

IN THE INCOMETAX APPELLATE TRIBUNAL  
JAIPUR BENCH: JAIPUR  
(BEFORE SHRI R.P. TOLANI AND SHRI T.R. MEENA)

I.T.A. No. 182/JP/2012  
Asstt. Year-  
PAN No. AAFAS 3422 G

Jaipur Development Authority,  
J.L.N. Marg, Jaipur.

Vrs.

The C.I.T.-II  
Jaipur.

(Appellant)

(Respondent)

Assessee by :- Shri Shyam Lal Agarwal.  
Department by :- Shri Subhash Chandra.

Date of hearing : 18/09/2014  
Date of pronouncement : 30/09/2014

O R D E R

PER: T.R. MEENA, A.M.

This is an appeal filed by the assessee against the order dated 29/12/2011 of the learned CIT(A)-II, Jaipur. The sole ground of appeal is against the learned CIT has withdrawn the registration of Trust and hold out that the assessee is carrying out activities in the nature of trade, commerce or business and activities and objects are not charitable.

2. The learned Commissioner of Income Tax, Jaipur observed that Jaipur Development Authority (In short JDA) was granted registration U/s 12AA of the Income Tax Act, 1961 (hereinafter referred as the Act) on 21/11/2008 w.e.f. 14/3/2007. Later on in compliance of ITAT's order dated 30/01/2009, it was made effective fro. 12/10/1982. The objects of

institution are given in Chapter-IV of JDA Act 1982, which regulates the function of institution. The objections are reproduced as under:-

*Power and functions of the Authority.*

*"16. Function of the Authority- The main object of the Authority shall be secure the integrated development of the Jaipur Region and for that purpose the functions of the Authority shall be:-*

- (a) Urban planning including the preparation of Master Development Plan and Zonal Development Plans and Carrying out surveys for the purpose and also making alterations therein as may be deemed necessary.*
- (b) Formulation and sanction of the projects and schemes for the development of the Jaipur Region or any part thereof.*
- (c) Execution of projects and schemes directly by itself or through a local authority or any other agency.*
- (d) To make recommendations to the State Government on any matter or proposal requiring action by the State Government, Central Government, any local authority or any other authority for overall development of the Jaipur Region.*
- (e) Participation with any other authority for the development of the Jaipur Region.*
- (f) Coordinating execution of projects or schemes for the development of the Jaipur Region.*
- (g) Supervision or otherwise ensuring adequate supervision over the planning and execution of any project or scheme, the expenses of which, in whole or in part are to be met from the Jaipur Region Development Fund.*
- (h) Preparing schemes and advising the concerned authorities departments and agencies in formulating and undertaking schemes for development of agriculture, horticulture, floriculture, forestry, dairy development, transport, communication, schooling, cultural activities, sports, medicare, tourism, entertainment and similar other activities.*
- (i) Execution of projects and schemes on the directions of the State Government.*
- (j) Undertaking housing activity in Jaipur region, provided that the delineation of responsibility for housing between Rajasthan*

- Housing Board and the Authority will be made by State Government effective from the date to be fixed by it.*
- (k) To acquire, hold, manage and dispose of property, movable or immovable, as it may deem necessary.*
  - (l) To enter into contracts, agreements or arrangements with any person or organization as the Authority may deem necessary for performing its functions.*
  - (m) To prepare Master Plan for traffic, control and management, devise policy and programme or action for smooth flow of traffic and matters connected therewith.*
  - (n) To perform functions designated by the State Government in the areas of urban renewal, environment and ecology, transport and communication, water energy resource management directly or through its functional Boards or other departments/agencies as the State Govt. may specify.*
  - (o) Regulating the posting of bills, advertisement hordings, signpost, and name boards in Jaipur region or in any part thereof as specified by the Authority.*
  - (p) Regulating the erection or re-erection of buildings and projections, making material alternations therein and providing for open spaces in Jaipur region or in any part thereof as specified by the Authority.*
  - (q) Removing obstructions and encroachments upon public streets, open spaces and properties vesting in the Government or the Authority.*
  - (r) To do all such other acts and things which may be necessary for or incidental or conducive to, any matters which arise on account or its activity and which are necessary for furtherance of the objects for which the Authority is established, and*
  - (s) To perform any other functions that the State Government may designate in furtherance of the objectives or this Act."*

It has been held that these objects are covered under the last limb of Section 2(15) of the Act i.e. advancement of any other objects of general public utility. The institution was granted registration on account of carrying out work of charitable purpose by way of advancement of any

other object of general public utility as per prevailing provisions. However, in view of amendment in Section 2(15) of the Act by Finance Act, 2008 w.e.f. 01/4/2009, the advancement of any other object of general public utility shall not be a charitable purpose in certain circumstances. He reproduced the Section as under:-

*"2. Definitions- (15) " Charitable purpose"- includes relief of 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 objects or general public utility:*

*Provided that the advancement of any other objects 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"*

*2.2 The memorandum explaining the introduction of above proviso is as under:-*

*"5.1 Sub-section (15) of section 2 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 sub-section (23C) of section 10 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 provisions.*

*5.2 With a view to limiting the scope of the phrase advancement of any other object of general public utility, sub-section (15) of section 2 has been amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or*

*application, or retention, of the income from such activity. Scope of this amendment has further been explained by the CBDT vide its circular No. 11/2008, dated 19<sup>th</sup> December, 2008."*

*2.3 Further second proviso was inserted by Finance Act, 2010 retrospectively w.e.f. 01/04/2009 as under:-*

*"Provided further that the 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 provisions year."*

*Vide Finance Act, 2011 w.e.f. 01/04/2012, the limit of Rs. 10 lakh was raised to Rs. 25 lakh.*

*2.4 It has been held that as per newly added proviso to section 2(15), 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, 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, if such receipts exceeds Rs. 10/25 lakh.*

3. The learned CIT had given details of various receipts for F.Y. 2008-09, which includes receipt from sale of plot, receipts from built up properties, sewerage Inc., conversion charges, urban assessment (lease money), map release, transfer fee and penalties, rent, interest on FDR, misc. receipts. The learned CIT gave reasonable opportunity of being heard to the appellant. It was submitted by the institution that to meet the objective, JDA collect the development and other charges from the resident of the JDA region. The Government land in the JDA region vest to the JDA other than those which are held/transferred/allotted to the other agencies/board/department of the Government by the State Government. No amount is paid as cost of such lands transferred/vested by the State Government to JDA and therefore no stock of land is

accounted for being no cost. It was further submitted that on sale of Government land, JDA has been directed to pay the 15% of the land sale amount to Jaipur Nagar Nigam, 20% to the State Government and remaining is with JDA for the development works. The JDA also collect the other charges like the urban assessment fee (ground rent) being known as lease money, conversion charges and interest/penalty or late payment thereof. All amount of lease money and 60% of the conversion charges are retained with JDA for development. 40% of the conversion charges are paid to the State Government. The learned CIT concluded that major source of income is sale of plots and built up properties. Remaining income is received from various charges, fees and penalties levied and collected by the institution. These charges/fees/penalties are related to certain powers given to the institution by State Government and relevant Acts and Rules to regulate various activities in its region. These are sewerage charges, conversion charges for converting residential land to commercial land, lease money, map release charges, transfer fee for transfer of property, Sub-division charges for division of a land into various plots, fee for site plan etc.. These charges are received for providing certain services by the institution to the persons.

Regarding sale of plots and built up properties, it was observed that most of the properties are sold through open auction where the

property is sold to the person who is highest bidder. In auction, all type of properties such as residential and commercial are sold. For auction, minimum sale price is determined by Director (Finance) of the institution on the recommendation of Minimum Sale price Assessment Committee and in auction, property is sold to the highest bidder. Details of properties sold through auction in last three years were submitted by the institution during the course of hearing. Summary of the same is as under:-

F.Y.	Amount received through auction (in crores)
2008-09	81.22
2009-10	86.06
2010-11	169.36
Total	336.65

The learned CIT concluded that in terms of number, total 603 properties were sold through open auction. The number of the properties sold and amount received shows the magnitude and nature of the main activity carried out by the institution. Selling of the property through auction to the persons, who pays the highest amount, shows the commercial nature of the activity of the institution. Commercial principal of business is to derive maximum price of the product/service of the business and the

institution is following the same principal by selling property in auction to the highest payer. Builder or real estate developers do the same activity which is being done by the assessee such as purchase and sale of land at commercial principles and rates, development of land and construction building and sale by auction or otherwise. There is no difference in any activity of the assessee and business man as both try to sell the property at the maximum rate which is evidenced by the act of assessee i.e. sell through open auction. If the assessee were not doing activities in the nature of business/commerce, it would have been selling the property at cost plus some reasonable percentage for maintenance and administrative expenses and not through open auction at the maximum price. If it were not doing activities in the nature of business, it would have been selling property at lesser rate to public charitable trust/institutions but this is not the case. In the auction, no concession is given considering the purpose of the purchaser, which may be charity or personal use or commercial. The same principal is followed by the business man then how the assessee can claim that its activities are not in the nature of trade, business or commerce. From the point to view of common man and general public the institution is doing same activity which is being done by a builder or developer. The institution is also purchasing/acquiring land, developing it, making construction over it and

selling it to fetch the maximum price. This activity is considered by general public as business, trade or commerce. So this activity is in the nature of trade, commerce or business. Regarding other activities, mentioned above, it has been held that, it have nature of trade, commerce or business. The learned AR for the assessee replied on 18/10/2010, which has been reproduced by the learned CIT on pages 11,12 and 13 of his order. After considering the assessee's reply, it has been held that the activities of the institution come under the purview of last limb of Section 2(15) of the Act i.e. advancement of any other object of general public utility. Wherein the limitation has been prescribed by amending this section i.e. 25 lacs. The assessee's plea that it is not doing business or trade or commerce but doing charitable activities by providing housing and community facilities, civil amenities and other infrastructure for the population of Jaipur region was not found convincing i.e. there was no question of profit motive in any other activity and therefore, the amended part of section 2(15) does not apply on it on the ground that it is accepted that objects of the assessee are charitable but the issue is whether the activities are in the nature of trade, commerce or business or not. He has also not convinced with the finding given by the ITAT in its earlier order that the primary purpose and the predominant object of the assessee is not earning the profit but to secure integrated development

of Jaipur, it is involved in several other functions and the earning of the profit in the process is incidental thereto. It is observed by the ITAT that after amendment in Section 2(15) of the Act, there remains no difference between main and primary object and other objects and even if there is no profit motive mentioned in any of the objects but if the assessee carries out its activity in the nature of trade, commerce or business then it will not remain charitable. The argument of the AR that by introducing provision 2(15) of the Act is for exclusion from charitable purpose is limited to those institutions, whose main activity is in the nature of trade, commerce business, was not found acceptable to the CIT. The learned CIT observed that insertion of second proviso is for absolute restriction on any receipt of commercial nature for which a limit has been prescribed in second proviso. He further reproduced the Hon'ble ITAT's order on page 17 and it has been concluded that after amendment made in Section 2(15), the assessee does not remain charitable institution. He also distinguished Hon'ble Supreme Court decision in the case of Addl. CIT Vs. Surat Silk Cloth Manufacturers Association (1979) 2 Taxman 501/(1980) 121 ITR 1 (SC). The assessee's plea that registration U/s 12AA(3) can be withdrawn only in two conditions (i) the activities are not genuine or (2) the activities are not as per the objects of the assessee. Since none of these conditions is attracted in this case, registration

cannot be withdrawn U/s 12AA(3) of the Act. As per learned CIT, the activities of the assessee was not found charitable in view of Section 2(15) of the Act. He further applied Section 293(c) of the Act and held that if the registration cannot be withdrawn U/s 12AA, he has power U/s 293(c) of the Act to withdraw the registration. It is observed that total value of receipts of the assessee is much more than Rs. 10 lacs and in view of the specific mandate of proviso of Section 2(15), the assessee institution's objects cannot be considered as charitable from A.Y. 2009-10 and onward. Accordingly, the registration granted U/s 12AA has been withdrawn U/s 12AA(3) read with Section 293(c) of the Act w.e.f. 1/4/2009 i.e. A.Y. 2009-10 onward.

4. Being aggrieved by the order of the learned CIT-II, Jaipur, the assessee is in appeal before us. He submitted brief facts of appellant, which is a government authority wholly, owned and controlled of government of Rajasthan. The main purpose of forming the JDA Act, 1982 for setting up an authority for planning, coordinating and supervising for proper, orderly and rapid development of the areas in Jaipur region and of executing plans, projects and schemes for such development and to provide for the matters connected therewith, so that housing, community facilities, civil amenities and other infrastructural facilities are created. The main functions of the authority are mostly

those as mentioned in Schedule-XII of Article 243W of the constitution for the municipalities. The powers and functions of the authority are given in para 16 of chapter IV of the JDA Act from serial No. (a) to (s). Authority was exempted U/s 10(20)/10(20A) of the Act. However, after amendment in Section 10(20), 10(20A), the authority was required to file return and get registration U/s 12AA of the Act. The registration was granted to the authority by the direction of the Hon'ble ITAT, Jaipur Bench with retrospective effect. The learned CIT has withdrawn the registration of JDA by observing that the objects of the institution are not charitable but comes under the purview of last limb of Section 2(15) of the Act i.e. Advancement of any other object of general public utility. The whole order of withdrawal is on the wrong consideration that the activities are in the nature of trade, commerce or business only because the second proviso to Section 2(15) applies as per Section 12AA(3) of the Act where the Trust or an institution has been granted registration under Clause(b) of Sub-Section (1) of Section 12AA of the Act. The learned CIT can cancel the registration in two situations (i) if the activities of the institution are not genuine and (ii) the activities assessee not carried out in accordance with the objects of the institution. Further it has been argued that the withdrawn U/s 12AA(3) of the Act is applied w.e.f. 01/6/2010 effective from A.Y. 2010-11 it means prospective. The objects

are genuine and activities are carried out as per the objects. As the authority is a government authority, its object is to provide civil amenities and infrastructure and no trade or business, therefore, withdrawal of registration by the learned CIT was not justified. The second proviso to Section 2(15) of the Act is not applicable to the assessee even in those cases, where it is applicable, the new Section 13(8) was inserted in budget 2012 w.e.f. 01/4/2009 where also the withdrawal of registration is not required to be made. He further relied on the decision of Hon'ble ITAT Mumbai Bench in case of Indian Plastic Association in ITA No. 308/Mum/2012 A.Y. 2009-10 wherein it has been held by the Hon'ble Bench that insertion of first proviso to Section 2(15) is to cover those, which under the garb of general public utility carry on business on commercial activities to escape the liability under the Act gaining exemption U/s 11 of the Act. The Hon'ble Madras High court in the case of Tamilnadu Cricket Association Vs. DIT exemption in Appeal No. 450 of 2013 dated 21/10/2013 has held that considering the provisions of Section 12AA(3) of the Act, the cancellation or registration in a given case could be done only under the stated circumstances U/s 12AA(3) of the Act. In the case of Lucknow Development Authority, the Hon'ble Allahabad High Court vide order dated 16/9/2013 held that mere selling some product at 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 the provision 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 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) of the Act. In case of Sarvodaya Ilakkiya Pannai Vs CIT 343 ITR 300 the Hon'ble Madras High Court vide order dated 25/1/2012 has held that under section 12AA, the Commissioner is empowered to grant or refuse the registration and after granting registration, would be empowered to cancel and that too, only on two conditions laid down under section 12AA(3) of the Act. Whether the income derived from such transaction would be assessed for tax and also whether the trust would be entitled to exemption under section 11 are entirely the matters left to the Assessing Officer to decide as to whether it should be assessed or exempted. In para 10 of the order, it has been held that none of the conditions U/s 12AA(3) were violated by the appellant. The Hon'ble Jodhpur Bench of ITAT in case of Jodhpur Development Authority Vs. CIT in ITA No.

508/Jodh/2010 wherein the Hon'ble Bench had allowed the registration U/s 12AA to it. In another case of Rajasthan Housing Board Vs. CIT, the Hon'ble ITAT, Jaipur Benchy, Jaipur in granting registration U/s 12AA held that proviso to Section 2(15) are totally different. The exemption U/s 11 is to be examined on yearly basis, therefore, the exemption U/s 11 has no effect for granting registration U/s 12AA. In similar case of Gujarat Cricket Association, ITAT 'A' Bench, Ahmadabad in ITA No. 93/Ahmadabad/2011 has held that the registration cancelled by DIT(E) on the basis of amended provision of Section 2(15) of the Act was not justified as amended provision does not fall with the permissible limit of Section 12AA(3) of the Act. The Hon'ble ITAT Agra Bench in case of Agra Development Authority Vs. CIT in ITA No. 166/Agr/2012 dated 11/01/2013 has held that the learned CIT cancelled registration U/s 12A w.e.f. 2009-10, which is the period prior to 01/6/2010, the CBDT has also clarified circular No. 762 dated 18/2/1989 that the amended provision U/s 12AA(3) of the Act is applicable on A.Y. 2011-12. No opinion has been expressed whether Agra Development Authority's works was charitable or not. He also relied on the following case laws:

- (i) The Institute of Chartered Accountants of India Vs. Director General of Income Tax (Exemption), 347 ITR 99 (Delhi)

(ii) Director of Income Tax (Exemption) Vs. Sabarmati Ashram Gaushala Trust 362 ITR 539 (Guj).

(iii) CIT Vs. Improvement Trust, 308 ITR 361 (P&H)

(iv) UIT Improvement Trust Vs. CIT, Sriganganagar, ITA No. 169/Jodh/2011.

(v) Gujarat Industrial Development Corporation Vs. CIT ITA No. 175/Ahd/2011 order dated 13/1/2012.

In case of Gujarat Industrial Development Corporation Vs. CIT in ITA No. 175/Ahd/2011 order dated 13/1/2012, the Hon'ble ITAT has held that the registration cancelled on the basis of definition of charitable purpose U/s 2(15) not invoking the provisions of Section 12AA(3) of the IT Act. Thus, cancellation of registration was not found justified. The learned AR prayed to direct the CIT to withdraw the cancellation of registration granted to the JDA.

5. The learned DR argued that earlier JDA is covered U/s 10(20A) of the Act, which has been amended from 01/4/2003. As per explanation of Section 10(20), the JDA is not also covered as local authority. Thereafter, the assessee has to file return as per Income tax law. The assessee applied for registration U/s 12A of the Act, which was allowed on the direction of Hon'ble ITAT, Jaipur Bench from 1982. Section 2(15) also changed the scenario of the authorities from 01/4/2009 and definition of

charitable purpose had been limited for certain trust who were involving in carrying on of any activity in 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 fees or any other consideration, irrespective of the nature of use or application or retention, of the income from such activity. There was also a limit prescribed by second proviso of this section i.e. 10 lacs later on 25 lacs in previous year. The learned CIT has thoroughly discussed the aspects of Section 2(15) of the Act and also cited various case laws and now it is clear that JDA is not a charitable institution but the earning money like a builder, which can be concluded on the basis of objects and functions of the institution. The detail of receipts of different nature has been elaborately mentioned by the learned CIT in his cancellation order, which does not include any charitable activity, for which he relied upon the decision in case of Punjab Urban Planning and Development Authority Vs. CIT by the Hon'ble ITAT Chandigarh 'B' Bench in ITA No. 764/Chandigarh/2003 order dated 01/6/2006 wherein identical issue had decided by the Bench by upholding that development authority is not a charitable institution and learned CIT rightly rejected the 12A. He further relied the decision in case of Jammu Development Authority in ITA NO. 164/Jammu/2012, the Hon'ble Jammu High Court had not found any question of law. The Hon'ble ITAT Amritsar

Bench had decided the Jammu Development Authority's case against the assessee and by upholding that amendment brought in section 2(15) by the Finance Act, 2008, that Jammu Development Authority is an authority established with the motive of profit constituted under Jammu & Kashmir Development Act, 1970 and that the activities of such authority are hit by Section 2(15) of the Act. Therefore, he prayed to confirm the order of the learned CIT.

6. We have heard the rival contentions of both the parties and perused the material available on the record. The JDA was established in October, 1982 by JDA Act. Purpose of JDA is for planning, coordinating and supervising for proper, orderly and rapid development of the areas in Jaipur region, in which several government departments, local authorities and other organization are at present engaged within their own jurisdictions to provide also that such authority be enabled either itself or through other authority to formulate and execute plans, projects and schemes for the development of Jaipur region. So that housing, community facilities, civic amenities and other infrastructure are properly created for the population of Jaipur region in the prospective of 2001 AD or thereafter including the intermediate stage and to provide for matters connected with the purpose of aforesaid. Later on this Act further amended from time to time as per need of Jaipur region. As per chapter

(vi), functions of the authorities have been defined in item No. (a) to (s). As per item-(h), the authority is authorized to develop agriculture, horticulture, floriculture, forestry, dairy development, transport, communication, schooling, cultural activities, sports, medicare, tourism, entertainment and similar other activities. As per item-(n), it performs in the area of urban renewal, environment and ecology directly or through its functional boards, therefore, the JDA not only planning the urban area with master development plan and zonal development plan but also sanction projects and schemes for development. The JDA is a tool of State government for coordinated and planned development in Jaipur region. In practical, the main work of JDA is construction of roads, sewerage, parks, play grounds, provide plots for educational, health and cultural institution for over all development of the community. By making planned development it provides smooth transportation so that air pollution can be minimized and save time of the public. If it is left in the hands of private operator, these facilities would not be provided on similar price as provided by the JDA. Whatever, the Revenue is generated through these activities are finally utilized for the benefit of the public. The intention of the institution is not to earn profit but recover the cost of the establishment as well as other expenditure to implement the object of the JDA. The State Government also give the grant to it. As per

Rajasthan Tenancy Act, the land is owned by the State Govt. but farmers are lessee for 99 years in perpetuity. It can be acquired for the public purposes. Various sports as well as community facilities provided by the JDA are not for profit motive but for the development of the whole urban community. The learned DR as well as learned AR cited various case laws against and in favour of the assessee but recently Hon'ble Allahabad High Court in the case of Lucknow Development Authority has held that mere selling some product at profit will not ipso facto hit assessee by applying proviso to section 2(15) and deny exemption available under section 11. The intention and manner of the assessee was not to earn profit. Further the amendment made in Section 2(15) is effective from 2011-12 as clarified by the CBDT in its circular mentioned above. The ITAT 'A' Bench of Lucknow in the case of Uttar Pradesh Avas Evam Vikas Parishad Vs. CIT-1, Lucknow has held that as per Section 12AA that the CIT is satisfied that the activity of such Trust or Institution are not genuine or are not being carried out in accordance with the object of the Trust or Institution, as the case may be. The CIT shall pass an order in writing cancelling the registration of such Trust or Institution. It is essential that one of these two conditions must be satisfied that either the activities of such Trust are not genuine or the activities are not being carried out in accordance with the object of the Trust. The Bench did not find any

condition in assessee's case. Therefore, the ITAT 'A' Bench of Lucknow allowed the appeal in favour of the assessee. In our case, the conditions are not found by the CIT, he simply applied Section 2(15) of the Act for cancelling the registration of the institution. The Hon'ble Delhi High Court in case of M/s GS1 India Vs. Director General of Income Tax (Exemption) & Anr. has considered amended Section 2(15) of the Act and held that with regard to scenario prior to 2008 amendment applied test of predominant object of activity enunciated by the Hon'ble Supreme Court in the case of ACIT Vs. Surat Cloth Manufacturing Association to determine whether primary object of the activity involved in carrying out the object of general public utility is to be subserved the charitable purpose or to earn profit. In case where the predominant object of the activity is to carry out charitable purpose and not to earn profit, it does not lose its character of charitable purpose merely because some profit arises from such activities. Therefore, money earned from business held under trust or otherwise, to feed the charity would not disentitle or negate the claim of engagement in charitable purpose defined under section 2(15) of the Act. It further held that CBDT circular No. 11/2008 emphasized that 2008 amendment is only applicable to residual category, charitable entity when it carries on any activity in the nature of trade, commerce or business, on any activity and to determine whether such

activity is commercial will be decided on its own facts and no generalization is possible. However, the tax authorities in the context of the above circular denied tax exemptions on the premises that charitable activity was only a mask to cover business activity of the charitable entity to determine whether the residual category, charitable entity is engaged in any business activity, the issue of the self enrichment and self gain should be carefully looked into. A small contribution by way of fees should not be emulated the transaction or the give activity to be commercial in nature. As per Section 2(15), the charitable activity test means activity with a view to make or earns profit. The four integrates laid down are (a) profit motive is a critical factor to discern whether the activity is business, trade or commerce, (b) charitable activity should be devoid of selfishness or illiberal spirit, (c) the underline propelling motive is not for commercial exploitation but general public good and (d) fees charged if any should be nominal and based on commercial principle.

Applying the above test, the Hon'ble Delhi High Court opined that a mere levy of fees is neither reflective of business aptitude nor indicative of profit oriented intent. The Hon'ble Delhi High Court held that when propelling motive is not to earn profit but general public good, the charitable entity will fail the business test and meet the touchstone of charity. The Hon'ble Delhi High Court further held that charging fees on

IPR sense profit motive does not amount to commercial exploitation. Moreover, when the fees charged is commensurate based on commercial or business principles, the charity activity test is fulfilled. The Hon'ble Delhi High Court ruled as primary and predominant activity is charitable in nature. The nominal fees charged are important for covering operational cost of the petitioner. Thus, keeping in view of the charitable activity test, it was held that business activity of the petitioner is integral to its charitable purpose and question of requirement of separate books of account for the business activity seems redundant. The Hon'ble Delhi High Court's findings is squarely applicable in the case of the appellant. Further proviso to Section 2(15) of the IT Act has held by the Hon'ble ITAT, Mumbai Bench in the case of Indian Plastic Association (supra), is to cover those, which under the garb of general public utility carry on business on commercial activities to escape the liability under the Act gaining exemption U/s 11 of the Act, we also feel that this section applied on such type of trust or institution who get registration U/s 12A of the Act for claiming the exemption U/s 11 of the Act. The appellant is a government agency and engaged in the coordinate and planned development of Jaipur region and which is predominant object of it. The learned CIT also erred in applying the provisions of Section 293(c) of the Act, in this case, which applied withdrawal of approval granted under any

provision of this Act, notwithstanding that a provision to withdraw such approval has not been specifically provided for in such provision. For cancellation of registration, the specific provision U/s 12AA is provided. Therefore, we are of the considered view that learned CIT was no right to withdraw the registration of the appellant from A.Y. 2009-10. Accordingly, we set aside the order of the learned CIT(A) and directed to grant the registration to the JDA.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 30/09/2014.

Sd/-  
(R.P. TOLANI)  
JUDICIAL MEMBER

Sd/-  
(T.R. MEENA)  
ACCOUNTANT MEMBER

Jaipur, Dated : 30<sup>th</sup> September, 2014

\* Ranjan

Copy forwarded to :-

1. The Jaipur Development Authority, Jaipur.
  2. The CIT-II, Jaipur.
  3. The CIT (A)
  4. The CIT
  5. The D/R
- Guard file (I.T.A. No. 182/JP/2012)

By Order,

AR ITAT Jaipur.

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