**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**ITA No. 62 of 2018**
**Date of decision: 04.07.2018**

**The Commissioner of Income Tax (Exemptions), Chandigarh**

**……Appellant**

**Vs.**

**M/s Improvement Trust Bathinda, Dr. Mela Ram Road, Bathinda (PAN AAATE1563E)**

**…..Respondent**

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**
**HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Denesh Goyal, Senior Standing Counsel for the appellant.

**Ajay Kumar Mittal,J.**

1. This order shall dispose of ITA Nos. 62 and 64 of 2018 as according to the learned counsel for the appellant-revenue, the issues involved in both the appeals are identical. However, the facts are being extracted from ITA No. 62 of 2018.

2. ITA No. 62 of 2018 has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 which (in short, "the Act") against the order dated 30.08.2017, Annexure A.3, passed by the Income Tax Appellate Tribunal, Amritsar Bench (in short, "the Tribunal") in ITA No. 477/ASR/2016, for the assessment year 2013-14, claiming following substantial questions of law.

"(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in law by not considering the scope of proviso of Section 2(15), as it had been directed by Hon'ble High Court, while deciding the cases?

(ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in drawing a corollary from circular No.11 of 2008 of CBDT where the said circular while clarifying the issue had expressly indicated that entities claiming charity under Section 2(15) should eschew any activity in the nature of trade, commerce or business?

(iii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right by ignoring the ratio laid down in the cases of Punjab Urban Development Authority and Jammu Development Authority by Hon'ble ITAT Chandigarh and Hon'ble ITAT Amritsar respectively (to the extent improvement trusts carry out land development in a similar manner as Development Authorities do)?

(iv) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in not acknowledging that performing statutory functions does not absolve a government created authority from paying taxes?

(v) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in ignoring the ratio laid down in the case of PUDA Vs. CIT reported as (2006) 103 TTJ CHD 988 in which the Hon'ble Tribunal has held that the activities of the PUDA are of commercial nature and thus not entitled to exemption. The Hon'ble ITAT has failed to take note that both PUDA and the assessee are engaged in identical activities?

(vi) Whether on the facts and in the circumstances of the case, the order of the Hon'ble ITAT is contrary to the evidence and material on the record of the case and therefore, perverse?

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No. 62 of 2018 may be noticed. The respondent-assessee trust is an authority formed by the Government of Punjab for the purpose of planning, development and improvement of District Bathinda. It filed its return of income for the assessment year 2013-14 declaring nil income after claiming exemption under Section 11 of the Act. The case was selected for scrutiny. During the course of assessment proceedings, the Assessing Officer observed that the assessee was carrying on business of sale and purchase of residential plots and commercial properties by auction and earned huge net profit during the year under consideration, which was in the nature of trade, commerce and business and did not fall within the meaning of words “the advancement of any other object of general public utility” under Section 2(15) of the Act. The Assessing Officer completed assessment under Section 143(3) of the Act for the assessment year 2013-14 and assessed the total income of the assessee at ₹ 12,71,28,721/- and exemption under Section 11 of the Act was denied by holding that the activites carried out by the assessee during the year in question were clearly hit by the first proviso to Section 2(15) of the Act read with Section 13(8) of the Act and the assessee was not entitled to exemption under Section 11 of the Act. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), [CIT(A)]. Vide order dated 20.07.2016, Annexure A.2, the CIT(A) allowed the appeal relying upon the orders passed by the Tribunal dated 2.6.2016 and 30.06.2016 for the assessment years 2008-09 and 2010-11 respectively in the assessee’s own case wherein the Tribunal had relied upon its own decision dated 10.09.2015 in the case of Hoshiarpur Improvement Trust in ITAT No.496/Asr/2013. The appellant-revenue challenged the order dated 20.07.2016 before the

Tribunal. Vide order dated 30.08.2017, Annexure A.3, the Tribunal dismissed the appeal filed by the revenue by relying upon order of ITAT, Amritsar dated 02.06.2016 in ITA No. 416/ASR/2013. The appellant-revenue filed appeal bearing ITA No. 384 of 2016 before this Court against the order dated 02.06.2016 passed by the Tribunal, which was dismissed by this Court on 14.05.2018. The appellant-revenue had also filed appeal before this Court against the order dated 10.09.2015 passed by the Tribunal in the case of Hoshiarpur Improvement Trust. Vide order dated 23.12.2016, this Court dismissed the appeal filed by the revenue by relying upon its order dated 20.12.2016 in ITA No. 147 of 2016 in ***CIT (Exemption) Vs. M/s Improvement Trust, Moga***. Hence the instant appeals by the appellant-revenue.

4. We have heard learned counsel for the appellant-revenue.

5. At the outset, learned counsel for the appellant-revenue did not dispute that the issues raised in these appeals are covered by the decision of this Court in ***The Tribune Trust Vs. Commissioner of Income Tax and another and Commissioner of Income Tax (Exemption) Vs. Improvement Trust, Moga*** [2017] 390 ITR 547 where the similar issues have been decided against the revenue and in favour of the assessee.

6. Accordingly, both the appeals are dismissed.

**(Ajay Kumar Mittal)**
**Judge**

**July 04, 2018**
**'gs'**

**(Avneesh Jhingan)**
**Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**