IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SHRI C.M. GARG : JUDICIAL MEMBER

ITA Nos. 3056/Del/2012 & 3013/Del/2013
U/s 12AA of the I.T. Act.

Haridwar Development Authority Mayapur, Haridwar. PAN: AAALH 0055 Q	Vs.	Commissioner of Income-tax, Dehradun.

AND

ITA No. 6058/Del/2012
A.Y. 2006-07

Haridwar Development Authority Mayapur, Haridwar. PAN: AAALH 0055 Q	Vs.	ACIT Indl. Area, Haridwar.

(Appellant)	(Respondent)

Appellant by	:	Shri M.B. Chhibbar Adv.
Respondent by	:	Shri Sunsil Bajpai CIT(DR)
Date of hearing	:	05-06-2014
Date of order	:	25-07-2014.

O R D E R

PER S.V. MEHROTRA, A.M:

ITA nos. 3056/Del/2012 & 3013/Del/2013, preferred by the assessee, are directed against the order of CIT, Dehradun, refusing to grant registration u/s 12AA of the I.T. Act. ITA no. 6058/Del/2012 for A.Y. 2006-07 is directed against CIT(A)'s order dated 6-9-2012 in quantum appeal. All these appeals were heard together and being disposed of by this common order for the sake of convenience.

2. Brief facts of the case are: The assessee trust/ society had been granted registration u/s 12AA of the I.T. Act on 9-3-2009 by the Commissioner of Income-tax, Dehradun. Ld. CIT in his impugned order dated 26-3-2013 has observed that from the return filed by the assessee trust/ society for A.Y. 2009-10, it transpired that there was receipt which seemed to be related to trade, commerce or business, violating the amended provisions of section 2(15) of the I.T. Act. Accordingly, a show cause notice was issued to the assessee as to why registration granted to the assessee trust/ society may not be reviewed in the context of the new provisions of section 2(15) of the Act and to show cause as to why the approval granted u/s 12A/80G may not be withdrawn. The assessee in detail explained the constitution of assessee society and the activities undertaken by it and pointed out that development of the district by providing housing, roads, development and maintenance of parks (boost to environment), plantation of trees (again pertaining to environment), providing sewerage system (clean and healthy environment), are all objects for the welfare of the people of the district; as also these are objects of general public utility. The assessee further pointed out as under:

> "Your attention is drawn to the fact that there are so many similar authorities functioning in the state of U.P., Uttarakhand and other stats of India and different Benches of the Income Tax Appellate Tribunal (ITAT) have held that activities of these authorities are for advancement of general public utility as given in sub section 15 of Section 2 of the act. Reliance is placed on the following decisions of the ITAT:
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> 1. Aligarh Development Authority-ITA No. 168(Ag)/Del/2007, order dated 30.05.2008.
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> 2. U.P Awas Evam Vikas Parishad- ITA No. 1690 (Luck)/2003 for A.Y. 2003-04 dt: 25.07.2005.
>
> 3. Lucknow Development Authority, Lucknow Bench.

4. Kanpur Development Authority, Lucknow Bench.

5. Khurja Development Authority-ITA No. 1851 (DEL) 2009 order dt: 14.07.2009 .

6. Saharanpur Development Authority- ITA No. 5008 (Del) 2007 order dated 20.06.2008.

7. Hapur Pilkhuwa Development Authority- ITA No. 2735/Del/2006, order dated 15.05.2007.

8. Ghaziabad Development Authority- ITA No. 2903 (Del) 2006 order dated 31.01.2007.

9. Ayodhya Faizabad Development Authority.

10. Unnao- Shuklaganj Development Authority ITA no. 686,690,696,703 and 736 (Luck)/2003 for A.Y. 2003-04 dt: 25.07.2005.

11.Muzzafamagar Development Authority decided by ITAT, Delhi "E" Bench on 0 1.02.20 1 0 the latest order on the issue.

Your kind attention is drawn to paragraphs 39, 40 and 41 from the order of U.P Awas Evam Vikas Pari shad, which are reproduced as under:- .

> *39. From the perusal of the objects of the Parishad, we find that the objects of the Parishad schemes and other projects, to plan and coordinate various housing activities in the State and to ensure expeditious and efficient implementation of housing and improvement schemes in the state. As regards the other Authorities before us, we have perused the UPUPD Act 1973. Section 4 of the said Act provides that state Government may, by notification in the Gazette constitute for the purposes of this Act, an Authority to be called the Development Authority for any development area. The Authorities before us have been constituted by the Government under this section. Section 7 of the said Act has also provided for the objects of these Authorities as mentioned above in para 27.*
>
> *40. section 17(1) of this Act provides as under: If in the opinion of State Government any land is required for the purpose of development or for any other purposes under this Act, the State Government may acquire such land under the provisions of Land Acquisition Act, 1894.*

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 provided 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 advancement of general public utility.

4. Copy of Govt. G.O through which Authority was created/ formed: To conclude, it is submitted that the Haridwar Development Authority is engaged in activities enriched in definition of Charitable Purpose given in sub-section 15 of Section 2 of the Income Tax Act."

2.1. Further, in response to notice dated 14-12-2011, the assessee submitted as under:

"…. 3. The funds of the authority are generated by way of development fee, map fee, stamp duty, stacking fee etc. for which the State government has authorized it by Special Act.

4. As per the G.O. of the State government for the development of infrastructure of the area under the purview of Authority, some specific part of its receipts has to be transferred to Infrastructure fund Account so that it can be used for the development of the areas as and when required. As the development is a continuous process and not limited to any specific period. In the case of Haridwar Development Authority, it is bound as per direction of State govt. to transfer specific percentage of its receipts to the infrastructure Development Fund. Such fund has been utilized for infrastructure development purpose after approval of members of the Samiti which consist of District Magistrate, Vice President of Development Authority, Mukhya Nagar Adhikari (MNA) , Nagar Nigam/Executive Officer, Nagarpalika Parishad and Representative of Jal Nigam. Therefore, at the time of receipts of funds from various sources as mentioned above,

there is statutory obligation to transfer specific percentage or receipts to the Infrastructure Development Fund and Hardwar Development Authority has no right to remain with the Authority, but the same has been administered strictly by the instructions of the Government.

5. That the amount set apart and meant for utilization only as per the directions of the State Government as application of funds. Therefore, the amount so set apart as per the statutory obligation as not liable to tax in the hands of the Authority.

6. The receipts of the Authority are by way of development fees, map fees, stamp duty, stacking fees etc. for which the state Govt. has authorized it by Special Act and the expenditure has to be incurred on the repair of roads, development and maintenance of parks, sewerage system, plantation etc. i.e. for the objective for which the Authority was set up, so it cannot be linked to any usual business activity that expenditure should be related to income earning sources.

7. The Haridwar Development Authority has received map fee, development fee, compounding fee, supervision fee, subdivision fee etc. to only meet out the cost of setup a new parks, sewerage system, electric installation, plantation of tree etc. which are wholly subservient to the public utility objective. These are not the service with a profit motive in consideration of rendering the service to trade, commerce or business. Thus the Assessee is neither carrying out any activity in the nature of trade, commerce or business, nor it is rendering any service in relation to such trade, commerce or business. The Authority is performing such regulatory functions as assigned to the authority by legislation.

8. The regulatory function being carried out by the Haridwar Development Authority was only incidental to the main object which is development of Haridwar, Pauri, Tehri and parts of Dehradun and all developmental schemes as well as beautification of the said Districts comes under the purview m which is certainly an object of general public utility and,

therefore, qualifies to be termed as 'charitable activity for the purpose of section 2(15).

9. The newly amendment section 2(15) will apply only to the entities whose purpose is 'advancement of any other object of public utility' i.e. the fourth limb of definition of 'chartable purpose; contained in section 2(15), hence entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act, if they carryon commercial activities.

10. That similar views and conclusions have been arrived at by the Chandigarh B Bench of IT AT in its order dt. 28.08.2009 ITA No. 74/chd/2009 in the case of Himachal Pradesh Environmental and Pollution Control Board vs. CIT Simla where's the object of the board was control of pollution and was granted registration under section 12AA of the Income Tax Act, 1961 w.e.f05.12.2009. The Learned Commissioner served a notice on the assessee requiring him to show cause as to why, in view of the fact that the assessee was earning income from various kinds of fees and charges and in view of restricting the scope of an object of general public utility by amending section 2(15), the registration granted to the assessee should not be withdrawn. It was pointed out that, with effect from the assessment year 2009-2010 and by the virtue of amendment to section 2(15) vide Finance Act 2008, 'advancement of any object of general utility' cannot be treated as a charitable purpose if 'it involves the carrying out of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to such trade, commerce or business, for a cess or fees or any other consideration, irrespective of nature of use of application of the income from such activity'. Learned Commissioner's case was that since the assessee was "earning income over the years in the nature of license fees, consent fees, testing charges etc" and "since the basic objective of the protection of environment pursued by the Board involves the carrying on if such activities and the earning of such income, the object pursued cannot be considered to be a charitable purpose with effect from the assessment year 2009- 2010.

The Learned Commissioner cancelled the registration under section 12AA with effect from 2009-10. But the Hon'ble

bench has quashed the order of the learned Commissioner and held that the learned Commissioner did not have any good reasons, substantial in law, to withdraw the registration. The impugned order was accordingly set aside.

11. As the Haridwar development Authority was always engaged in, and continues to engage in, a charitable activity within meaning assigned to that expression under section 2(15) of the Act. The objects and activities of the authority were examined at the point of time when the authority was granted registration and since there was no change in the situation as it prevailed at the time of registration was granted vis-a-vis the situation prevailing now, there was no cause of action for withdrawing the registration. In view of the above submission we request your goodself not to withdraw registration u/s 12AA of the Income Tax Act."

2.2. Ld. CIT did not accept the assessee's contention and withdrew the registration relying on following decisions:

- ITAT Chandigarh Bench 'B' in the case of Punjab Urban planning & development authority Vs. CIT (ITA no. 764/Chd/2003 dated 1-6-2006 reported in 103 TTJ-Chd.-988)
  Wherein after examining the activities undertaken by the authority it was held that they were not of charitable nature but mere of commerce nature involving profit motive.

- ITAT Amritsar Bench in the case of Jalandhar Development Authority Vs. CIT (2009) 124 TTJ(ASR) 598.

2.3. Ld. CIT also referred to CBDT Circular no. 11/2008 dated 19-12-2008 wherein the amended provisions of section 2(15) were explained and it was pointed out that the entities which were carrying on commercial activities would not be entitled for exemption u/s 11.

2.4. The findings of ld. CIT are summarized as under:

(i) The activity undertaken by the authority was in the nature of trade, commerce or business, which was carried on with the intention to earn profit.

(ii) The assessee had income from following sources:

(a) Map fees;
(b) Development fee
(c) Compounding fee
(d) Supervision fee
(e) Sub division fee.

(iii) Maintenance of public park, maintenance of roads and roundabouts etc. were mainly undertaken by assessee for getting better value for the plots and residential houses.

2.5. Ld. CIT pointed out that provision of these facilities was incidental to the business of the assessee. She further pointed out that if on the basis of these activities exemption was granted to the assessee, then every builder and colonizer would become eligible for claiming exemption u/s 12A on the pretext of providing facilities of general public utility.

2.6. The deletion of section 10(20A) justifies the intention of the legislature to bring the housing development authority under the ambit of taxation.

2.7. The case laws relied upon by the assessee were different as most of them related to the period before the amendment in Finance Act, 2008 applicable from 1-4-2009. Therefore, after the change of the definition of 'charitable purpose' itself, an authority like HAD does not pass the acid test.

2.8. Objects of the authority are purely commercial in nature because of the clear profit motive.

2.9. From the facts on record it is evident that HAD acquires and then develops the land for selling at higher rate earning huge profits thereon. It sells property in auction, allots property at market rates and charges interest for belated payments of the instalments by the buyers. Accordingly, the registration granted u/s 12A was cancelled.

3. Being aggrieved with the order of ld. CIT, the assessee is in appeal before us and has taken following grounds of appeal:

> *"1. On the facts and circumstances of the case and in law, the order by the Ld. CIT canceling registration under section 12AA(3) is bad in law and is against the facts and circumstances of the case.*
>
> *2. On the facts and circumstances of the case and in law, the Ld. CIT has erred in canceling registration under section 12AA(3) of the Income Tax Act by applying incorrect reasoning.*
>
> *3. On the facts and circumstances of the case and in law, the Ld. CIT has grossly erred in not appreciating the fact that the Appellant Authority has been created with the object of general public utility which is a charitable object within the meaning of section 2(15) of the Income Tax Act, 1961.*
>
> *4. On the facts and circumstances of the case and in law, the Ld. CIT has erred in holding that the activities of the appellant are not charitable.*
>
> *5. On the facts and circumstances of the case and in law, the Ld. CIT has grossly erred in concluding that the activities of advancement of th4e object of general public utility by the Appellant Authority are undertaken/ carried on in a totally commercial nature and hence the registration granted to the Authority is liable to be cancelled.*

6. On the facts and circumstances of the case and in law, the Ld. CIT is not justified in comparing the appellant with private builders, completely ignoring the fact that the appellant authority has not been created with the object of earning profit and any surplus generated by the Authority has to be spent for the benefit of the area itself which the appellant Authority is duly bound to develop as per its aims and objects.

7. On the facts and circumstances of the case and in law, the Ld. CIT in canceling the registration has erroneously ignored the fact that he issue of registration to similar development authorities is also covered by orders passed by the ITAT upholding registration granted to such Authorities"

3.1. Though the assessee has taken 7 grounds of appeal but the only issue is regarding cancellation of registration granted u/s 12AA on various grounds.

4. Ld. Counsel for the assessee reiterated the submissions made before ld. CIT, reproduced earlier and pointed out that ld. CIT neither examined the objects and activities, pursued by the assessee nor the cases cited by assessee.

4.1. Ld. Counsel referred to sub-section (3) to section 12AA and pointed out that before canceling the registration granted to the assessee, the CIT should be satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution. He submitted that assessee/ authority has been established u/s 4 of the UP Urban Planning & Development Act, 1973 by issuing notification in the gazette by the State Government. Ld. Counsel further referred to Sec. 4(1) & (2) of the UPUPD Act, as reproduced below:

4. The Development Authority –(1) The State Government may, by notification in the Gazette constitute for the purposes of this

Act, an Authority to be called the Development Authority for any development area.

(2) The Authority shall be a body corporate, by the name given to it in the said notification, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract and shall by the said name sue and be sued.

4.2. With reference to the above section ld. Counsel further pointed out that in view of sub-section (2) to section 4 of the UPUPD Act, the object of the assessee is to acquire, hold and dispose of the property. Ld. Counsel further referred to section 7 of the UP Urban Planning & Development Act which reads as under:

"Objects of the Authority – The objects of the Authority shall be to promote and secure the development of the development area according to plan and for that purpose the Authority shall have the power to acquire, hold,, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity, to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto.

4.3. Ld. Counsel further referred to section 14 of the UP Urban Planning & Development Act and pointed out that after the declaration of any area as developed area, no development of land can be undertaken or carried out or continued in that area by any person or body (including a department of Government) unless permission for such development has been obtained in writing from the Vice Chairman in accordance with the provisions of this Act.

4.4. Ld. Counsel pointed out that no private colonizer could carry on any activity relating to construction in the developed area notified u/s 3 of the UP Urban Planning & Development Act. Therefore, ld. CIT's observation that every builder would become entitled to exemption is devoid of any merit.

4.5. Ld. Counsel further referred to section 17 of the Act and pointed out that compulsory acquisition of land in regard to the activities to be pursued by the authority was to be done by the state government under the provisions of Land Acquisition Act. He, therefore, submitted that it is entirely within the purview of State government as to which land is to be acquired. He pointed out that after the acquisition of land by the state government, the same is to be transferred to the authority for the purpose for which the land had been acquired on payment by Authority. He, therefore, submitted that the entire administration was with the State government.

4.6. Ld. Counsel further referred to section 18 which deals with the disposal of land by Authority and pointed out that this disposal of the land was to be done by the Authority by way of sale, exchange or leave or by the creation of any easement, right or privilege or otherwise but not by way of gift.

4.7. Ld. Counsel further referred to section 20 which deals with funds of the Authority and pointed out that as per sub-section (2) the fund is to be applied towards meeting the expenses incurred by the Authority in the administration of this Act and for no other purposes. He submitted that no profit motive was involved.

4.8. With reference to all these sections, ld. Counsel submitted that the entire administration with reference to this land was to be under the control

and supervision of state government and this work has been undertaken by the assessee as an instrumentality of state.

4.9. Ld. Counsel referred to the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Krishi Utpadan Mandi Samiti (2010) 1 All LJ 817, contained at page 44 onwards of the PB and referred to para 41 of the said decision, which is reproduced herein below:

> *"It is contended by the Revenue that the assessee are established with profit motive because they are not rendering free services but they are charging cess/ fees for their services and, therefore, the assessee are not established for charitable purposes. There is no merit in this contention. The cess/fees are charged by the assessees from the purchases in the market area at the rate prescribed by the State Government for the purpose of carrying out the object of the Act. As held by the Apex Court in the cases of Surat Art Silk Clot Manufacture Association (1980) 121 AIR 1 and in the case of Bharat Diamond Bourse (2003) 259 ITR 280 where the dominant purpose of a trust/institution is charitable, incidentally if some profit is made and the said profit is used for charitable purposes, the said trust/institution does not cease to be established for charitable purposes. In the case of the assessees, the dominant object is to regulate procurement and supply of agricultural and some other produce and to meet the expenses required for achieving the said object, the Legislature has empowered the assessees to levy cess/ fees. Moreover, surplus remaining in the market fund are ploughed back for carrying out the object for which these Mandi Samitis are established. Thus, the surplus remaining in the market fund is neither distributed nor accumulated as profits. In these circumstances, it cannot be said that the assessees are established with profit motive so as to deny registration under Section 12A/ 12AA of the Act.*

4.10. With reference to aforementioned para, ld. Counsel submitted that in the present case also the surplus remaining is neither distributed nor accumulated as profits and applied for the objects of the trust.

4.11. Ld. Counsel thereafter referred to the ITAT Ahmedabad Benches order dated 7-6-2013 in the case of Sabarmati Ashram Gaushala Trust Vs. ADIT (Exemption) [ITA no. 670/Ahd/2013], contained at pages 68 onwards of the PB, wherein, inter alia, in para 5, following observations are made:

> "We find that reading of the proviso to section 2(15) along with speech of the Hon'ble Finance Minister and Circular of the CBDT reproduced above make it clear that only the institutions carrying on commercial activities are intended to be covered by the proviso, not the genuine charitable institutions. The activity will be deemed to be in the nature of trade, commerce or business, only if same is carried on with the intention to earn profit. The Courts in series of decisions have held that it is an activity carried on in a systematic manner with a view to earn profit, which will be termed as "business". Accordingly, in order to hold that the activity is in the nature of trade, commerce or business, there should be profit motive. If during the course of carrying out any activity on non-commercial lines, some profit is received by the Trust, which is incidental to the activities of the trust, the same shall not be construed to be activity in the nature of trade, commerce or business of the assessee.

4.12. Thereafter, ld. Counsel referred to the decision of Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Improvement Trust (2009) 308 ITR 361 (P&H) contained at page 33 onwards of the PB, wherein the Hon'ble High Court has observed as under:

> "We have heard learned counsel for the parties and perused the record.
>
> Learned counsel for the assessee has drawn our attention to the judgment of the hon'ble apex court in the case of CIT v. Gujarat Maritime

> Board [2007] 295 ITR 561, wherein the question for consideration was the meaning to be assigned to the expression "any other object of general public utility" in section 2(15) of the Act. It was held that the said expression includes all objects which promote welfare of general public. Gujarat Maritime Board, for development of minor ports in the State of Gujarat, was held to be a charitable institution.
>
> Learned counsel for the assessee has also drawn our attention to a Division Bench judgment of this court in the case of CIT v. Market Committee [2007] 294 ITR 563. It was held that even if the assessee was not a trust, if its objective was to promote general public interest, section 2(15) of the Act was attracted and the assessee is entitled to registration under section 12A of the Act.
>
> It is not the case of the appellant-Commissioner of Income-tax that the assessee is not carrying on the activities of general welfare covered by the expression "any other object of general public utility" in section 2(15) of the Act.
>
> In view of the judgment of the hon'ble Supreme Court in the case of Gujarat Maritime Board [2007] 295 ITR 561 and the Division Bench judgment of this court in the case of Market Committee [2007] 294 ITR 563, we are of the view that the question sought to be raised is covered against the Revenue."

5. Ld. DR submitted that the ld. Commissioner has dealt with all the cases. He submitted that circle rat at which the Authority gives the land is market rate and, therefore, ld. CIT, relying on the decision of the ITAT Chandigarh Bench 'B' in the case of Punjab Urban Planning & Development Authority Vs. CIT (2006) 103 TTJ (Chd) 988, rightly held that while carrying out its objects it was acquiring land on normal rate and selling the same after developing it to general public at a higher rate. The facilities, like parks, schools, community centres etc., provided to plot holders were tools to attract investors and hidden cost of these facilities were already include din cost charged from public.

5.1. Ld. DR pointed out that ld. CIT also referred to the decision of the ITAT Amritsar Bench in the case of Jalandhar Development Authority Vs.

CIT (2009) 124 TTJ (Asr) 598., wherein also similar view was taken. He pointed out that in the case of Haridwar Development Authority and Punjab Urban Planning & Development Authority (supra), there were striking resemblances. He further pointed out that ld. CIT(A) has also observed in para 12 that the case laws cited in the reply of the assessee were different as most of them related to the period before the amendment in the Finance Act, 2008 becoming applicable from 1-4-2009. Accordingly, ld. CIT rightly concluded that the objects of the assessee were purely commercial in nature and cannot be said to be charitable. He submitted that ld. CIT rightly concluded that the assessee acquired and then developed the land for selling it at a higher rate, earning huge profits thereon by way of auction, allotment at market rates and charged interest for delayed payments of the instalments by the buyers.

6. Ld. Counsel for the assessee in the rejoinder submitted that the decisions in the cases of Punjab Urban Planning & Development Authority (supra) & Jalandhar Development Authority (supra) are not applicable in the present case because this Authority is constituted under the U.P. Urban Planning & Development Act, 1973 and is under the jurisdiction of Hon'ble Allahabad High Court.

7. We have heard rival submissions and perused the record of the case. The first proviso to section takes out an activity from the ambit of charity object if the same is in the nature of trade, commerce or business. Section 2(15) reads as under:

> *"2. (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 historic 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 application, or retention, of the income from such activity;*
>
> ***Provided*** *further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty five lakh rupees or less in the previous year.*

7.1. The assessee was set up as per U.P. Govt. G.O. dated 04/06/1986 under Uttar Pradesh Nagar Yojna Evam Vikas Adhiniyam 1973 (based on Delhi Development Act 1957) with an objective of development of Hardwar, Pauri, Tehri and part of Dehradun and all development schemes as well as beautification of the District came under its purview. In the objects, it is, inter alia, mentioned that the existing local bodies and other authorities inspite of their best efforts had not been able to cope with the problems of town planning and urban development and, therefore, to tackle the same resolutely the State Government considered it advisable that in such developing areas, Development Authorities patterned on the Delhi Development Authority be established. The entire activities are controlled/ administered through various government orders and notifications.

7.2. It is noticeable that in section 2(15) preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest have been brought within the definition of "charitable purpose". In our opinion, the submission of the assessee that development of the district by providing housing, roads, development and maintenance of parks (boost to environment) plantation of trees (again pertaining to environment), providing sewerage system (clean and healthy environment) are all objects for the welfare of the people of the

district; as also these are objects of general public utility. However, since these are the objects of general publicity utility and the boost to environment is only incidental to the activity undertaken by the assessee, therefore, the activity carried out by assessee comes within the last limb of section 2(15) viz. advancement of any other object of general public utility and, therefore, it is to be examined whether the same doe not involve the carrying on of activity in the nature of trade, commerce or business or any activity of rendering any services in relation to any trade, commerce or business or cess or fee or any other consideration irrespective of the nature of use or application or reduction of the income from such activity.

7.3. In this regard, we would first refer to the various sections dealing with the activity undertaken by the assessee. As per section 3 of the U.P. Urban Planning & Development Act, 1973, first of all the State has to form an opinion that any area within the state requires to be developed according to plan and on formation of such opinion, it is to notify in the gazette the area to be a development area. Thereupon, the State will constitute an Authority to be called the Development Authority in respect of that development area as per section 4 of the said Act.

7.4. The objects of the Authority are contained in Section 7 and for carrying out its objects of development, it has been vested with the power:

(i) to acquire, hold, manage and dispose of land and other property;

(ii) to carry out building, engineering, mining and other operations;

(iii) to execute works in connection with the supply of water and electricity, to dispose of sewage and to provide and maintain other services and amenities; and

(iv) generally to do anything necessary or expedient for purpose of such development and for purposes incidental thereto.

7.5. Section 14 of the Act gives exclusive right to the Development Authority for development of land in respect of area which has been declared as development area u/s 3. After such declaration no development of land shall be undertaken or carried out or continued in that area by any person or body (including a department of government), unless permission of such development ahs been obtained in writing from the Vice Chairman in accordance with the provisions of the Act.

7.6. Further, the development has to be carried out as per the plans. Section 18 of the Act requires the State government to acquire the land and transfer the same to the Development Authority. The Authority is not entitled to gift the land but to dispose of the land by way of sale, exchange or lease or by the creation of any easement, right or privilege or otherwise.

7.7. Section 20 deals with the fund of the Authority, which is reproduced hereunder:

> *"20. Fund of the Authority – (1) The Authority shall have and maintain its own fund to which shall be credited –*
> *(a) All moneys received by the Authority from the Stage 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 this 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.*
> *(f) The fund shall be applied towards meeting the expenses incurred by the Authority in the administration of this Act and for no other purposes."*

7.8. All these provisions in the Act lead to inescapable conclusion that State Govt. constituted Development Authority for the welfare of people and not with any profit motive.

7.9. Now we will examine the proviso to section 2(15) with reference to above broad scheme of the Act. From the above it is evident that the main object of the assessee is development of the area as per the mandate of U.P. Urban Planning & Development Act, 1973. The activity undertaken by the Authority comes within the object of general public utility but it cannot be concluded that it involves the carrying on of any activity in the nature of trade, commerce or business. Unless the activity undertaken by the assessee comes within the ambit of trade, commerce or business, the proviso would not get attract.

7.10. Hon'ble Supreme Court in the case of CIT vs. Gujarat Maritime Board 295 ITR 561 has held that where the assessee was under a legal obligation to apply its income which was directly and substantially from the business held under trust for the development of minor ports in the State of Gujarat, then it does not involve any profit motive and assessee was entitled for registration u/s 12A. The Hon'ble Supreme Court pointed out that the income earned by the Port was deployed for the development of minor ports in the state of Gujarat. Hon'ble Supreme Court took note of the fact that u/s 73 of the Gujarat Maritime Board Act 1981, all moneys received by or on behalf of the Board were to be credited to a fund called the general account of the minor ports and under section 74, detailed guidelines as noted at page 564 of the report, were there. The mode of dealing with deficit or surplus was contemplated u/s 75 of the said Act. Considering all these sections, the Hon'ble Supreme Court held that there could not be said to be any profit

motive. Unless there was a profit motive, it cannot be said that an entity was carrying on any trade, commerce or business.

7.11. We further find that in case of Krishi Utpadan Mandi Samity (supra), the Hon'ble Allahabad High Court, while dealing with the proviso to section 2(15), inter alia, observed that main object is to be considered and incidentally if some profit is made and the said profit is used for charitable purpose the said trust/ institution does not cease to be established for charitable purpose.

7.12. We further find that in the case of Muzaffarnagar Development Authority (supra), the ITA T following the decisions in the case of U.P. Avas Evam Vikas Parishad (supra); and M/s Khurja Development Authority Vs. CIT (supra), allowed the assessee's appeal.

7.13. Further in the case of Sabarmati Ashram Gaushala Trust Vs. ADIT (E) (supra), we find that Tribunal has held that profit motive is must for holding an activity to be in the nature of trade, commerce or business.

7.14. Since the decision of Hon'ble Allahabad High Court is in the case of U.P. Avas Evam Vikas Parishad (supra) is applicable to the facts of the case, therefore, we do not find any reason to refer to the decisions relied upon by the ld. CIT in the cases of Punjab Urban Planning & Development Authority (supra) & Jalandhar Development Authority (supra). It is pertinent to note that ld. CIT has granted registration u/s 12AA from 20-1-2009.

7.15. In view of above discussion we hold that 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 activity with any profit motive but the predominant object is welfare of people at large.

8. In the result, the grounds raised by assessee are allowed and the registration is restored.

ITA no. 3056/Del/2012:

9. In this appeal the main issue before the CIT was that the assessee Authority was created with the object of general public utility which is a charitable object within the meaning of section 2(15) of the I.T. Act. The ld. Commissioner has granted registration u/s 12AA to the assessee Authority vide letter 137/2008-09 dated 9-3-2009 w.e.f. 20-1-2009 i.e. only from the date of application. The assessee filed application dated 28-3-2009 to CIT for granting exemption u/s 12AA w.e.f. 1-4-2002 but ld. CIT vide his order dated 1-5-2009 advised the assessee to approach the CBDT u/s 119(2)(b) for getting the delay condoned. However, CBDT vide its order dated 6-1-2011 rejected the assessee's application for condonation.

10. Ld. Counsel referred to the decision of Hon'ble Allahabad High Court in the case of Krishi Utpadan Mandi Samiti (supra), wherein in para 14 the Hon'ble High Court has observed as under:

> *"14. Section 12A(1)(i) of the Income tax Act, specifically states that the delay can be condoned by the Commissioner in case of Trust or institution. Thus, there is a provision for condoning the delay in making the registration under section 12A. Under section 12A, one of the conditions for registration is the submission of the application in the prescribed form during the time specified in clause (a) of the Section. In most of the cases, CITs have condoned the delay. The proviso (i) to Section 12A(1)(a) contained a provision for condonation of delay. All charitable and religious trusts, desiring to avail the benefits of tax exemptions under sections 11 & 12 were, inter alia, required to file application under section 12A in form 10A for registration of the institution before the Commissioner. The proviso to clause (a) has been substituted by the Finance Act, 1991 w.e.f. 1st October, 1991 and provides that if an application for registration of the trust is made after the specified period,*

the Commissioner may register the trust or institution from the date of creation of the trust or the establishment of the institution if he is satisfied, for reasons to be recorded, that the person was prevented from making the application before the expiry of the period for sufficient reasons. If he is not so satisfied, the registration would take effect from first day of the financial year in which the application is made as per (ii) proviso to section 12(A)(1)(a) which reads as under:

(ii) "from the 1st day of the financial year in which the application is made, if the Commissioner is not so satisfied.

Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007."

11. Respectfully following the above decision of Hon'ble Allahabad High Court we condone the delay and direct the ld. Commissioner to grant registration w.e.f. 1-4-2002.

12. As far as reasons for delay in filing the application is concerned, we find that original application u/s 12AA was filed on 28-11-2003 with the Commissioner, Dehradun, which had been rejected and thereafter in view of the changed legal position i.e. order dated 20-1-2009, u/s 12AA granting registration by the Commissioner and further in view of the ITAT order in the case of Aligarh Development Authority Vs. Addl. CIT Range-I, New Delhi and so many similar cases in the state of U.P., the assessee filed the application on 20-3-2009. Thus, there was reasonable cause for delay in filing the application which, in our opinion, should have been condoned instead of adopting a technical view as taken by CBDT.

13. In the result, assessee's appeal stands allowed.

ITA no. 6058/Del/12 (2006-07):

14. For A.Y. 2006-07, the assessing officer has passed the assessment order without taking into consideration that the assessee trust was entitled for exemption u/s 12A and therefore, we restore the matter to the file of assessing officer.

15. In the result, ITA nos. 3056/Del/2012 & 3013/Del/2013 are allowed and ITA no. 6058/Del/2012 is allowed for statistical purposes.

Order pronounced in open court on 25-07-2014.

Sd/-	Sd/-
(C.M. GARG)	(S.V. MEHROTRA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 25-07-2014.

MP

Copy to :

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR