IN THE INCOME TAX APPELLATE TRIBUNAL,

CIRCUIT BENCH, VARANASI

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA Nos. 264, 265, 266 & 267/Alld/2017
Assessment Years: 2011-12, 2012-13, 2013-14 and 2014-15.

M/s. Varanasi Development Authority, PannaLal Park, Varanasi- 221003,U.P.	v.	Assistant Commissioner of Income Tax, Circle-3, Varanasi, U.P.
PAN:AAATV6811A		
(Appellant)		(Respondent)

Assesseeby:	ShriAshishBansal, Advocate
Revenue by:	ShriSunil Bajpai, CIT- D.R.
Date of hearing:	20.04.2022
Date of pronouncement:	06.07.2022

O R D E R

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

These four appeals, all filed by assessee, being ITA Nos. 264, 265, 266 & 267/Alld./2017 for assessment year(s)(ay's) 2011-12 to 2014-15 respectively, are directed against separate appellate order(s) dated 05.09.2017, 07.09.2017, 08.09.2017 and 08.09.2017 respectively passed by ld. Commissioner of Income Tax (Appeal), Varanasi (hereinafter called "the CIT(A)") in Appeal Nos. 27/ACIT/Circle-3/VNS/13-14, ITA no. 3/DCIT(Exemption)/LKW/2015-16 , 25/ACIT(Exemption)/ LKW/2015-16 and CIT(A)/10429/2016-17 , for assessment year's 2011-12 to 2014-15 respectively , the appellate proceedings had arisen

before Learned CIT(A) from separate assessment order(s), assessment order dated 28.02.2014 passed by learned Assessing Officer (hereinafter called "the AO") under Section 143(3)of the Income-tax Act, 1961 (hereinafter called "the Act") for ay: 2011-12, assessment order dated 30.03.2015 passed by AO under Section 143(3)of the 1961 Act for ay: 2012-13, assessment order dated 29.02.2016 passed by AO under Section 143(3)of the 1961 Act for ay: 2013-14 and assessment order dated 27.12.2016 passed by AO under Section 143(3)of the 1961 Act for ay: 2014-15. These four appeals were heard in Open Court through Physical hearing mode.

2. Since, all these four appeals involve common issues, these four appeals were heard together and are disposed off by this common order. With the consent of both the parties, appeal for ay: 2011-12 is taken as a lead case and our decision in ay: 2011-12 shall apply mutatis mutandis to all the remaining three appeals for ay: 2012-13 to 2014-15. This is the second round of litigation before the tribunal.

3. The grounds of appeals raised by assesseein memo of appeal filed with Income Tax Appellate Tribunal, Varanasi (hereinafter called "the tribunal") for ay: 2011-12 , reads as under:

> *"1. Because the appellate order dated 05.09.2017 which has been impugned in this appeal, is vitiated as the same has not been decided in pursuance of the guidelines/directors given by earlier by ITAT in ITA No. 380/LKW/2015 in the case of Dy. CIT, Lucknow vs. Varanasi Development Authority vide judgment and order dated 28.08.2015 with which the "CIT(A)" got seized in the 2nd round of hearing of appeal (against the assessment order dated 28.02.2014).*
>
> *WITHOUT PREJUDICE TO THE AFORESAID*

2. Because during the course of appellate proceedings in the 2nd round wherein the matter was decided afresh as per the direction contained in the ITAT order date 28.08.2015 (supra), it had been fully demonstrated that the activities carried on by the VDA/appellant could not have been said to be involving " carrying on of any activity in the nature of trade, commerce or business of any activity of rendering any service in relation any trade, commerce or business, for acess or fee or any other consideration" and accordingly the appellant's claim for exemption was not hit by the proviso to Section 2(15) of the Act.

3. Because the CIT(A) has erroneously held by referring to "realization from allotment of properties', " interest from bank", "interest from allottes", interest on scheme loans " & " other receipts" that

(a) "the assessee is carrying on its activity in the nature of trade, commerce and business: and

(b) its affairs are hit by proviso to section 2(15) of the Act

and on that basis, in upholding the denial of appellant's claim for exemption under Section 11 read with Section 12 of the Act.

4. BECAUSE reliance on the decisions of

(i) Lucknow Bench of ITAT in the case of Kanpur Development Authority vs. Asstt. CIT-1, Kanpur, (ITA No. 332 & 333/LKW/2013; and

(ii) Allahabad Bench of ITAT in the case of Allahabad Development Authority vs. Asstt. CIT, Range-3, Allahabad (ITA No. 346/Alld/2015)

In arriving at the conclusion that activities carried on by VDA/appellant is hit by the proviso to section 2(15) of the Act, is wholly misplaced and denial of claim for exemption under Section 11 of the Act, even though VDA/appellant stood registered under Section 12AA of the Act, is wholly erroneous being inconsistent with the facts of the case and law applicable thereto.

5. BECAUSE on a due consideration of the "aims and objects" and other provisions of Uttar Pradesh (Planning and Development) Act, 1973 under which the VDA/appellant had been constituted as an "Authority" for development of the 'Specified Development Area' as assigned to it and the provisions, as referred to in brief in Annexure-1 to the rounds of appeal, the CIT(A) was obliged to hold that the activities carried on by VDA/appellant, even if consideration, were not hit by the proviso to Section 2(15) of the Act and accordingly it was entitled to exemption under section 211 of the Act.

6. Because the case of VDA/appellant is frequently covered by the decision of Hon'ble Jurisdictional High Court in the case of CIT (Exemption), Lucknow vs. Moradabad Development Authority, Moradabad in ITA No. 3 of 2017, dated 05.05.2017 which in turn was based on the earlier decision of the Hon'ble Jurisdictional High Court in the case of CIT(Exemption), Lucknow vs. Yamuna Express Industrial Development Authority and others, and the CIT(A) has erred in not following the said judgment, while dismissing the appeal.

7. Because the order appealed against is contrary to the facts, law and principles of natural justice."

4(i). The brief facts of the case (ay: 2011-12) arethat the assesseefiled return of income on 30.09.2011, declaring total income of Rs. Nil. The case of the assessee was selected by Revenue for framing scrutiny assessment u/s. 143(3) read with Section 143(2) of the 1961 Act. Statutory notices under Sections 143(2)/142(1) of the 1961 Act were issued by AO from time to time. During course of assessment proceedings, the assessee appeared before AO and filed replies and details, produced books of accounts, bills andvouchers, which were test checked by AO. The solitary question which has arisen in this appeals is with regard to claim of the assessee for grant of exemption under Sections 11, 12 and 13 of the 1961 Act, which stood disallowed by the authorities below. The assessee is registered under Section 12A of the 1961 Act. Theassessee is a State Government body constituted by separate Act of State Government. The object of the assessee areof general public utilities for management, regulation and control of infrastructure falling within Varanasi. The assessee had claimed exemption under Sections 11, 12 and 13 of the 1961 Act . The assesseehas filed Form-10B for seeking necessary exemptions u/s 11,12 and 13 of the 1961 Act. The audit report under Section 44AB was also filed by the assessee in prescribed form No. 3CB and 3CD. The AO observed that the object of the assessee-authority as defined under Section 7 of the **Uttar Pradesh Urban Planning and Development Act, 1973**and as submitted by the assessee in written reply before AO, are as under:

> "*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 purpose of such development and for purpose incidental thereto."*

4(ii) The AO after perusal of the objects of the assessee, observed that no-where in these objects , the charity or charitable, poor, economically weaker, subsidy/subsidized, assistance, uplift are mentioned. The AO observed on perusal of the 1973 State Act, that it was never intended by the State Government that the assessee be a charitable organization and the AO observed that the assessee was formed with the sole object of ensuring the development of Varanasi. The AO observed that on dissolution of the assessee-authority, the assets of the assesseewill revert back to State, which is duly mentioned in Section 58 of the 1973 State Act, which reads as under:

> *(1) "Where the State government is satisfied that the purpose for which the authority was established under this Act has been substantially achieved so as to render the continued existence of the Authority in the opinion of the State Government unnecessary, that Government may by notification in the Gazette declare that the authority shall be dissolved with effect from such date as may be specified in the notification, and the Authority shall be deemed to be disallowed accordingly."*
>
> *(2) From the said date-*
>
> *a. all properties, funds and dues which are vested in, or realizable by, the Authority shall vest in or be realizable by, the State Government;*
> *b. all nazul lands placed at the disposal of the Authority shall revert to the State Government;*
> *c. all liabilities which are enforceable against the Authority shall be enforceable against the State Government; and*
> *d. for the purpose of carrying out any development which has not been fully carried out by the Authority and for the purpose of realizing properties, funds and due referred to in clause, (a) the functions of the Authority shall be discharged by the State Government."*

Thus, the AO observed that on dissolution of the assessee, all the properties, funds and dues which are vested in or realizable by the assessee-authority , shall vest in or be realizable by the State Government , and it is the discretion of the State Government to apply for any purpose it deems fit. The AO

observed that the funds generated during the so called charitable period may be utilized by the State Government for the purposes of business ,and hence the transfer is not an irrevocable transfer which is meant exclusively for charitable purposes. The AO observed that transfer of assets are revocable and Sections 11 and 12 of the 1961 Act will have no application. The AO referred to provisions of Section 11(1) of the 1961 Act and observed that it is subject to provisions of Section 60 to 63 of the 1961 Act. The AO observed that Section 60 to 63 of the 1961 Act deals with revocable transfer of assets, and for creation of valid trust, transfer of the assets for charitable purposes should be irrevocable, which as per AO is not fulfilled in the case of the assessee. The AO observed that the assessee is neither in the field of education , nor in the field of medical relief of poor and at the most the assessee's objects and activities could be said to be falling within the scope of 'general public utilities' u/s 2(15) of the 1961 Act.

4(iii) The AO observed that the assessee has received income from the following sources :-

S. No.	***HEADS***	***SCHEDULE NO.***	***AMOUNT (RS.)***
1	*Realization from allotted properties*		*4,80,44,700*
2	*Interest from bank*	*H*	*4,58,23,859*
3	*Interest from allottees& Schemes Loans*	*I*	*2,32,25,290*
4	*Other receipts*	*K*	*6,65,61,591*

4(iv) The AO observed that these receipts viz. realization from allotted properties, interest from bank , interest from allottees and scheme loans and other receipts which are received by assessee from different parties are commercial in nature . The AO issued Show cause notice(SCN) to the assessee as to why these receipts may not be treated as in the nature of commercial

/business/trade. The assessee submitted replies in reply to SCN, but the AO held the assesseeis engaged in the activities of acquisition of land and after development of land , selling thaton commercial prices , approval of maps of residential and commercial constructions . The AO also observed that the assessee is also developing houses and selling it on commercial lines . The AO further observed that the assessee is engaged in the sale of shops. The AO also observed that the assessee is engaged in the business activities, and hence it has filed audit report u/s 44AB of the 1961 Act, in Form No. 3CB and Form No. 3CD.

4(v) the AO observed that the assessee has explained that theassesseeis engaged in the objective of developing Varanasi and has carried out various activities, to name a few:

> *"(i) for development of objects of general public utilities including management, regulation and control of infrastructure being falling within Varanasi city,*
> *(ii) The major working includes approval of maps of residential and commercial construction within the city,*
> *(iii) Regulation and implementation of various plans for development of the city.*
> *(iv) Development and allotments of plots, residential units etc. to specific class of people/public at large,*
> *(v) Infrastructure development including roads, sever(sic. sewer) etc."*

4(vi) The AO observed that objects of the assessee as mentioned above falls under the limb "any other object of general public utilities". The AO then refers to what constitute business , in legal parlance, and observed that the activities of the assessee are commercial in nature . The AO observed that these authorities are to be brought into tax net as even Section 10(20A) was also omitted by the Finance Act, 2002 w.e.f. 01.04.2003 . The AO also referred to the Central Board of Direct Taxes(CBDT) Circular No. 8 of 2002, dated 27th August, 2002 , wherein it is provided that income of certain

authoritiestobecome taxable as the dominant purpose is to carry on business, and these development authorities are not involved in charitable activities. The AO observed that intention of the legislature is to tax development authorities , and hence the assessee is not exempt from income-tax. The AO referred to several judgments to support its contentions to hold that no exemption can be granted to the assessee under Section 11 and 12 of the 1961 Act, as the assessee falls under the last limb of Section2(15) of the 1961 Act as the assessee is carrying on the activity in the nature of trade,commerce and business and earned during the period income in excess of Rs. 25 Lacs, the AO held that the surplus generated by the assessee is profit earned by the assessee which is chargeable to tax at the maximum marginal rates and the assessee was assessed by the AO as business entity persuing the incidental business to its objects of development of city of Varanasi . The AO observed by examining books of accounts that the assessee maintains only one set of books of accounts , which is in violation of Section 11(4) of the 1961 Act , and hence the AO denied the exemption to the assessee under Section 11 and 12 of the Act, for ay: 2011-12 , by holding that the assessee is not carrying on the charitable activities as per provisions of Section 2(15) of the 1961 Act, vide assessment order dated 28.02.2014 passed by AO u/s. 143(3) of the 1961 Act.

5. The assessee being aggrieved by assessment framed by AO, filed first appeal before ld. CIT(A) , who was pleased to allow appeal of the assessee in first round of litigation. The Revenue being aggrieved filed second appeal with tribunal in first round of litigation, whereintribunal vide order dated 28.08.2015 in ITA No. 380/LKW/2015 for ay: 2011-12, restored the matter to the file of ld. CIT(A) for fresh adjudication , with following directions as under:

"4. We have considered the rival submissions. We find that in the case of CIT vs. Lucknow Development Authority (supra), the judgment of Hon'ble Allahabad High Court is on this basis that there is not material/evidence brought on record by the Revenue which may suggest that the assessee was conducting its affairs on commercial line with the motive to earn profit. It was held that under these facts, the proviso of Section 2(15) is not applicable. Now we examine the facts of the present case to find out as to whether the Revenue has brought on record any material/evidence which may suggest that the assessee was conducting its affairs on commercial line with the motive to earn profit. When we do so, we find that on page 4 of the assessment order, it is noted by the A.O. that on dissolution of the assessee authority, all properties, funds and dues which are vested in or realizable by the authority shall vest in or be realisable by the state government and therefore , the funds generated during so called charitable purpose period may be utilized for the purpose of the business. On page 5 of the assessment order, there is a chart of the income of the assessee from various sources and as per the same, Realization from allotted properties is only Rs. 480.45 lacs and interest income of Rs. 458.24 lacs plus Rs. 232.25 lacs and other receipts Rs. 665.62 lacs. In this manner, as against Realisation from allotted properties of only Rs. 480.45 lacs , interest income and other receipts is Rs. 1356.11 lacks. In view of these facts, the A.O. came to the conclusion that the receipts of the assessee are commercial in nature. Under these facts, inour considered opinion, the judgment of Hon'ble Allahabad High Court rendered in the case of CIT vs. Lucknow Development Authority (supra) cannot be made applicable in the facts of the present case. Learned CIT(A) has simply followed this judgment without examining this aspect that the facts in the present case are tallying or not with the facts in the case of CIT vs. Lucknow Development Authority (supra). Therefore, we feel it proper that this issue should go back to CIT(A) for afresh decision after examining this aspect that the facts in the present case are tallying with the facts in the case of CIT vs. Lucknow Development Authority (Supra) or not. We, therefore, set aside the order of CIT(A) and restore the entire matter back to him for a fresh decision in the light of above discussion after providing reasonable opportunity of being heard to both sides."

6. The ld. CIT(A) in second round of litigation decided the issue against the assesseevide appellate order dated 05.09.2017 , by holding as under:

> *"5. I have gone through the submissions of the assessee and the directions of Hon'ble ITAT while setting aside the case to the file of CIT(A). The Hon'ble ITAT had very categorically stated in the order that judgment in the case of Lucknow Development Authority was on the basis that there is no material or 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. The Hon'ble ITAT also pointed out that in the original assessment order the A.O. came to the conclusion that the receipts of the assessee are commercial in nature and it was on these facts that the Hon'ble ITAT opined that the case of Lucknow Development Authority cannot be made applicable to fact of the present case. The case was set aside simply because the predecessor CIT(A) has merely followed the judgment in the case of Lucknow Development Authority.*
>
> *6. In Para-4 of the assessment order, the A.O. has observed that the objects of the authority as defined u/s 7 of the UP Urban Planning Development Act, 1973 is as under:*
>
> > *"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, dispose of land 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 purpose of such development and for purpose incidental thereto."*
>
> *5. Nowhere in the Uttar Pradesh Urban Planning and Development Act, 1973 words like charity or charitable, poor, economically weaker, subsidy/subsidized, assistance, uplift are mentioned. It is evident from the Uttar Pradesh Planning and Development Act, 1973*

that It was never intended by the State government that Varanasi Development Authority be a charitable organization and it was formed with sole objective of ensuring the development of Varanasi in accordance with the plan.

6. As per Uttar Pradesh Planning and Development Act, 1973, Section 58. Dissolution of the Authority.

> *(1) Where the State government is satisfied that the purpose for which the authority was established under this Act have been substantially achieved so as to render the continued existence of the Authority in the opinion of the State Government unnecessary, that Government may by notification in the Gazette declare that the authority shall be dissolved with effect from such date as may be specified in the notification, and the Authority shall be deemed to be dissolved accordingly."*

(2) From the said date-

> *(a) all properties, funds and dues which are vested in, or realizable by, the Authority shall vest in or be realizable by, the State Government;*
>
> *(b) allnazul lands placed at the disposal of the Authority shall revert to the State Government;*
>
> *(c) all liabilities which are enforceable against the Authority shall be enforceable against the State Government; and:*
>
> *(d) for the purpose of carrying out any development which has not been fully carried out by the Authority and for the purpose of realizing properties, funds and due referred to in clause, (a) the functions of the Authority shall be discharged by the State government.*
>
> *It shows that on dissolution of Varanasi Development Authority all the properties, funds and dues which are vested in, realizable by, the authority shall vest in, or be realizable by, the State government and it is*

discretion of the State government to apply it for any purpose it deems fit. The funds generated during so called charitable purpose period may be utilized for the purpose of business. Therefore, it cannot be said irrevocable transfer which is meant exclusively for charitable purpose. Under these circumstances transfer of assets will be revocable and section 11,12 of the Income Tax will not apply.

7. The A.O. further noticed that the assessee is in receipt of income from the following sources:

It is seen that during the assessment year 2011-12 the assessee is in receipt of income from the following sources:-

S. No	*HEADS*	*SCHEDULE NO.*	*AMOUNT (RS.)*
1	*Realization from allotted properties*		*4,80,44,700*
2	*Interest from bank*	*H*	*4,58,23,859*
3	*Interest from allottees& Schemes Loans*	*I*	*2,32,25,290*
4	*Others receipts*	*K*	*6,65,61,591*

The above detail show that the incomes in the form of realization from allotted property, interest from bank, interest from allotees and scheme loan and other receipts are received from different parties on commercial lines. The provisions of s. 2(15) of IT Act which have been amended with effect from 01.04.2009 and the amended provisions defined charitable purpose as under:-

"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 acess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;*

8. As mentioned in the Para-7, the appellant earns income from realization of allotted properties, Interest from bank, interest fromallottee and other receipts The appellant is also authorized under Section 35 of the Urban Planning and Development Act to levy upon the owner of property a betterment charges. Lands are acquired and disposed off also through tender/auction for a consideration. It is also clear that if the value of any property in that area which is benefited by development has increased or will increase, the appellant authority may levy upon the owner of the property a betterment charge in respect of increase in the value of property. Even private firms/developers after once fixing the rate of property will not ordinarily increase the same. Any institution/authority claiming exemption u/s11 of the IT Act, if it has option to charge people on account of national and prospective increase in value of property, is in the opinion of Hon'bleITAT Kanpur Development authority case, is a better example of Mahajans charging compound interest.

Further, the appellant is a nodal agency for different government departments and it has been executing deposit works and earn income for the same. There works are basically in the nature of civil contract work and the role of appellant has been basically that of a civil contractor on which TDS has also been attracted by the Principals awarding the work. The nature of activities of the appellant are akin to the activity of any other developer, builder or colonizer.

9. Thus, it is clear that income derived by the assessee from above sources are purely in the nature of commercial activities, the S.2(15) of IT Act clearly provides that advancement of any other object of general public utility shall not be considered to be

charitable in nature, if it involves, the carrying over any activity, trade, commerce or business or any activity or rendering any services in relation to any trade, commerce or business for a cess or any other consideration. It has been held by Hon'ble ITAT, Amrtisar Bench in the case of Jammu Development Authority Vs. CIT, Jammu (2012) 23 taxmann.com343 (Asr.) as under:

> *Section 12AA read with sections 2(15), 10(20), 10(20A) and 12A of the Income-tax Act, 1961- Charitable or religious trust- Registration procedure-Main object of the assessee- development authority under Government Control was to promote and secure development of local area- Its activities were found to aim at earning profit and it was not mere incidental to its activity- There was no obligation on part of assessee to spend income on charitable purpose only- On dissolution of assessee all properties and funds would vest in Government- There was no restriction as to how said funds were to be utilized by Government-Whether assessee was not entitled to registration under Section 12A-Held, yes (in favour of revenue)*

10. It may not be out of place to mention here that this decision of Hon'ble ITAT has been confirmed by Hon'ble Punjab and Haryana Court in ITA No. 64 of 2012 dated 12.11.2003 and that the SLP has been dismissed by Hon'ble Supreme Court on 24.07.2014 vide No. 4990/214.

11. It has been further held by Hon'ble ITAT Cochin Bench in the case of Greater Cochin Development Authority Vs. JDIT (OSD) (Exemption), Range-4 Kochi as under;

Section 2(15) of the Income tax Act, 1961-Charitable purpose(Objects of general public utility)-Assessment years 2009-10 and 2010-11 Assessee trust was constituted by Government for planning and development of cities-Assessee claimed exemption under section 11 on ground that its activities were of general public utility and , hence , charitable in nature-However, on analysis of activities of assessee, it was observed that assessee had turned into a huge profit making agency-Whether, thus, Commissioner

(Appeals) rightly denied exemption under section 11-Held yes (para 48 & 51) (in favour of revenue)

12. The jurisdictional bench of ITAT Lucknow Bench-B in the case of Kanpur Development Authority Vs.ACIT-1 Kanpur (ITA NO. 332 & 333/Lkw/13) have decided the issue against the assessee by holding that the issue in the case of Kanpur Development Authority is duly covered by decision of Allahabad Tribunal in the case of Allahabad Development Authority vs. ACIT, Range-3 Allahabad in ITA No. 346/Alld/2015 in which the tribunal did not allow the exemption u/s 11 of the IT Act as in the opinion of the tribunal the assessee was hit by proviso to S. 2(15) of the IT Act. The relevant findings of the tribunal in the case of Kanpur Development Authority s. ACIT, Kanpur, in ITA No. 332& 333/Lkw/2013 dated 11.08.2016 is reproduced below as under:-

> *"30. Now, let us discuss about the facts prevailing in the case under consideration. When the ADA was originally incorporated, the activity of urban development all over the State of UP should have been avowed objective of the State government. Hitherto, the relevant activities were carried out through a Board and subsequently, it should have been decided to from a separate autonomous body or statutory corporation to carry out or accelerate the process of Urban development including the urban area. Accordingly, UP Urban Planning and Development Act, 1974 was enacted and the assessee Authority was notified under the Act. At that point of time, the assesse authority was enjoying monopoly, i.e. it was the only organization involved in orderly development of urban plots. As observed earlier, the profit motive should have been absent at that point of time. Since ,the urbanization brought in many economic benefits, like, development of undeveloped areas, economic activity, employment, generation of fresh taxes etc. It was considered to be useful to the public at large and hence the activities of the assessee was considered tobe an object of general public utility falling within the definition of charitable purpose as defined u/s 2(15) of the Act. However, we notice there appears to be drastic change in the*

approach of the assessee. In the present days, the assessee appears to be adopting the system of offering plots/space by way of "auctioning"/tender, obviously the object is to corner maximum possible price on sale of plot/space. The assessee has also lost its monopoly in this field and the private entrepreneurs are also nowadays allowed to develop urban estates. The present day scenario would show that the private entrepreneurs are developing many special economic Zones all over the country. Hence, in the present day scenario, the activities of the assesseee and theprivate entrepreneurs stand on samefooting. There cannot be any dispute that the activity of setting up/developing urban estates and maintaining the infrastructure facilities by the private entrepreneurs is considered as "Business activity". Since the activity carried on by the assessee is no different from the one carried on by the private entrepreneurs, in our view, the activity carried on by the assessee should also be considered to be "business activity" only. Hence, the activity carried on by the assessee, in our view, would be hit by the proviso to Sec. 2(15) of the Act. The assessee appears to be adopting the system of offering plots/space by way of "auctioning", obviously the object is to corner maximum possible price on sale of plot/space. We, therefore, are of the firm opinion that after the insertion of the proviso in Section 2(15), the assessee cannot be regarded to have been established for charitable purpose. Our view is also supported by the decision of the Amritsar Bench of the ITAT in the case of Jalandhar Development Authority Vs. CIT 124 TTJ 598(Amr.). The coordinate bench of this tribunal has also taken similar view in the case of ITA No. 26/PNJ/2012 in the case of Goa Industrial Development Corporation Vs. CIT vide order dtd. 22.06.2012 to which the undersigned is the author. Similar view has been taken coordinate bench of this tribunal in the case of Entertainment Society of Goa Vs. CIT ITA No. 90/PNJ/2012 vide order dt.5.4.2013. Amritsar Bench of this tribunal in the case of Jammu Development Authority Vs. CIT, Jammu ITA No. 30(ASR) of 2011 ide order dt.2012 taken the same view. The said decision has been confirmed by Hon'ble High Court (ITA No. 164/2012; CMA No. 2/2012 dated

12.11.2013). SLP filed against the said decision has been dismissed by Hon'ble Supreme Court. No other decision of any other High Court was brought to our knowledge taking a contrary view after the insertion of proviso to Section 2(15), The decision of Bihar Society for Computerization of Registration offices Patna vs. CIT dt. 30.10.2009 in ITA No. 61/pat/2009 rendered by Patna Bench of this tribunal relate to prior to the insertion of proviso to Section 2(15).

31. But, in our opinion, the proviso under Section 2(15) is notretrospective. I*t has been added by the Finance Act, 2008 w.e.f. 1.4.2009 i.e. from A.Y. 2009-10. A provision can be regarded to be clarificatorywhen there is an ambiguity in the interpretation of the provision. Section 2(15), as it stood prior to the insertion of the proviso, did not have any ambiguity. The section, defines "charitable purpose"by giving an inclusive definition mentioning therein "charitable purpose includes relief to the poor, education, medical relief and advancement of any other object of general public utility. In the case of Section 2(15) as it existed prior to the insertion of the proviso, there was no ambiguity on the interpretation of section 2(15)-what does the advancement of any object of general public utility mean? Whether it includes therein carrying on of any activity in the nature of trade, commerce or business. In fact, by putting the proviso by Finance Act, 2008 w.e.f 2009 the legislature specified that advancement of any other general public utility shall not be a charitable purpose if it involves carrying on of activity in the nature of trade, commerce or business or any activity in the nature of trade, commerce or business or any activity of rendering any services in relation to a trade, commerce or business for cess or fee or any other consideration irrespective of the nature of the use or application or retention of the income from such activity . From the notes and clauses of the Finance Bill, 2008 we noted that proviso was inserted in Sec. 2(15) so as to exclude from advancement of any other object of general public utility.*

Any activity in the nature of trade, commerce or business or,

(1) Any activity of rendering any service in relation to any trade, commerce or business, for a fee or cess or any other consideration irrespective of the nature of use, application or retention of the income from such activity.

32. In the proposal it is clearly mentioned that the amendment will take effect from 1.4.2009 and will accordingly apply in relation to A.Y. 2009-10 and subsequent assessment years. The memorandum explaining the provision in the Finance Bill, 2008 explains that the amendment has been proposed in the following manner;

"Section 2(15) of the Act defines "charitable purpose" to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

It has been noticed that a number of entities operating on commercial lines are claiming exemption on their income either under Section 10(23C) or Section 11 of the Act on the ground that they are charitable institutions. This is based on the argument that they are engagedin the "advancement" of an object of general public utility" as is included in the fourth limb of the current definition of "charitable purpose". Such a claim, when made in respect of an activity carried out on commercial lines, is contrary to the intention of the provision.

With a view to limiting the scope of the phrase "advancement of any other object of general public utility", it is proposed to amend section 2(15) so as to provide that "the advancement of any other object or general public utility" shall not be a charitable purpose if it involves the carrying on of-

(a) Any activity in the nature of trade, commerce or business or,
(b) Any activity of rendering of any service in relation to any trade, commerce or business, for a fee or cess or any other consideration, irrespective of the nature of use of application of the income form such activity or the retention of such income, by the concerned entity.

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

33.From the explanation, it is apparent that the intention of the legislature is clear that the entities operating on commercial lines should not be allowed exemption on their income either u/s 10(23C) or under Sec. 11 on the ground that they are charitable institutions and they are engaged in advancement of object of general public utility. The memorandum does not speak of ambiguity in the existing definition of charitable purpose as given u/s 2(15). The amendment is not by way of clarification but limits the scope of the phrase 'advancement of any other objects of general public utility' so that the benefit may not be available to any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to trade, commerce, or business for a fee, cess or any other consideration irrespective of the nature of the use or application of the income from such activity or retention of such income by the concerned entity. The Assessing Officer has to look into the definition of charitable purpose as applicable for the A.Y. for deciding whether the Assessee is engaged in charitable purpose or not if the Assessee is engaged in any activity in the nature of trade, commerce or business for consideration and hit by the proviso to Section 2(15) and accordingly has to decide whether the income of the assessee is exempt u/s 11 or not.

34. Once, in our opinion, the assessee no more remains being established for charitable purpose after the insertion of proviso in Section 2(15), the eligibility of assessee for registration stands cancelled. The CIT is the law implementing authority u/s 12A and therefore, it has power to rectify its order by cancelling/withdrawing the registration by rectifying the order passed u/s 12A from the date when the assesse no more remains to be charitable institutions as is held by us in the preceedingpara. In our opinion, a legal mistake would occur in the order of the CIT continuing the registration from the date when the proviso under Section 2(15) has been inserted as the institutionno more remains to have been created/established for charitable purposes or religious purposes. If the registration will remain continued, the purpose of amendment made in Section

2(15) will be defeated and injustice will be caused to those institutionshaving the similar objects as the assesseehas but created or established after the amendment in Section 2(15) of the Income Tax Act. We cannot read the proviso in this manner. In case, CIT fails to rectify the order granting the registration, the legislature has taken care of this situation by inserting subsection (8) in Section 13 By Finance Act, 2012 w.e.f 1.4.2009 which lays down as under:

> *"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."*

In view of this provision, the assessing officer while making the assessment should not give benefit to the assessee u/s 11 or section 12 from A.Y. 2009-10 even if the registration u/s 12A is granted and subsequently, it is found that in view of proviso to section 2(15), the assessee can no more be regarded to have been created for charitable purpose.

35. We have gone through the order of the 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:

> *"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 stake holders and the finding of the Triubnal 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 orsubstantially 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 Officer by issuing notices 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 25.07.2005 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 under Secretion 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 of the poor education, medical relief and the advancement of any other object of general public utility"

37. The said definition 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 under Section 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 the settled law in view of the decision of 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. In that case the Hon'ble Supreme Court has held as under:

> *"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Supreme Court divorced from the context of the question under consideration and treat it to be the complete law declared by the court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. A decision of the Supreme Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, courts must carefully try to ascertain the true principle laid down by the decision."*

This decision since does not relate to the impugned assessment year therefore in our opinion the said decision will not assist the assessee.

Similar view has been taken by Hon'ble Supreme Court in the case of MadhavRaoJivajiRaoScindiaBahadur V. Union of India, (1971), 3 SCR 9.

38. The assessee has also relied on the decision of this Tribunal in ITA No. 390-A-2006 we noted that this decision is also not applicable to the facts of the case before us that decision relate to the registration sought u/s 12A of the Income Tax. The case before us does not relate to the registration being sought u/s 12A of the Income Tax. We also noted that all the other decision relied on the by the learned AR are also prior to the amendment in Section 2(15) of the Income Tax Act therefore they are also not applicable in the instant case.

39. We therefore in view of our aforesaid discussion as well as the proviso to Section 2(15) and the provision of Section 13(8) as inserted by the Finance Act, 2012 w.e.f. 1.4.2009, confirm the order of the CIT(A) and dismiss the appeal of the assessee."

10. Respectively, following the said decision of the tribunal, we noted that the registration u/s 12AA of the Act granted by learned CIT does not grant the assessee a

license to claim exemption under Section 11 of the Act. Once the assessee is hit by first proviso to section 2(15) of the Act in view of applicability of section 13(8), the assessee is not entitled to claim exemption u/s. 11 of the Act. We, therefore, confirm the order of CIT(A) on this issue. Thus, ground No. 3 stands dismissed.

13. The written submissions of the assessee have been duly considered the discussion held during the course of hearing of appeal has also been considered. It may be pointed out that the decision in the case of CIT vs.Lucknow Development Authority as relied upon by the assesseethe Hon'ble Courts has found that where the trust is carrying out its activities with no motive to earn profit, for fulfillment of its aims and objectives and in the process earn the some profit, the same would not be hit by the proviso to S. 2(15). The aims and objects of mere selling some product at profit will not ipso facto hit assessee by applying proviso s. 2(15) and denying exemption under Section 11.

14. The case of the present assessee has to be decided in the background of the concept of profit motive as it is an important concept in deciding whether charitable status is to be allowed to the assessee or not in the light of above decision of Hon'ble High Court. Chapter-VIII which deals in supplemental and miscellaneous provision of the Act. It provides that:

> *It is provided that where in the opinion of the authority, as a consequence of any development scheme been executed by the authority in any development area, the value of any property in that area which is benefitted by the development, has increased or will increase, the authority shall be entitled to levy upon the owner of the property or any person having an interest therein a betterment charge in respect of the increase in value of the property resulting from the execution of the development.*

15. The Hon'bleLucknow Bench in Kanpur Development Authority in ITA No. 332& 333/Lkw/2013 has discussed this clause in detail in its order on page 23&24 and the same are reproduced as under:-

> *It is important to read the above clause devoting sufficient time and judge whether a charitable institution would be levying such charges on the persons living in the area developed by the Authority and benefitted as a result of increase in prices due to the development. I think that even those firms and companies, working absolutely on the lines of profit of motive, will desist from levying such charges, The areas developed by the Authority are inhabited not only by well off people but also people who find it difficult to meet their means. If such charges are levied on the people of poor class, they would come under grave difficult. If an institution, claiming to be charitable and enjoying the benefits of exemptions under Section 11, has the option to charge people on account of prospective and notional increase in the price of their properties, it would be a better example of Mahajans charging compound interest at high interest rates on the amounts lent out, from the poor people of the society.*

From the above analysis of Hon'ble ITAT order referred to above, it becomes clear that decision of Allahabad High Court in the case of Lucknow development Authority relied upon by the appellant does not help it, but goes against it.

16. It is also clear that the judgment in the case of Lucknow Development Authority was on the basis that there was no material/evidence brought on record by the revenue which may suggest that the assesse was conducting its affairs on commercial lines. However, the facts as discussed above in para-7, clearly established that M/s Varanasi Development Authority is running its affairs on the lines of a private developer and is charging its customers on commercial lines as discussed by the AO in page-5 of the assessee order with a motive to earn profit.

17. In view of the above I hold that the case of the assessee falls under last limb of S. 2(15) of IT Act as the asessee is carrying on its activity in the nature of trade, commerce and business and during the year under consideration, it earned income in excess of Rs. 25,00,000/- and it affairs are hit by proviso to section 2(15) of IT Act, 1961 and accordingly, I hold that the AO correctly denied the exemption under Section 11&12 of IT

Act to the assessee for A.Y. 2011-12 and net taxable income determined by the A.O. at Rs. 3,80,00,813/- to be taxed at maximum marginal rate is correctly determined".

7. Aggrieved by the appellate order dated 05.09.2017 passed by ld. CIT(A) in second round of litigation, the assessee has now come in appeal before the tribunal . The Ld. Counsel for the assessee opened arguments before the Bench and submitted that the assessee is registered under Section 12A of the 1961 Act and is carrying out development activities for development of Varanasi. The Ld. Counsel for the assessee drew our attention to the audited financial statements of the assessee ,and submitted that 'Infrastructure Development Fund' is used for development of infrastructure of Varanasi. The Ld. Counsel for the assessee for the relied upon the decision of ITAT-Lucknow Bench in the case of Lucknow Development Authority in ITA No. 185 & 186/LKW/2019,dated 10th March, 2022. It was submitted that Section 2(15) of the 1961 Act benefit is available to the assessee and proviso is not applicable to the assessee. The Ld. Counsel for the assessee drew our attention to Page No. 28 ,Para 8 of the appellate order passed by ITAT, Lucknow Bench, in the case of Lucknow Development Authority(supra). Our attention was drawn to Para 51-56 of the paper books, where audited accounts of the assessee are placed. It was submitted by ld. Counsel for the assesseethat the assessee case is paramateria with the case of Lucknow Development Authority(supra).Our attention was also drawn by ld. Counsel for the assesseeto an appellate order passed by ITAT, Agra Bench in the case of Jhansi Development Authority v. DCIT, Circle-4, Agra , reported in (2021) 123 taxman.com247(Agra-trib.).

7.2. On the other hand, the ld. CIT-DR submitted that the ITAT, Lucknow Bench decision in the case of Lucknow Development Authority(supra) is based on certain decisions which were rendered in earlier context, while the law was amended with effect from 1st April, 2009. It was submitted wherever there is a commercial activities carried on by the tax-payer, the deductions under section 11 and 12 of the 1961 Act are not allowed, if it exceeds taxable limits as prescribed u/s. 2(15) of the 1961 Act. Our attention was also drawn to provisions of Section 2(15) and 13(8) of the 1961 Act. The Ld. CIT DR submitted that the registration under Section 12AAof the 1961 Act does not mean that the assessee will get exemption/deduction u/s 11 and 12 of the 1961 Act. Our attention was drawn to the judgement and order of Hon'bleAllahabad High Court in the case of Allahabad Development Authorityin ITA No. 134/2013, dated 07th December, 2017. Our attention was also drawn by ld. CIT-DR to the decision of ITAT-Chandigarh in the case of Chandigarh Lawn Tennis Association v. ITO , in ITA No. 1382/Chd/2016, dated 26.07.2018 .Our attention was also drawn to page 54 of the paper book filed by the assessee, and provisions of Section 11(4A) of the 1961 Act. It was submitted that no separate books of accounts are maintained by theassessee. Our attention was drawn by ld. CIT-DR to provisions of Section 10(23C) of the 1961 Actand its proviso. Our attention was also drawn by ld. CIT-DR to provisions of Section 2(15) of the 1961 Act, and to the first proviso and second proviso. It was submitted by ld. CIT DR that the law was amended with effect from 01.04.2009. It was submitted that the business is not barred but it is to be within the limits as prescribed in Section 2(15) of the 1961 Act. It was submitted that deduction / exemption u/s. 11 of the 1961 Act are available when the property is held for charitable or religious purposes, while

theassesseeis buying and selling land, thus theassessee is in business. It was submitted that proviso will be applicable as limit has been exceeded .The ld. CIT DR drew our attention to provisions of Section 11 of the 1961 Act and specifically to Section 11(4) of the 1961 Act. The ld. CIT DR submitted that the assesseeis buying land, developing landand selling land , and it cannot be said that business of the assessee is different from any other businesses. It was submitted that the assesseeis not doing any work of charitable nature, rather it is doing business with profit motives. It was submitted by ld. CIT DR that the assessee is selling properties through auctions wherein objective is to fetch maximum rates with a view to maximize profits, and there is no charity involved in assessee's work. It was submitted that the assessee is not into hospital and educational activities. It was submitted that the assessee is doing systematic business activities and hence proviso to Section 2(15) is applicable. The ld. CIT DR also submitted that in case of winding up of the assessee, all the funds, properties and assets shall go to State Government , which shows that it is revocable transfer and hence the assessee is not entitled for relief under Section 11, 12 and 13 of the 1961 Act. The ld. CIT DR prayed that the orders passed by authorities below be confirmed as the assessee is into business activities of buying land, developing land and selling properties, thus the assessee is not eligible/entitled for deduction/exemption u/s 11 , 12 and 13 of the 1961 Act. The ld. CIT-DR submitted that as per provisions of Section 58 of the 1973 State Act, the assets, fundsetc of the assessee shall vest with the State Government in the eventuality of winding up of the assessee.

7.3 The ld. Counsel for the assessee submitted in rejoinder that the decision of ITAT, Chandigarh Bench in the case of Chandigarh Lawn Tennis Association (supra) was considered by Agra-tribunal while adjudicating appeal in the case ofJhansi Development Authority (supra), which was adjudicated by tribunal in favour of the tax-payer. The ld. Counsel for the assessee relied upon decision of Agra-tribunal in the case of Jhansi Development Authority(supra) andit was submitted that Hon'ble Allahabad High Court decision was also considered by Agra-tribunal while deciding the above case.

8. We have considered rival contentions and perused the material on record, including cited case laws. This is second round of litigation before tribunal. In the first round of litigation, the tribunal while adjudicating appeal filed by the Revenue, set aside and restored the matter to the file of ld. CIT(A) for a fresh decision with following directions, vide appellate order dated 28.08.2015 in ITA no. 380/Lkw/2015 for assessment year 2011-12, by holding as under:-

> *"4. We have considered the rival submissions. We find that in the case of CIT vs. Lucknow Development Authority (supra), the judgment of Hon'ble Allahabad High Court is on this basis that there is not material/evidence brought on record by the Revenue which may suggest that the assessee was conducting its affairs on commercial line with the motive to earn profit. It was held that under these facts, the proviso of Section 2(15) is not applicable. Now we examine the facts of the present case to find out as to whether the Revenue has brought on record any material/evidence which may suggest that the assessee was conducting its affairs on commercial line with the motive to earn profit. When we do so, we find that on page 4 of the assessment order, it is noted by the A.O. that on dissolution of the assessee authority, all properties, funds and dues which are vested in or realizable by the authority shall vest in or be realisable by the state government and therefore , the funds generated during so called charitable purpose period may be utilized for the purpose of the business. On page 5 of the assessment order, there is a chart of the income of the assessee from various sources and as per the same, Realization from allotted properties is only Rs. 480.45 lacs and interest income of Rs. 458.24 lacs plus Rs. 232.25 lacs and other receipts Rs. 665.62 lacs. In this manner, as against Realisation from allotted properties of only Rs. 480.45 lacs , interest income and other receipts is Rs. 1356.11 lacks. In view of these facts, the A.O. came to the conclusion*

that the receipts of the assessee are commercial in nature. Under these facts, in our considered opinion, the judgment of Hon'ble Allahabad High Court rendered in the case of CIT vs. Lucknow Development Authority (supra) cannot be made applicable in the facts of the present case. Learned CIT(A) has simply followed this judgment without examining this aspect that the facts in the present case are tallying or not with the facts in the case of CIT vs. Lucknow Development Authority (supra). Therefore, we feel it proper that this issue should go back to CIT(A) for afresh decision after examining this aspect that the facts in the present case are tallying with the facts in the case of CIT vs. Lucknow Development Authority (Supra) or not. We, therefore, set aside the order of CIT(A) and restore the entire matter back to him for a fresh decision in the light of above discussion after providing reasonable opportunity of being heard to both sides."

Thus , as could be seen that tribunal while setting aside the appellate order passed by ld. CIT(A) in first round of litigation, has observed that the ld. CIT(A) has allowed the appeal of the assessee by following judgment and order of Hon'ble Allahabad High Court in the case of CIT v. Lucknow Development Authority, reported in (2014)265 CTR 433(All.HC) without comparing whether the facts in the instant case are tallying with the facts in the case of Lucknow Development Authority(supra). The tribunal noted that the AO has brought on record in its assessment order that on dissolution of the assessee , all properties , funds and dues which are vested in or realizable by assesseeshall vest in or realizable by State Government, and thus the funds during the so called charitable purpose period may be utilized by State Government for business purposes. Further the tribunal noted that the AO has brought on record in its assessment order that realization from allotted properties is only Rs. 480.45 lacs , while interest income and other receipts are to the tune of Rs. 1356.11 lacs. The tribunal observed that the AO came to conclusion that the receipts of the assessee are commercial in nature. The tribunal further observed that the ld. CIT(A) has simply followed the judgment and order of Hon'ble Allahabad High Court in the case of Lucknow Development Authority(supra) and granted relief to the assessee without

examining this aspect whether facts in the present case are tallying with the facts in the case of Lucknow Development Authority(supra), and hence the tribunal set aside the appellate order of ld. CIT(A) and restored the matter to the file of ld. CIT(A) for denovo adjudication of the appeal.

The ld. CIT(A) while adjudicating appeal of the assessee in second round of litigation adjudicated the appeal against the assessee, mainly on the grounds that the assessee is running its activities/affairs on commercial lines with motive to earn profit, and is thus hit by proviso to Section 2(15) of the 1961 Act. The ld. CIT(A) observed that the assessee earned income from realization of allotted properties, interest from bank , interest from allottee and other receipts. The ld. CIT(A) observed that the assessee is also authorized u/s 35 of Urban Planning and Development Act to levy upon the owner of property a betterment charges. The ld. CIT(A) observed that lands are acquired and disposed off also through tender/auctions for a consideration. The ld. CIT(A) observed that if the value of any property in that area which is benefitted by development has increased or will increase, the assessee may levy upon the owner of the property a betterment charges in respect of increase in the value of the property. The ld. CIT(A) observed that such betterment charges cannot be imposed by even private firms/developers. Thus, the ld. CIT(A) while relying on the decision of tribunal in the case of Kanpur Development Authority wherein it was observed that if the institution/authority who is claiming exemption u/s 11, has option to charge people on account of notional and prospective increase in value of property, is clearly a case of Mahajan's charging compound interest.The ld. CIT(A) also observed that the assesse is a nodal agency for different government department and has been executing

civil contract work as civil contractor , and even income-tax at source has been deducted on payments made to the assessee. There was also reference by AO to Section 58 of the 1973 State Act, wherein on dissolution of the assessee, its funds , properties, dues realizable etc. shall revert back to State Government. The ld. CIT(A) relied upon several judicial precedents to hold that the assessee is not entitled for deduction u/s 11 to 13 of the 1961 Act, as its activities/affairs are run on commercial lines with an intent to make profits, and clearly the assessee is hit by proviso to Section 2(15) of the 1961 Act. The appellate order passed by ld. CIT(A) in second round of litigation is reproduced in para 6 of this order, and is not repeated again.

That is how , we are now seized of the matter , in this second round of litigation. Before we proceed further, it will be relevant to reproduce the relevant extracts of judgment and order passed by Hon'ble Allahabad High Court , in the case of Lucknow Development Authority(supra), as under:

> ***"17.*** *We have heard learned counsel for the parties and gone through the material available on record.*
>
> ***18.*** *It is undisputed fact that the assessee is a "Statutory Authority" which was established under the provisions of the Uttar Pradesh Planning and Development Act, 1973. In the instant case, prior to 1st April, 2003, the assessee were enjoying exemption under Section 10(20A) and Section 10(29). When these provisions were amended w.e.f. 1st April, 2003, then the necessity arose to register these institutions under Section 12A. In view of the objects, there is no good reason for holding that statutory bodies could not be treated as "charitable" within the meaning of Section 2(15). The object of the "Authority" is to provide shelter to the homeless people, therefore, there is no objectionable material to treat these institutions as 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 and 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.

19. *The contention that the assessee are earning profit has no merit as per the ratio laid down in the case of ShriSarafa Association v. CIT [2007] 294 ITR 262/ 163 Taxman 228 (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 of Income-tax (Exemption) v. GovinduNaicker Estate [2009] 315 ITR 237 (Mad), it was observed that the construction of commercial complex by charitable trust is eligible.*

20. *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 v. Gujarat Maritime Board [2007] 295 ITR 561/[2008] 166 Taxman 58 (SC), where it was observed that:—*

> *'... in Section 2(15), namely, "any other object of general public utility". From the said decisions it emerges that the said expression is of the widest connotation. The word "general" in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose [CIT v. 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 v. 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 v. Surat Art Silk Cloth Mfrs. Association [1980] 121 ITR 1/[1979] 2 Taxman 501 (SC)].'*

21. *Applying the ratio laid down in the case of CIT v. Andhra Pradesh State Road Transport Corpn. [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.*

22. *Further, it may be mentioned that Section 12AA of the Act lays down the procedure for registration in relation to the conditions for applicability of Sections 11 & 12 as provided in Section 12A. Therefore, once the procedure is complete as provided in sub-section (1) of Section 12AA and a certificate is 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.*

23. *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. v. CIT [1979] 117 ITR 1/1 Taxman 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.*

24. *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 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.*

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

"2.2. 'Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under Section 11(4A) or the seventh proviso to Section 10(23C), which are that —

(i) the business should be incidental to the attainment of the objectives of the entity, and

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

26. *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.*

27. *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).*

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.*

29. *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.

30. *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.*

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

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

The aforesaid judgment and order passed by Hon'bleAllahabad High Court deciding the issue in favour of the taxpayer viz. Lucknow Development Authority(supra), was for ay's: 2003-04 to 2006-07 , which assessment years were all prior to ay: 2009-10 , while there was an amendment in Section 2(15) by Finance Act, 2008 w.e.f. 01.04.2009 , wherein first proviso to Section 2(15) was inserted. We are concerned with ay: 2011-12 wherein amended Section 2(15) shall be applicable, whichread as:

Definitions.

2. In this Act, unless the context otherwise requires,—

***

***

(*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 ten lakh rupees or less in the previous year;*]

Thus, as could be seen that charitable purpose shall include advancement of any other object of public utility, but the same shall not be a chartable 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. But ,however , if the aggregate value of receipts is less than or equal to Rs. 10 lacs , then first proviso shall not be applicable.

While inserting the first proviso to Section 2(15) vide Finance Bill, 2008 w.e.f. 01.04.2009, it was stated in Notes on clauses , as under:

"Clause (15) of the said section defines "charitable purpose" to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

It is proposed to amend the said clause by inserting a proviso thereto so as to exclude from "advancement of any other object of general public utility"—

(i) any activity in the nature of trade, commerce or business, or

(ii) 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 any such activity.

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

The Memorandum to Finance Bill, 2008 , provided as under:

"RATIONALISATION AND SIMPLIFICATION MEASURES

Streamlining the definition of "charitable purpose"

Section 2(15) of the Act defines "charitable purpose" to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

It has been noticed that a number of entities operating on commercial lines are claiming exemption on their income either under section 10(23C) or section 11 of the Act on the ground that they are charitable institutions. This is based on the argument that they are engaged in the "advancement of an object of general public utility" as is included in the fourth limb of the current definition of "charitable purpose". Such a claim, when made in respect of an activity carried out on commercial lines, is contrary to the intention of the provision.

With a view to limiting the scope of the phrase "advancement of any other object of general public utility", it is proposed to amend section 2(15) so as 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—

(a) any activity in the nature of trade, commerce or business or,

(b) any activity of rendering of any service in relation to any trade, commerce or business,

for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity, or the retention of such income, by the concerned entity.

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

It will be relevant at this point of time to refer to a recent appellate order passed by Lucknow-tribunal in the case of Lucknow Development Authority v. ACIT(Exemption) in ITA no. 185 &186/Lkw/2019 for ay: 2013-14, ITA no. 163 & 164/Lkw/2019 for ay: 2014-15 and 2015-16 and ITA no. 439/Lkw/2019 for ay: 2016-17, vide common order dated 10th March, 2022 wherein the tribunal decided the issue in favour of tax-payer and held that the tax-payer LDA is entitled for exemption u/s. 11 of the 1961 Act even after considering the amended provisions of Section 2(15) , as all assessment years dealt with by Lucknow-tribunal in its afore-stated appellate order were post

amendment to Section 2(15) by Finance Act, 2008, wherein Lucknow-tribunal held as under:

> *"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/XXXVI2-21(DA)-72 dated 13.09.1974. In Uttar Pradesh Urban Development and Planning Act, it is mentioned that this Act is being enacted to tackle the problems of town planning and urban development. The assessee Authority has been constituted by the State Government and assessee Authority has no power to take decision on application of funds in contravention to the provisions of the UPUPD Act. The Authority thus cannot be said to be running for profit motive. If any income is earned over and above expenditure, it is used for development work in the city of Lucknow. Authority is just assisting State Government in development of towns which is for the welfare of the public.*
>
> *9. As regards the Revenue's stand to compare the assessee with a private colonizer, we observe that the major source of income of the assessee authority is from the sale of plots, houses, shops, rent, sundry receipts and interest, still the assessee authority cannot be compared with a private Real Estate Developers for several reasons. Few such reasons are discussed below:*
>
> > *a. The appellant Authority is constituted by Uttar Pradesh Urban Development Act, 1973 for the development of Lucknow without profit motive. On the other hand, the private colonizers/ Real Estate Developers are embodied by private firms and companies for the development of a housing project undertaken by them with profit motive.*
> >
> > *b. The appellant Authority consist of nominees of the State Government and are answerable to the State Government for any course of action taken by them beyond the powers delegated to them by the Act/ State Government, however, private colonizers/ Real Estate Developers consist of private players who are only answerable to each other for their actions.*
> >
> > *c. The Authority is neither running for profit motive nor it is actually earning profit. However, in case of private colonizers/ Real Estate Developers, the difference between the actual cost and the sale consideration is exorbitant to earn maximum profits and no discounts are granted to weaker section.*
> >
> > *d. The appellant Authority cannot utilize funds in any activity other than the main objects / administration of the Act under which it is constituted, however, no such restrictions are upon such private colonizers/ Real Estate Developers.*
> >
> > *e. Books of accounts are audited by auditor appointed by State Government/ office of Authority General of India in case of LDA. On the other hand, audit in case of private colonizers/ Real Estate Developers is done by an auditor appointed by them and in some cases, it is even not compulsory by law.*

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

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

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

ii. Roads, sewage system, etc. which are build and street lights which are installed by the appellant Authority for the benefit of the public at large, however, Real Estate Developers only develops roads, installs lights inside their project areas, and if used by general public, it is considered as trespassing.

iii. All the plots/ flats/ houses allotted by appellant Authority of similar sizes cost the same to the buyer, however, the cost of plots/ flats/ houses of same size as of appellant Authority build by private players is exorbitantly high and also differ if, the property sold by private player are vastu compliant/ east facing/ park facing, etc.

iv. The receipt of money is arising out of sole purpose of growth and development of the areas and if there are surplus funds, they cannot be distributed but are used in forth coming years for development of Lucknow city. No such restriction is upon the Real Estate Developers.

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

i. Commissioner of Income-tax v. Ahmedabad Rana Caste Association [1983] 140 ITR 1 (SC)
ii.Commissioner of Income-Tax Vs. Gujarat Maritime Board [2007] 295 ITR 561 (SC)
iii. CIT v. Bar Council of Maharashtra (1981) 130 ITR 28 (SC)

9.2 Further, in the case of Additional Commissioner of Income-Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 (SC) a Constitution Bench held that, if primary purpose and predominant object of a trust are to promote welfare of general public, the purpose would be charitable purpose. If primary or predominant object of an institution is charitable, any other object which might not be charitable, but which is ancillary or incidental to dominant purpose, would not prevent institution from being a valid charitable trust. Therefore, irrespective of the fact that LDA receipts include consideration from sale of property, rent, interest, etc., LDA has to be considered as charitable trust in light of abovementioned judgments of Hon'ble Supreme Court and Hon'ble Allahabad High Court in its own case since its predominant object are to promote welfare of general public and L.D.A. cannot be compared with and treated like a real estate developer. Treating L.D.A. like a real estate developer will defeat the very purpose of establishing L.D.A. by an Act of Legislatures.

9.3 From the above facts, it is clear that the Lucknow Development Authority is not engaged in carrying on any activity in the nature of trade, commerce or business or any activity in the nature of rendering any service in relation to any trade, commerce or business for a fee or any other consideration. The nature of activities of the assessee Authority, the purpose and manner of its formation and the objects for which it has been created goes to show that it is not engaged in carrying on any activity in the nature of trade, commerce or business. The objects of the assessee Authority do not, expressly or impliedly, provide for carrying on of trade, commerce or business. The L.D.A. is only rendering/ providing service to the general public on behalf of the Government without any profit motive or 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 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 nongenuine NGOs who carry on activities in the nature of trade or business under the grab of charity. The appellant Authority is a Government body. It does not fall under the category of non-genuine NGOs. The Learned Assessing Officer has taken a narrow and myopic view, by holding that the assessee Authority is carrying on business, which needs to be corrected.

9.7 While dealing with cases such as of L.D.A., a Government body, a narrow and myopic view should not be adopted. While interpreting the terms trade, commerce or business, in the Commentary on Income Tax Law by Chaturvedi&Pithisaria, "business" has been defined / explained as under (Page 1321; Vol I; Fifth edition):

(1) Business

"The word "business" is one of large and indefinite import and connotes something which occupies the time, attention and labour of a person normally with the object of making profit [JesselM.R. In smith V. Anderson, (1880) 15 Ch D 247, 258; State of Andhra Pradesh v. H. Abdul Bakshi& Bros, (1964) 15 STC 644, 547 (SC); CIT v. MotilalHirabaiSpng.AndWvg. 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 [Halsbury's Laws of England, Third Edition, Vo1.38, page 10, quoted in CIT v. Upasana hospital, (19970 225 ITR 845,851 (Ker). Also see, CIT v. Delhi Transport Corporation, (1996) 134 Taxation 386, 392-93 (Del)]. 'Business' is a word which has more extensive I meaningthat trade. All trade is business but all business is not trade [Vijaya Bank v. A.N. Tewari, (1995) 83 Taxman 340,342 (Del)]."

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

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

CIT, (1982) 133 ITR 470,474 (Del); Government Medical Store Depot v. Superintendent of Taxes, (1986) Tax LR 2164 (SC) = (1985) 60 STC 296 (SC); Government Medical Store Depot v. State of Haryana, (1986) 63 STC 198(SC))."

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

"The word 'business' is a word of large and indefinite import. It is something which occupies the attention and labour of a person for the purpose of profit. It has a more extensive meaning than the word 'trade'. An activity carried on continuously in an organized manner with a set purpose and with a view to earn profit is business [CIT v. M.P. Bazaz, (1993) 200 ITR 131, 135, 136 (Ori)]. Also see, Khoday Distilleries Ltd. v. State of Karnataka, JT 1994 (6) SC 588, 625-26."

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

In the Commentary on Income Tax law by Chaturvedi&Pithisaria, "trade" and "commerce" have been defined as under (Page 1323; Vol 1; Fifth Edition):

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

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

"Liability to pay tax under Act 7 of 1956 arises if a person carries on trade by himself or through his agent, or follows a profession or is in employment within the State, and to otherwise. The expression "trade" is not defined in the Act. "Trade" in its primary meaning is the exchanging of goods for goods for 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. VenkatksubbiahReddiar (1996), 221 ITR 18,21 (Mad.), Hon'ble Madras High Court has, while holding that profit - motive is essential to constitute a business, observed as under:

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

Similar findings have been made in the following case laws:

> *(1) Barendra Prasad Ray v. ITO (1981) 129 ITR 295 (SC)*
>
> *(2) LalaIndra Sun In Re (1940) 8 ITR 187 (Alld)*
>
> *(3) NarasinghaKar& CO. v, CIT (1978) 113 ITR 712(Ori)*

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 PradhanMantriAwasYojna.

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. KrishiUtpadanMandiSamite (2010) 1 ALJ 817, their lordship held that

charging cess /fee is for the purpose of carrying out object of Act i.e. KrishiUtpadanMandiSamitiAdhiniyam, 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 MandiSamiti 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 MandiSamities 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'bleHigh 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 treated as "charitable" within the meaning of Section 2(15). The object of the "Authority" is to provide shelter to the homeless people, therefore, there is no objectionable material to treat these institutions as noncharitable. The registration under Section 12A is mandatory to claim exemption under Sections 11 & 13, but registration alone cannot be treated as conclusive. It is always open to Revenue Authorities, while processing return of income of these assessees, to examine the claim of the assessees under Sections 11 & 13 and give such treated to these institutions as is warranted by the facts of the case. Revenue Authorities are always at liberty to cancel the registration under Section 12AA(3). Moreover, it may be mentioned that the benefit of Section 11 is not absolute or conclusive. It*

is subject to control of Sections 60 to 63. If it is found by keeping in view the provisions of Sections 60 to 63 that it is not so includible then such income does not qualify for any relief.

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

If the objects of the "Authority" is charitable as public utility then the benefit being a charitable trust is eligible as per the ratio laid down in the case of CIT vs. Gujarat Maritime Board, [2007] 295 ITR 561 (SC), where it was observed that:-

> *"... in Section 2(15), namely, "any other object of general public utility". From the said decisions it emerges that the said expression is of the widest connotation. The word "general" in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose [CIT vs. Ahmedabad Rana Caste Association, [1983] 140 ITR 1 (SC)]. The said expression would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the general public the purpose would be charitable purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry [CIT vs. Andhra Chamber of Commerce [1965] 55 ITR 722 (SC)]. If the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity [Addl. CIT vs. Surat Art Silk Cloth Manufacturer Association [1980] 121 ITR 1 (SC)]."*
>
> *Applying the ratio laid down in the case of CIT vs. Andhra Pradesh State Road Transport Corporation [1986] 159 ITR 1 (SC), where of in the present case, the "Autonomous Authority" was established for the purpose of predominant of development the area and provide to shelter to the homeless people within the State of U.P. The management and control of the Authority is essentially with the State Government and there is no profit motive as the income earned by the Authority is deployed for the development of the State.*
>
> *Further, it may be mentioned that Section 12AA of the Act lays down the procedure for registration in relation to the conditions for applicability of Sections 11 & 12 as provided in Section 12A. Therefore, once the*

procedure is complete as provided in sub-section (1) of Section 12AA and a certificate is issued granting registration to the trust or institution the certificate is a document evidencing satisfaction about (i) the genuineness of the activities of the trust or institution, and (ii) about the objects of the trust or institution. Section 12A stipulates that the provisions of Sections 11 & 12 shall not apply in relation to income of a trust or an institution unless the conditions stipulated therein are fulfilled. Thus, granting of registration under Section 12AA denotes that the conditions laid down in Section 12A stand fulfilled.

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

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

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

> *"2.2. 'Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under Section 11(4A) or the seventh proviso to Section 10(23C), which are that –*
>
> *(i) the business should be incidental to the attainment of the objectives of the entity, and*
> *(ii) separate books of accounts should be maintained in respect of such business."*
>
> *For the applicability of proviso to Section 2(15), the activities of the trust should be carried out on*

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

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

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

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

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

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

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

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

"(a.) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified by upholding the order of Ld. CIT (A) by not considering the amended provision of Section 2(15) of the Income Tax Act, 1961. In which there is a provision for charging tax if total receipt of entities engaged in advancement of general public utility exceeds Rs.10 Lakh. Whereas the assessee has shown excess of income over expenditure of Rs.16,69,28,027/- by sales of Plots, shops and flats and its activities are in the nature of trade, commerce or business and amended provision of section 2(15) of the Income Tax Act 1961 is squarely applicable in this case.

(b.) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified by ignoring the fact held 2 in the case of M/s Safdurjung Enclave Educational Society Vs. Municipal Corporation Delhi (1992) 3 SCC 390, in which the Hon'ble Supreme Court of India has held that the activities run on commercial lines do not fall within the ambit of charitable object.

(c.) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in upholding the order of the CIT(A) and ignoring the fact that the activities of the authority are hit by Section 2(15) of Income Tax Act, 1961 and therefore the applicant is not entitled to get benefit of section 12AA of the Income Tax Act, 1961. The Applicant primarily is not carrying out any activity for advancement of any objective of general public utility, as such. The Applicant was purely involved in commercial activities for the purpose of making profit and charity, if any, was 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 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:

(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 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.

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

assesseeexceeding an amount of Rs.50,000/- therefore, those persons were the persons listed in sub-clause (b) of Section 13(3) and that is why that case law was decided in favour of the Revenue whereas in the present case, it is undisputed fact that the assessee was allowing discount to its employees, therefore, this case law is not applicable. As regards the applicability of case law of Noida Entrepreneurs Association, we find that in that case a CBI inquiry had been conducted and there were gross violation 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."

Thus, as could be seen above that the Lucknow-tribunal in the case of Lucknow Development Authority(supra), held that the Lucknow Development Authority(LDA) 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, and it was held by tribunal that

L.D.A. is entitled for exemption u/s 11 of the 1961 Act being engaged in charitable activities by persuing objects of advancement of objects of general public utility. This appeal decided by Lucknow-tribunal was for ay:2013-14 to 2016-17, wherein allay's were for the period post amendment of Section 2(15) by Finance Act, 2008 w.e.f. 01.04.2009. While adjudicating this appeal, the tribunal has dealt with the judgment and order passed by Amritsar-tribunal in the case of Jammu Development Authority(supra) which stood affirmed by Hon'ble High Court of Jammu and Kashmir and SLP filed against the said judgment and order stood dismissed by Hon'ble Supreme Court, and also dealt with the appellate order passed by Lucknow-tribunal in the case of Kanpur Development Authority which stood recalled by Lucknow-tribunal, and then tribunal proceeded to decide the issue in favour of tax-payer. We are in complete agreement with the above appellate order passed by Lucknow-tribunal in the case of LDA. This appellate order was passed by Lucknow-tribunal for assessment years which were all post amendment to Section 2(15) of the 1961 Act by Finance Act, 2008 wef 01.04.2009 , and the effect of amendment was duly dealt with by the Lucknow-tribunal.Now , we have to see whether the assessee can be considered to be similarly placed to Lucknow Development Authority, so far as its constitution , activities and other relevant facts are concerned, and thence can similar benefit be extended to the assesseewrt its claim for exemption u/s 11 of the 1961 Act.

The assessee is registered u/s 12A of the 1961 Act vide Registration No. CT/62/HQ-I/2003-04/1001 dated 22.03.2004. The assessee before us, like L.D.A. was constituted u/s 4 of the Uttar Pradesh Planning and Development Act, 1973.The Varanasi Development Authority, Varanasi is a development

authority declared under Section 4 of the 1973 State Act and was notified in exercise of power under Section 3 of the State Act of 1973 by the State Government by Gazette Notification dated 20th August, 1974. Thus, the assessee is a "Statutory Authority" which was established under the 1973 State Act. It is pertinent to mention that preamble to the 1973 State Act provides that it is an Act to provide for the development of certain areas of Uttar Pradesh according to plan and for matters ancillary thereto. The reasons for enactment are stated to be , as follows:

> *"Reasons for the enactment.-*
>
> *(1) The Governor of Uttar Pradesh promulgated on June 12, 1973, the Uttar Pradesh Urban Planning and Development Ordinance, 1973, which reproduced the provision of the Uttar Pradesh Urban Planning and Development Bill, 1973, as passed by the U.P. Legislative Council. The reasons for this enactment are given below.*
>
> *(2) **In the developing areas of the State of Uttar Pradesh, the problems of town planning and urban development need to be tackled resolutely. The existing local bodies and other authorities, in spite of their best efforts, have not been able to cope with these problems to the desired extent. In order to bring about improvement in this situation, the State Government considered it advisable that in such developing areas Development Authorities patterned on the Delhi Development Authority be established. As the State Government was of the view that the urban development and planning work in the State had already been delayed it was felt necessary to provide for early establishment of such Authorities.***
>
> *(3) The present measure seeks to replace the aforesaid Ordinance by a President Act.*
>
> *(4) The Committee constituted under the proviso to Sub-section (2) of Section 3 of the Uttar Pradesh State Legislature (Delegation of Powers) Act, 1973 (Act 33 of 1973), has been consulted before the enactment of this measure as a President's Act."*

Thus, as could be seen , the 1973 State Act was enacted to tackle the problems of town planning and urban development resolutely, in the developing areas of U.P.. It is recognized that the existing local bodies and authorities were not able to cope with the problems to the desired extent, and hence need was felt to create

an authority in developing areas on the pattern of Delhi Development Authority. Thus, it is very clear from the preamble itself that the predominant object and purpose i.e. the pith and substance for creating these authorities is to tackle the problem of town planning and urban development, to have a planned and integrated development of town within the developing areasaccording to plan, and not otherwise. The purpose is to have planned development, rather than profit making .The work of development of the area was until then was carried by local bodies and authorities who were not able to achieve the desired results.It is pertinent to mention that India is a Welfare State working with the object of welfare of people, and all the States as well Union Territories comprising within Union of India are working for the welfare of the people. Thus, to undertake the planned development of urban areas , proper town planning and housing for all are the important responsibilities of Government both Central and State Government , which is now been vested by State Government with these specialized statutory development authorities like assessee to carry out development in a planned manner in the development area, rather than making profits at its core objective.

Section 1 of the 1973 StateAct , provides that it will extend to whole of Uttar Pradesh. , excluding Cantonment Area and lands owned , requisitioned or taken on lease by the **Central Government for the purpose of defense**. Thus , it could be seen that the 1973 State Act has widest coverage of the area within development area falling within the jurisdiction of Development Authority , excluding Cantonment Area and land held by Central Government for the purpose of Defense.

Section 3 of the 1973 State Act, reads as under:

> *"3. Declaration of development, areas.-*
> *If in the opinion of the State Government* ***any-area within the State requires to be developed according to plan*** *it may, by notification in the Gazette, declare the area to be a development area."*

Thus, if in the opinion of State Government**, any area within the State requires to be developed according to plan,** the State Government by issuing a notification in the Gazette, declare the area to be a development area. Thus, the object of the 1973 State Act is to develop an area according to plan , so that proper town planning in an integrated manner can be undertaken and development of the notified area takes place in a planned and organized manner, instead of having hapharzd and unorganized development of the development area falling within the jurisdiction of the Development Authority .

Section 4 of the 1973 State Act , reads as under:

> "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.
> (3) The Authority in respect of a development area which includes whole or any part of a city as defined in the [Uttar Pradesh Municipal Corporation Act. 1959), shall consist of the following members namely
>
> a- Chairman to be appointed by the State Government:
> b- Vice-Chairman to be appointed by the State Government:
> [c- the Secretary to the State Government, in charge of the Department in which, for the time being, the business relating, to the Development Authorities is transferred, ex-officio:)]
> d- the Secretary to the State Government in charge Of the Department of Finance, ex-officio.
> e- the Chief Town and Country Planner, Uttar Pradesh ex-officio:
> [f- the Managing Director of the Jal Nigam established under the Uttar Pradesh Water Supply and Sewerage Act, 1975. ex-officio)]

g- theMukhya Nagar Adhikari, ex-officio:
h- the District Magistrate of every district any part of which Included in the development area ex-offtcio:
i- four members to be elected by Sabhasads of the Nagar Mahapalika for the said city from amongst themselves, Provided that any such member shall cease to hold such office as soon as he ceases to be Sabhasad of the (Municipal Corporation):
(j) such other members not exceeding three as may be nominated by the State Government.

(4) The appointment of the Vice-Chairman shall be whole time.
(5) The Vice-Chairman shall be entitled to receive from the funds of the Authority such salaries and allowance-and be governed by such conditions of service as may be determined by general or special order of the State Government in this behalf.
(6) A member referred to in Clause (c) Clause (d) Clause (e) or Clause (f) of Sub-section (3) may instead of attending a meeting of the Authority himself depute an officer, not below the rank of Deputy secretary in the department, in the case of a member referred to In Clause (c) or Clause (d) and not below the rank of Town Planner in the case of a member referred to in Clause (e) and not below the rank of Superintending Engineer in the case of a member referred to in clause (f) to attend the meeting. The officer so deputed shall have the right to take part in the proceedings of the meeting and shall also have the right to vote.
(7) The Authority in respect of a development area other than that mentioned in Sub-Section (3) shall consist of a Chairman, a Vice Chairman and not less than five and not more than eleven such other members, including at least one member from Municipal Boards and Notified Area Committees having each jurisdiction in the development area, who shall hold office for such period and on such terms and conditions as may be determined by general or special order of the State Government in this behalf. Provided that the Vice-Chairman or a member other than an ex-officio member of the Authority may at any time by writing under his hand addressed to the State Government resign his office and on such resignation being accepted shall be deemed to have vacated his office.
(8) No act or proceedings of the Authority shall be invalid by reason of the existence of any vacancy in, or defect in the constitution of, the Authority."

It is provided in Section 4 of the 1973 State Act that the Development Authority shall be body corporate, having **perpetual succession**. Thus, the Development Authority shall be a body corporate having perpetual succession, thus **enjoying perpetual existence**. The 1973 State Act also providesthat the Staff/officers of the Authority shall be appointed by State Government, namely Chairman, Vice Chairman , who shall be Members of the Development Authority. The authority shall also have ex-officio Members, namely (a) Secretary to the State Government , in charge of the Department in which , for the time being , the business relating , to the authority is

transferred, (b) Secretary to the State Government in charge of the Department of Finance, (c) Chief Town and Country Planner, U.P. ,(d) Managing Director of the Jal Nigam established under the Uttar Pradesh Water Supply and Sewerage Act, 1975 (e) Mukhya Nagar Adhikari , (f) The District Magistrate of every District any part of which is included in the development area , (g) four members to be elected by Sabhasads of the Nagar Mahapalika and (h) such other Members not exceeding three as may be nominated by State Government .Thus, it clearly shows that the Constitution of the Members is widest amongst public functionaries, who are associated in their specialized areas relating to planned and integrated development of town/cities.Section 5 of the 1973 State Act provides that the State Government may appoint Secretary and Chief Accounts Officer of the Development Authority. Section 6 of the 1973 State Act provides that the State Government may appoint Advisory Council for the purposes of advising Authority on the preparation of the master plan and on such other matters relating to the planning of development or in connection with administration of the 1973 State Act. The Advisory Council again consists of specialized public functionaries, in the field of town planning, health , transportation, electricity , local authorities, labour, industry , commerce , elected people representatives of the area etc. . Thus, it could be seen that the State Government has deep and pervasive control over the appointments and management of the Authority . The fundamental and predominate object of constituting these authorities including assessee, being to have planned , regulated and integrated development of the development area according to plan, and not otherwise. The purpose is to have planned development, rather than making profits .

The objects of the Authority are stated in Section 7 of the 1973 State Act , which shall be to promote and secure the development of the area according to plan . The authority has powers to carry our 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. Section 7 of the 1973 State Act, reads as under:

> *"7. Objects of the Authority.- The objects of the Authority shall be promote and secure the development of the development area according to plan and for that purpose the Authority shall have the Power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity to dispose of sewage and to provide and maintain other services and* ***amenities*** *and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto: Provided that save as provided in this Act nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force."*

The word 'amenity' is defined in section 2(a) of the 1973 State Act, which includes roads, water supply, street lighting, drainage, sewerage , public works and such other convenience as the State Government may by notification in the Gazette specify to be an amenity for the purposes of this Act. Thus,the authority has been vested with responsibility to provide amenities within the development area falling within its jurisdiction, which include road, water supply, street lighting, drainage, sewerage, public works and other conveniences. Section 2(a) of the 1973 State Act, reads as under:

> *"(a) 'amenity' includes road, water supply. street lighting, drainage, sewerage, public works and such other convenience as the State Government may, by notification in the Gazette, specify to be an amenity for the purposes of this Act.,"*

Section 8 of the 1973 State Act provides that the Authority shall prepare a Master Plan for the development area. It provides that the Master Plan shall define the various zones into which the development area may be divided for the purposes of development and the manner in which land is proposed to be used in each Zone. Section 9 of the 1973 State Act provides for development plans for each Zone to be prepared by the Authority. A zonal development plan may contain a site-plan and use-plan for the development of the zone and show the approximate locations and extents of land uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses; specify the standards of population density and building density; show every area in the Zone which may, in the opinion of the Authority, be required or declared for development or re-development. Section 9A of the 1973 State Act contain, provisions regarding all or any of the following matters, namely- (i) the division of any site into plots for the erection of buildings; (ii) the allotment or reservation of land for roads, open spaces, gardens, recreation-grounds, schools, markets and other public purposes: (iii)the development of any area Into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out, (iv) the erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of buildings: (v) the alignment of buildings of any site; (vi) the architectural features of the elevation or frontage of any building to be erected on any site, (vii)the number of residential buildings which may be erected on plot or site; (viii) the amenities to be provided in relation to any site or

buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense such amenities are to be provided: (ix)the prohibitions or restrictions regarding erection of shops. work-shops, warehouses of factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality, the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained: the restrictions regarding the use of any site for purposes other than erection of buildings; any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for presenting buildings being erected haphazardly, in such zone or area. Section 10 of the 1973 State Act provides that master plans and zonal development plans as prepared by Authority shall be submitted to State Government for its approval , and State Government has powers to approve the Master Plan and/or Zonal Development Plans with or without modification , or reject the plan with directions to the Authority to prepare a fresh plan according to such directions. Thus, it could be seen that the Authority is been given vast and onerous responsibilities under the 1973 State Act to undertake planned , regulated and integrated development of the entire area which falls under its jurisdiction, and it will be preposterous to compare it with an ordinary real estate company/builder who are building/constructing a residential / commercial complex, as their aim to undertake business with an intent to make profits. It could also be seen that the StateGovernment has deep and pervasive control over the Authority . The fundamental and predominate object being to have planned, regulated andintegrated development of the development area according to plan, and not otherwise. The purpose is to have planned development. It could be said

that the Authority is a State instrumentality discharging functions which are hitherto required to be performed by State Government and the objects are for advancement of object of general public utility . It is pertinent to mention that India is a Welfare State working with the object of welfare of people, and all the States as well Union Territories comprising within Union of India are working for the welfare of the people. Thus, to undertake the planned development of urban areas , proper town planning and housing for allareimportant responsibilities of Central and State Government, which is now been vested by State Government with these specialized statutory development authorities like assessee to carry out development in a planned manner in the development area, rather than making profits at its core objective. Moving further, Reference is also drawn to Section 14 of the 1973 State Act, which lays down that once the area is declared as development area falling within jurisdiction of Development Authority, no person or body (including Government Department) can carry out or continue with the development of land unless permission in writing is obtained from the Authority. Further, it provides that all developments in the development area shall be carried out only in accordance with Master Plan and/or Zonal development plans. It is provided in Section 15 of the 1973 State Act, the authority is vested with powers to levy fee for granting permission to any person or body to carry out development of land. The authority is also vested with powers to levy development fees, mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed. Section 15A of the 1973 State Act provides that Every person or body having been granted permission under sub-section (3) of section 15, shall complete the development according to the approved plan and send a notice in writing of

such completion to the Authority, and obtain a completion certificate from the Authority in the manner prescribed or provided in the bye-laws of the Authority. Section 16 of the 1973 State Act provides that no person or body shall use land and buildings in the Zone in contravention of the Zonal Development Plan. Chapter VI of the 1973 State Act provides for compulsory acquisition of land by State Government under the Land Acquisition Act and transferring of the said acquired land with the Authority, for achieving its objects of planned and regulated development of development area falling within its jurisdiction. It also empowers Authority to dispose of land . The Authority is also vested with powers to recover charges, in case of failure by the lessee to construct the building within stipulated time. The State Government is also empowered to transfer Nazul Land to Authority, for achieving its objects of development in the development area(Section 19). Section 22 of the 1973 State Act provides that accounts of the Authority shall be subject to audit by annually by the Examiner , Local Fund Accounts. However, the State Government may entrust the audit to the Accountant General, Uttar Pradesh or to Comptroller and Auditor General of India or to any other auditor. Section 23 of the 1973 State Act provides that the Authority shall prepare Annual Report of its activities and submit to the State Government. The said Annual report shall be placed before both the Houses of the Legislature. Then, there are several supplemental and miscellaneous provisions in the 1973 State Act which empowers Authority to enter in or upon and land and building to carry out its functions. The 1973 State Act also empowers Authority to levy penalties for undertaking or carrying out any developmental activities in contravention of Master Plans and/or Zonal Developmental Plan or without the permission , approval or sanction of the

Authority as mandated in the 1973 State Act. There are also provisions for punishment by way of imprisonment for encroachment or creating obstruction on any land not being private property, whether or not such land vests in the authority Section 27 , 28 and 28A of the 1973 State Act empowers Authority to order demolition , seal or stop of any development which was carried out in contravention of Master Plan and/or Zonal Development Plan or without the sanction, permission or approval of the Authority as is mandated under the provisions of the 1973 State Act. Section 29 of the 1973 State Act provides that the Authority shall have such other powers and functions exercisable by the local authority concerned or its Chief Executive Officer, as the case may be, under the enactment constituting that local authority subject to such exceptions or modifications, as the State Government may by notification in the Gazette specify. Section 34 of the 1973 State Act provides that where any area has been developed by the Authority , it may require the local authority within whose local limits the area so developed is situated, to assume responsibility for the maintenance of the amenities which have been provided in the area by the Authority and for the provision of the amenities which have not been provided by the Authority but which in its opinion should be provided in the area. Section 35 provides that if in the opinion of the authority, in consequence of any development scheme executed by authority , in any development area , the value of any property in that area has been benefitted by the development , has increased or will increase , the Authority is empowered to levy betterment charges on the owners of the property or on any person having interest in the property. Section 40 of the 1973 State Act provides that all dues to the authority can be recovered as arrears of land revenue and also by attachment and sale of

property , apart from any other mode of recovery. Section 41 and 42 of the 1973 State Act provides that there is deep and pervasive control exercised by State Government over the Authority in carrying out directions issued by State Government whose decision shall be final , and also in calling for records, returns by State Government from Authority , and inspection by State Government , which reads as under:

> *"41. Control by State Government.-*
> *(1) The Authority,the Chairman or the Vice-Chairman shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.*
> *(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the [Authority, the Chairman or the Vice-Chairman) under this Act any dispute arises between the authority, the Chairman or the Vice Chairman) and the State Government the decision of the State Government on such dispute shall be final.*
> *(3) The State Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the [Authority or the Chairman) for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit: Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.*
> *(4) Every order of the State Government made in exercise of the powers conferred by this Act shall be final and shall not be called in question in any court."*
>
> " 42. Returns and Inspections.-
> (1) The Authority shall furnish to the State Government such reports, returns and other information as that Government may from time to time require.
> (2) Without prejudice to the provisions of Sub-section (1), the State Government or any officer authorised by the State Government in that behalf, may call reports, returns and other information from the Authority, or the local authority concerned in regard to the implementation of the Master Plan.
> (3) Any person authorised by the State Government or the officer referred to in Sub-section (2) may enter into or upon any land with of without assistants or workmen for ascertaining whether the provisions of the Master Plan are being or have been implemented, or whether the development is being or has been carried out in accordance with such plan.
> (4) No such entry shall be made except between the hours of sunrise and sunset and without giving reasonable notice to the occupier, or if there be no occupier, to the owner of the land or building."

Section 55 of the 1973 State Act provides that the State Government has powers to frame rules to carrying out the purposes of the 1973 State Act.

Section 58 of the 1973 State Act provides that in case State Government is satisfied that the purpose for which the Authority was established have been substantially achieved, the State Government may by notification in official Gazette declared that the Authority shall be dissolved , and on such dissolution, all properties, funds and dues of the Authority shall vest in, or realizable by State Government. Section 58 reads as under:

> *"58. Dissolution of Authority.-*
> *(1) Where the State Government is satisfied that the purposes for which the Authority was established under this Act have been substantially achieved so as to render the continued existence of the Authority in the opinion of the State Government unnecessary, that Government may by notification in the Gazette, declare that the Authority shall be dissolved with effect from such date as may be specified in the notification; and the Authority shall be deemed to be dissolved accordingly.*
> *(2) From the said date-*
> *(a) all properties, funds and dues which are vested in or realisable by, the Authority shall vest in, or be realisable by, the State Government;*
> *(b) allnazul lands placed at the disposal of the Authority shall revert to the State Government:*
> *(c) all liabilities which are enforceable against the Authority shall be enforceable against the State Government: and*
> *(d) for the purpose of carrying out any development which has not been fully carried out by the Authority and for the purposes of realising properties, funds and dues referred to in Clause (a) the functions of the Authority shall be discharged by the State Government."*

It will be relevant to refer to the provisions of Section 20(2) of the 1973 State Act, which provides that the funds of the Authority shall be applied towards meeting the expenses incurred by Authority in the administration of the 1973 State Act and for no other purposes, which reads as under:

> *"CHAPTER VII*
>
> *Finance,Accounts and Audit*
>
> ***20. Fund of the Authority.***
>
> ***

(2) The fund shall be applied towards meeting the expenses incurred by Authority in the administration of this Act and for no other purpose;"

The Varanasi Development Authority, Varanasi is a development authority declared under Section 4 of the 1973 State Act and was notified in exercise of power under Section 3 of the State Act of 1973 by the State Government by Gazette Notification dated 20th August, 1974.On going through the 1973 State Act as elaborately discussed above, it is clear that the Varanasi Development Authority is been given vast and onerous responsibilities under the 1973 State Act to undertake planned , regulated and integrated development of the entire area which falls under its jurisdiction, and it will be preposterous to compare it with an ordinary real estate company/builder who is building/constructing a residential / commercial complex, who are carrying on business with an intent to make profits. It could also be seen that the State Government has deep and pervasive control over the Authority . The fundamental and predominate object being to have planned, regulated and integrated development of the development area according to plan, and not otherwise. The purpose is to have planned development. It could be said that the Authority is a State instrumentality discharging functions which are hitherto required to be performed by State created for advancement of objects of general public utility being town planning and urban development including housing for all . It is pertinent to mention that India is a Welfare State working with the object of welfare of people, and all the States as well Union Territories within Union of India are working for the welfare of the people . Proper town planning and urban development in planned manner including

housing for all is the responsibility of both the Central and State Government. The State Government has constituted statutory authorities including assessee under the 1973State Act to tackle the problems of town planning and urban development in a planned manner. Thus, on perusal of the entire scheme of 1973 State Act , it could be said that the assessee is engaged in advancement of object of public utility i.e. the town planning and urban development in a planned manner, which is the predominant object of the assessee , while sale of properties etc. are incidental objective.. Section 2(15) of the 1961 Act stipulates that charitable purposes, inert-alia, includes advancement of any other object of public utility. However, the advancement of any other object of public utility shall not be charitable , if it involves 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 use or application , or retention, of the nature 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 aggregate receipts from such activity do not exceed Rs. 10 lacs. It will be relevant to refer to the judgment and order of Hon'ble Supreme Court in the case of CIT v. Andhra Chamber of Commerce , reported in (1965) 55 ITR 722(SC), wherein Hon'ble Supreme Court held as under:

> *"The expression "object of general public utility" in section 4(3) 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 thereby if it includes the taking of steps to urge or oppose legislation affecting trade, commerce or manufacture. 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, is contemplated. In In re Trustees. of the Tribune [1939] 7 ITR 415 , 425 (PC) the Judicial Committee of the Privy Council was called upon to*

consider whether a trust created under a will to maintain a printing press and newspaper in an efficient condition, and to keep up the liberal policy of the newspaper, devoting the surplus income of the press and newspaper after defraying all current expenses in improving the newspaper and placing it on a footing of permanency and further providing that in case the paper ceased to function or for any other reason the surplus of the income could not be applied to the object mentioned above, the same should be applied for the maintenance of a college which had been established out of the funds of another trust created by the same testator, was a charitable purpose within the meaning of section 4(3). The Judicial Committee expressed the view that the object of the settlor was to supply the province with an organ of educated public opinion and this was prima facie an object of general public utility, and observed :

> *"These English decisions are in point in so far only as they illustrate the manner in which political objects, in the wide sense which includes projects for legislation in the interests of particulars causes, affect the question whether the court can regard a trust as being one of general public utility. In the original letter of reference it was not suggested by the Commissioner that the newspaper was intended by its founder to be a mere vehicle of political propaganda,. and in the case of SardarDyal Singh it seems unreasonable to doubt that his object was to benefit the people of Upper India by providing them with an English newspaper—the dissemination of news and the ventilation of opinion upon all matters of public interest. While not perhaps impossible, it is difficult for a newspaper to avoid having or acquiring a particular political complexion unless indeed it avoids all reference to the activities of governments or legislatures or treats of them in an eclectic or inconsistent manner. The circumstances of Upper India in the last decade of the nineteenth century would doubtless make any paper published for Indian readers sympathetic to various movements for social and political reform. But their Lordships having before them material which shows the character of the newspaper as it was in fact conducted in the testator's lifetime, have arrived at the conclusion that questions of politics and legislation were discussed only as many other matters were in this paper discussed and that it is not made out that a political purpose was the dominant purpose of the trust."*

In All India Spinners' Association v. Commissioner of Income-tax [1944] 12 ITR 482, 488 (PC), the assessee was formed as an unregistered association by a resolution of the All India Congress Committee for the development of village industry of hand-spinning and hand-weaving. The association was established as an integral part of the Congress organisation, but it had independent existence and powers unaffected and uncontrolled by politics. The objects of the association, amongst others, were to give financial -assistance to khaddar organisations by way of loans, gifts or bounties, to help or establish schools or institutions where hand-spinning is taught, to help and open khaddar stores, to establish a khaddar service, to act as agency on behalf of the Congress to receive self-spun yarn as subscription to the Congress and to issue certificates and to do all the things that may be considered necessary for the furtherance of its objects, with power to make regulations for the conduct of affairs of the association of the council and to maize such amendments in the present constitution, as may be considered from time to time. The funds of the association consisted mostly of donations and subscriptions, and

out of the funds charkas and handlooms were purchased and supplied to the inhabitants free of charge. Raw cotton was supplied to the poor people to be spun into yarn and the yarn so spun along with the yarn acquired by the association were supplied to other poor people for hand-weaving. The income of the association was treated by the Commissioner of Income-tax as not exempt under section 4(3)(i) of the Indian Income-tax Act inasmuch as (i) the dominant purpose of the association was political, (ii) even assuming it was not political, the dominant purpose was not in any event a valid charitable purpose in law, and (iii) some of the objects were not clearly charitable objects. The Judicial Committee held that the income of the association was derived from property held under trust or other legal obligation wholly for charitable purposes and the English decisions on the law of charities not based upon any definite and precise statutory provisions were not helpful in construing the provisions of section 4(3)(i) of the Indian Income-tax Act. The words of section 4(3) were largely influenced by Lord Macnaghten's definition of charity in Pemsel v. Commissioners for Special Purposes of the Income Tax, but that definition had no statutory authority and was not precisely followed in the most material particulars ; the words of the section being " for the advancement of any other object of general public utility" and not as Lord Macnaghten said "other purposes beneficial to the community". The Judicial Committee observed that the primary object of the association was relief of the poor and apart from that ground there was good ground for holding that the purposes of the association included advancement of other purposes of general public utility. The Judicial Committee then held :

> *"These words, their Lordships think, would exclude the object of private gain, such as an undertaking for commercial profit though all the same it would subserve general public utility. But private profit was eliminated in this case. Though the connexion in one sense of the Association with the Congress was relied on as not consistent with 'general public utility' because it might be for the advancement primarily of a particular party, it is sufficiently clear in this case that the Association's purposes were independent of and were not affected by the purposes or propaganda of Congress.*

The Indian.legislature has evolved a definition of the expression "charitable purpose" which departs in its material clause from the definition judicially supplied in Pemsal's case (Supra) and decisions of English courts, which proceed upon interpretation of language different from the Indian statue. have little value. We, therefore, do not propose to deal with the Indian large number of English cases cited at the Bar, except to mention three, which declared trust for political purposes invalid.

In Rex v. Special Commissioners of Income Tax: Ex parte Headmasters' Conference and Rex v. Special Commissioners of Income Tax: (Ex parte Incorporated Association of Preparatory Schools [1925] 10 Tax Cas. 73 it was held that a conference of headmasters incorporated under the Companies Act as an association limited by guarantee, of which under the memorandum of association income was to be applied towards the promotion of its expressed objects, one of which was the promotion of, or opposition to, legislative or administrative educational measures, the holding of examinations, etc., was not a body of persons established for charitable purposes only within the meaning of the Income Tax Acts. Similarly, an incorporated association of preparatory schools incorporated under the Companies Act as an association limited by guarantee, the income whereof was to be applied solely towards

the promotion of its expressed objects which included the advancement and promotion of, or opposition to, legislative or administrative educational measures, etc., was not an association whose income was applicable to charitable purposes only. The Court of King's Bench held in the case of each of the two trusts that because the income could be utilised for promotion of, or opposition to, legislative or administrative educational measures, and those being the primary objects, the income was not liable to be applied solely to charitable purposes.

In Commissioners of Inland Revenue v. Temperance Council of the Christian Churches of England and Wales [1926] 10 Tax Cas. 748 a council constituted by resolution at a meeting of representatives of the temperance organisation of the Christian Churches of England and Wales, the purpose of which being united action to secure legislative and other temperance reform was held not to be a council established for charitable purposes only, nor was its income applicable to charitable purposes only, and that it was therefore not entitled to the exemption sought.

In Bowman v. Secular Society Ltd. [1917] AC 406, 442 Lord Parker observed :

> *"A trust for the attainment of political objects has always been held invalid, not because it is ... illegal but because the court has no means of judging whether a proposed change in the law will or will not be for the public benefit ....."*

This court, in a recent judgment, LaxmanBalwantBhopatkar by Dr. DhananjayaRamchandraGadgil v. Charity Commissioner, Bombay [1963] 2 SCR 625, considered whether for the purposes of the Bombay Public Trusts Act (29 of 1950) a trust to educate public opinion and to make people conscious of political rights was a trust for a charitable purpose. The court held (SubbaRao J. dissenting) that the object for which the trust was founded was political, and political purpose being not a charitable purpose did not come within the meaning of the expression "for the advancement of any other object of general public utility" in section 9(4) of the Bombay Public Trusts Act, 1950. The definition of "charitable purpose" in section 9 of the Bombay Public Trusts Act closely follows the language used in the definition given under the Income-tax Act, section ,4(3). But in LaxmanBalwantBhopatkar's case [13] as in the cases of the courts in England which we have referred to, it was held that the primary or the principal object was political and therefore the trust was not charitable. In the present case the primary purpose of the assessee was not to urge or oppose legislative and other measures affecting trade, commerce or manufactures. The primary purpose of the assessee is, as we have already observed, to promote and protect trade, commerce and industries, to aid, stimulate and promote the development of trade, commerce and industries and to watch over and protect the general commercial interests of India or any part thereof. It is only for the purpose of securing these primary aims that it was one of the objects mentioned in the memorandum of association that the assessee may take steps to urge or oppose legislative or other measures affecting trade, commerce or manufactures. Such an object must be regarded as purely ancillary or subsidiary and not the primary object."

It will be also relevant to refer to judgment and order of Hon'ble Supreme Court in the case of CIT v. Gujarat Maritime Board , reported in (2008) 295 ITR 561(SC), wherein Hon'ble Supreme Court held as under:

> *"**14.** We have perused number of decisions of this Court which have interpreted the words, in section 2(15), namely, 'any other object of generally public utility'. From the said decisions it emerges that the said expression is of the widest connotation. The word 'general' in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose—CIT v. 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 v. 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 v. Surat Art Silk Cloth Mfrs. Association [1980] 121 ITR 1 (SC).*
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> ***15.** The present case in our view is squarely covered by the judgment of this Court in the case of CIT v. Andhra Pradesh State Road Transport Corpn. [1986] 159 ITR 1 in which it has been held that since the Corporation was established for the purpose of providing efficient transport system, having no profit motive, though it earns income in the process, it is not liable to income-tax.*
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> ***16.** Applying the ratio of the said judgment in the case of Andhra Pradesh State Road Transport Corpn. (supra), we find that, in the present case, GujaratMaritime Board is established for the predominant purpose of development of minor ports within the State of Gujarat, the management and control of the Board is essentially with the State Government and there is no profit motive, as indicated by the provisions of sections 73, 74 and 75 of the 1981 Act. The income earned by the Board is deployed for the development of minor ports in India. In the circumstances, in our view the judgment of this Court in Andhra Pradesh State Road Transport Corpn.'s case (supra) squarely applies to the facts of the present case.*
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> ***17.** Before concluding we may mention that under the scheme of section 11(1) of the 1961 Act, the source of income must be held under trust or under other legal obligation. Applying the said test it is clear, that GujaratMaritime Board is under legal obligation to apply the income which arises directly and substantially from the business held under trust for the development of minor*

port in the State of Gujarat. Therefore, they are entitled to be registered as 'Charitable Trust' under section 12A of the 1961 Act."

It would also be relevant to refer to relevant extracts in Reference answered by Hon'ble Supreme Court in Reference u/s 257 of the 1961 Act in Tax Reference in Addl. CIT v. Surat Art Silk Cloths Manufacturers Association , reported in (1979) 2 Taxman 501(SC), as under:

Per Lordship P.N. Bhagwati, J

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6. But even if such a contention were permissible, we do not think there is any substance in it. The law is well settled that if there are several objects of a trust or institution, some of which are charitable and some non-charitable and the trustees or the managers in their discretion are to apply the income or property to any of those objects, the trust or institution would not be liable to be regarded as charitable and no part of its income would be exempt from tax. In other words, where the main or primary objects are distributive, each and everyone of the objects must be charitable in order that the trust or institution might be upheld as a valid charity - *Mohammed Ibrahim Riza* v. *CIT* [1930] LR 57 IA 260 and *East India Industries* (*Madras*) *Pvt. Ltd.* v. *CIT* [1967] 65 ITR 611. But if the primary or dominant purpose of a trust or institution is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity - *CIT v. Andhra Chamber of Commerce* [1965] 55 ITR 722. The test which has, therefore, to be applied is whether the object which is said to be non-charitable is a main or primary object of the trust or institution or it is ancillary or incidental to the dominant or primary object which is charitable. It was on an application of this test that in *CIT* v. *Andhra Chamber of Commerce (supra),* the Andhra Chamber of Commerce was held to be a valid charity entitled to exemption from tax. The Court held that the dominant or primary object of the Andhra Chamber of Commerce was to promote and protect trade, commerce and industry and to aid, stimulate and promote the development of trade, commerce and industry and to watch over and protect the general commercial interests of India or any part thereof and this was clearly an object of general public utility and though one of the objects included the taking of steps to urge or oppose legislation affecting trade, commerce or manufacture, which, standing by itself, may be liable to be condemned as non-charitable, it was merely incidental to the dominant or primary object and did not prevent the Andhra Chamber of Commerce from being a valid charity. The Court pointed out 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". The Court also held that the Andhra Chamber of Commerce did not cease to be charitable merely because the members of the Chamber were incidentally benefited in carrying out its main charitable purpose. The Court relied very strongly on the decisions in *Commissioner of Inland Revenue* v. *Yorkeshire Agricultural Society* [1920] 13 Tax Case 58 and *Institution of Civil Engineers* v. *Commissioner of Inland Revenue* [1931] 16 Tax Case 158 for reaching the conclusion that merely because some benefits incidentally arose to the members of the society or institution in the course of carrying out its main charitable purpose, it would not by itself prevent the association or institution from being a charity. It would be a question of fact' in such case "whether there is no such personal benefit, intellectual or professional, to the members of the society or body of persons as to be incapable of being disregarded.

7. It is this criterion which has to be applied in the present case and if we do so, it is clear that the dominant or primary purpose of the assessee was to promote commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth as set out in sub-clause (*a*) of clause (3) of the memorandum and the objects specified in sub-clauses (*b*) to (*e*) of clause (3) were merely incidental to the carrying out of this dominant or primary purpose. The objects set out in sub-clauses (*b*) to (*e*) of clause (3) were, in fact, in the nature of powers conferred upon the assessee for the purpose of securing the fulfilment of the dominant or primary purpose. The Revenue, it may be conceded, is right in contending that these objects or powers in sub-clauses (*b*)to (*e*) of clause (3) could benefit the members of the assessee but this benefit would be incidental in carrying out the main or primary purpose forming the basis of incorporation of the assessee. If, therefore, the dominant or primary purpose of the assessee was charitable, the subsidiary objects set out in sub-clauses (*b*) to (*e*) of clause (*3*)would not militate against its charitable character and the purpose of the assessee would not be any the less charitable. Now having regard to the decision of this Court in *Indian Chamber of Commerce* v. *CIT* [1975] 101 1TR 796, there can be no doubt that the dominant or primary purpose to promote commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth fall within the category of advancement of an object of general public utility. It is true that according to the decision of the Judicial Committee of the Privy Council in *All India Spinners' Association* v. *CIT* [1944] 12 ITR 482, the words "advancement of any other object of general public utility" would exclude objects of private gain, but this requirement was also satisfied in the case of the assessee, because the object of private profit was eliminated by the recognition of the assessee under section 25 of the Companies Act, 1956 and clauses 5 and 10 of its memorandum. It must, therefore, be held that the income and property of the assessee were held under a legal obligation for the purpose of advancement of an object of general public utility within the meaning of section 2, clause (*15*) .

8. But the question still remains whether this primary purpose of the assessee, namely, to promote commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth could be said to be "not involving the carrying on of any activity for profit'*. This question arises on the terms of section 2, clause (*15*) , which gives an inclusive definition of charitable purpose. It provides that "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". It is now well settled as a result of the decision of this Court in *Dharmadeepti* v. *CIT* [1974] 114 ITR 454 /[1978] Taxman 66 that the words "not involving the carrying on of any activity for profit" qualify or govern only the last head of charitable purpose and not the earlier three heads. Where, therefore, the purpose of a trust or institution is relief of the poor, education or medical relief, the requirement of the definition of "charitable purpose" would be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution. But if the purpose of the trust or institution is such that it cannot be regarded as covered by the heads of "relief of the poor, education and medical relief", but its claim to be a charitable purpose rests only on the last head "advancement of any other object of general public utility", then the question would straight arise whether the purpose of the trust or institution involves the carrying on of any activity for profit. The last head of "charitable purpose" thus requires, for its applicability, fulfilment of two conditions: (*i*) the purpose of the trust or institution must be advancement of an object of general public utility, and (*ii*) that purpose must not involve the carrying on of any activity for profit. The first condition does not present any difficulty and, as we have already pointed out above, it is fulfilled in the present case, because the primary purpose of the association, namely, promotion of commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth is clearly advancement of an object of general public utility. But the real difficulty arises when we turn to consider the applicability of the second condition. What do the words "not involving the carrying on of any activity for profit" mean and what is the nature of the limitation they imply, so far as the purpose of advancement of an object of general public utility is concerned?

9. It would be convenient at this stage to refer briefly to the legislative history of the definition of "charitable purpose" in the Income-tax Law of this country, as that would help us to understand the true meaning and import of the words "not involving the carrying on of any activity for profit". These restrictive words, it may be noted, were not to be found in the definition of "charitable purpose" given in sub-section (3) of section 4 of the Indian Income-tax Act, 1922 and they were added for the first time when the present Act was enacted. What were the reasons which impelled the Legislature to add these words of limitation in the definition of "charitable purpose" is a matter to which we shall presently advert, but before we do so, we may usefully take a look at the definition of "charitable purpose" in section 4, sub-section (3) of the Act of 1922. There, "charitable purpose" was defined as including "relief of the poor, education, medical relief and the advancement of any other object of general public utility" without the additive words "not involving the carrying on of any activity for profit". Now it is interesting to compare this definition of "charitable purpose" with the concept of "charity" under English law. The English law of charity has grown round the Statute of Elizabeth, the preamble to which contained a list of purposes regarded as worthy of protection as being charitable. These purposes have from an early stage been regarded merely an examples and have through the centuries been considered as guide posts for the courts in the differing circumstances of a developing and fast changing civilization and economy. Whenever a question has arisen whether a particular purpose is charitable, the test has always been whether it is or is not within the spirit and intentment of the preamble to the Elizabeth Statute. The law has been developed by analogy upon analogy and it is to be found in the large case of case law that has

been built up by the court over the years. The result is that the concept of charity in English law is as vague and undefined as it is wide and elastic and every time there has to be a search for analogy from the preamble to the Statute of Elizabeth or from decided cases. An early attempt to simplify this problem by a classification under main heads was made by Sir Samuel Romilly when he tried to sub-even charitable purposes under four heads in the following summary submitted by him in the course of arguments in *Morice* v. *Bishop of Durham* [1805] 10 Ves. 522 "relief of the indigent, the advancement of learning, the advancement of religion and the advancement of objects of general public utility". This classification was adopted in substance by Lord Macnaughten in his classic list of charitable purpose in *Special Commissioners* v. *Pemsel* [1891] 3 TC 53 (HL) where the learned Law Lord pointed out that charity in its legal sense comprises four principal division's "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". It will be noticed that the first head in the definition of "charitable purpose" both in the Act of 1922 and in the present Act is taken from the summary of Sir Samuel Romilly; the second from the classification of Lord Macnaughten after omitting the word "advancement"; the third is a new head not to be found either in the summary of Sir Samuel Romilly or in the classification of Lord Macnaughten while the fourth is drawn from the last head in the summary of Samuel Romilly. The definition of "charitable purpose" in Indian law thus goes much further than the definition of charity to be derived from the English cases, because it specifically includes medical relief and embraces all objects of general public utility. In English law it is not enough that a purpose falls within one of the four divisions of charity set out in Lord Macnaughten's classification. It must also be within the spirit and intendment of the preamble to the Statute of Elizabeth if it is to be regarded as charitable. There is no such limitation so far as Indian law is concerned. Even if a purpose is not within the spirit and intendment of the preamble to the Statute of Elizabeth, it would be charitable if it falls within the definition of "charitable purposes" given in the Statute. Every object of general public utility would, therefore, be charitable under the Indian law, subject only to the condition imposed by the restrictive words "not involving the carrying on of any activity for profit" added in the present Act. It is on account of this basic difference between the Indian and English law of Charity that Lord Wright uttered a word of caution in *All India Spinners' Association* v. *CIT* (*supra*) against blind adherence to English decisions on the subject. The definition of "charitable purpose" in the Indian Statute must be construed according to the language used there and against the background of Indian life. The English decisions may be referred to for help or guidance but they cannot be regarded as having any binding authority on the interpretation of the definition in the Indian Act. With these prefatory observations, we may now turn to examine the crucial words "not involving the carrying on of any activity for profit". The question of semantics that was posed before us was - and that is a question which we must first resolve before we can arrive at the true meaning and effect of these words - whether these words qualify "advancement" or "object of general public utility". What is it that must not involve the carrying on of any activity for profit in order to satisfy the requirement of the definition; "advancement" or "object of general public utility"? The Revenue contended that it was the former and urged that whatever be the object of general public utility, its "advancement" or achievement must not involve the carrying on of any activity for profit, or, in other words, no activity for profit must be carried on for the purpose of achieving or attaining

the object of general public utility. The argument was that if the means to achieve or carry out the object of general public utility involves the carrying on of any, activity for profit, the purpose of the trust or institution, though falling within the description "any other object of general public utility," would not be a charitable purpose and the income from business would not be exempt from tax. Now, if this argument is right, it would not be possible for a charitable trust or institution whose purpose is promotion of an object of general public utility to carry on any activity for profit at all. Not only would it be precluded from carrying on a business in the course of the actual carrying out of the primary purpose of the trust or institution, but it would also be unable to carry on any business even though the business is held under trust or legal obligation to apply its income wholly to the charitable purpose or is carried on by the trust or institution by way of investment of its money for the purpose of earning profit which, under the terms of its constitution, is applicable solely for feeding the charitable purpose. The consequence would be that even if a business is carried on by a trust or institution for the purpose of accomplishing or carrying out an object of general public utility and the income from such business is applicable only for achieving that object, the purpose of the trust or institution would cease to be charitable and not only income from such business but also income derived from other sources would lose the exemption. This would indeed be a far reaching consequence but we do not think that such a consequence was intended to be brought about by the Legislature when it introduced the words "not involving the carrying on of any activity for profit" in section 2, clause (75). Our reasons for saying so are as follows:

10. It is clear on a plain natural construction of the language used by the Legislature that the ten crucial words "not involving the carrying on of any activity for profit" go with "object of general public utility" and not with "advancement". It is the object of general public utility which must not involve the carrying on of any activity for profit and not its advancement or attainment. What is inhibited by them in last ten words is the linking of activity for profit with the object of general public utility and not its linking with the accomplishment or carrying out of the object. It is not necessary that the accomplishment of the object or the means to carry out the object should not involve an activity for profit. That is not the mandate of the newly added words. What these words require is that the object should not involve in the carrying on of any activity for profit. The emphasis is on the object of general public utility and not on its accomplishment or attainment. The decisions of the Kerala and Andhra Pradesh High Courts in *CIT* v. *Cochin Chamber of Commerce & Industry* [1973] 87 ITR 83 and *Andhra Pradesh State Road Transport Corporation* v. *CIT* [1975] 100 ITR 392, in our opinion, lay down the correct interpretation of the last ten words in section 2, clause (*15*). The true meaning of these last ten words is that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of general public utility, and not its accomplishment or carrying out, which must not involve the carrying on of any activity for profit.

11. It is true that the consequences of a suggested construction cannot alter the meaning of a statutory provision where such meaning is plain and unambiguous, but they can certainly help to fix its meaning in case of doubt or ambiguity. Let us examine what would be the consequences of the construction contended for on behalf of the Revenue. If the contention put forward on behalf of the Revenue were accepted, then, as already pointed out above, no trust

or institution whose purpose is promotion of an object of general public utility, would be able to carry on any business, even though such business is held under trust or legal obligation to apply its income wholly to the charitable purpose or is carried on by the trust or institution for the purpose of earning profit to be utilised exclusively for leading the charitable purpose. If any such business is carried on, the purpose of the trust or institution would cease to be charitable and not only the income from such business, but the entire income of the trust or institution from whatever source derived, would lose the tax exemption. The result would be that no trust or institution established for promotion of an object of general public utility would be able to engage in business for fear that it might lose the tax exemption altogether and a major source of income for promoting objects of general public utility would be dried up. It is difficult to believe that the Legislature could have intended to bring about a result so drastic in the consequence. If the intention of the legislature were to prohibit a trust or institution established for promotion of an object of general public utility from carrying on any activity for profit, it would have provided in the clear cut terms that on such trust or institution shall carry on any activity for profit instead of using involved and obscure language giving rise to linguistic problems and promoting interpretative litigation. The Legislature would have used language leaving on doubt as to what was intended and not left its intention to be gathered by doubtful implication from an amendment made in the definition clause and that too in language far from clear.

12. Moreover, another consequence of the construction canvassed on behalf of the Revenue would be that section 11, sub-section (4), would be rendered wholly superfluous and meaningless. Section 11, sub-section (4), declares that for the purpose of section 11 "property held under trust" shall include a business undertaking and, therefore, a business can also be held under trust for a charitable purpose and where it is so held, its income would be exempt from tax, provided, of course, the other requisite condition for exemption are satisfied. It may be pointed out that section 11, sub-section (4), when it provides that a business may also be properly held under trust, does not bring about any change in the law, because even prior to the enactment of the provision, it was held by the Judicial Committee of the Privy Council in *In re. Trustees of the Tribune* [1939] 7 ITR 415 that property in the corresponding section 4(3)(*j*) of the 1922 Act included business and this principle was affirmed by the pronouncements of this Court in *J.K. Trust* v . *CIT* [1957] 32 ITR 535 and *CIT* v . *P. Krishna Warrior* [1964] 53 ITR 176. Section 11, sub-section (4), merely gave statutory recognition to this principle. New section 13(1)(*bb*) , introduced in the 1961 Act with effect from 1-4-1977, provides that in the case of a charitable trust or institution for the relief of the poor, deduction or medical relief which carries on any business, income derived from such business would not be exempt from tax unless the business is carried on in the course of the actual carrying out of a primary purposes of the trust or institution. Where, therefore, there is a charitable trust or institution falling within any of the first three categories of charitable purpose set out in section 2, clause (*15*) , and it carries on business which is held by it under trust for its charitable purpose, income from such business would not be exempt by reason of section 13(1)(*bb*). Section 11, sub-section (4), would, therefore, have no application in case of a charitable trust or institution falling within any of the first three heads of "charitable purpose". Similarly, on the construction contended for on behalf of the Revenue, it would have no applicability also in case of a charitable trust or institution falling under the last head of "charitable purpose", because, according to the contention of the

Revenue, even if a business is held under trust by a charitable trust or institution for promotion of an object of general public utility, income from such business could not be exempt since the purpose would cease to be charitable. The construction contended for on behalf of Revenue would thus, have the effect of rendering section 11, sub-section (4), totally redundant after the enactment of section 13(1)(*bb*) . We do not think we can accept such a construction which renders a provision of the Act superfluous and reduces it to silence. If there is one rule of interpretation more well settled than any other, it is that, if the language of a statutory provision is ambiguous and capable of two constructions, that construction must be adopted which will give meaning and effect to the other provisions of the enactment rather than that which will give none. The construction which we are placing of section 2, clause (*15*), leaves a certain area of operation to section 11, sub-section (4), notwithstanding the enactment of section 13(1)(*bb*) and we must, therefore, in any event perfer that construction to the one submitted on behalf of the Revenue.

13. We must, however, refer to the decision of this Court in *Indian Chamber of Commerce* v. *CIT* [1975] 101 ITR 796 because that is the decision on which the strongest reliance was placed on behalf of the Revenue. The question which arose for decision in that case was whether income derived by the Indian Chamber of Commerce from arbitration fees levied by the Chamber, fees collected for issuing certificates of origin and share of profit for issue of certificates of weighment and measurement was exempt from tax under section 11 read with section 2, clause (*15*), of the Act. The argument of the Indian Chamber of Commerce (here in after referred as "the assessee") was that its objects were primarily promotional and protective of Indian trade interests and other allied service operations and they fall within the broad sweep of the expression "advancement of any other object of general public utility" and its purpose was, therefore, charitable within the meaning of section 2, clause (75), and its income was exempt from tax under section 11. The Revenue, on the other hand, contended that though the objects of the assessee were covered by the expression "advancement of any other object of general public utility", the activities of the assessee which yielded income were carried on for profit and the advancement or accomplishment of these objects of the assessee, therefore, included carrying on of activities for profit and hence the purpose could not be said to be charitable and the income from these activities could not be held to be exempt from tax. These rival contentions raised the same question of interpretation of section 2, clause (75), which has arisen in the present case. Krishna Iyer, J., speaking on behalf of the Court, lamented the obscurity and complexity of the language employed in section 2, clause (75) - a sentiment with which we completely agree - and after referring to the history of the provision the learned Judge proceeded to explain what according to him was the true interpretation of the last concluding words in section 2, clause (75). The learned Judge said:

> "... So viewed, an institution which carries out charitable purposes out of income 'derived from property held under trust wholly for charitable' purposes may still forfeit the claim to exemption in respect of such takings or incomes as may come to it from pursuing any activity for profit. Notwithstanding the possibility of obscurity and of dual meanings when the emphasis is shifted from advancement, to 'object' used in section 2 (75), we are clear in our minds that by the new definition the benefit of exclusion from

> total income is taken away wherein accomplishing a charitable purpose the institution engages itself in activities for profit. The Calcutta decisions are right in linking activities for profit with *advancement* of the object. If you want immunity from taxation, your means of fulfilling charitable purposes must be unsullied by profit-making ventures. The advancement of the object of general public utility must not involve the carrying on of any activity for profit. If it does, you forfeit. The Kerala decisions fall into the fallacy of emphasising that linkage between the objects of public utility and the activity carried on. According to that view, whatever the activity, if it is intertwined with, wrapped in or entangled with the object of charitable purpose even if profit results therefrom, the immunity from taxation is still available. This will result in absurd conclusions. Let us take this very case of a chamber of commerce which strives to promote the general interests of the trading community. If it runs certain special types of services for the benefit of manufacturers and charges remuneration from them it is undoubtedly an activity which, if carried on by private agencies, would be taxable. Why should the chamber be granted exemption for making income by methods which in the hands of other people would have been exigible to tax? This would end up in the conclusion that a chamber of commerce may run a printing press, advertisement business, market exploration activity or even export promotion business and levy huge sums from its customers whether they are members of the organisation or not and still claim a blanket exemption from tax on the score that the objects of general public utility which it has set for itself implied these activities even though profits or surpluses may arise therefrom. Therefore, the emphasis is not on the object of public utility and the carrying on of related activity for profit. On the other hand, if in the advancement of these object the chamber resorts to carrying on of activities for profit, then necessarily section 2(75) cannot confer cover. The advancement of charitable objects must not involve profit-making activities. That is the mandate of the new amendment."

It will thus be seen that Krishna Iyer, J. accepted the contention of the Revenue that the means of accomplishing or carrying out an object of general public utility must not involve the carrying on of any activity for profit or to use the words of the learned Judge "must be unsullied by profit-making ventures" and even if a business is carried on by a trust or institution for earning profit to be applied wholly for an object of general public utility, the trust or institution would forfeit the claim for exemption from tax. The view taken by him was that the benefit of the exemption would be taken away where, in accomplishing or carrying out an object of general public utility, the trust or institution engages itself in activity for profit or, in other words, the trust or institution should not resort to carrying on of an activity for profit for the purpose of accomplishment or attainment of the object of general public utility. This view clearly supports the construction canvassed on behalf of the Revenue for our acceptance, but, with the greatest respect to the learned Judges who decided the Indian Chamber of Commerce case, we think, for reasons already discussed, that this view is incorrect and we cannot accept the same.

14. We have already examined the language of section 2, clause (*15*) *,* and pointed out how the plain natural meaning of the words used by the Legislature in that definitional clause does not accord with the contention of the Revenue. We have said enough on the subject and nothing

more need be said about it. It is enough to point out that in a subsequent decision in *CIT* v. *Dharmodayam Co.* [1977] 109 ITR 527 which came by way of an appeal from the judgment of the Kerala High Court, this Court itself has, in effect and substance, departed from this view and adopted the same construction which has commended itself to us. The question which arose in this case was whether the income from business of conducting kurries carried on by the assessee was exempt from tax. The contention of the Revenue was that since the assessee was an institution established for promoting an object of general public utility and this purpose was sought to be achieved out of the income of the business of conducting kurries, the last concluding words of section 2, clause (75), were attracted and the income of the assessee was disentitled to exemption from tax. This contention was, however, rejected by the Kerala High Court which took the view that the business of conducting kurries was held under trust to apply its income for the charitable purpose of the assessee and was not carried on as a matter of advancement of that charitable purpose and hence it was not possible to say that the purpose of the assessee involved the carrying on of an activity for profit so as to attract the mischief of the last few words in section 2, clause (*15*) . Krishna Iyer, J., in the *Indian Chamber of Commerce* case, while discussing the judgment of the Kerala High Court in the *Dharmodayam* case, observed, consistently with the interpretation placed by him on the last concluding words in section 2, clause (75), that the decision of the Kerala High Court in this case proceeded on a wrong test and impliedly, therefore, was incorrectly decided. But this Court while disposing of the appeal from the decision of the Kerala High Court differed from the view taken by Krishna Iyer, J. and upheld the judgment of the Kerala High Court. This Court pointed out that the facts of *Dharmodayam* case were not before Krishna Iyer, J. and that the test applied by Kerala High Court was held by him to be wrong on the assumption that the case fell under the last clause of section 2, clause (75), but, in fact, this assumption was invalid, as *Dharmodayam* case was not one falling under the last part of the definitional clause. The finding of the Kerala High Court was that the business of conducting kurries was a business held under trust for applying its income to the charitable purpose and it was not carried on as a matter of advancement of the primary purpose of the trust or in the course of carrying out such purpose and it could not, therefore, be said that the primary purpose of the trust involved the carrying on of an activity for profit within the meaning of the last concluding words in section 2, clause (75). This Court thus held in no uncertain terms that if a business is held under trust or legal obligation to apply its income for promotion of an object of general public utility or it is carried on for the purpose of earning profit to be utilised exclusively for carrying out such charitable purpose, the last concluding words in section 2, clause (75), would have no application and they would not deprive the trust or institution of its charitable character. What these last concluding words require is not that the trust or institution whose purpose is advancement of an object of general public utility should not carry on any activity for profit at all but that the purpose of the trust or institution should not involve the carrying on of any activity for profit. So long as the purpose does not involve the carrying on of any activity for profit, the requirement of the definition would be met and it is immaterial how the moneys for achieving or implementing such purpose are found, whether by carrying on an activity for profit or not. We may point out that even in *Sole Trustee, LokaShikshana Trust* v. *CIT* [1975] 101 ITR 234 (SC), a decision which, as we shall presently point out, does not command itself to us on another point, the same interpretation has been accepted by this Court.

15. We must then proceed to consider what is the meaning of the requirement that where the purpose of a trust or institution is advancement of an object of general public utility, such purpose must not involve the carrying on of any activity for profit. The question that is necessary to be asked for this purpose is as to when can the purpose of a trust or institution be said to involve the carrying on of any activity for profit The word "involve" according to the Shorter Oxford Dictionary means "to enwrap in anything, to enfold or envelop; to contain or imply". The activity for profit must, therefore, be intertwined or wrapped up with or implied in the purpose of the trust or institution or in other words it must be an integral part of such purpose. But the question again is what do we understand by these verbal labels or formulae; what is it precisely that they mean? Now there are two possible ways of looking at this problem of construction. One interpretation is that according to the definition what is necessary is that the purpose must be of such a nature that it involves the carrying on of an activity for profit in the sense that it cannot be achieved without carrying on an activity for profit. On this view, if the purpose can be achieved without the trust or institution engaging itself in an activity for profit, it cannot be said that the purpose involves the carrying on of an activity for profit. Take, for example, a case where a trust or institution is established for promotion of sports without setting out any specific mode by which this purpose is intended to be achieved. Now obviously promotion of sports can be achieved by organising cricket matches on free admission or no-profit no-loss basis and equally it can be achieved by organising cricket matches with the predominant object of earning profit. Can it be said in such a case that the purpose of the trust or institution does not involve the carrying on of an activity for profit, because promotion of sports can be done without engaging in an activity for profit. If this interpretation were correct, it would be the easiest thing for a trust or institution not to mention in its constitution as to how the purpose for which it is established shall be carried out and then engage itself in an activity for profit in the course of actually carrying out of such purpose and thereby avoid liability to tax. That would be too narrow an interpretation which would defeat the object of introducing the words "not involving the carrying on of any activity for profit". We cannot accept such a construction which emasculate these last concluding words and renders them meaningless and ineffectual.

16. The other interpretation is to see whether the purpose of the trust or institution *in fact* involves the carrying on of an activity for profit or, in other words, whether an activity for profit is *actually* carried on as an integral part of the purpose or to use the words of Chandrachud, J., as he then was in' *Dharmodayam* case, "as a matter of advancement of the purpose". *There must be an activity for profit* and it must be involved in carrying out the purpose of the trust or institution or, to put it differently, it must be carried on in order to advance the purpose or in the course of carrying out the purpose of the trust or institution. It is then that the inhibition of the exclusionary clause would be attracted. This appears to us to be a more plausible construction which gives meaning and effect to the last concluding words added by the Legislature and we prefer to accept it. Of course, there is one qualification which must be mentioned here and it is that if the constitution of a trust or institution expressly provides that the purpose shall be carried out by engaging in an activity which has a predominant profit motive, as, for example, where the purpose is specifically stated to be promotion of sports by holding cricket matches on commercial lines with a view to making profit, there would be no

scope for controversy, because the purpose would, on the face of it, involve carrying on of an activity for profit and it would be non- charitable even though no activity for profit is actually carried on or, in the example given, no cricket matches are in fact organised.

17. The next question that arises is as to what is the meaning of the expression "activity for profit". Every trust or institution must have a purpose for which it is established and every purpose must for its accomplishment involve the carrying on of an activity. The activity must, however, be for profit in order to attract the exclusionary clause and the question, therefore, is when can an activity be said to be one *for* profit? The answer to the question obviously depends on the correct connotation of the proposition "for". This proposition has many shades of meaning but when used with the active participle of a verb it means "for the purpose of" and connotes the end with reference to which something is done. It is not, therefore, enough that as a matter of fact an activity results in profit but it must be carried on with the object of earning profit. Profit-making must be the end to which the activity must be directed or, in other words, the predominant object of the activity must be making of profit. Where an activity is not pervaded by profit motive but is carried on primarily for serving the charitable purpose, it would not be correct to describe it as an activity for profit. But where, on the other hand, an activity is carried on with the predominant object of earning profit, it would be an activity for profit, though it may be carried on in advancement of the charitable purpose of the trust or institution. Where an activity is carried on as a matter of advancement of the charitable purpose or for the purpose of carrying out the charitable purpose, it would not be incorrect to say as a matter of plain English grammar that the charitable purpose involves the carrying on of such activity, but the predominant object of such activity must be to subserve the charitable purpose and not to earn profit. The charitable purpose should not be submerged by the profit-making motive; the latter should not masquerade under the guise of the former. The purpose of the trust, as pointed out by one of us (Pathak, J.) in *Dharmadeepti* v. *CIT (supra),* must be "essentially charitable in nature" and it must not be a cover for carrying on an activity which has profit making as its predominant object. This interpretation of the exclusionary clause in section 2, clause (*15*) *,* derives considerable support from the speech made by the Finance Minister while introducing that provision. The Finance Minister explained the reason for introducing this exclusionary clause in the following words:

> "The definition of 'charitable purpose' in that clause is at present so widely worded that it can be taken advantage of even by commercial concerns which, while ostensibly serving a public purpose, get fully paid for the benefits provided by them namely, the newspaper industry which while running its concern on commercial lines can claim that by circulating newspapers it was improving the general knowledge of the public. In order to prevent the misuse of this definition in such cases, the Select Committee felt that the words 'not involving the carrying on of any activity for profit' should be added to the definition."

It is obvious that the exclusionary clause was added with a view to over-coming the decision of the Privy Council in the *Tribune* case where it was held that the object of supplying the community with an organ of educated (public opinion by publication of a newspaper was an object of general public utility and hence charitable in character, even though the activity of

publication of the newspaper was carried on on commercial lines with the object of earning profit. The publication of the newspaper was an activity engaged in by the trust for the purpose of carrying out its charitable purpose and on the facts it was clearly an activity which had profit-making as its predominant object, but even so it was held by the Judicial Committee that since the purpose served was an object of general public utility, it was a charitable purpose. It is clear from the speech of the Finance Minister that it was with a view to setting at naught this decision that the exclusionary clause was added in the definition of "charitable purpose". The test which has, therefore, now to be applied is whether the predominant object of two activities involved in carrying out the object of general public utility is to subserve this 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. It would indeed be 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, LokaSikshana Trust* case *(supra)* 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"* (emphasis supplied). We wholly endorse these observations.

18. The application of this test may be illustrated by taking a single example. Suppose, the Gandhi Peace Foundation which has been established for propagation of Gandhian thought and philosophy, which would admittedly be an object of general public utility, undertakes publication of a monthly journal for the purpose of carrying out this charitable object and charges a small price which is more than the cost of the publication and leaves a little profit, would it deprive the Gandhi Peace Foundation of its charitable character? The pricing of the monthly journal would undoubtedly be made in such a manner that it leaves some profit for the Gandhi Peace Foundation, as, indeed, would be done by any prudent and wise management, but that cannot have the effect of polluting the charitable character of the purpose, because the predominant object of the activity of publication of the monthly journal would be to carry out the charitable purpose by propagating Gandhian thought and philosophy and not to make profit or, in other words, profit-making would not be the driving force behind this activity. But it is possible that in a given case the degree or extent of profit-making may be of such a nature as to reasonably lead to the inference that the real object of the activity is profit-making and not serving the charitable purpose. If, for example, in the illustration given by us, it is found that the publication of the monthly journal is carried on wholly on commercial lines and the pricing of the monthly journal is made on the same basis on which it would be made by a commercial

organisation leaving a large margin of profit, it might be difficult to resist the inference that the activity of publication of the journal is carried on *for* profit and the purpose is non-charitable. We may take by way of illustration another example given by Krishna Iyer, J. in *Indian Chamber of Commerce* case *(supra)* where a blood bank collects blood on payment and supplies blood for a higher price on commercial basis. Undoubtedly, in such a case, the blood bank would be serving an object of general public utility but since it advances the charitable object by sale of blood as an activity carried on with the object of making profit, it would be difficult to call its purpose charitable. Ordinarily, there should be no difficulty in determining whether the predominant object of an activity is advancement of a charitable purpose or profit-making. But cases are bound to arise in practice which may be on the border line and in such cases the solution of the problem whether the purpose is charitable or not may involve much refinement and present real difficulty.

19. There is, however, one comment which is necessary to be made whilst we are on this point and that arises out of certain observations made by this Court in *Sole Trustee, LokaSikshana Trust* case *(supra)* as well as *Indian Chamber of Commerce* case *(supra).* It was said by Khanna, J. in *Sole Trustee, LokaShikshana Trust* case:

> "... if the activity of a trust consists of carrying on a business and there are no restrictions on its making profit, the court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust involves the carrying on of an activity of profit."

And to the same effect, observed Krishna Iyer, J. in *Indian Chamber of Commerce* case *(supra)* when he said:

> "...An undertaking for a business organisation is ordinarily assumed for profit unless expressly or by necessary implication or by eloquent surrounding circumstances the making of profit stands loudly negatived ...A pragmatic condition, written or unwritten proved by a proscription of profits or by long years of invariable practice or spelt from some strong surrounding circumstances indicative of anti-profit motivation - such a condition will nullify for charitable purpose..."

Now we entirely agree with the learned Judges who decided these two cases that activity involved in carrying out the charitable purpose must not be motivated by a profit objective but it must be undertaken for the purpose of advancement or carrying out of the charitable purpose. But we find it difficult to accept their thesis that whenever an activity is carried on which yields profit, the inference must necessarily be drawn, in the absence of some indication to the contrary, that the activity is *for* profit and the charitable purpose involves the carrying on of an activity for profit. We do not think the Court would be justified in drawing any such inference merely because the activity results in profit. It is in our opinion 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 motive. What is necessary

to be considered is whether having regard to all the facts and circumstances of the case, the dominant object of the activity is profit-making or carrying out a charitable purpose. If it is the former, the purpose would not be a charitable purpose, but, if it is the latter, the charitable character of the purpose would not be lost.

20. If we apply this test in the present case, it is clear that the activity of obtaining licences for import of foreign yarn and quotas for purchase of indigenous yarn, which was carried on by the assessee was not an activity for profit. The predominant object of this activity was promotion of commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth, which was clearly an object of general public utility and profit was merely a bye-product which resulted incidentally in the process of carrying out the charitable purpose. It is significant to note that the assessee was a company recognised by the Central Government under section 25 of the Companies Act, 1956 and, under its memorandum of association, the profit arising from any activity carried on by the assessee was liable to be applied solely and exclusively for the promotion of trade and commerce in various commodities which we have mentioned above and no part of such profit could be distributed amongst the members in any form or under any guise. The profit of the assessee could be utilised only for the purpose of feeding this charitable purpose and the dominant and real object of the activity of the assessee being the advancement of the charitable purpose, the mere fact that the activity yielded profit did not alter the charitable character of the assessee. We are of the view that the Tribunal was right in taking the view that the purpose for which the assessee was established was a charitable purpose within the meaning of section 2, clause (75), and the income of the assessee was exempt from tax under section 11. The question referred to us in each of these references must, therefore, be answered in favour of the assessee and against the Revenue. 21. The Revenue will pay the costs of the assessee in two sets; one in Reference Case No. 1A of 1973 and the other in Reference Cases Nos. 10-14 of 1975."

Much reliance is placed by Revenue on the betterment charges being levied by the Authority . Firstly, these charges are levied under the authority of Section 35 of the 1973 State Act . Secondly , these betterment charges are levied where in the opinion of the Authority , as in consequence of any development scheme having been executed by the Authority in any development area the value of any property in that area which has been benefited by the development, has increased or will increase, the Authority shall be entitled to levy upon the owner of the property or any person having an interest therein a betterment charge in respect of the increase in value of the property resulting from the execution of the development. Thus, it could be seen that

there is a **quid pro quo** , and it is only where due to some development scheme having been executed by Authority in any development area , the value of property has been benefited by the said development, then the authority shall be entitled to levy upon the owner of the property or any person having any interest therein a betterment charges. Thirdly, it is obvious that to carry out administration of the vast and onerous responsibilities cast upon the Authority by virtue of the 1973 State Act to have planned development of the development area and to provide various amenities , the authority has to raise funds from various sources to meet its costs to fulfill responsibilities under the 1973 State Act and to make it self sustainable , and merely because betterment charges are recovered it could not be said that the Authority is a commercial enterprise working with profit motive. Infact , there is also provision in 1973 State Act for grants being given by State Government to assessee, for fulfilling its onerous and vast responsibilities entrusted to the assessee under the 1973 Act. Fourthly, if any development scheme is carried out by Authority in any development area which has led to increase in value of properties in that area, there are costs associated with implementation of that particular development scheme which is to be incurred by Authority, and if the said costs are recouped from the property owners of that area, will not make the Authority a commercial enterprises existing for profits, even if some surplus is generated on that count, as Section 20(2) of the 1973 State Act, mandates that the Authority is bound to apply its funds towards meeting the expenses incurred by Authority in the administration of this Act and for no other purpose.Thus, this contention of the Revenue is rejected.

Revenue has also raised the contention that the assessee is maximizing profits by selling the properties by auction, where the person offering maximum bid price is sold the property, and hence the assessee is a commercial enterprise existing solely for profits , and is not a charitable entity within the meaning of Section 2(15) of the 1961 Act. This argument of the Revenue lacks merit The process of allocation by State (or State instrumentalities) of natural resources through process of public auction, brings in transparency and efficiency in the entire allocation process and is considered to be the most efficient and transparent process for allocation of natural resources. The process of allocation of natural resources through public auction, leads to an efficient and transparent method for price discovery of the natural resources being allocated by State, so that there are no allegation of bias and malafide , and chances of manipulation and distribution of resources at throw away prices is avoided . Reference is drawn to decision of Hon'ble Supreme Court in 2G Telecom case and subsequent Presidential Reference – Special Reference No. 1 of 2012 under Article 143(1) of the Constitution of India (2012) 9 SCR 311. Thus, merely because the assessee had adopted a method of selling properties through public auction, it cannot be said that the assessee is profiteering and is a commercial enterprise, dehors the vast and onerous responsibilities cast upon the assessee under the 1973 State Act to have planned development of the development area falling under its jurisdiction. Thus, this contention of the Revenue is rejected.

Revenue has also raised the contention that Section 58 of the 1973 State Act provides that where the State Government is satisfied that the purpose for which authority was established have been substantially achieved , the State

Government may dissolve the authority , and on dissolution the funds, properties and dues of the authority shall vest in the State Government, which in the opinion of the Revenue makes it a revocable as well the funds, properties and other assets of the authority may be deployed by State Government for the purposes of business. This contention of the Revenue is again without any merit, firstly, If the funds , properties and dues of the assessee-authority vests in State Government on dissolution, the State Government itself is a non taxable entity. Secondly, the Authority is created to discharge the onerous and vastresponsibilities as we have seen in the preceding para's of this order for development of the development area in a planned manner , and not otherwise, which not only include development of Master Plans, Zonal Development Plans for the Zones in the development area, and then overseeing that all the development , constructions in the development area takes place in a planned manner, and not otherwise. Preamble of the 1973 State Act itself states that the local bodies who were entrusted to do the act of development were not able to achieve the desired results and hence a separate body on the pattern of DDA is required to be created. Can it be said that with ever increasing population and growth of the Indian Economy, there will not be a requirement for a planned development of the cities , rather in our considered view with the passage of time the burden and responsibilities of these authorities will further increase and requirement for more planned growth of development area will be more felt. The needs for good road, electricity, sanitation, waste disposal, sewerage, parks, libraries, sports complexes , open space, community centers , stadium, conference halls etc. within the development area is more and more increasingly felt, and to say that these authorities are going to be dissolved in

near foreseeable future is more academic. Rather , Section 4(2) of the 1973 State Act clearly provides that these authorities shall have perpetual succession. Much is said by Revenue that on dissolution of these authorities, the assets, properties , dues and funds shall revert to State Government , who shall use it for business, and hence there is no charitable nature of these authorities, is again without merit. State Government on whom the funds, properties and assets will vest itself is a non taxable entity. It is pertinent to mention that India is a Welfare State working with the object of welfare of people, and all the States as well Union Territories comprising within Union of India are working for the welfare of the people. In case on dissolution of the authority, funds, dues, assets and properties if vest in the State Government(a non-taxable entity), who is expected to use these funds for the welfare of the people of the State, and in any case even if it is accepted that the State Government deploys those funds, assets and resources for business purposes, then the income which arises from business of the State Enterprise will obviously get taxed within the provisions of the 1961 Act , but to say that the assessee being engaged in advancement of object of public utility, is not a charitable entity within definition of Section 2(15) is too far fetched, and this contention of Revenue is rejected.

Revenue has also raised contention that the perusal of the audited accounts of the assessee will reveal that it is engaged in business. We have carefully gone through the audited financial statements. The assessee has shown receipt from following heads :-

S. No	*HEADS*	*SCHEDULE NO.*	*AMOUNT (RS.)*
1	*Realization from allotted properties*		*4,80,44,700*

2	*Interest from bank*	*H*	*4,58,23,859*
3	*Interest from allottees& Schemes Loans*	*I*	*2,32,25,290*
4	*Others receipts*	*K*	*6,65,61,591*

The other receipts as included above at S.No. 4 , comprises of following:

S.No.	Particulars		Amount in Rs.
1	Entry Fee from Nagwa Park		15,30,565.00
2.	Sale of Forms		5,40,974.45
3.	Penalty		1,37,500.00
4.	**Sub Division Charges**		16,735,580.08
5.	Income from Appeal Charges		1,24,075.00
6.	**Income from Plan Charges**		34,39,216.00
7.	Legal Charges		29,200.0
8.	Income from Advertisement		1,68,250.00
9.	Income from Late Fees		20,293.00
10.	Inspection Charges		1,82,227.00
11.	.01% Deduction as per Approval		1,886.00
12.	Round Off		3.20
13.	Other Income		1,105,378.22
14.	**Receipt Against Map Sanction & Regularization**		
14a	**Strengthening Charges**	10%	141,228.91
14b	**Development Charges**	10%	6482464.78
14c	**Compounding Charges**	50%	17835952.72
14d	**Sewerage Charges**	20%	16031.80

14e	**Water Charges**	20%	91651.20
14f	**Malwa Fees**	20%	495326.88
14g	Supervision Charges		2229165.33
14h	**Income from Land Use Conversion Charges**	10%	3,40,000.00
14i	**F.A.R. Fees**	10%	1886349.20
14j	**Map Charges**		6931195.00
14k	PrabhavShulk	10%	958749.10
15	**Receipt from Allotted Properties**		
15a	Lease Rent		743780.00
15b	Shop Rent		844621.00
15c	Income from Building & Office Rent		2446709.00
15d	**Free Hold Charges**		9513.40
15e	Income from Canteen Rent		2700.00
15f	Income from Cycle Stand		415000.00
15g	Land Use and Name Transfer fees		244617.00
15h	Income by Deduction from Advance for Land/Building		72.00
15i	Income by Deduction from Registration Amount		183100.00
15j	House Rent deduction from Security Money Amount		12280.00
15k	House Rent Deduction from Salary		190636.00
15l	Vehicle Deduction		45300.00
	Total		**66561591.87**

The above charts clearly reveals that the assessee is rendering various services for which necessary charges are recovered by assessee, which are in discharge of onerous and vast responsibilities entrusted to the assessee under the 1973 State Act, more particularly sub-division of property, plan charges, receipt against map sanction and regularization, compounding charges, strengthening charges , development charges sewerage charges , water charges , Malwa fees, land use conversion , F.A.R Fees, map charges etc. . The assessee has also earned income from allotted properties, which obviously is part of its activities to sell properties under various schemes ,tocarry out planned development of the development area under its jurisdiction. Much is said by Revenue as to earning of interest income by the assessee which as per Revenue shows that the assessee is earning income on commercial lines and thus now entitled for exemption u/s 11 , as is reflected in its audited accounts for the year under consideration (placed in paper book filed by the assessee , which is now placed on record in file) . We have observed that the assessee has placed surplus funds with banks by way of saving bank account as well FDR's (pb/page 56), on which interest was earned . Reference is drawn to Section 20(2) and 20(3) of the 1973 State Act, which reads as under:

> *"20(2) The fund shall be applied towards meeting the expenses incurred by Authority in the administration of this Act and for no other purpose;*
>
> *20(3) Subject to any directions of the State Government, the Authority may keep in current account of any Scheduled Bank such sum of money out of its fund as it may think necessary for meeting its expected currents requirement and invest any surplus money in such manner as it thinks fit."*

Section 20(2) of the 1973 State Act provides that the fund of the authority shall be applied towards meeting the expenses incurred by Authority in the administration of the 1973 State Act, thus the assessee is obligated by law to apply all funds at its disposal for meeting expenses for vast and onerous responsibilities entrusted to the assessee by the provisions of the 1973 State Act, and if there are surplus available , the assessee is empowered to invest such surplus money as it deems fit, and prudence demand that instead of keeping the surplus idle in current account where no income by way of interest is earned, the assessee acted in a prudent manner by placing such surplus funds with SB/FDR's with bank so that such investments will yield income to the authority by way of interest income , and by virtue of Section 20(2) of the 1973 State Act, the assessee is obligated to apply its funds including interest income on SB/FDR's for meeting the expenses incurred in the administration of the 1973 State Act. Thus, even if surplus/profits is generated, it will not change its character of being a charitable entity engaged in advancement of objects of general public utility as defined u/s 2(15) of the 1961 Act, and it will not lose its character of being a charitable entity eligible for exemption u/s 11 of the 1961 Act.

The assessee is transferring receipts under the following heads directly to 'Infrastructure Fund' in its books of accounts (audited financial statement/page 63 /paper book) instead of crediting the same to Income and Expenditure Account , which is utilized by assesse for incurring expenditure on infrastructure development

Transfer to Infrastructure Fund

S.No.	Particulars		Amount in Rs.
1.	**Development Charges**	90%	58342183.10
2.	**Strengthening Charges**	90%	1271060.15
3.	**Compounding Charges**	50%	17835952.72
4.	PrabhavShulk	90%	8628741.90
5.	2% Stamp Shulk	90%	135854104.50
6.	Income from Land Use Conversion Charges	90%	3060000.00
7.	FAR fee	90%	16977142.80
8.	Free Hold Charges	90%	85620.60
	Total		242054805.78

The Infrastructure Development Fund , which the assessee is claiming was utilized for development of infrastructure, as is recorded in audited financial statements , is as under:

Balance as on 01.04.2010 Rs. 289638349.82

Add: Transfer During the year Rs. 242054805.78

Rs. 531693155.60

Less: Expenditure on Infrastructure Development Rs.116648106.86

Balance as on 31.03.2011 Rs. 415045048.74

The Revenue has not brought any incriminating material to prove that these expenses were not incurred by the assessee for Infrastructure Development of

the development area within its jurisdiction. These expenses incurred by the assessee on Infrastructure development under the head 'The Infrastructure Development Fund', also reflects that the assessee is incurring expenditure on infrastructure development in the development area , to meet vast and onerous responsibilities cast on it under the provisions of 1973 State Act. In the audited financial statement for the year under consideration , it is stated in Para 7 –Notes to Accounts –Schedule O (page 76/paper book) , that VDA(viz. Varanasi Development Authority) has transferred 90% of Development, Strengthening , Free Hold , F.A.R. Fees & Transfer charges and 50% of Compounding Charges to Infrastructure Development Fund(Corpus Fund) as per G.O. No. 152/9/A-1-1998 & subsequent govt. G.O.. The observation of Hon'ble Allahabad High Court in the case of CIT v. Lucknow Development Authority , reported in (2013) 38 taxmann.com 246(Allahabad), at para 29 in context of Infrastructure , development and reserve fund IDRF are relevant, which are as under:

> *" 29 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 committee 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 in nature in its hands. For this reason also , it appears that the funds are utilized for general utility."*

The assessee has incurred following expenses on Schemes, apart from incurring Establishment and Administrative Expense, as under:

S.No.	Expenses on Scheme	Amount in Rs.
1.	Planning Expenses	6119195.00
2.	Park Maintenance	332395.50

3.	Repair and Maintenance of Lalpur-I	1814605.99
4.	Sever, Mal &Nala Expenses Lalpur-I	520501.56
5.	Sever, Mal &Nala Expenses Lalpur-II	92387.77
6.	RamnagarYojana Scheme	631075.18
7.	Lalpur Housing Scheme	91386872.85
8.	Expenses on old Scheme	9164122.00
9.	Repair and Maintenance (Bhadani Housing Scheme)	3710005.20
	TOTAL	**113771161.45**

This also clearly reflects that the assessee is incurring expenses on various schemes such as Lalpur Housing Scheme ,RamnagarYojana, Bhadani Housing Scheme , to have planned development in the development area. There is no incriminating material brought by Revenue to prove that the assessee has not incurred above expenses on the various above mentioned scheme.

The Revenue has also raised that the assessee has also undertaken various civil construction work on behalf of State Government Departments and hence it is a commercial enterprise , again this contention lacks merit, as once a specialized Statutory authority is constituted by State Government under the provisions of the 1973 Act , it will always be open for State Government department's to entrust civil construction work to this specialized body who is equipped with all specialized personnel, material, equipment's, know how etc. to carry out these civil construction works for government department, but that does not mean that the assessee whose predominant object being to tackle problems of town planning and urban development in a planned manner , will lose its charitable character of advancing object of general public utilities. We have already seen that State Government has deep and pervasive control over the assessee, and the assessee's accounts are audited by Government Auditors, and the assessee can only utilize its funds, assets

and resources , including any surplus generated therein, in discharge of its functions and responsibilities under the 1973 State Act , and for no other purposes.

Further, now as per Section 2(15) of the 1961 Act, it is to be seen that the authority is not engaged in the business, trade or commerce . It is pertinent to mention that Lucknow-tribunal while deciding the appeal in the case of Lucknow Development Authority(supra), has concluded after detailed deliberations that LDA is not engaged in business, trade or commerce, and is not working with profit motive. It is also pertinent to reproduce hereunder the relevant extract of the appellate order passed by Lucknow-tribunal in the case of LDA(supra), wherein tribunal dealt with the issue whether LDA is engaged in activities in the nature of business, trade or commerce , and the tribunal after detailed discussion held that the LDA is not engaged in any activities of business, trade or commerce. The assessee is also an authority constituted under the 1973 State Act and the activities of the assessee are for tackling problems of town planning and urban development in Varanasi in a planned manner and not otherwise. The relevant extract of decision of Lucknow-tribunal are reproduced, as under:-

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

9.7 While dealing with cases such as of L.D.A., a Government body, a narrow and myopic view should not be adopted. While interpreting the terms trade, commerce or business, in the Commentary on Income Tax Law by Chaturvedi&Pithisaria, "business" has been defined / explained as under (Page 1321; Vol I; Fifth edition):

> (1) Business
>
> "The word "business" is one of large and indefinite import and connotes something which occupies the time, attention and labour of a person normally with the object of making profit [JesselM.R. In smith V. Anderson, (1880) 15 Ch D 247, 258; State of Andhra Pradesh v. H. Abdul Bakshi& Bros, (1964) 15 STC 644, 547 (SC); CIT v. MotilalHirabaiSpng.AndWvg. 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. Thus the word 'business' is a wider term than, and not synonymous with, trade; and means practically anything which is an occupation as distinguished from a pleasure [Halsbury's Laws of England, Third Edition, Vo1.38, page 10, quoted in CIT v. Upasana hospital, (19970 225 ITR 845,851 (Ker). Also see, CIT v. Delhi Transport Corporation, (1996) 134 Taxation 386, 392-93 (Del)].

'Business' is a word which has more extensive I meaningthat trade. All trade is business but all business is not trade [Vijaya Bank v. A.N. Tewari, (1995) 83 Taxman 340,342 (Del)]." The aforesaid Commentary further explains "business" as under on Page 1336:

> "Is profit-motive essential to constitute a 'business'? - "Business,without profit is not business, any more than a pickle is candy"[Abbot]. To regard an activity as 'business', there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure [Shah. J., in State of Andhra Pradesh v. H. Abdul Bakshi& Bros. , (1964) 15 STC644, 647(SC); StateofGuajrat v. Raipur Mfg. Co. Ltd. , (1967)19 STC 1 (SC) ; Director of Supplies and Disposals v. Member, Board of Revenue (1967) 20 STC 398 (SC); CST v. Anil Co-operative Credit Society, (1969) 24 STC 180, 192 (Gui); MahammadFaruq, In re (1938) 6 ITR 1, 7 (Ail); Bharat Development (P.) Ltd. v. CIT, (1982) 133 ITR 470,474 (Del); Government Medical Store Depot v. Superintendent of Taxes, (1986) Tax LR 2164 (SC) = (1985) 60 STC 296 (SC); Government Medical Store Depot v. State of Haryana, (1986) 63 STC 198(SC))."

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

> "The word 'business' is a word of large and indefinite import. It is something which occupies the attention and labour of a person for the purpose of profit. It has a more extensive meaning than the word 'trade'. An activity carried on continuously in an organized manner with a set purpose and with a view to earn profit is business [CIT v. M.P. Bazaz, (1993) 200 ITR 131, 135, 136 (Ori)]. Also see, Khoday Distilleries Ltd. v. State of Karnataka, JT 1994 (6) SC 588, 625-26."
>
> (ii) Meaning and Concept of “Trade” and “Commerce” In the Commentary on Income Tax law by Chaturvedi&Pithisaria, "trade" and "commerce" have been defined as under (Page 1323; Vol 1; Fifth Edition):
>
> “Trade or Commerce- The definition of 'trade' does not find its place in the Act. The dictionary meaning of 'trade' as per dictionary of Webster's New Twentieth Century Dictionary, (Second edition), means amongst others, 'A means of

> earning one's living, occupation or work'. In Black's Law Dictionary also 'trade' means a business which a person has learnt or he carries on for procuring subsistence or profit; occupation or employment, etc. [CIT v. Assam Hard Board Ltd., (1997)224 ITR 31.8, 320 (Gauh)]. "Trade" in its primary meaning is the exchanging of goods for goods or goods for money; in its secondary meaning it is repeated activity in the nature of carried business on with a profit motive, the activity being manual or mercantile as distinguished from the liberal arts or learned professions or agriculture [State of Punjab v. Bajaj Electricals Ltd.,(1968) 70 ITR 730, 732 (Sc)]. If a person buys goods with a view to selling them at profit, it is an ordinary case of 'trade'. If the transactions are on a large scale, it is called 'commerce, [GannonDunkerley& Co. v. State of Madras, (1954) 5 STC 216,244 (Mad)],and it is the continuous repetition of such transactions which will constitute a "business"."

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

> "Liability to pay tax under Act 7 of 1956 arises if a person carries on trade by himself or through his agent, or follows a profession or is in employment within the State, and to otherwise. The expression "trade" is not defined in the Act. "Trade" in its primary meaning is the exchanging of goods for goods for 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. VenkatksubbiahReddiar (1996), 221 ITR 18,21 (Mad.), Hon'ble Madras High Court has, while holding that profit - motive is essential to constitute a business, observed as under:

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

Similar findings have been made in the following case laws:

> (1) Barendra Prasad Ray v. ITO (1981) 129 ITR 295 (SC)
>
> (2) LalaIndra Sun In Re (1940) 8 ITR 187 (Alld)
>
> (3) NarasinghaKar& CO. v, CIT (1978) 113 ITR 712(Ori)

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 PradhanMantriAwasYojna."

We are in complete agreement with the above view of Lucknow-tribunal in the case of LDA. The assessee, like , LDA was also constituted under the provisions of 1973 State Act, and its activities are paramateria with the

activities of LDA.Thus, it could be said based on detailed analysis of the 1973 State Act , activities carried on by the assessee and ratio of aforesaid decisions , that the assessee is engaged in the advancement of object of general public utility, the predominant object being town planning and development of development area under its jurisdiction , in a planned manner, and not otherwise, with no profit motive , while sale of properties etc. being ancillary objects to its predominant object and the assessee is not engaged in any business , trade or commerce.

The assessee authority is also constituted under same statute viz. 1973 State Act , and after perusing the vast and onerous responsibilities assigned to the assessee-authority under the 1973 State Act , its audited financial statements and activities carried on by the assessee as elaborately discussed in the preceding para's of this order, we are also of the considered view that the assessee authority predominant purpose is to tackle problems of town planning and urban development in a planned manner, and not otherwise, with no profit motive as its object, while sale of properties etc. are merely ancillary objects for attainment of main and predominant objects , and it could be said that the assessee is not engaged in any trade, commerce or business.

We have also observed that in following case laws decided by Hon'ble High Court and tribunal, this issue has been decided in favour of the tax-payer, wherein assessment years were post amendment in Section 2(15) of the 1961 Act by Finance Act, 2008 w.e.f. 01.04.2009:-

1. Judgment and Order passed by Hon'ble Rajasthan High Court in the case of CIT v. Jodhpur Development Authority, reported in (2017) 79 taxmann.com 361(Raj. HC)

2. Judgment and Order passed by Hon'ble Gujarat High Court in the case of Ahmedabad Urban Development Authority , reported in (2017) 83 taxmann.com 78(Guj HC)
3. Judgment and Order passed by Hon'ble Karnataka High Court in the case of CIT v. HubliDharwad Urban Development Authority , reported in (2020)113 taxmann.com 580(Kar. HC)
4. Judgment and Order passed by Hon'ble Gujarat High Court in the case of CIT(E) v. Jamnagar Area Development Authority , reported in (2020)120 taxmann.com140(Guj. HC)
5. Judgment and Order passed by Hon'ble Gujarat High Court in the case of PCIT(E) v. Surat Urban Development Authority, reported in (2020) 120 taxmann.com 407(Guj)
6. Appellate Order passed by Agra-tribunal in the case of Jhansi Development Authority v. DCIT, reported in (2021) 123 taxmann.com 247(Agra-trib.)
7. Appellate Order passed by Agra-tribunal in the case of Agra Development Authority v. DCIT, reported in (2021) 127 taxmann.com 387(Agra-trib.)

Thus, based on our above detailed discussions in this appellate order, we hold that the assessee is a charitable entity u/s 2(15) of the 1961 Act, being engaged in the advancement of object of general public utility, with the predominant object of tackling problems of town planning and urban development in a planned manner, and shall be eligible for exemption u/s 11 of the 1961 Act. Thus, the appeal filed by the assessee stand allowed. We order accordingly.

9. In the result appeal filed by assessee in ITA no. 264/Alld./2017, for ay: 2011-12 is allowed. We order accordingly.

10. Our decision in ITA No. 264/Alld/2017, for ay: 2011-12 shall apply mutatis mutandis to the ITA No's. 265-267/Alld/2017 for ay's: 2012-13 to 2014-15 respectively as all the issue's raised by assessee in its appeal(s) for ay's: 2012-13 to 2014-15 stood duly answered in assessee's appeal for ay:2011-12, and hence all these appeals in ITA no's: 265-267/Alld/2017 for ay's: 2012-13 to 2014-15 respectively , are allowed. We order accordingly.

11. In the result appeals filed by assessee in ITA no's. 265-267/Alld/2017 for ay's: 2012-13 to 2014-15 respectively , are allowed .We order accordingly.

12. In the result, all the appeals filed by the assessee in ITA Nos. 264, 265, 266 & 267/A/2017, for ay(s) :2011-12 to 2014-15respectively , are allowed. We order accordingly.

Order pronouncedin Open Court on 06/07/2022 at Varanasi, U.P.

Sd/-	***Sd/***
[VIJAY PAL RAO]	[RAMIT KOCHAR]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

DATED: 06/07/2022
K.D.Azmi/-

Copy forwarded to:

1. Appellant –M/s. Varanasi Development Authority, PannaLal Park, Varanasi-221003, U.P.

2. Respondent –Assistant Commissioner of Income Tax, Circle-3, Varanasi

3. The ld. CIT-DR , ITAT, Varanasi, U.P.

4. The ld. CIT, Varanasi,U.P.

5. The ld.CIT(A), Varanasi, U.P.

Sr. P.S.