTION 13(3) OF INCOME-

> TAX ACT The Parishad vide GO no. 1490/PS/HC dated 24.12.1988 is liable to grant discount of 5% on the value to the property once in the lifetime to its employee/ officers. Further, Parishad is also liable to grant reservation of 2% in allotment not only to its own employees but also employees of Development Authority/ Jal Nigam, Municipality and employees of other Local Bodies by virtue of Rule 36 of U.P. Awas Evam Vikas Parishad (Disposal of Residential & Non-Residential Properties), 1988.
>
> Further, it is submitted that the specified persons as per the section 13(3)(cc) are only manager of institution by whatever name they may be called in the institution. The clause (cc) of section 13(3) was inserted by Finance Bill 1972. The relevant portion of the Memorandum explaining the provisions in the Finance Bill, 1972 is reproduced below:

"25. In order to ensure that the tax exempt funds of charitable and religious trust or institutions are applied to the purposes of such trusts and institutions and are not diverted for the benefit of the author of the trust, founder of the institution, persons who have made substantial contributions or who manage the affairs of the trust or institution, the Bill seeks to make the following amendments in the scheme of tax exemption of such trusts and institutions:-

.....

.....

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(d) Where the voluntary contributions are received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes, such contributions will qualify for exemption from income-tax only if the conditions specified in section 11 regarding application of income or accumulation thereof are satisfied and no part of the income enures and no part of the income or property of the trust or institution is applied for the benefit of persons specified in section 13(3) of the Income-tax Act, i.e.. author of the trust, founder of the institution, a person who has made substantial contribution to the trust or institution, the relatives of such author, founder, person, etc. In other words income byway of voluntary contributions will ordinarily quality for exemption from Income-tax only to the extent it is applied to the purposes of the trust during the relevant account year or within three months next following. Such charitable or religious trusts with however, be able to accumulate income from voluntary contributions for future application to charitable or religious purposes for a maximum period up to ten years without forfeiting exemption from tax, if they comply with certain procedural requirements laid down in section 11 in this behalf. These requirements are that (1) the trust or institution should give notice to the Income-tax Officer, specifying the purpose for which the income to be accumulated and the period for which the accumulation is proposed to be made and (2)the income so accumulated should be invested in Government or other approved securities or deposited in post office savings bank, scheduled banks, co-operative banks or approved financial institutions.

(iii) The list of persons referred to in sub-section (3) of section 13 of the Income-tax Act is being enlarged by including therein trustees of trusts, managers of institutions, their relatives and concerns in which such trustees, managers and relatives have a substantial interest. The effect of this amendment will be that where any income of the trust or institution created or established after 31.3.1962 (i.e., after the coming into force of the Income-tax Act, 1961) ensures for the benefit of trustees, managers, etc., the trust or institution will forfeit exemption from tax. Likewise, where any income or property of the trust or institution is used or applied during the relevant account year for the direct or indirect benefit of trustees, managers. etc. exemption from income-tax will be forfeited irrespective of whether the trust or institution was created or established before or after the commencement of the Income-tax Act."

Page 162 of 242 (UP AWAS EVAM VIKAS PARISHAD) From the plain reading of the Memorandum explaining the provisions in the Finance Bill, 1972 it is clear that the legislatures did not intent to include employees of the institution/ trust under the purview of section 13(3)(cc) of the Income-tax

Act. The scope of section 13(3) was widened for plugging loopholes in the law so that the tax exempt funds of charitable and religious trusts or institutions are applied to the purposes of such trusts and institutions and are not diverted for the benefit of the author of the trust, founder of the institution, persons who have made substantial contributions or who manage the affairs of trust or institution.

Further, the word manager of institution (by what ever name it may be called) has been used in the clause (cc) of sub-section (3) of section 13 of Income-tax Act to cover all the persons who have control over the affairs of the institution and not the persons who are appointed for carrying on of day to day business such as officers and employees of such institution. The real test to be applied is, who has the controlling and directing power or rather or to put it in a different language there is always a seat of power or the head and brain, and what has got to be ascertained is where is this seat of power or the head and brain. An institution has got to work through officers and servants, but it is not the officers and servants that constitute the seat of power or the controlling and directing power. It is that authority to which the servants and officers are subject, it is that authority which controls and manages them, which is the central authority. In case of the Parishad such power partially vests in its Board. The Board consists of following members by virtue of sub-section (5) of section 3 of U. P. Avas Evam Vikas Parishad Adhiniyam, 1965:

(5) The Board shall consist

(a) The Minister, Housing and Urban Planning Department Uttar Pradesh-Adhyaksh ex officio,:

(a-1) The Principal Secretary/Secretary to the Government of Uttar Pradesh in Housing and Urban Planning Department-Karyakari Adhyaksh/Sadasya-ex officio,]

(b) Three Upadhyaksh who shall be the non-official members appointed by the State Government.

(c)the Principal Secretary/Secretary to the Government of Uttar Pradesh in the Finance Department, ex-officio member;

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(d) the Principal Secretary/Secretary to the Government of Uttar Pradesh in the Urban development, ex-officio member;

(e) the Principal Secretary/Secretary to the Government of Uttar Pradesh in the Bureau of public Enterprises Department ex-officio member;

(f) the Chief Town and Country Planner, Uttar Pradesh, ex-officio member;

(g) The Director, Central Building Research Institute Roorkee - ex officio member.

(h) The Housing Commissioner, Uttar Pradesh Avas Evam Vikas Parishad-ex officio member.

(i) The Chief Engineer, Uttar Pradesh Avas Evam Vikas Parishad-ex officio member.

(j) The Finance Controller, Uttar Pradesh Avas Evam Vikas Parishad-ex officio member.

(k) The Chief Architect Planner, Uttar Pradesh Avas Evam Vikas Parishad-ex officio member.] Further, the Board may appoint such officers and servants as it considers necessary for efficient performance of its functions by virtue of section 8 of the Adhiniyam. The Housing Commissioner who is appointed by the State Government under the provision of section 7 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (UPAEVPA) has control over the all officers and servants of the Board by virtue of section 11 of said Adhiniyam. Thus, the officers and servants do not hold the ultimate controlling power and hence cannot be equated as Managers under the provision of section 13(3)(cc) of Income-tax Act.

Here it is pertinent to mention that even the Board does not have the ultimate control. The functions of the Board are defined under section 15 of the Adhiniyam which was constituted after the approval of U. P. Legislative Assembly and U. P. Legislative Council. Further, the power to make Rules vest with State Government u/s section 94 of the U.P. Awas Evam Vikas Parishad Adhiniyam, 1965. Further, as per section Page 164 of 242 (UP AWAS EVAM VIKAS PARISHAD) 92 of said Adhiniyam the State Government has control over the Board and if the Board acts beyond its power, State Government can always dissolve the board by virtue of section 93 of U.P. Awas Evam Vikas Parishad Adhiniyam, 1965. Further, the budget of the Parishad every year is approved by the State Government by virtue of section 63 of Adhiniyam. Therefore, the ultimate power vest with State Government and no individual or group of persons in case of the Parishad.

Thus, although the Board is given a large amount of discretion and a considerable amount of authority, but the mere doing of affairs of Parishad does not constitute these managers the controlling and directing power. Their power-of-attorney can be cancelled at any moment by dissolution of the Board by the State Government. The Board has to carry out any orders given to them from the Government, they must submit to Government an explanation of what they have been doing, and throughout the time that they are working is in a vigilant eye of the State Government.

Therefore, by no means the employee defined u/s 8 of the Adhiniyam are covered under the ambit of section 13(3) of the Income-tax. No concession or reservation in allotment of any property has been given by the Parishad to any person defined in section 3(5) of Adiniyam or even the Housing Commissioner in any year. Further, the Ld. Assessing Officer has first held that the Parishad has violated the provisions of section 13(3) in A.Y. 2017-18 and even the Ld. Commissioner of Income-tax (Appeals) has never adopted such view before A.Y. 2015-16. Here it would be pertinent to note that the Ld. Commissioner of Income-tax (Appeals) who held that the violation of section 13(3) has been committed by Parishad in A.Y. 2015-16 to A.Y. 2017-18, did not hold similar view while allowing the exemption claimed u/s 11 of Income-tax Act in A.Y. 2007-08 and A.Y. 2008-09 vide appellate order dated 15.11.2018 and neither the Ld Assessing Officer raised such issue in his remand report. Further, when the Ld. Commissioner of Income-tax (Appeals) raised this issue first in A.Y. 2015-16, we had made a submission that the employees of Parishad are not covered u/s 13(3)

and hence, no violation has been made. The said submission was pleaded to be accepted in A.Y. 2017-18 during the hearing before the Ld. Commissioner of Income-tax (Appeals). With respect to our contention that the legislatures never intended to include the employees, we further place our reliance on Page 165 of 242 (UP AWAS EVAM VIKAS PARISHAD) judgement of Hon'ble Patna High Court in case of Tata Steel Charitable Trust wherein it was observed and held as under:

"11. Now, coming to the second condition, as said above, 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) of Section 13 of the Act then such trust becomes disentitled to claim any exemption under Section 11 of the Act. 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. (See New Lexicon Webster's Dictionary). 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 cannot disentitle the trust from claiming exemption under Section 11(1)(a) of the Act."

Further, the Hon'ble Commissioner of Income-tax (Appeals), Moradabad in the appellate order dated 28.01.2019 in case of Moradabad Development Authority for A.Y. 2015-16 when similar issue was raised before her held as under:

"The AO has not specified as to how the beneficiaries are the persons mentioned in section 13(3) of the Income Tax Act. 1961. No specific instances are given by him. Further, on an apparent reading of section 13(3) read with the scheme of UP government, it does not appear that the scheme is intended to give benefit to the persons mentioned in section 13(3)."

Therefore, the employees/ officers referred in the G.O. cannot be construed as Adhyaksh or member of the Board of Parishad and for this reason even if any benefit is given by Parishad for social upliftment of its employees/ officers cannot be equated with the benefits given to persons defined under section 13(3) of Income-tax Act. In view of the aforesaid facts, the contention of the revenue on Page 166 of 242 (UP AWAS EVAM VIKAS PARISHAD) applicability of provisions of section 13(1)(c) read with section 13(3) of Income-tax Act, 1961, is unlawful, wrong and illogical.

III. REGARDING SECTION 11(2) & 13(1)(d) OF INCOME-TAX ACT In this regard it is submitted that the appellant Parishad has complied with the provisions of section 11(2) and section 11(5) read with section 13(1)(d) of Income-tax Act. The same is evident from the audited Financial Statements, the computation of income filed with return of income and audit report in Form 10B and Form 10 wherever applicable submitted during assessment proceedings.

In view of the aforesaid facts, circumstances, CBDT Circular No. 11/2008, judgements mentioned in earlier submissions and in this submission and judgement of Hon'ble Supreme Court in the case of

Andhra Pradesh Road Transport Corporation and judgement of Hon'ble Allahabad High Court in case of appellant Authority in ITA Nos. 12 of 2006 for 12AA registration dated 27.09.2013, 31 of 2010 for AY 2004-05 dated 16.09.2013, Moradabad Development Authority in ITA No. 3 of 2017 for A.Y. 2009-10 dated 03.05.2017 and judgement of Hon'ble Gujrat High Court in the case of Ahmedabad Urban Development Authority dated 02.05.2017 and Surat Urban Development Authority dated 21.09.2020,Hon'ble ITAT, Delhi in the case of Moradabad Development Authority in ITA Nos. 4631 and 4632/Del/2017 for A.Ys. 2012-13 and 2013-14 dated 04.01.2018 and judgement of Hon'ble ITAT, Agra in the case of Firozabad Shikohabad Development Authority vs. CIT-II, Agra in ITA No. 55/ Agra/ 2015 dated 07.02.2018 and judgement of Hon'ble ITAT, Agra in case of Agra Development Authority in ITA No. 215/Agr/2016 for AY 2011-12 dated 17.05.2021 and Jhansi Development Authorityin ITA No. 256/Agra/2014 for AY 2010-11 dated 13.01.2021and order of Hon'ble ITAT, Delhi in case of Haridwar Development Authority dated 30.06.2021and order of Ld. Assessing Officer, National Faceless Assessment Centre for AY 2018-19 and order of Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre for AY 2004- 05 and also the fact that since beginning there was no change in the charitable activities and main objects of Parishad, the Parishad deserves to be treated as charitable institution engaged in charitable activities in pursuit of charitable purposes and its income deserves to be treated as exempt u/s 11 read with section 2(15), 12 and 13 of the Income-tax Act, 1961 and delete the addition of Surplus(reflecting in Page 167 of 242 (UP AWAS EVAM VIKAS PARISHAD) the audited Income &Expenditure account) made by the Ld. Assessing Officer.

Supplementary written submissions dated 17/05/2022 A detailed submission with respect to non-applicability of proviso to section 2(15) of Income-tax Act has already been submitted earlier before your honours. Herein under we are submitting why the order in case of Greater Cochin Development Authority, relied upon by the department would not be applicable in case of the U. P. Awas Evam Vikas Parishad:

i. EXTRACTS FROM ORDER OF TRIBUNAL The facts are that The Greater Cochin Development Authority (hereinafter referred as GCDA) had a valid 12AA registration certificate. GCDA was denied exemption u/s 11 of Income-tax Act for AY 2009-10 and AY 2010-11 by the Hon'ble ITAT, Cochin. The relevant portion of the order is reproduced below:

"46. At the outset, we are of the view that we are not agreeable with the contention of the learned Counsel. At the same time, res judicata is not applicable in income-tax proceedings. We do not want to comment as to why and how the registration was granted to these authorities as the same is not pending before us for adjudication. Reliance can be placed upon the decision pronounced by the Hon'ble Apex Court in the case of Distributors (Baroda) (P) Ltd. v. Union of India and Ors. (155 ITR 120) wherein the Hon'ble Apex Court held that "it is almost as important that the law should be settled permanently as that it should be settled correctly but there may be circumstances where public interest demands that the previous decision be reviewed and reconsidered. The doctrine of stare decises should not deter the Court from overruling an earlier decision, if it is satisfied that such decision is manifestly wrong or precedes upon a mistaken assumption in regard to the existence or continuation of a statutory provision or is contrary to another decision of the Court."However, two views reasonably may be possible. Perpetuation of error is not a heroism. However, we make it clear

that this observation of ours should not be treated to bear any effect in the case of other assessees. At the same time, order passed by a lower Page 168 of 242 (UP AWAS EVAM VIKAS PARISHAD) authority is not binding on the Tribunal. However, it may be a good arguable point by the parties. This issue requires deliberation from a different angle whether the assessee was constituted to provide any charity to the public at large or to satisfy the needs for housing accommodation for the people of Kerala and also planning and development of the cities, towns and villages or whether the development in such a way is of charitable nature. A plea was raised by the learned Counsel for the assessee that funds are provided by the Kerala Government or generated by the assessee itself. To generate its funds for carrying out its objects, the assessee is acquiring lands, developing them and selling the plots to the general public who apply for the same. Even the economically weaker strata of the society is generally applying. It is not the case that the assessee is allotting houses to the poor masses free of cost. The Hon'ble apex Court in the case of Asstt. CIT v. Thanthi Trust (2001) 165 CTR (SC) 681 : (2001) 247 ITR 785 (SC) has deliberated upon the issue of charitable purposes wherein the founder of a daily newspaper created a trust in March, 1954 and the objects of the trust were originally to establish newspaper as an organ of educated public opinion for the Tamil reading public. In July, 1957, a supplementary deed making the trust irrevocable and Anr. supplementary deed for establishing and running a school/college for teaching journalism were added. The question before the Hon'ble Court was whether the income of the trust was exempt from income-tax during the relevant period, The Hon'ble Apex Court while coming to a particular conclusion reversed the decision of the Hon'ble High Court of Madras and held that the trust did not fall within the provisions of Section 11(4A), as it then stood, and was not entitled to exemption from tax.
....

48. The major thrust of the learned Counsel for the assessee is that the assessee is of general public utility as it satisfies the need for housing accommodation for the section of the people of State of Kerala, specifically Cochin and is also doing planning and development of the cities, towns and villages. We are not agreeable with the argument of the learned Counsel because a charitable institution provides services for charitable purposes either at free of cost or on cost to cost basis and not for profit. In the present scenario, the similar activities are performed by big colonizers/developers who are Page 169 of 242 (UP AWAS EVAM VIKAS PARISHAD) earning a huge profit. If this income is exempted u/s. 11, then we will open a pandora box and anybody will claim the exemption from tax.
....

52. The coordinate Bench of the Tribunal at Amritsar, following the decision in the case of Punjab Urban Planning and Area Development Authority vs. CIT, 156 Taxman 37 (Chd.) held, in the case of Jalandhar Development Authority V/s.CIT (2009)124 TTJ (Asr) 598, to which one of us, viz. author member, is a party, that denial of registration under S.12AA(a) of the Act to that assessee, which was also constituted under Punjab Regional And Town Planning and Development Act, 1995, was justified. The objects of the Authority in that case as noted by the Tribunal in para 3 of its order reads as follows:

....

53. At this juncture, it may be observed that the above objects noted by the Amritsar Bench of the Tribunal in the context of Jalandhar Development Authority, is almost identical to the assessee's case. Considering the contention of the assessee with regard to the charitable nature involved in its activities, and also taking into account the case-law cited before it in that behalf, held in conclusive portion of para 6.1 of that order as follows-

....

54. In view of the above discussion, we are inclined to hold that the CIT(A) is justified in rejecting the claim of exemption u/s. 11 of the I.T. Act."

ii. EXTRACTS FROM ORDER OF HON'BLE KERELA HIGH COURT Aggrieved of the order of Hon'ble ITAT, Cochin in case of GCDA an appeal was preferred before Hon'ble Kerela High Court vide ITA No. 208 & 210 of 2014. The Hon'ble High Court dismissed the appeals of GCDA and passed order dated 19.12.2014, whose relevant portion is reproduced below:

Page 170 of 242 (UP AWAS EVAM VIKAS PARISHAD) "The question that raises for consideration in these appeals is whether the activities of the appellant would qualify to be a charitable purpose as defined in Section 2(15) of the Act to claim exemption as provided under section 11 of the Act.

.....

12. We have already stated that for the assessment year, the total income assessed was Rs. 8,00,94,700/-. It is undisputed that the appellant is charging fees for supervision and centage charges, permission for transfer of land, copy of records, cost of forms, cost of plans, booklets and that the income on this account during the assessment year 2009-10 was Rs. 1,23,11,413/-. It is also undisputed that the appellant has developed several commercial centers and rented it out and that the appellant itself is responsible for the maintenance, upkeep and the provision of common facilities. The total receipts of such letting out and maintenance charges during the assessment year came to Rs. 4,09,73,498/-. It is also admitted that the commercial space developed by the assessee is auctioned by it to the highest bidder. These activities that are carried on by the assessee are for consideration and purely on commercial lines and these are activities which any other real estate developer is engaged in. It was considering these admitted facts that the assessing officer and the appellate authorities have concurrently come to the conclusion that the activities carried on by the assessee are in the nature of trade, or commerce or business, and that the assessee is receiving consideration in return for its activities carried on by the assessee are in the nature of trade, or commerce or business, and that the assessee is receiving consideration in return for its activities.

13. Considering the nature of the activities that are carried on by the assessee, the factual correctness of which is undisputed, we can only endorse the view taken by the statutory authorities that in view of the proviso to Section 2(15), the activities of the assessee do not qualify to be charitable purpose as defined therein. In such a scenario, the assessing officer was justified in disallowing the exemption claimed and assessing to tax the income of the assessee and the appellate authorities were justified in confirming the same. In such circumstances, we don't see any question of law arising in these appeals to be considered by this Court under Section 260(A) of the Income Tax Act.

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14. For these reasons, ITA No. 208/2014 is dismissed.

Since the issue raised in ITA No. 210/2014 is identical in all respects and in view of our conclusion as above, this appeal is also dismissed."

iii. EXTRACTS FROM ORDER OF HON'BLE SUPREME COURT Aggrieved of the said orders SLP were preferred by GCDA before Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the SLP of GCDA on 04.09.2015while stating as under:

"Heard the learned counsel for the petitioner and perused the relevant material.

We do not find any legal and valid ground for interference. The special leave petitions are dismissed."

APPELLANT CONTENTION It is firstly submitted that the Hon'ble Kerela High Court in its judgement has clearly mentioned that there is no question of law involved as accordingly to the factual position proviso to section 2(15) of Income-tax Act is applicable as decided by the Hon'ble ITAT, Cochin. The Special Leave Petition filed against the said order of Hon'ble Kerala High Court was dismissed by Hon'ble Supreme Court stating that there is no legal and valid ground for interference. Thus, it can be said that the Hon'ble Supreme Court consented with the order of Hon'ble Kerala High Court in terms of no question being involved in said case. Article 141 of Constitution of India stipulates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Since, in the case of Greater Cochin Development Authority no question of law is involved as adjudicated by Hon'ble Kerala High Court and then confirmed by Hon'ble Supreme Court, the dismissal of such SLP cannot be equated as law of land and hence, such order is not binding upon this Hon'ble Bench under Article 141 of Constitution of India.

Therefore, since the Hon'ble Kerala High Court was dismissed for there being no question of law involved, the order of Hon'ble ITAT, Cochin shall prevail as it was last fact-finding authority in case of Greater Cochin Development Authority. Your Honour kind attention is invited to judgement of Hon'ble Punjab & Haryana High Court in case Page 172 of 242 (UP AWAS EVAM VIKAS PARISHAD) of The Tribune Trust v. CIT in ITA No. 62 of 2015 dated 23.12.2016 wherein question arose before the court whether when Punjab & Haryana High Court has passed an order against

Jammu Development Authority, would the appeal of The Tribune Trust stand on any ground before the High Court. The Hon'ble High Court answered to the said contention of revenue as under:

"The judgment is of no assistance to the appellant for the Division Bench observed that there were findings of fact that the assessee/appellant had in that case not been acting to advance any object concerning general public utility. The judgment was, therefore, based on the facts of this case. It is obviously for this reason that the Division Bench held that no question of law much less a substantial question of law emerged from the order of the Tribunal. It is difficult to understand how this order can possibly be relied upon as laying down any law when Court itself records that the order impugned therein is based on the facts of that case. The dismissal of the Special Leave Petition filed against that order is, therefore, of no assistance to the Revenue either."

Further, it is submitted that from below made submissions it is clear that in case of appellant, the order of jurisdictional High Court would prevail as it has answered in affirmation to the question of non- applicability of proviso to section 2(15) of Income-tax Act in case of appellant itself, however, we would like to differentiate the constitution of Greater Cochin Development Authority from the appellant by drawing your honour kind attention to sub-section (1) of section 30 of Madras Town Planning Act of 1920 (i.e. the Act under whose provisions the Greater Cochin Development Authority was constituted) which allows utilization of funds for purposes beyond the Act post sanction from State Government. In this regard it is submitted that no similar provision is available in the Adhiniyam through which the appellant was constituted. On the contrary, the funds by the appellant cannot be utilized for any purpose beyond the administration of the Adhiniyam through which it was enacted.

sub-section (1) of section 30 of Madras Town Planning Act of 1920 "The receipts of a municipal council under this Acts or any town-planning scheme made there under shall form a separate town-planning fund and all expenditure under this Act or any town planning scheme there under shall defrayed out of such Page 173 of 242 (UP AWAS EVAM VIKAS PARISHAD) fund. No portion of the fund shall, except with the sanction of the State Government, be expanded for purposes not provided for by this Act."

Section 63 of Uttar Pradesh Awas Evam Vikas Adhiniyam, 1965 "(b) Every such budget shall be prepared in such form as may be prescribed and shall make provision for-

i. the housing and improvement schemes which the Board proposes to execute whether in part or whole during that year ;

ii. the due fulfillment of all the liabilities of the Board ; and iii. the efficient administration of this Act ;

And shall contain a statement showing the estimated receipts and expenditures on capital and revenue accounts for that year and such other particulars as may be prescribed.

(c)The Board shall after considering the budget sanction it with or without modifications, and submit the same to the State Government for approval.

(d) The State Government may either approve the budget as sanctioned by the Board, or return it to the Board for such modifications as the State Government may direct."

Further, it is submitted that in case of U. P. Awas Evam Vikas Parishad (the appellant) and Moradabad Development Authority (whose objects are similar to the appellant)question of law with respect to non- applicability of proviso to section 2(15) post amendment by Finance Act 2008 has been answered in favour of the assessees by Hon'ble Allahabad High Court by taking cognizance of its judgement in case of Yamuna Expressway Industrial Development Authority. The question of law framed in above three cases are as under:

Yamuna Expressway Industrial Development Authority in ITA No.

107 of 2016 dated 21.04.2017 wherein issue involved was granting of registration u/s 12AA of Income-tax Act Page 174 of 242 (UP AWAS EVAM VIKAS PARISHAD) Questions of Law "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 12-AA 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?"

Moradabad Development Authority (whose activities are quite similar to that of GCDA as well as appellant) for AY 2009-10 in ITA No. 03 of 20017 dated 03.05.2017 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 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.

Page 175 of 242 (UP AWAS EVAM VIKAS PARISHAD) (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 just incidental to its business. The Authority was acquiring land from farmers and 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 generalpublic utility by the appellant authority are undertaken/carried on in a totally commercial manner and activities of the assessee are similar to the Jammu 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 AppealNo.4990/2014. Hence the appellant authority is not entitled to registration under section 12A of the Income Tax Act,1961."

Page 176 of 242 (UP AWAS EVAM VIKAS PARISHAD) U.P. Awas Evam Vikas Parishad in ITA No. 15 of 2014 dated 18.07.2017 wherein issue involved was cancellation of 12AA registration.

Question of Law "Whether under the facts and circumstances of the case, the learned ITAT was right in holding that the registration granted u/s 12 A of the I.T. Act cannot be cancelled by the CIT under the provisions of Section 12AA (3) of the I.T. Act when the activities of the assessee were hit by the first and second proviso to section 2(15) of the I.T. Act w.e.f. 01.04.2009."

The Hon'ble Allahabad High Court while deciding the question of law in case of Yamuna Expressway Industrial Development Authority (Supra), has elaborately discussed as to when an object of advancement of general public utility would amount to charitable in nature and took cognizance of various provisions of the Act under which the respondents were constituted, non-applicability of proviso to section 2(15) of Income-tax Act was discussed after taking cognizance of in numerous case laws, some of which are enumerated as under:

1. Institute of Chartered Accountants of India vs. Director General of Income-tax (Exemption) [2012] 347 ITR 99 (Delhi)

2. CIT Versus Lucknow Development Authority, Lucknow 2014 (2) ALJ 578

3. Commissioner of Income-Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association [1980]121 ITR 1 (SC)

4. CIT Versus Krishi Utpadan Mandi Samite 2012 (12) SCC

5. Commissioner of Income-Tax Vs. Dawoodi Bohra Jamat [2014] 364 ITR 31 (SC)

6. CIT Versus Andhra Pradesh State Road Transport Corporation (1986) 159 ITR 1 (SC)

7. Commissioner of Income-Tax Vs. Gujarat Maritime Board [2007] 295 ITR 561 (SC)

8. Thiagarajar Charities Vs. Additional Commissioner of Income-Tax [1997] 4 SCC 724 Page 177 of 242 (UP AWAS EVAM VIKAS PARISHAD)

9. Director of Income Tax (Exemption) Vs. Sabarmati Ashram Gaushala Trust [2014] 362 ITR539 (Gujarat), Since the order of Hon'ble Allahabad High Court in case of appellant is post the order of Hon'ble Kerala High Court in case of GCDA and the Hon'ble Allahabad High Court is jurisdictional high court which has passed judgement stating that the proviso to section 2(15) of the Act is not applicable upon the appellant in question, the order of jurisdictional High Court should prevail over the order of Hon'ble Kerala High Court in case of GCDA.

Further, it is submitted before your honours that the Hon'ble ITAT, Cochin in case of GCDA referred the case of Lucknow Development Authority reported in (2013) 38 Taxman.com 246 (Alld.) and treated it to be as judgement of Hon'ble Allahabad High Court with respect to registration u/s 12A of Income-tax Act. In this regard it is submitted that the above judgement was interpreted on wrong pretext as the said judgement was with respect to granting of exemption u/s 11 of Income-tax Act for prior years to amendment in section 2(15) of Income-tax Act wherein the lordships had also considered the amendment to section 2(15) by Finance Act 2008.

Further, the basic viewpoint for denial of exemption u/s 11 of Income- tax Act by Hon'ble ITAT, Cochin was for the reason that according to it an institution is charitable only if it provides services at either free of cost or on cost-to-cost basis. In this regard it is firstly submitted that the Hon'ble Allahabad High Court in the case of Lucknow Development Authority and Yamuna Expressway Industrial Development Authority has already considered similar contentions made by revenue and held that profit motive should be involved, just generation of surplus does not take away charitable nature of the institution. Further, through following words, "However, we make it clear that this observation of ours should not be treated to bear any effect in the case of other assessees." the Hon'ble Cochin Bench in case of GCDA gave its indication to revenue that this order may not be treated blanketly on all assesses as it pertains to only the party involved.

Further, while adjudication of following cases, reference of Greater Cochin Development Authority has been made and order has been passed in favour of the assessee whose objects and nature of activities are similar to that of the appellant:

Page 178 of 242 (UP AWAS EVAM VIKAS PARISHAD) i. Hon'ble ITAT, Delhi in case of Dy Commissioner of Income-

tax v. Haridwar Development Authority in ITA No. 6796 & 5320/Del/2017 dated 30.06.2021 for AYs. 2013-14 & 2014-

ii. Hon'ble ITAT, Mumbai in case of Maharashtra State Road Transport Corporation in ITA No. 5577/Mum/2017 for AY 2013-14 dated 08.08.2019 iii. Hon'ble ITAT, Ahmedabad in case of Dy Commissioner of Income-tax v. Rajkot Urban Development Authority in ITA No. 2389/Ahd/2017 dated 18.12.2019 for AY 2009-10 iv. Hon'ble ITAT, Ahmedabad in case of Gujrat Housing Board v. DDIT (Exemption) in ITA NO. 1224/Ahd/2016 dated 23.01.2018 for AY 2011-12 Furthermore, reliance is placed on the order of Hon'ble Bench in case of Lucknow Development Authority dated 14.03.2022 where the objects were similar to that of the appellant and exemption u/s 11 of Income-tax is allowed holding that the proviso to section 2(15) of Income-tax Act is not applicable.

Further, it is submitted that where two views are possible in a case, the view favorable to assessee should be adopted as held by Hon'ble Supreme Court in Vegetable Products Ltd. (1973) 88 ITR 192.

Further, it is utmost important that the law should be settled correctly than permanently. The doctrine of stare decises should not deter from overruling an earlier decision when such decision is manifestly wrong. In this regard, reliance is placed on judgement of Hon'ble Apex Court in the case of Distributors (Baroda) (P) Ltd. v. Union of India and Ors. (155 ITR 120) wherein the Hon'ble Apex Court held that "it is almost as important that the law should be settled permanently as that it should be settled correctly but there may be circumstances where public interest demands that the previous decision be reviewed and reconsidered. The doctrine of stare decises should not deter the Court from overruling an earlier decision, if it is satisfied that such decision is manifestly wrong or precedes upon a mistaken assumption in regard to the existence or continuation of a statutory provision or is contrary to another decision of the Court."

Furthermore, your honours kind attention is being invited to the fact that the case of AY 2015-16 was selected for re-assessment Page 179 of 242 (UP AWAS EVAM VIKAS PARISHAD) proceeding and in return filed u/s 148, exemption u/s 11 of Income- tax Act was claimed. The Ld. Assessing Officer, National Faceless Centre granted exemption u/s 11 of Income-tax Act vide order u/s 147 of Income-tax Act and deleted all the additions made earlier through order u/s 143(3) of Income-tax Act.

In view of the aforesaid facts, circumstances and oral and written submissions made on earlier dates, CBDT Circular No. 11/2008, judgements mentioned in earlier submissions and in this submission and judgement of Hon'ble Supreme Court in the case of Andhra Pradesh Road Transport Corporation and judgement of Hon'ble Allahabad High Court in case of appellant Authority in ITA Nos. 12 of 2006 for 12AA registration dated 27.09.2013, 31 of 2010 for AY 2004-05 dated 16.09.2013, Moradabad Development Authority in ITA No. 3 of 2017 for A.Y. 2009-10 dated 03.05.2017 and judgement of Hon'ble Gujrat High Court in the case of Ahmedabad Urban Development Authority dated 02.05.2017 and Surat Urban Development Authority dated

21.09.2020,Hon'ble ITAT, Delhi in the case of Moradabad Development Authority in ITA Nos. 4631 and 4632/Del/2017 for A.Ys. 2012-13 and 2013-14 dated 04.01.2018 and judgement of Hon'ble ITAT, Agra in the case of Firozabad Shikohabad Development Authority vs. CIT-II, Agra in ITA No. 55/ Agra/ 2015 dated 07.02.2018 and judgement of Hon'ble ITAT, Agra in case of Agra Development Authority in ITA No. 215/Agr/2016 for AY 2011-12 dated 17.05.2021 and Jhansi Development Authority in ITA No. 256/Agra/2014 for AY 2010-11 dated 13.01.2021 and order of Hon'ble ITAT, Delhi in case of Haridwar Development Authority dated 30.06.2021and order of Ld. Assessing Officer, National Faceless Assessment Centre for AY 2018- 19 and order of Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre for AY 2004-05and also the fact that since beginning there was no change in the charitable activities and main objects of Parishad, the Parishad deserves to be treated as charitable institution engaged in charitable activities in pursuit of charitable purposes and its income deserves to be treated as exempt u/s 11 read with section 2(15), 12 and 13 of the Income-tax Act, 1961 and delete the addition of Surplus (reflecting in the audited Income & Expenditure account) made by the Ld. Assessing Officer and the other additions made may kindly be deleted as well.

Prayer It is most respectfully prayed that the Hon'ble Income Tax Appellate Page 180 of 242 (UP AWAS EVAM VIKAS PARISHAD) Tribunal may kindly be pleased to treat the Parishad as institution existing solely for charitable purposes and grant the exemption u/s 11 read with section 2(15), 12 and 13 of Income-tax Act.

16. We have heard the rival parties and have gone through the material placed on record. The appeals were earlier heard on 24/01/2022. However, during the course of dictation of the order, it was observed that the Special Counsel of the Revenue had placed heavy reliance on the order of Hon'ble Supreme Court in the case of Greater Cochin Development Authority wherein it was claimed that under similar facts and circumstances, Hon'ble Supreme Court had dismissed the appeals filed by the assessee. We observe that the Learned counsel for the assessee had not elaborated on this argument of the Revenue therefore, the cases were refixed and were finally heard on 17/05/2022. Learned counsel for the assessee filed supplementary written submissions, which has been made part of this order. In the supplementary written submissions, the Learned counsel for the assessee has argued that the judgment of Hon'ble Supreme Court in the case of Greater Cochin Development Authority is not applicable to the facts and circumstances of assessee. Elaborating on such judgment, Learned counsel for the assessee, through her written submissions, had submitted that in that case the Hon'ble ITAT had held that the activities of the assessee were hit by the proviso to section 2(15) of the Act and Hon'ble High Court had dismissed the appeal of the assessee by holding that no substantial question of law arose in that appeal and in this respect our attention was invited to the judgment of Hon'ble Kerala High Court dated 19/12/2014. We find force in this argument of the ld. Counsel as Hon'ble High Court did not frame any question of law therefore, the Special Leave Petition dismissed by Hon'ble Supreme Court does not lay down any law in this respect and therefore, the judgment of Hon'ble Supreme Court is not a Page 181 of 242 (UP AWAS EVAM VIKAS PARISHAD) binding precedent. We further find that the judgment of Hon'ble High Court of Jammu & Kashmir in the case of Jammu Development Authority is also not applicable to the assessee as that case related to the denial of registration u/s 12A of the Act and in the present cases there is no dispute regarding registration u/s 12A of the Act as the assessee is duly

registered u/s 12A of the Act. Moreover, in this case also the Hon'ble High Court had not framed any question of law.

17. We find that Hon'ble Punjab & Haryana High Court in the case of the Tribune Trust Chandigarh vs. CIT has observed that where the High Court had not framed any question of law, the SLP dismissed by Hon'ble Supreme Court do not lay down any law. We find that Hon'ble Kerala High Court in its judgment dated 14/12/2014 had not framed any question of law what to talk substantial question of law. In this respect, it is important to reproduce the findings of Hon'ble Kerala High Court, which for the sake of completeness are reproduced below:

> "13. Considering the nature of the activities that are carried on by the assessee, the factual correctness of which is undisputed, we can only endorse the view taken by the statutory authorities that in view of the proviso to Section 2(15), the activities of the assessee do not qualify to be charitable purpose as defined therein. In such a scenario, the assessing officer was justified in disallowing the exemption claimed and assessing to tax the income of the assessee and the appellate authorities were justified in confirming the same. In such circumstances, we don't see any question of law arising in these appeals to be considered by this Court under Section 260(A) of the Income Tax Act."

18. We find from the findings of Hon'ble High Court of Kerala and further from the findings of Hon'ble Jammu & Kashmir High Court in the case of Jammu Development Authority that Hon'ble High Courts had not framed any Page 182 of 242 (UP AWAS EVAM VIKAS PARISHAD) question of law and had dismissed the appeals of the assessees based upon the facts of those assessees and therefore, the dismissal of SLP, filed by the assessee, by Hon'ble Supreme Court, cannot be said to have laid down any law and therefore, the findings of Hon'ble Supreme Court in the case of Greater Cochin Development Authority and in the case of Jammu Development Authority, will not be applicable to the cases of the assessee as in the case of the assessee, the jurisdictional High Court of Allahabad has already decided the issue in favour of the assessee wherein the Hon'ble court has held that the activities of the assessee are not hit by the proviso to section 2(15) of the Act. Since admittedly by both parties, there has not been any change in the activities undertaken by the assessee therefore, the activities undertaken by the assessee during these years under consideration will not be hit by the proviso to section 2(15) of the Act. For the sake of convenience, the findings of Hon'ble Allahabad High Court dated 18/07/2017 in the case of assessee itself are reproduced below:

> "3. This appeal was admitted on following substantial question of law:
>
> "Whether under the facts and circumstances of the case, the learned ITAT was right in holding that the registration granted u/s 12A of the I.T. Act cannot be cancelled by the CIT under the provisions of Section 12AA (3) of the I.T. Act when the activities of the assessee were hit by the first and second proviso to section 2(15) of the I.T. Act w.e.f. 01.04.2009."

> 4. Learned counsel for the parties at the outset could not dispute that issue raised in this appeal is squarely covered by this Court's judgment in Income Tax Appeal No. 107 of 2016: Commissioner of Income Tax, (Exemption), Lucknow Vs. M/s Yamuna Expressway Industrial Development Authority and other two connected appeals decided on 21.04.2017.
>
> 5. For the reasons stated in aforesaid judgment, the question raised in this appeal is answered against Revenue.
>
> Page 183 of 242 (UP AWAS EVAM VIKAS PARISHAD)
>
> 6. Appeal is accordingly dismissed."

18.1 The Hon'ble High Court, it is seen, has relied on its decision in the case of Yamuna Expressway Industrial Development Authority. It would be appropriate to reproduce the relevant portion of the decision of High Court order dated 21/04/2017 passed by Hon'ble Allahabad High Court in the case of Yamuna Expressway Industrial Development Authority in I.T.A. No.107 of 2016 as under:

> "31. Reverting back to pivotal issue, we find that CIT (E), at the stage of registration, is not supposed to inquire into the conduct of charitable or other activities to be performed by a trust or institution which has submitted application for registration. That is an investigation to be gone subsequently at the time of assessment by Assessing Authority. In this regard, reliance is placed on Kerala High Court in Sree Anjaneya Medical Trust Versus CIT (2016) 382 ITR 399 and Karnatka High Court in Commissioner of Income Tax and others Versus Sri Gururaja Seva Samithi decided on 3.7.2015 and some other authorities which we may discuss in detail at appropriate stage.
>
> 32. Though arguments have been advanced in a much wider compass, but we find that real dispute is whether respondents- authorities would satisfy term "charitable purpose' as defined under Section 2(15) of Act, 1961 so as to entitle them for registration under Section 12A(1) of Act, 1961. Another argument has been raised that at the stage of considering application for registration, CIT (E) is not entitled to look into the question, whether activities of applicants seeking registration are charitable or not.
>
> 33. Under the definition of "charitable purpose' parties are ad idem that all three IDA's at the best, would have to be covered by the words "advancement of any other object of general public utility".

34. It is also admitted that if fail, they are not entitled for registration. Endeavour on the part of Revenue, is that proviso inserted in Section 2(15) by Finance Act, 2008 with effect from 01.04.2009 excluding activities in the nature of trade, commerce or Page 184 of 242 (UP AWAS EVAM VIKAS PARISHAD) business or any service rendered in relation to trade, commerce or business for a cess

or fee or any other consideration, excludes all the aforesaid three "IDAs' from the purview of definition of "charitable purpose' under Section 2(15) of Act, 1961.

35. Explaining amended provision defining "charitable purpose", Central Board of Direct Taxes, (hereinafter referred to as "CBDT"), has issued Circular No.134/34/2008-TPL (Circular No.11/2008) dated 19th December, 2008. It is clarified therein that proviso to Section 2(15) will not apply to first 3 limbs, namely, relief of the poor, education or medical relief. It will apply only to entities whose purpose is "advancement of any other object of general public utility" i.e. 4th limb of definition of "charitable purpose".

36. Entities which carry on commercial activities will not be eligible for exemption under Section 11 or 10 (23C) of Act, 1961. Whether an entity is carrying on activities in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of activities. It is said that an Assessee, if engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is "charitable purpose". In such a case, object of general public utility will be only a mask or a device to hide the true purpose, which is trade, commerce or business, or rendering of any service in relation to trade, commerce or business. In our view, each case would depend on its own facts and no generalization is possible.

37. Recapitulating history of definition of expression "charitable purpose", we find that phrase "advancement of object of general public utility" was raised sometimes during course of arguments in Morice Versus Bishop of Durham (1805) 10 Ves Jr 522 by Sir Samuel Romilly when he tried to subsume "charitable purposes" under four heads i.e. relief of the indigent, the advancement of learning, the advancement of religion and the advancement of objects of general public utility. Substance of the above statement was taken note by Lord Macnaghten in Special Commissioners Versus Pemsel (1891) A.C. 531 (HL), where he pointed out that charity in its legal sense, comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of the preceding heads. In Macduff's case Page 185 of 242 (UP AWAS EVAM VIKAS PARISHAD) (1896) 2 Ch451 (456) Lord Lindley and other Law Lords held that the words "general public utility" are very wide in their scope and that every object of public utility may not necessarily be a charitable purpose.

38. In 1918, expression was inserted in Indian Income Tax Act, 1918 adding the phrase "advancement of other objects of general public utility", without any restriction or qualification whatever in Explanation to Section 4 (3). In Trustees of Tribute, in re (1935) 3 ITR 246, 272 (Lah) Justice Tek Chand remarked, that Indian legislature, has used a phraseology which is much wider and more comprehensive than that of fourth head of classification in Special Commissioner Versus Pemsel (supra). The aforesaid remarks of Justice Tek Chand were approved by judicial committee of Privy Council in Trustees of the Tribute, In re (1939) 7 ITR 415(PC).

39. The four heads are to be read in ejusdem generis so as to give relief to public. Simultaneously, they should be given their natural meaning as it can be in common parlance but in a manner so as to

keep objects, public in nature. Whether a particular object is of general public utility or not is to be tested by the principles applicable to such case in a Court of Law and by finding out whether Court should record a trust or charity and would undertake its administration and control.

40. In CIT Versus Andhra Pradesh State Road Transport Corporation (1986) 159 ITR 1 (SC), Court considered the question, whether Road Transport Corporation established by Government for providing road transport facilities to general public, and a statutory enactment obliged the Corporation to handover to the Government all income left over after meeting expenses which was to be invested by Government for road development, its activities do not involve carrying on of an activity for profit and its income would be exempted as that of an institution meant for advancement of an object of general public utility.

41. Broadly, it is said that a valid trust for a charitable or religious purposes involves:

1) the specification or identification of the property, the subject matter of the trust;

2) the dedication of the property;

3) the constitution of the public as the beneficiary; and Page 186 of 242 (UP AWAS EVAM VIKAS PARISHAD)

4) the specification of the objects on which or for which income from the property is to be spent or applied.

42. In the context of Krishi Utpadan Mandi Samiti, a similar question came up for consideration before this Court in CIT Versus Krishi Utpadan Mandi Samitee 2010 (1) ALJ 817. It was held that charging of cess/fee is for the purpose of carrying out object of Act i.e. Krishi Utpadan Mandi Samiti Adhiniyam, 1964 (hereinafter referred to as "U.P. Act,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.

43. This judgment of High Court has been confirmed by Supreme Court in Appeal preferred by Revenue in CIT Versus Krishi Utpadan Mandi Samitee 2012 (12) SCC 267.

44. In Commissioner of Income-Tax Vs. Dawoodi Bohra Jamat [2014] 364 ITR 31 (SC) the question, whether Dawoodi Bohra Jamat (hereinafter referred to as "DBJ") is a "charitable trust" was considered. DBJ is a registered public trust under M. P. Public Trust Act, 1951. It filed an application before CIT (E) under Section 12A read with Section 12AA for registration so as to get exemption under Section 11 of Act, 1961. CIT (E) rejected application by order dated 14th September, 2007. It held that DBJ is not a charitable trust since its object and purpose is confined to only a particular

religious community, it would attract provisions of Section 13(1)(b) hence registration was denied. In appeal, Tribunal however took a different view and held that DBJ is entitled to claim registration under Section 12A and 12AA. Revenue came in appeal to High Court which held that the findings of Tribunal are factual. However, Section 13(1)(b) would not be applicable to DBJ as trust is not created or established for benefit of any particular religious community or caste. Consequently, Revenue's appeal was rejected by High Court vide judgment dated 22.06.2009. Then the matter went to Supreme Court. Objection of Revenue was that object of trust was not wholly religious in nature, but charitable and confined to the benefit of a particular religious Page 187 of 242 (UP AWAS EVAM VIKAS PARISHAD) community i.e. DB community hence Section 13(1)(b) was attracted, ousting trust from ambit of exemption available under Sections 11 and 12 of Act, 1961. Court held, that, under the scheme of Act 1961, Sections 11 and 12 are substantive provisions. They provide exemption to a religious or charitable trust. Income derived from property held by such public trust as well as voluntary contributions received by said trust are subject matter of exemption from taxation under Act, 1961. Section 12A and 12AA contain detailed procedural requirements for making application for registration. Registration under Section 12A and 12AA is a condition precedent for availing benefit under Section 11 and 12. Unless institution is registered under Sections 12A and 12AA, it cannot claim benefit of Sections 11 and 12. After referring to various authorities, Court then said that legal effect of true facts and documents is a question of law. Determination of nature of trust as wholly religious or wholly charitable or both charitable and religious under Act, 1961 is not a question of fact. It is a question which requires examination of legal effects on proven facts and documents, i.e., the legal implication or object of respondent- trust as contained in trust deed. Words "other objects of "general public utility" were considered in a catena of decisions. The said expression is of the widest connotation. Words "general' in the said expression is pertaining to a whole class. Court relied on its earlier decision in Commissioner of Income-Tax Vs. Gujarat Maritime Board [2007] 295 ITR 561 (SC), and held that advancement of any object or benefit to the public or a section of public is distinguished from benefit to an individual or a group of individuals, and would be a charitable purpose. In Additional Commissioner of Income-Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 (SC) a Constitution Bench held, 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.

45. In DBJ, (supra) Court relied on Thiagarajar Charities Vs. Additional Commissioner of Income-Tax [1997] 4 SCC 724. The word "charity" connotes altruism in thought and action and involves an idea of benefiting others rather than oneself. Supreme goal of all religions is philanthropy which could be manifested in various forms. It has been held that gifts for religious purposes are prima facie gifts for Page 188 of 242 (UP AWAS EVAM VIKAS PARISHAD) charitable purposes. Court also observed that in Section 13(1)(b) it could be inferred that Legislature intended to include trusts established only for charitable purposes. It does not mean that a trust, if composite one, that is, one for both religious or charitable purposes, then it would not be covered by clause (b) of Section 13(1). What is intended to be excluded from being eligible for exemption under Section 11 is a trust for charitable purpose, which is established for the benefit of any particular religious

community or caste. Court, therefore, held that DBJ is a trust based on religious tenets under ''Quran' according to religious faith of Islam. Perusal of objects and purposes of DBJ Trust demonstrate that activities of trust, though both charitable and religious, are not exclusively meant for a particular religious community. The objects do not channel benefit of any community hence would not fall under the ambit of Section 13(1)(b) of Act, 1961.

46. In Director of Income Tax (Exemption) Vs. Sabarmati Ashram Gaushala Trust [2014] 362 ITR 539 (Gujarat), after looking into the documents relating to insertion of proviso in Section 2(15) of Act, 1961, Court said that activity of a trust would be excluded from the term "charitable purpose', if it is engaged in any activity in the nature of trade, commerce or business or any service in relation to trade commerce or business for a cess, fee and/or any other consideration. Intention is not to exclude genuine charitable trust of general public utility, but is aimed at excluding activities in the nature of trade commerce or business, which are masked as "charitable purpose". Gujarat High Court said that the main object of trust was for general public utility and for charitable purposes. The main objectives of trust are to breed the cattle and endavour to improve quality of cows and oxen in view of need of good oxen as India is prominently an agricultural country, to produce and sale cow milk, to hold and cultivate agricultural land etc. Various activities relating to cow milk and other research maintenance etc., Court held, that objects are of general public utility. Profit making was neither the aim nor object of trust. It was not principal activity. Merely because, while carrying out activities for the purpose of achieving the objects of the trust, certain incidental surpluses were generated, would not render the activity in the nature of trade, commerce or business.

47. In Delhi High Court this dispute was raised in Institute of Chartered Accountants of India Vs. Director General of Income-tax (Exemption) [2012] 347 ITR 99 (Delhi). Court held that activities of Page 189 of 242 (UP AWAS EVAM VIKAS PARISHAD) institute i.e. fundamental or dominant function of institute was to exercise overall control or regulate activities of members/enroll chartered accountants and merely if same institute was holding coaching classes would not generate income. Court held that proviso to Section 2(15) of Act, 1961 would not be attracted to Institute of Chartered Accountants of India.

48. In the context of Lucknow Development Authority (hereinafter referred to as "LDA") a statutory body constituted under U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as "UPUPD Act, 1973") in CIT Versus Lucknow Development Authority, Lucknow 2014 (2) ALJ 578, a question arose whether it would be entitled for registration under Section 12A/12AA. On behalf of Revenue, it was argued that LDA is engaged in activities of acquiring land, developing plots, constructing residential as well as commercial places and selling thereto. Sales are also undertaken through auction process and sold to highest bidder, to earn more and more profits. Said activities are trade in nature and liable to tax. Revenue sought to equate LDA with private colonizers and builder. On behalf of LDA various provisions of UPUPD Act, 1973 were placed. This Court held that expression ''general' under Section 2(15) means pertaining to whole class. Advancement of any object or purpose to benefit public or a section of public is distinguished from benefit to an individual or group of individuals. Expression "charitable purpose" would prima facie include all objects which promote welfare of general public.

49. In the context of Gujarat Maritime Board, similar issue came up for consideration in Commissioner of Income-Tax Vs. Gujarat Maritime Board [2007] 295 ITR 561 (SC). Here also Commissioner rejected application for registration, but Tribunal allowed it and judgment was confirmed by High Court. Supreme Court affirmed High Court verdict that Assessee was under a legal obligation to apply its income which was directly and substantially received from business held under trust for development of minor ports in State of Gujarat. Court distinguished Section 10(20) and Section 11 of Act, 1961 and held that both provisions operate in totally different spheres. If Board ceased to be "local authority", it is not precluded from claiming exemption under Section 11(1) in the light of definition of "charitable purposes" under Section 2(15) of Act, 1961. Advancement of any object of benefit to public or a section of public as distinguished from benefit to an individual or a group of individuals could be a "charitable purpose". It was held that Gujarat Maritime Board was established for Page 190 of 242 (UP AWAS EVAM VIKAS PARISHAD) predominant purpose of development of minor ports within State of Gujarat and its management was given in the hands of Government. Income earned by Board is deployed for development of minor ports in the State. In the circumstances, it was held within the ambit of definition of "charitable trust' under Act, 1961.

50. In the case of Jaipur Development Authority, Revenue held that major source of income is sale of plots and built up properties. Remaining income is received from various charges, fees and penalties levelled and collected by Jaipur Development Authority. Jaipur Bench of Tribunal in I.T.A.No.182/JP/2012, Jaipur Development Authority, J.L.N. Marg, Jaipur Vs. The C.I.T.-II Jaipur, decided on 30.09.2014, held that Jaipur Development Authority is entitled for registration under Section 12A and in this context said as under:-

> "The JDA was established in October, 1982 by JDA Act. Purpose of JDA is for planning, coordinating and supervising for proper, orderly and rapid development of the areas in Jaipur region, in which several government departments, local authorities and other organization are at present engaged within their own jurisdictions to provide also that such authority be enabled either itself or through other authority to formulate and execute plans, projects and schemes for the development of Jaipur region. So that housing, community facilities, civic amenities and other infrastructure are properly created for the population of Jaipur region in the prospective of 2001 AD or thereafter including the intermediate stage and to provide for matters connected with the purpose of aforesaid. Later on this Act further amended from time to time as per need of Jaipur region. As per chapter (vi), functions of the authorities have been defined in item No. (a) to (s). As per item-(h), the authority is authorized to develop agriculture, horticulture, floriculture, forestry, dairy development, transport, communication, schooling, cultural activities, sports, medicare, tourism, entertainment and similar other activities. As per item-
>
> (n), it performs in the area of urban renewal, environment and ecology directly or through its functional boards, therefore, the JDA not only planning the urban area with master development plan and zonal development plan but also sanction projects and schemes for development. The JDA is a tool of State government for coordinated and planned development in Jaipur region. In practical, the main work of JDA is

construction of Page 191 of 242 (UP AWAS EVAM VIKAS PARISHAD) roads, sewerage, parks, play grounds, provide plots for educational, health and cultural institution for over all development of the community. By making planned development it provides smooth transaction so that air pollution can be minimized and save time of the public. If it is left in the hands of private operator, these facilities would not be provided on similar price as provided by the JDA. Whatever, the Revenue is generated through these activities are finally utilized for the benefit of the public. The intention of the institution is not to earn profit but recover the cost of the establishment as well as other expenditure to implement the object of the JDA. The State Government also give the grant to it." (emphasis added)

51. We would now examine in the light of above "definition" as explained by CBDT vide Circular dated 19th December, 2008 and exposition of law, discussed above, whether an IDA constituted under a provincial enactment, on the subject of Industrial Development, would satisfy requirement of Section 2(15) of Act, 1961 and would not be disqualified by attracting proviso thereto.

52. In this regard, we may examine functions of aforesaid ''IDAs' vis-a-vis nature of funds they collect in different forms. All three ''IDAs' are statutory bodies. They cannot function beyond authority conferred by UPIAD Act, 1976. Section 6 provides object of IDA which includes acquisition of land; preparation of a plan for development of industrial development area; demarcation and development of sites for industrial, commerce and residential purposes according to plan; providing infrastructure for industrial, commercial and residential purposes; to provide amenities; allocate transfer either by sale or lease or otherwise plots of land for industrial, commercial and residential purposes; regulate erection of buildings and setting up of industries and laying down plans for which a particular site or plot of land shall be used i.e. for industrial, commercial or residential purposes; and, to regulate industrial, commercial, residential or any other specified purpose. Therefore basic object is to develop and regulate of an area notifying as industrial development area.

53. Funds collected by ''IDAs' constituted under UPIAD Act, 1976 include taxes under Section 11 which can be levied for the purpose of providing, maintaining or continuing amenities in industrial development area. However, maximum quantum of tax provided under Section 11 is that it shall not exceed 25% of annual value of Page 192 of 242 (UP AWAS EVAM VIKAS PARISHAD) such site or building and such tax cannot be imposed by IDA without previous approval of State Government.

54. Funds of IDA shall constitute, under Section 20, as under:-

"20. Fund of the Authority (1) The Authority shall have and maintain as own fund to which shall be credited

(a) all moneys received by the Authority from the State Government by way of grants, loans, advances or otherwise

(b) all moneys borrowed by the Authority from sources other than the State Government by way of loans or debentures

(c) all (fees, tolls and charges) received by the Authority under the Act

(d) all moneys received by the Authority from the disposal of lands buildings and other properties movable and immovable and

(e) all moneys received by the Authority by way of rents and profits or in any other manner or from any other source."

55. Section 20(2) says that funds shall be applied by IDA towards meeting expenses incurred in administration of UPIAD Act, 1976 and for no other purposes. Therefore, there is a complete bar that the funds of authorities can be used only for the purpose of UPIAD Act,1976 and not otherwise. As we have already said, they are for general public utility and not for an individual or any individual group or otherwise. State Government after due approval by Legislature by law, grant advances etc. to ''IDA' for performance of functions under UPIAD Act, 1976. Similarly, an ''IDA' may also borrow money by way of loan or debenture from such sources, other than Government, on such terms and conditions as may be approved by State Government. For re-payment of borrowed money, an "IDA' is required to maintain a sinking fund. Accounts of ''IDAs' are to be audited vide Section 22, in the area declared as ''industrial township'. There may not be constituted any ''municipality' though it is obligatory under Article 243 (Q) of Constitution, but proviso to Article 243 (Q) (1) authorizes Governor to specify an ''IDA' as "industrial township" and municipal services thereof shall be provided by ''IDA' in that area. Therefore, within the area, the ''IDAs' have been declared industrial township and municipal services are to be provided by them.

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56. We may also examine some other aspects commented by Revenue to exclude ''IDAs' from the ambit of Section 2(15) of Act, 1961.

57. One of the queries made by CIT (E) was evidence regarding ownership of land, building in the name of ''IDAs', audit report of preceding three years with income and expenditure receipt and payment account and also whether any fund has been set apart/accumulated during last three years for any specified object or trust. We have already noted that the statute i.e. UPIAD Act, 1976, itself takes care of funds stating that ''IDAs' shall use entire fund, whatever is available from various resources, for the purpose of UPIAD Act, 1976 and in performance of their objectives and duties under the said Act.

58. With reference to Section 6 (2)(i), IDA acquire land, develop the same and sell at the cost of acquisition plus development. For the purpose of maintenance cost, it charges lease rent from the allottee of the land. If any surplus arises or remains with ''IDAs', it has to be consumed/utilized for meeting expenses incurred by ''IDAs' in administration of UPIAD Act, 1976 and not for any other purpose.

59. Thus, whatever amount is received by ''IDAs' under different heads, whether tax, rent, fee, sale consideration etc., it has to be used in discharge of objectives and functions provided under UPIAD

Act, 1976, for the benefit of general public.

60. In Ramtanu Cooperative Housing Society Limited and another Versus State of Maharashtra and others 1970 (3) SCC 323 a Constitution Bench had an occasion to examine validity of Maharashtra Industrial Development Act of 1962. Under the said Act, provisions were made for incorporation, regulation and winding up of Maharashtra Development Corporation. The true character of Corporation was examined by Court in the light of provisions of Act and it was observed that Corporation is established for the purpose of securing and assisting rapid and orderly establishment and organization of industries in industrial areas and industrial estates in the State of Maharashtra. Functions of Corporation are generally to promote and assist in rapid and orderly establishment, development of industries in Maharashtra and to establish and manage industrial estates at places selected by State Government, develop industrial areas selected by Government for the purpose and make them Page 194 of 242 (UP AWAS EVAM VIKAS PARISHAD) available for undertakings to establish themselves, assist financially by loans and to undertake schemes or works, either jointly with other corporate bodies or institutions or with Government or local authorities, or an agency basis, in furtherance of the purposes for which Corporation is established. There also an industrial area was to be declared by notification by State Government. An argument was raised that Corporation was a trading one as it can sell property, transfer land, borrow money and entitled to charge rents and profits etc. Rejecting contention that Corporation is a trading body, Court said:-

> "these profits will be themselves neither be the indicia nor the decisive attributes of the trading character of the Corporation. Ordinarily, a Corporation is established by shareholders with their capital. The shareholders have their Directors for the regulations and management of the Corporation. Such a corporation set up by the shareholders carries on business and is intended for making profits. When profits are carned by such a Corporation they are distributed to shareholders by way of dividends or kept in reserve funds. In the present case, these attributes of a trading Corporation are absent. The Corporation is established by the Act for carrying out the purposes of the Act. The purposes of the Act are development of industries in the State. The Corporation consists of nominees of the State Government, State Electricity Board and the Housing Board. The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing buildings, allotting builings, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of the sole purpose of establishment, growth and development of industries.
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> 17. The corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of Page 195 of 242 (UP AWAS EVAM VIKAS PARISHAD) road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of work of the Corporation. The fund of the

> Corporation consists of moneys received from the State Government, all fees, costs and charges received by the Corporation, all moneys received by the Corporation from the disposal of lands, buildings and other properties and all moneys received by the Corporation by way of rents and profits or in any other manner. The Corporation shall have the authority to spend such sums out of the general funds of the Corporation or from reserve and other funds. The Corporation is to make provision for reserve and other specially denominated funds as the State Government may direct. The Corporation accepts deposits from persons, authorities or institutions to whom allotment or sale of land, buildings, or sheds is made or is likely to be made in furtherance of the object of the Act. A budget is prepared showing the estimated receipts and expenditure. The accounts of the Corporation are audited by an auditor appointed by the State Government. These provisions in regard to the finance of the Corporation indicate the real role of the Corporation, viz, the agency of the Government in carrying out the purpose and object of the Act which is the development of industries. If in the ultimate analysis there is excess of income over expenditure that will not establish the trading character of the Corporation." (emphasis added)

61. Aforesaid observations applied from all corners to respondent- authorities i.e. "IDAs' and it is a complete answer in the present case also to the argument that Cess/Fee and other considerations realized by ''IDAs' render their activities in the nature of trade, business or commercial so as to exclude them from definition of "charitable purposes" by application of proviso to Section 2 (15) of Act, 1961. It was also observed that there are two features, which are normally not found in trading corporation (1) that the sums payable to corporation are recoverable as arrears of rent under the Act and (2) on dissolution, assets vest in and liabilities become enforceable against the State Government. Court also said that underlying concept of trading Corporation is buying and selling, but in the case of Corporation under the aforesaid Act, there was no aspect of buying or selling. Corporation carries out the purpose of Act, i.e. development of Page 196 of 242 (UP AWAS EVAM VIKAS PARISHAD) industries in the State. Constructions of buildings, establishment of industries by letting building on hire or sale, acquisition and transfer of land, in relation to establishment of industrial estates, or development of industrial areas and setting up of industries, it cannot be said to be relating to land or buildings for the reason that State is carrying out the object of Act with the Corporation as an agent in setting up industries in the State. Act aims at buildings and industrial town and the Corporation carries out objects of the Act. Court further said that:-

> "The hard core of a trading Corporation is its commercial character. Commerce connotes transactions of purchase and sale of commodities, dealing in goods. The forms of business transactions may be varied but the real character is buying and selling. The true character of the Corporation in the present case is to act as an architectural agent of the development and growth of industrial towns by establishing and developing industrial estates and industrial areas. We are of the opinion that the Corporation is not a trading one." (emphasis added)

62. Sri Mehta, learned Senior Counsel, endeavored with great pains and sincerity to urge that CIT(E) gave utmost opportunity to these authorities to show that they do not come within the ambit of activities constituting trade, business or commerce activities, but these authorities failed to place relevant material before CIT (E). He drew our attention to order of CIT(E) dated 19.11.2015. He referred to para-2 of said order wherein it is mentioned that respondent GNIDA could not produce books of accounts nor furnished required details. It had not filed any return for Assessment Year 2012-2013 even after expiry of last date of filing of return. It had a net profit of Rs 20,64,84,209/- for Assessment Year 2012-13, but filed return showing income nil. Similarly, for Assessment Year 2013-2014 net profit of Rs.83,39,876/- was shown as nil income. CIT (E) also observed that GNIDA was claiming exemption under Section 10(20) of Act, 1961, but simultaneously sought registration under Section 12AA of Act, 1961. There was no reason for filing application after 12 years. Respondents-authorities could not produce required details, books of accounts or any other evidence to show that it is involved in any charitable activity as such. Having said so, CIT (E) observed "on perusal of material available on record it is seen that applicant assessee is a profit making body and it is not carrying out any charitable activities". Due to non-production of books of accounts and Page 197 of 242 (UP AWAS EVAM VIKAS PARISHAD) vouchers, CIT (E) said that it could not verify genuineness of activities. Before registration is made, competent authority i.e. CIT (E) has to see object of charitable purposes and genuineness of activities. Respondents-authorities failed to prove the same. CIT (E) also observed that respondents-authorities have got property development income which comprises of sale and development of land and sale of constructed property. It has also got income under the head "urban services", which comprises of lease rent, loan interest, fee, penalties, duties and taxes. Similarly, under head of administration "IDAs' have got income form interest, forfeiture of property and miscellaneous income. Besides, interest bearing funds have been given interest free loan and grants. All these activities will show that respondents-authorities are primarily engaged in business of development and sale of properties for earning profit and if there is any charitable activity, it is coincidence or incidental to its business. Respondents-authorities are running business purely on commercial line without any intention of any sort of charitable purposes. Attempt of ''IDAs' is to seek parity with LDA or Haridwar Development Authority (hereinafter referred to "HDA") in view of judgments rendered in respect of those bodies, directing grant of registration to CIT(E), was failed by distinguishing and observing that those development authorities were constituted under UPUD Act, 1973 and UPIAD Act, 1976 and provisions of two Acts are significantly different in all respects.

63. Interestingly, CIT (E) while admitting that after dissolution of these ''IDAs', assets and properties shall vest in Government, it has taken it as a negative factor and relevant to exclude "IDAs' from ambit of "charitable purposes" by observing that there is no restriction that the left over property shall be used for "charitable purposes" but would vest in State Government. These observations are in the teeth of what has been observed by Constitution Bench in Ramtanu Cooperative Housing Society Limited (supra).

64. CIT (E) then tried to involve itself with Section 10(20A) and Section 10(20) of Act, 1961 observing that Section 10(20A) has been deleted/omitted with effect from 01.04.2003 and Section 10(20) applies to "local authorities" only and ''IDAs' are not "local authorities" as stated in explanation to Section 10(20) of Act, 1961.

65. It is true that "IDAs' being not very clear about provisions under which they are exempted, made attempts to refer and rely one or other provisions but a mistake of law in pleading status or claiming Page 198 of 242 (UP AWAS EVAM VIKAS PARISHAD) a particular advantage under a provision is neither an admission nor will attract principle of estoppel or acquiescence. When law requires something and provides a particular status with particular description, it is to be treated accordingly. A mistaken claim will not make any difference, either for affirmence or denial.

66. When CIT (E) was required to consider application for registration, in our view, it should have concentrated only to the requirement of Section 12A and 12AA, as the case may be, and not other provisions like Section 10(20) or 10(20A) etc. The factum that ''IDAs' would be covered or not, under Section 10(20), would make no difference for the reason, if these authorities satisfy requirement of Section 12A(1), then are entitled for registration after following procedure laid down under Section 12AA. A mere wrong claim on the part of these authorities will not be of any disadvantage to them.

67. The consideration on the part of CIT (E), it appears, is more influenced by concept of first three heads of charitable trusts. Apparently, it has lost objectivity in looking into thrust, ambit and spirit of 4th head i.e. advancement of any other object of "general public utility". This is a sheer ignoring scope and ambit of statutory provisions of UPID Act, 1976 beyond which respondents-authorities cannot function, being statutory bodies constituted under said Act. They have to function within the provisions of said Act.

68. CIT (E) has attempted to equate these ''IDAs' with private builders and developers. Para-11 of said order is reproduced as under:-

> "The law requires a conjunctive test whereby objects have to be charitable and genuineness of charitable activities should be established for registration of application u/s 12A. Mere recital of objects or activities without cogent or corroborative evidence are not sufficient by themselves to enable a registering authority to arrive at the satisfaction mandated by law. The applicant, in this case is primarily carrying out its business activities for making profit, just like any other private builder/developer. The applicant is neither a local authority, nor carrying out any charitable activity, as such. Like any other private builder or developer is acquiring land at a very low price and then developing the land along with other public utilities, in order to attract the buyers and sell the developed plots/flats Page 199 of 242 (UP AWAS EVAM VIKAS PARISHAD) with high margin or profit. In the instant case, the documents on record do not suffice to establish the genuineness of activities. The Applicant did not file any specific reply to queries raised and Books of accounts and Vouchers etc were also not produced under the pretext of being "Voluminous", so the claim of the Applicant regarding charitable activities could not be ascertained or verified. As such the findings of fact regarding its charitable activities or rather the lack thereof arrived at on the basis of the evidence filed and arguments addressed stand uncontroverted. This is fatal to the claim of the applicant."

69. This endeavour, in our view, is thoroughly misconceived and shows immature approach and misapplication to the issue in question. Observations made in para-11 of the order passed by CIT (E), in our view, are nothing but an irrational, illogical and misconceived approach so as to exclude respondents-authorities from the ambit of definition of "charitable purposes".

70. In our view, Tribunal has rightly set at naught aforesaid illegality by setting-aside said order.

71. Entire discussion, if we summarize, can be placed in a small arena of judicial analysis, that is, a body or institution which is functioning for advancement of objects of general public utility and its activities are not in the nature of trade, business or commerce and also not a sheer profit making, such institution is entitled to claim itself to be constituted for "charitable purposes" and seek registration under Section 12A(1) of Act, 1961.

72. There is another limb of issue with regard to manner in which CIT (E) has proceeded. It is seriously argued by learned counsel for respondents-authorities that CIT (E), while considering an application for registration under Section 12AA, is not supposed to examine "whether applicant is entitled for certain exemptions under Section 11 or 12 or not" since that is within the jurisdiction of Assessing Authority and not CIT (E). Reliance is placed on the judgments of certain High Courts which, in brief, we may discuss hereinafter.

73. First decision in the line is this Court's judgment in Fifth Generation Education Society Versus Commissioner of Income Tax (1990) 185 ITR 634 (All) wherein it has been said that at the stage of considering application for registration, Commissioner is not to Page 200 of 242 (UP AWAS EVAM VIKAS PARISHAD) examine application of income. All that he may examine is whether application is made in accordance with the requirements of Section 12A read with rule 17A and whether Form No. 10A has been properly filled up. He may also see whether objects of the trust are charitable or not, but it is not proper to examine application of income. The Commissioner is also not supposed to see whether any activity carried out by society is charitable in nature or not. That is not the requirement of Section 12A.

74. Gujrat High Court in N.N. Desai Charitable Trust Versus Commissioner of Income Tax 2000 (246) ITR 452 (Guj.) held that authority, examining the question whether a fund of institution is eligible to be certified for the purposes of Section 80G, is not to act as an Assessing Officer and pronounce upon the pending assessments. Commissioner, in examining this aspect, in respect of pending assessments, in our opinion, exceeded his jurisdiction while considering the application for approval. He, as a matter of fact, stepped into the jurisdiction of Assessing Officer.

75. In Sanjeevamma Hanumanthe Gowda Charitable Trust Versus Director of Income Tax (Exemption) (2006) 285 ITR 327 (Kar.) Karnataka High Court said:

> "Having regard to the scheme of sections 11, 12 and 13 ultimately what the Commissioner has to look into is not the source of income to the trust but whether such income is applied for charitable or religious purposes. The satisfaction of the Commissioner should be regarding the application of the income of the trust for the

aforesaid purposes which only entitles the assessee to claim exemption. For arriving at such satisfaction primarily he has to look at the object of the trust, when the same is reduced into writing in the form of trust deed. If on the date of the application the trust has received income from its property, then find out how the said income has been expended, and whether it can be said that the income is utilized towards charitable and religious purposes, i.e., towards the object of the trust. Therefore, for the purpose of registration under section 12AA of the Act, what the authorities have to satisfy is the genuineness of the activities of the trust or institution and how the income derived from the trust property is applied to charitable or religious purpose and not Page 201 of 242 (UP AWAS EVAM VIKAS PARISHAD) the nature of the activity by which the income was derived by the trust." (emphasis added)

76. In Director of Income Tax Versus Foundation of Ophthalmic and Optometry Research Education Centre (2013) 355 ITR 361 (Del.), Delhi High Court said:-

"10..... the above provision would suggest that there are no restrictions of the kind which the Revenue is reading into in this case. In other words, the statute does not prohibit or enjoin the Commissioner from registering a trust solely based on its objects, without any activity, in the case of a newly registered trust. The statue does not prescribe a waiting period, for a trust to qualify itself for registration....."

77. Recently Kerala High Court in Sree Anjaneya Medical Trust Versus Commissioner of Income Tax (2016) 382 ITR 399 (Ker.) has taken a similar view and observed that:- "

....10. It is clear from a plain reading of sections 12A and 12AA of the Act that what is intended thereby is only a registration simpliciter of the entity of a trust. This has been made a condition precedent for the claiming of benefits under the other provisions of the Act regarding exemption of income, contribution, etc. No examination of the modus of the application of the funds of the trust or an examination of the ethical background of its settlers is called for while considering an application for registration. The stage for consideration of the relevance of the object of the trust and the application of its funds arises at the time of the assessment. Where benefits are claimed by the assessees in terms of section 11 and 12 of the Act, the question as to the nature of such contribution and income can be looked into. At the time of registration of the trust, going by the binding judgments of the apex court, what is to be looked into is whether the trust is a genuine one and whether it is a sham institution floated only to avail the benefits of exemption under the Act..... xxxx xxxx.

13. Going by the provisions of sections 12A and 12AA of the Income-tax Act, we hold that the grounds raised by the registering authority and upheld by the appellate authority for rejection of registration to the appellant trust cannot be Page 202 of 242 (UP AWAS EVAM VIKAS PARISHAD) sustained. The authorities could have examined only the genuineness of the trust and its activities. They did not have

> material to hold that the trust was either not genuine or its activities were not what was professed in the deed of trust....." (emphasis added)

78. A taxation statute is to be interpreted strictly but not to the extent of disturbing natural consequence, which is evident from a plain and simple reading, particularly when statute is unambiguous. When a provision is clear, there is no reason to go beyond enactment and find out some objective intention by mere guess work which may not have been there. Similarly, a statute cannot be interpreted from the individual's conviction, conception and perception, but its general and common meaning applicable to all, should be applied whether one likes such consequence and effect of Legislation or not.

79. One objection, which has been advanced seriously, is that Tribunal should not have directed to grant registration since competent authority is Commissioner, therefore, Tribunal should have directed Commissioner to consider registration. In our view, this submission also sans merit. Tribunal exercises coextensive appellate power against the order of Commissioner. It is the last Court of fact. There is no restriction on the power of Tribunal. Section 254 of Act, 1961 empowers Tribunal to pass such orders as it deems fit. Therefore, in all the matters, where appeal is provided to Tribunal, its power is coextensive with the authorities whose orders are appealed before Tribunal. There is no reason to read power of Tribunal, in a manner so as to linger on a matter between different authorities, particularly when there is no such restriction under the statute and on the contrary, statute confers widest power upon Tribunal.

80. Looking from all angles and giving our serious thoughts and utmost consideration to the arguments advanced on behalf of both sides and in the light of discussions made above, we have no hesitation in answering questions 1 and 2 in favour of respondents- authorities and against appellant-Revenue.

81. With respect to Question No. 3 learned counsel for Revenue sought to argue that jurisdiction of respective Tribunals should be determined with reference to place wherefrom order subjected to appeal is passed. It is, thus, contended that since order was passed by CIT(E) at Lucknow, therefore, in view of Rule 4(1) read with Page 203 of 242 (UP AWAS EVAM VIKAS PARISHAD) Notification dated 29.05.2001, appeal should have been filed at Lucknow Bench and not at Delhi.

82. We find that jurisdiction is not to be determined, as per aforesaid notification, with reference to the place where order under appeal was passed, but it has to be determined with reference to the location of office of Assessing Officer. Para-4 of Standing Order under Income Tax Appellate Tribunal, Rules 1963 (hereinafter referred to as "Rules, 1963") issued with reference to Rule 4 (1) of Rules, 1963 reads as under:

> "4. The ordinary jurisdiction of the Bench will be determined not by the place of business or residence of the assessee but by the location of the office of the Assessing Officer."

83. We may also mention, at this stage, that in the aforesaid Standing Order, jurisdiction of various Benches constituted at different places, have been given in detail and jurisdiction of Delhi Bench has been given at Serial No. 11 and it covers District Gautam Budh Nagar also. Item 11 of the aforesaid Standing Order giving details of territorial jurisdiction of Delhi Bench of Income Tax Tribunal reads as under:

> 11. Delhi Benches (7)
>
> - National Capital of Territory of Delhi.
>
> - Districts of Bhiwani, Faridabad, Gurgaon, Hissar, Jhajjar, Karnal, Mohindergarh, Ranipat, Rewari, Rohtak and Sonepat of Haryana.
>
> - District of Badaun, Bijnor, Bulandshahr, Gautam Budh Nagar, Ghaziabad, Jyotiba Rao Phule Nagar, Meerut, Moradabad, Muzaffar Nagar, Rampur and Saharanpur of Uttar Pradesh.
>
> - District of Almora, Chamoli, Dehradun, Haridwar, Nainital, Pauri Garhwal, Pithoragarh, Tehri Garhwal, Udham Singh Nagar and Uttarkashi of Uttaranchal.

84. In the present case, Assessing Authority of respondents is at Gautam Budh Nagar and, therefore, Delhi Bench has jurisdiction to entertain appeal.

85. Question 3, accordingly, is also answered against Revenue.

86. In the result, all the appeals fail and are dismissed with costs."

Page 204 of 242 (UP AWAS EVAM VIKAS PARISHAD) The Hon'ble Allahabad High Court, in this case, had framed the following questions of law:

> "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 12-AA 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 Commissioner of Income Tax (Exemptions), Lucknow in exercise of power under Section 12-AA of the Income Tax Act, 1961?"

After discussing various provisions of section 12A, 11A and 2(15) of the Act, along with the proviso to section 2(15), the Hon'ble High Court has answered all these three questions in favour of the assessee and against the Revenue. Therefore, their Lordships while considering question No. 2, exhaustively examined the activities of the assessee and held them to be non commercial in nature.

19. We further find that in the case of the assessee itself for assessment year 2015-16, the case of the assessee was reopened u/s 147 of the Act and the Assessing Officer during reassessment proceedings had allowed exemption to the assessee u/s 11 of the Act. The findings recorded in the assessment order are reproduced below:

> "As per records assessee UTTAR PRADESH AWAS EVAM VIKAS PARISHAD (PAN: AAAJU0103A) was denied the exemption claimed Page 205 of 242 (UP AWAS EVAM VIKAS PARISHAD) u/s 11 of the I.T. Act, 1961 by invoking provisions of section 2(15) of the I.T. Act, 1961 and activities of the trust/organization was held as non-charitable. Therefore, all the expenses whether revenue or capital made during the year were for Non-charitable purposes. In view of this, the accumulation made during FY 2008-09 amounting to Rs.5,53,18,733/- should have been treated as the income of the FY 2014-15, being spent on non-charitable purpose, invoking section 11(3)(a) of the I.T. Act, 1961, in addition to the surplus income held of the current year.
>
> .....
>
> .....
>
> "5. Contention of assessee is examined in the light of the facts and circumstances on record. The Income & Expenditure Account, balance sheet, computation of income etc. for financial year 2010-11 are verified during assessment proceedings.
>
> 6. In view of the facts and documents on record, total income of the assessee Parishad is assessed as under:
>
> | | |
> |---|---|
> | Returned Income | NIL |
> | Assessed income | NIL |
>
> 7. Assessed u/s 147 of the I.T. Act, 1961. Issue Demand Notice accordingly. Charge interest u/s 234A, 234B and 234C, if applicable. Give credit to prepaid issues."

20. We further find that with the insertion of section 10(46) of the Act, introduced by the statute by the Finance Act 2011, the specified income arising to a body or trust or Board or Trust or Commission, which has been established or constituted by a Central or a State Act, for any activity for the benefit of general public and which is not engaged in any commercial activity has been held to be exempt. The Greater Noida Industrial Development Authority, which again is set up by UP State Government and which is engaged in industrial development activity in the Greater Noida, has

been held to be engaged in non commercial activities vide order dated Page 206 of 242 (UP AWAS EVAM VIKAS PARISHAD) 26/02/2018 by Hon'ble Delhi High Court and Hon'ble Supreme Court has dismissed the SLP filed by the Revenue vide order dated 25/11/2019. We further find that CBDT, vide notification dated 23/06/2020, has allowed exemption u/s 10(46) for assessment year 2013-14 to 2016-17 to Greater Noida Industrial Development Authority. The said notification allows the activities undertaken by Greater Noida Industrial Development Authority, as activities for charitable purposes. The contents of such notification has been made part of this order and is reproduced below:

> Notification No. 33/2020 Central Government notifies 'Greater Noida Industrial Development Authority', an authority constituted by the State Government of Uttar Pradesh, in respect of the specified income arising to that board under section 10(46) of Income Tax Act, 1961. MINISTRY OF FINANCE (Department of Revenue) (Central Board of Direct Taxes) Notification No. 33/2020-Income Tax New Delhi, the 23rd June, 2020 S.O. 2014(E).--In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, 'Greater Noida Industrial Development Authority', (PAN AAALG0129L), an authority constituted by the State Government of Uttar Pradesh, in respect of the following specified income arising to that Commission, namely:--
>
> (a) Grants received from the State Government;
>
> (b) Moneys received from the disposal/90 years lease of immovable properties;
>
> (c) Moneys received by the way of lease rent & fees or any other charges from the disposal/90 years lease of immovable properties;
>
> (d) The amount of interest earned on the funds deposited in the banks;
>
> Page 207 of 242 (UP AWAS EVAM VIKAS PARISHAD)
>
> (e) The amount of interest/penalties received on the deferred payment received from the Allotees of various immovable properties; and
>
> (f) Water, sewerage and other municipal charges from the Allotees of various immovable properties.
>
> 2. This notification shall be effective subject to the conditions that Greater Noida Industrial Development Authority,-
>
> (a) shall not engage in any commercial activity;

(b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and

(c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

(d) shall file the Audit report along with the Return, duly verified by the accountant as provided in explanation to section 288(2) of the Income-tax Act, 1961 along with a certificate from the chartered accountant that the above conditions are satisfied.

3. This notification shall be deemed to have been applied for the period from 01-06-2011 to 31-03-2012 in the assessment year of 2012-2013 and also from the assessment years 2013-2014, 2014- 2015, 2015-2016 and 2016-2017.

[Notification No. 33/2020 F.No.300196/39/2018-ITA-I] PRAJNA PARAMITA, Director

21. Similarly, vide notification dated 24th December, 2020 in the case of Yamuna Expressway Industrial Development Authority, which again has been set up by UP State Government and wherein again similar income, arising from similar activities as in the case of Greater Noida Industrial Page 208 of 242 (UP AWAS EVAM VIKAS PARISHAD) Development Authority, has been held to be eligible for exemption u/s 10(46) of the Act.

22. The activities being undertaken by the assessee are similar which includes the money received from disposal of land, building and other properties movable and immovable and also money received by way of rent, lease charges from the immovable properties. Therefore, in view of the fact that CBDT itself has considered similar activities as being undertaken by various assessees being of non commercial nature, the activities undertaken by the assessee also cannot be said to be of commercial nature.

23. The Lucknow Bench of the Tribunal vide order dated 10/03/2022 in the case of Lucknow Development Authority, under similar facts and circumstances, has held similar activities being not hit by the proviso to section 2(15) of the Act. In that case the Tribunal has discussed as to what can be said business and what is the profit motive and what is the difference between the private builder and a Government builder. The findings of the Tribunal as contained from para 8 are reproduced below:

"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 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.

Page 209 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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.

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.

Page 210 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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.

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.

Page 211 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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) 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 Page 212 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 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 ITA No. 690/LUC/2003 and in pursuance of such order, registration has 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 or providing services in relation to Page 213 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 [Jessel M.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. Motilal Hirabai Spng. 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 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 [Page 214 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 meaning that 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); State of Guajrat 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); Mahammad Faruq, 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 the Commentary 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) 200 ITR 131, 135, 136 (Ori)].

Page 215 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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, [Gannon Dunkerley & 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 Page 216 of 242 (UP AWAS EVAM VIKAS PARISHAD) of goods for goods for 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 as business 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) Page 217 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 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.

Page 218 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 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 Page 219 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 non charitable. 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 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 Page 220 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 Page 221 of 242 (UP AWAS EVAM VIKAS PARISHAD) procedure is complete as provided in sub-section (1) of Section 12AA and a certificate is 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 Page 222 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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

(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 Page 223 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 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 Page 224 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 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.

Page 225 of 242 (UP AWAS EVAM VIKAS PARISHAD) (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 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:

> Page 226 of 242 (UP AWAS EVAM VIKAS PARISHAD)
>
> (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 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 Page 227 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 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.

Page 228 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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) 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 Page 229 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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 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 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.

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24. We further find that Hon'ble Allahabad High Court in the case of Moradabad Development Authority, which is engaged in the similar activities as the assessee, has dismissed the appeal of the Revenue against the order of the Tribunal whereby the Tribunal has held that the activities of that assessee were not hit by the proviso to section 2(15) of the Act. 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.

Page 231 of 242 (UP AWAS EVAM VIKAS PARISHAD) The Authority was acquiring land from farmers and 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."

25. The learned Special Counsel of the Revenue had argued that the Hon'ble High Court of Allahabad in the case of Moradabad Development Authority had decided the issue in favour of assessee by following the judgment in the case of Yamuna Expressway Industrial Development Authority which was not on the exemption u/s 11 but was on section 12A of the Act. To verify this argument of the Revenue, it is important to visit the judgment of Hon'ble Allahabad High Court in the case of Yamuna Expressway Industrial Development Authority. From the judgment we find that Hon'ble Court had framed the following questions of law:

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(ii) 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 ?
>
> (iv) 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."

26. 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 assessee and against the Revenue.

26.1 The argument of the Revenue that this judgment of YEIDA does not deal with the denial of exemption u/s 11 of the Act, is of no consequence. Though in that case, the prime issue was that of grant of registration u/s 12 of the Act, what was examined was the activities of that assessee. It is this aspect of the matter which is in question in the present cases before us also, although the question here is of grant of exemption u/s 11 of the Act.

Page 233 of 242 (UP AWAS EVAM VIKAS PARISHAD) 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.

27. In view of the above facts and circumstances, we do not find any infirmity in the order of learned CIT(A).

28. Now we take up the additional grounds of appeal taken by the Revenue vide its application dated 05/02/2022. Vide ground No. 1 of the additional grounds, it has been argued by the Revenue that learned CIT(A), while allowing relief to the assessee, has failed to consider the provisions contained in section 13(8) of the Act, introduced by the Finance Act, 2012 with retrospective effect from 01/04/2009. To adjudicate the above ground, it is important to first visit the provisions of section 13(8) of the Act, which for the sake of convenience is reproduced below:

> Section 13(8) Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso* to clause (15) of section 2 become applicable in the case of such person in the said previous year.
>
> (9) Nothing contained in sub-section (2) of section 11 shall operate so as to exclude any income from the total income of the previous year of a person in receipt thereof, if--

(i) the statement referred to in clause (a) of the said sub-

section in respect of such income is not furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year; or Page 234 of 242 (UP AWAS EVAM VIKAS PARISHAD)

(ii) the return of income for the previous year is not furnished by such person on or before the due date specified under sub- section (1) of section 139 for furnishing the return of income for the said previous year.

29. The analysis of above provisions states that the exemption u/s 11 of the Act will not be available to an assessee if the total income of the assessee includes any income which is hit by the proviso to provisions of section 2(15) of the Act. Section 2(15) of the Act relates to definition of charitable purposes and which includes relief of the poor, education, medical relief, preservation of environment, preservation of monuments and objects of artistic or historic interest and the advancement of any other object of general public utility. In the proviso inserted in the above section vide Finance Act, 2012 with effect from 01/04/2009, it has been provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it is carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity unless such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility and the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities of that previous year.

30. Admittedly, under the definition of charitable purposes, the objects of the assessee fall into advancement of any other object of general public utility. Therefore, the proviso inserted by the Finance Act, 2012 with effect Page 235 of 242 (UP AWAS EVAM VIKAS PARISHAD) from 01/04/2009 will be quite relevant in the case of the assessee. Such examination and effect of insertion of proviso to section 2(15) has already been made by Hon'ble Allahabad High Court, which is a jurisdictional High Court in the case of the assessee itself where the Hon'ble High Court, vide order dated 18/07/2017 has held that the activities carried on by the assessee are not hit by the proviso to section 2(15) of the Act. For the sake of completeness, the findings of Hon'ble Allahabad High Court are reproduced below:

"3. This appeal was admitted on following substantial question of law:

"Whether under the facts and circumstances of the case, the learned ITAT was right in holding that the registration granted u/s 12A of the I.T. Act cannot be cancelled by the CIT under the provisions of Section 12AA (3) of the I.T. Act when the activities of the assessee were hit by the first and second proviso to section 2(15) of the I.T. Act

w.e.f. 01.04.2009."

4. Learned counsel for the parties at the outset could not dispute that issue raised in this appeal is squarely covered by this Court's judgment in Income Tax Appeal No. 107 of 2016: Commissioner of Income Tax, (Exemption), Lucknow Vs. M/s Yamuna Expressway Industrial Development Authority and other two connected appeals decided on 21.04.2017.

5. For the reasons stated in aforesaid judgment, the question raised in this appeal is answered against Revenue.

6. Appeal is accordingly dismissed."

31. The Special Counsel of the Revenue, by taking this ground of appeal, as an additional ground of appeal, in fact has challenged the applicability of proviso to section 2(15) to the assessee whereas as per the judgment of Hon'ble High Court, this aspect has already been examined by Hon'ble High Court and which has categorically held that the proviso to section 2(15) are Page 236 of 242 (UP AWAS EVAM VIKAS PARISHAD) not applicable to the assessee. Admittedly, there has not been any change in the activities of the assessee since the passing of this judgment therefore, the additional ground No. 1, taken by the Revenue, has no force as Hon'ble High Court has already decided this issue in favour of the assessee. In view of the above, additional ground No. 1 is dismissed.

32. Vide ground no. 2 of additional ground, the Revenue has argued that while allowing relief, the learned CIT(A) has failed to comply with the provisions of section 11(2) of the Act. To adjudicate this ground, it is important to first visit the provisions of section 11(2) of the Act, which for the sake of completeness is reproduced below:

Section 11(2) Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation‡ to that sub- section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:--

(a) such person furnishes a statement in the prescribed form and in the prescribed70 manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);

(c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

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33. We find that this provision requires an assessee to spend 85% of the income earned to be eligible for exemption u/s 11 of the Act. From the order of the Assessing Officer, it is observed that the Assessing Officer has not raised any observation regarding non spending of income earned by the assessee and therefore, neither assessee filed any grounds of appeal before learned CIT(A) against the order of the Assessing Officer in this respect.

However, we find that since the Assessing Officer had outrightly disallowed the exemption u/s 11 of the Act, he has not examined the provisions of section 11(2) of the Act which necessitates that exemption u/s 11 will be available to the assessee only if it fulfills the provisions contained in section 11(2) of the Act. The provisions of section 11(2), as already noted by us above, relates to spending of 85% of the income and accumulation of 15% of the income, which aspect can be examined by the Assessing Officer while allowing exemption u/s 11 of the Act. Therefore, the Assessing Officer is directed to examine this aspect while allowing exemption u/s 11 of the Act. In view of the above, ground No. 2 of the additional grounds of appeal is allowed for statistical purposes.

34. Now coming to ground No. 3 of additional grounds, we find that Revenue has challenged that learned CIT(A) has not taken into account the provisions contained in section 13(1)(d) of the Act. The provisions contained in section 13(1)(d) of the Act relate to investments of the accumulated fund in the specified modes as contained in sub section 5 of section 11 of the Act. This aspect can also be examined by the Assessing Officer while granting exemption u/s 11 of the Act. In view of the above, ground No. 3 of the additional grounds of appeal is allowed for statistical purposes.

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35. The fourth ground of additional grounds of appeal relates to the grievance of the Revenue regarding non consideration of provision contained in section 13(3) of the Act. To adjudicate this ground of appeal, it is important to visit the provisions of section 13(3) of the Act, which for the sake convenience 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 up to 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 a substantial interest.

36. We find that this provision relates to use of funds of the assessee by the author of the trust or the founder of the institution or any person who has made a substantial contribution to the trust or institution, or any relative of any such author, founder, person, member, trustee or manager or any concern in which any of the persons referred to in clauses (a), (b), (c) and

(d) has a substantial interest. This aspect has been examined by the Tribunal while granting stay to the assessee in Stay Application No. 48 in I.T.A. No.701 where vide order dated 19/02/2020, the Tribunal prima facie had held that there is no violation of provisions of section 13(3) of the Act. Such findings were based on the fact that the allotment of plots were made Page 239 of 242 (UP AWAS EVAM VIKAS PARISHAD) to the employees of the assessee who are not part of the author as defined in section 13(3) of the Act and while holding so had relied on the judgment of CIT vs. Tata Steel Ltd. 203 ITR 704. The relevant findings of the Tribunal are reproduced below:

"This Stay Petition has been filed by the assessee with a request to stay the recovery of demand of Rs.3,01,83,05,459/- till disposal of the appeal.

2. The demand has risen due to addition made by the Assessing Officer by rejecting the exemption under section 11 of the Act by holding that the assessee had given benefit to its employees by giving them priority in allotments as well as concessions in the prices of plots and, therefore, was hit by the provisions of section 13(3) of the Act.

3. In pursuance to our directions dated 4/2/2020, the ld. D.R. filed the details of employees regarding the benefit to them in the form of concessions in the allotment of plots, and argued that since the assessee has allotted plots to its employees on concessional basis therefore, there is violation of section 13(3) of the Income Tax Act, and therefore, the stay application filed by the assessee is liable to be dismissed.

4. The ld. Counsel for the assessee, on the other hand, has stated that the employees of the assessee Parishad are not Managers of the Parishad, as they are doing routine work assigned to them and they are not involved in the management of the assessee Parishad. He further submitted that they are also not entrusted with taking

managerial/strategic decisions. Moreover, the benefit to the employees has been given as a declared policy as notified in the Parishad Rules. In this regard, our attention was invited to para 36 of the Parishad rules and therefore, it was argued that there is no violation on the part of the assessee. The ld. Counsel for the assessee submitted that the assessee is not a trust but an Institution and therefore, the provisions of section 13(3) of the Act will be attracted only if the benefit has been given to Manager. For the proposition that the employees are not Managers, the ld. Counsel for the assessee relied on the following case law:

1. CIT vs. Tata Steel Charitable Trust, 203 ITR 764 (Patna)

5. Accordingly, the ld. Counsel for the assessee prayed that since the assessee has already deposited more than 30% of the disputed tax and the assessee has been able to make out a prima facie case, Page 240 of 242 (UP AWAS EVAM VIKAS PARISHAD) due to which, the balance of convenience is in favour of the assessee, the demand sought by the Department may kindly be stayed.

6. The ld. D.R., however, objected to the contentions of the ld. Counsel for the assessee that the employees of the assessee Parishad are not covered by the provisions of section 13(3) of the Income Tax Act. The ld. D.R. heavily placed reliance on the following case laws for the proposition that the employees are covered for the purpose of violation of section 13(3) of the Act:

1. CIT vs. Awadh Educational Society, dated 13/9/2011 (Alld)

2. DIT vs. Maruti Center for Excellence, 208 Taxman 236 (Delhi)

3. Noida Entrepreneurs Association vs. NOIDA & Ors. (SC), WP (Civil) No.150 of 1997, dated 9th May, 2011

7. We find from the details certified by the Assessing Officer, vide letter dated 14/2/2020 (copy placed on record), that none of the core persons of the assessee Parishad got any preferential or concessional allotment of plots and the two persons who did get discount, are not either Trustees or Managers of the Parishad. Further, it is the Department's own case that the allotments purportedly in violation of section 13(3) of the Act have been made to the employees of the assessee Parishad. There is no rebuttal, however, to the assertion on behalf of the assessee that these employees are not acting in any Managerial capacity, so far as regards the discharge of their duties under the Parishad; and that the specific requirement of the section is concerning Managers and not employees. Therefore, the assessee has a prima facie case in its favour and as such the balance of convenience is also in its favour. However, keeping in view the interest of justice to both the parties, we direct the assessee to deposit an amount of Rs.20 crores in two installments of Rs.10 crores each and the first installment is to be paid latest by 29th February, 2020 and the second installment is to be paid latest by 15th March, 2020. The appeal of the assessee is accordingly adjourned for hearing to 23rd March 2020. With these directions, we stay the outstanding demand for a period of six months from the date of this order or till disposal of the appeal, whichever is earlier, provided the assessee deposits the above noted amounts within the prescribed period.

8. In the result, the stay application of the assessee is allowed as indicated above."

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37. Learned Special Counsel for the Revenue had relied on the following case laws for the proposition that in case of violation of provisions of section 13(3), the exemption u/s 11 cannot be allowed:

> (1) CIT vs. Awadh Educational Society in I.T.A.No.142 of 2007 by Hon'ble Allahabad High Court (2) Maruti Centre for Excellence [2012] 208 Taxman 236

38. 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.

39. 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. However, we find that such stay order was passed in assessment year 2017-18 whereas the present cases relate to earlier years therefore, the Assessing Officer can again examine these facts while granting exemption u/s 11 of the Act in the present previous years. However, while examining such facts, the Assessing Officer will have to consider the ratio of judgment in the case of Tata Steel Page 242 of 242 (UP AWAS EVAM VIKAS PARISHAD) Ltd. where employees of the assessee had been held to be not part of persons mentioned in section 13(3) of the Act.

40. In view of the above ground No. 4 of the additional grounds of appeal is also allowed for statistical purposes. In nutshell, ground No. 1 of additional grounds of appeal taken by the Revenue is dismissed while additional ground No. 2, 3 & 4 are allowed for statistical purposes.

41. In the result, all the grounds taken in the appeals and ground 1 of additional grounds of the Revenue stand dismissed and additional ground No. 2 to 4 are allowed for statistical purposes.

(Order pronounced in the open court on 08/06/2022) Sd/. Sd/.

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

Dated:08/06/2022
*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