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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) NO. 732/2017**

Reserved on : 26th October, 2017
Date of decision: 26th February, 2018

GREATER NOIDA INDUSTRIAL DEVELOPMENT AUTHORITY
..... Petitioner

Through Mr. Balbir Singh, Sr. Advocate with
Mr. Jasmeet Singh, Ms. Rubal Maini, Mr. Nitesh
Shrivastava, Mr. Naman Joshi, Mr. Hemant Jain &
Mr. Sunil Gupta, Advocates.

versus

UNION OF INDIA AND OTHERS Respondents
Through Ms. Ripu Daman Bhardwaj, CGSC &
Mr. T.P. Singh, Advocate for UOI.
Mr. Zoheb Hossain, Sr. Standing Counsel &
Mr. Deepak Anand, Jr. Standing Counsel for the
Revenue.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, J.:

Greater Noida Industrial Development Authority (hereinafter referred to as, the petitioner) has filed the present writ petition for setting aside and quashing the order dated 8th June, 2015 passed by the Additional Commissioner of Income Tax, ITA Division, Central Board of Direct Taxes,

rejecting their request for issue of notification of exemption under Section 10(46) of the Income Tax Act, 1961 (Act, for short).

2. The respondents to the present writ petition are Ministry of Finance, Central Board of Direct Taxes and Assistant Commissioner of Income Tax, Circle-3, Noida, Uttar Pradesh, who is the Assessing Officer of the petitioner. For the sake of convenience, we would refer to them as respondents.

3. On 22nd November, 2011 the petitioner had made an application with the respondents for issue and grant of exemption notification under Section 10(46) of the Act. The respondents by letter dated 22nd May, 2013, had required the petitioner to furnish information as per proforma enclosed along-with audited balance sheets. These were furnished by the petitioner by detailed reply and documents vide letter dated 28th June, 2013. By communication dated 3rd January, 2014, the respondents had again required the petitioner to furnish documents in the proforma enclosed. The petitioner thereupon submitted reply dated 5th February, 2014 furnishing information as per proforma enclosed. By another communication dated 28th March, 2014, the petitioner was required to furnish application in the standardized proforma enclosed with the letter. The petitioner submitted their application, in the desired proforma vide letter dated 29th March, 2014. The respondents thereupon vide letter dated 13th November, 2014 had expressed their prima facie view that the petitioner did not meet the prescribed conditions for approval under Section 10(46) of the Act and had required the petitioner to furnish clarification with necessary documents for claiming eligibility. By communication dated 10th December, 2014, the petitioner

referred to their meeting with the Additional Commissioner of Income Tax, ITA Division, Central Board of Direct Taxes, on 28th November, 2014 and enclosed therewith list of income sought to be notified for the purpose of Section 10(46) of the Act. The petitioner had requested that the following income should be notified for exemption under Section 10(46) of the Act:-

- “a. Grants received from the State Government.
- b. Moneys received from the disposal/90 years lease of immovable properties.
- c. Moneys received by the way of lease rent & fees or any other charges from the disposal/90 years lease of immovable properties.
- d. The amount of interest earned on the funds deposited in the banks.
- e. The amount of interest/penalties received on the deferred payment received from the Allotees of various immovable properties.
- f. Water, sewerage and other municipal charges from the Allotees of various immovable properties.”

4. The respondents, vide impugned order dated 8th June, 2015, have rejected the petitioner's prayers for issue of notification of exemption under Section 10(46) of the Act in respect of the aforesaid income for the following reasons:-

“3. The applicant (Greater Noida Industrial Development Authority) has been constituted under Section 3 of the Uttar Pradesh Area Development Act, 1976 (U.P. Act No. 6 of 1976).

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

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

6. Vide Board's letter dated 13/11/2014, the applicant was asked to clarify as to how various activities of the authority are not commercial in nature. The applicant has furnished its reply. As regards query that the activities of the authority are commercial in nature, following reply has been submitted.

- The authority is performing, apart from the activities related to the planned development of the area, all municipal functions like roads, water supply, street lighting and power supply, sewerage, drainage, collection treatment and disposal of industrial waste and town refuse and other community facilities, services or conveniences.
- Activities performed by the Authority are for the benefit of general public at large and by no stretch of imagination commercial in nature. All the amounts received by the Authority are utilized for the development of the Notified Area under its authority.
- Authority is mandated only to carry on the functions/objectives as detailed by Uttar Pradesh Industrial Development Act, 1976.
- Authority is not mandated to carry on any commercial/business activity from the point of view of earning profits.
- Authority is performing the Sovereign functions of planned development in the notified area and provision of municipal services in that area.

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

8. The applicant has sought to distinguish its case stating that it is not engaged in commercial activities as there is no profit motive involved and as it is carrying out the Sovereign functions of planned development in the notified area and provision of municipal services in that area. The conditions prescribed for the purpose of Section 10(46) do not distinguish the cases on the basis of criteria like inherent profit motive or otherwise. Hence, the condition prescribed that “(b) is not engaged in any commercial activity” does not seem to be fulfilled in the applicant’s case and hence the basic requirements of sub clause (b) of clause (46) of Section 10 does not seem to be fulfilled in the applicant’s case.

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

10. Thus, in view of the above, I am directed to convey that the applicant M/s Greater Noida Industrial Development Authority has not been found fit for notification u/s 10(46) of the Income Tax Act, 1961 by the Central Government and is hereby rejected.”

5. In this writ petition, we have to examine whether the petitioner was/is carrying on "any commercial activity" and therefore does not fulfill the negative stipulation of clause (b) to Section 10(46) of the Act. In order to decide the controversy, we would first like to reproduce Section 10(46) of the Act, which reads:-

“10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

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(46) any specified income arising to a body or authority or Board or Trust or Commission (by whatever name called) which—

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

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

Section 10 in separate clauses sets out and details different incomes that would not form part and are excluded from the total income of the assessee. Sub-section 46 to Section 10 states that the Central Government by issue of notification can grant exemption to specified income arising to a body, authority, board, trust or commission established or constituted under the Central, State or Provincial Act or constituted by Central Government or State Government with the object of regulating or administering any activity for the benefit of general public. Clause (b) in Section 10(46) states that the body, authority etc. should not be engaged in any commercial activity. The Explanation defines what is meant by the term "specified income" and the specified income alone is exempt.

6. A reading of the impugned order dated 8th June, 2015 would show that the respondents do not dispute and question that the petitioner has been

established or constituted by the State Government, i.e., Government of Uttar Pradesh under Section 3 of the Uttar Pradesh Industrial Area Development Act, 1976 (UPID Act, for short). Paragraph 4 of the impugned order records that the petitioner undertakes works relating to housing and development schemes, including acquisition, distribution, sale and letting of properties. Impugned order does not state that the petitioner was not established or constituted with the object of regulating or administering any activity for the benefit of general public. Even in the arguments before us it was not suggested by the respondents that the petitioner was not established or constituted with the object of regulating or administering activities for the benefit of general public. We have not examined these aspects nor interpreted the words "regulating" or "administering" and whether the activities of the petitioner would fall within the ambit and scope of the said expressions. We have examined and answered the question whether or not the petitioner was/is engaged in any "commercial activity".

7. Impugned order holds that the expression "is not engaged in any commercial activity" has not been defined and for Section 10(46) no distinction can be drawn between commercial activity undertaken with profit motive or otherwise. The contention that the petitioner does not operate and function for profit or with intent to earn profit and carries on sovereign function in the notified area and provides municipal services were not relevant and germane to clause (b) to Section 10(46) of the Act. Hence, the petitioner would not fulfill the basic requirement of clause (b) to Section 10(46) of the Act for grant of exemption notification.

8. The petitioner, it is accepted, as noticed above, is a body established under Section 3 of UPID Act. It has been established by the State of Uttar Pradesh with the primary aim and object to undertake planned development of industrial development area known as “Greater New Okhla Industrial Development Authority”. The State Government vide power under Section 3 of the UPID Act has issued Notification No. 7436 Bha.UXVIII-II-107 dated 28th January, 1991 to constitute “Greater New Okhla Industrial Development Authority” for the area specified therein. By Notification No. 6710/77-4-2001-56Bha/9 dated 24th December, 2001 under proviso to clause 1 of Article 243Q of the Constitution of India, it was notified that the area declared as Industrial Area by above notification dated 28th January, 1991 would be an industrial township with effect from the date of publication of said notification in the official Gazette. This notification also states that the petitioner was providing municipal services. Section 6 of the UPID Act provides for functions to be performed by the Authority like the petitioner established under Section 3 of the said Act.

9. Section 6 of the UPID Act reads as under:-

“6. Functions of the Authority

- (1) The object of the Authority shall be to secure the planned development of the industrial development area.
- (2) Without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions:
 - (a) To acquire land in the industrial development area, by agreement or through proceedings under the Land Acquisition Act, 1894 for the purposes of this Act;
 - (b) To prepare a plan for the development of the industrial development area;

- (c) To demarcate and develop sites for industrial, commercial and residential purpose according to the plan;
- (d) To provide infrastructure for industrial, commercial and residential purposes;
- (e) To provide amenities;
- (f) To allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial and residential purposes;
- (g) To regulate the erection of buildings and setting up of industries; and
- (h) To lay down the purpose for which a particular site or plot of land shall be used, namely for industrial or commercial or residential purpose or any other specified purpose in such area.”

One of the functions of Authorities like the petitioner, as per Section 6, is to secure planned development of the industrial development area. It has the power to acquire land for industrial development by agreement or through acquisition proceedings, prepare a plan, demarcate and develop sites for industrial, commercial and residential purpose. According to the plans prepared, the petitioner provides infrastructure for industrial, commercial and residential purposes, provides amenities, allocates and transfers the plots by way of sale, lease or otherwise, regulates erection of buildings, setting up of industries, etc. The word “amenities” has been defined in clause (a) to Section 2 of the UPID Act to include roads, water supply, street lighting, power supply, sewerage, drainage, etc.

10. As per Section 20 of the UPID Act, the petitioner is mandated to maintain its own funds, which shall consist of money received from the State

Government by way of grants, loans, advances or otherwise or from other sources by way of loans and debentures. Funds can also consist of fees, tolls and charges received by the petitioner under the Act and money received from disposal of land, building and properties both movable and immovable and money by way of rents and profits. Sub-section (2) to Section 20 of the UPID Act stipulates that the funds shall be applied towards meeting the expenses incurred by the petitioner in administration of the UPID Act and for no other purposes.

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

12. The expression 'commercial activity' in Sub-section 46 to Section 10 of the Act, has not been specifically defined and, therefore, meaning would have to be given keeping in mind the Legislative intent of the enactment. Normally when a word or expression is not defined for a provision, we apply Common Parlance Interpretation principle. Reference is made to the dictionary meaning to interpret to the word or expression. However, words and dictionary definitions can have varied, broad and narrower meanings. Therefore, contextual interpretation is required and mandated. In *Union of India versus Harjeet Singh Sandhu*, (2001) 5 SCC 593, the court went by the dictionary meaning of the term "impracticable" in proximity with the term "impossibility", and relying upon the Common Parlance Principle, it was held :-

31. The above passage shows that the learned Judges went by the dictionary meaning of the term "impracticable", placed the term by placing it in juxtaposition with "impossibility" and assigned it a narrow meaning. With respect to the learned Judges deciding Major Radha Krishan case [(1996) 3 SCC 507 : 1996 SCC (L&S) 761] we find ourselves not persuaded to assign such a narrow meaning to the term. "Impracticable" is not defined either in the Act or in the Rules. In such a situation, to quote from Principles of Statutory Interpretation (Chief Justice G.P. Singh, 7th Edn., 1999, pp. 258-59):

"When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that 'the meanings of words and expressions used in an Act must take their colour from the context in which they appear'. Therefore, 'when the context makes the meaning of a word quite clear, it becomes unnecessary

to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers’.

As stated by Krishna Iyer, J.: ‘Dictionaries are not dictators of statutory construction where the benignant mood of a law, and more emphatically, the definition clause furnish a different denotation.’ In the words of Jeevan Reddy, J.: ‘A statute cannot always be construed with the dictionary in one hand and the statute in the other. Regard must also be had to the scheme, context and to the legislative history.’ Learned Judge Hand cautioned ‘not to make a fortress out of the dictionary’ but to pay more attention to ‘the sympathetic and imaginative discovery’ of the purpose or object of the statute as a guide to its meaning.”

13. In *Black’s Law Dictionary 8th Edition* the word ‘commerce’ has been defined as exchange of goods or services especially on large scale involving transportation between cities, States and nations. In *Advanced Law Lexicon, 3rd Edition 2005 Vol. I*, at page 878 by P. Ramanatha Aiyar, the word ‘commerce’ has been defined as under:

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

‘Buying and selling together, exchange of merchandise especially on a large scale between different countries or districts; intercourse for the purpose of trade in any and all its forms [Section 2 (13), Income Tax Act]. (43 of 1961)]

If we go by the aforesaid definition the word 'commercial activity' will be of extremely wide import and would cover any transaction or activity connected with exchange of goods or property of any type, be it buying, selling or even compulsory acquisition under the Land Acquisition Act, which is a statutory function and obligation.

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

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

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

"Commercial.—(1) 'Commercial action' includes any cause arising out of the ordinary transactions of merchants and traders and, without prejudice to the generality of the foregoing words, any cause relating to the construction of a mercantile document, the export or import of merchandise, affreightment, insurance, banking, mercantile agency and mercantile usage.

(2) An incorporated canal company whose profits arose from tolls, was held a 'commercial company', or a company associated for 'commercial purposes', and, as such, liable to become bankrupt under the Joint Stock Companies Act, 1844."

23. Thus, the words "commercial purpose" would cover an undertaking the object of which is to make a profit out of the undertakings. In the present case the services of UTI were availed by the complainants for the betterment of their employees, that such an investment was made, and it is to be made clear that no benefit by way of profit was to accrue to the complainant, improving its balance sheet, in view of the definition of the word "commerce" given above, under no circumstances, could the appellant be said to be indulging in any "commercial" activity, thus excluding him from the definition of "consumer" as enshrined in the Act. The intent of the Universities in the present dispute is not profiteering and the same is for benevolent interest and there is no intention whatsoever that the investment is made for any commercial purpose or gain and therefore we find that the complainant Universities fall within the definition of "consumer" under the Act and the complaints are maintainable before the National Commission."

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

16. Way back in 1970, a Constitution Bench of five Judges in *Shri Ramtanu Co-operative Housing Society Limited and Another versus State of Maharashtra and Others*, (1970) 3 SCC 323, had examined validity of

Maharashtra Industrial Development Act, 1961 (3 of 1962) and in that context had referred to the functions performed by Maharashtra Development Corporation, which was to establish and manage industrial estate on selected basis and to develop industrial area selected by the State Government and for this purpose acquire and transfer land by way of sale, lease, etc. Contention of the petitioner therein that the Corporation established would be a trading one or a commercial corporation was rejected in the following words:-

“16. The petitioners contended that the Corporation was a trading one. The reasons given were that the Corporation could sell property, namely, transfer land; that the Corporation had borrowing powers; and that the Corporation was entitled to moneys by way of rents and profits. Reliance was placed on the report of the Corporation and in particular on the income and expenditure of the Corporation to show that it was making profits. These features of transfer of land, or borrowing of moneys or receipt of rents and profits will by themselves neither be the indicia nor the decisive attributes of the trading character of the Corporation. Ordinarily, a Corporation is established by shareholders with their capital. The shareholders have their Directors for the regulation and management of the Corporation. Such a Corporation set up by the shareholders carries on business and is intended for making profits. When profits are earned by such a Corporation they are distributed to shareholders by way of dividends or kept in reserve funds. In the present case, these attributes of a trading Corporation are absent. The Corporation is established by the Act for carrying out the purposes of the Act. The purposes of the Act are development of industries in the State. The Corporation consists of nominees of the State Government, State Electricity Board and the Housing Board. The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those

purposes, constructing buildings, allotting buildings, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of sole purpose of establishment, growth and development of industries.

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

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

industrial areas. We are of opinion that the Corporation is not a trading one.”

17. There are a number of decisions of the Delhi High Court on interpretation of the expression “in the nature of trade, commerce or business” in the proviso to Section 2(15) of the Act, for an institution carrying on the aforesaid activities is not a charitable institution under the residual category of advancement of any other object of general public utility. In *Institute of Chartered Accountants of India and Another versus Director General of Income Tax (Exemptions), Delhi and Others*, [2012] 347 ITR 99 (Del) referring to the meaning of the terms “commerce” and “business”, it was held as under:-

“33. Section 2(15) defines the term ‘charitable purpose’. Therefore, while construing the term ‘business’ for the said Section, the object and purpose of the Section has to be kept in mind. We do not think that a very broad and extended definition of the term ‘business’ is intended for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act to include any transaction for a fee or money. An activity would be considered “business” if it is undertaken with a profit motive, but in some cases this may not be determinative. Normally the profit motive test should be satisfied but in a given case activity may be regarded as business even when profit motive cannot be established/proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles, and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is infact in the nature of business. The test as prescribe (*sic*) in *Raipur Manufacturing Company* (supra) and *Sai Publications Fund* (supra) can be applied. The six indicia stipulated in *Lord Fisher* (supra) are also relevant. Each case, therefore, has to be examined on its own facts.

34. In view of the aforesaid enunciation, the real issue and question is that whether the petitioner-institute pursues the activity of business, trade or commerce. To our mind, the respondent while dealing with the said question has not applied their mind to the legal principles enunciated above and have taken a rather narrow and myopic view by holding that the petitioner institute is holding coaching classes and that this amounts to business....."

18. Six tests enunciated by Lord Fisher in **Customs and Excise Commissioners versus Lord Fisher**, [1981] 2 All ER 147 are;-

" (a) a serious undertaking earnestly pursued; (b) pursued with reasonable continuity; (c) substantial in amount; (d) conducted regularly on sound and recognized business principles; (e) predominantly concerned with the making of taxable supplies to consumers for a consideration; (f) such as consisted of taxable supplies of a kind commonly made by those who seek to make profit from them."

19. After extensively referring to the judgments of the Supreme Court in **State of Punjab versus Bajaj Electricals Limited**, [1968] 70 ITR 730 (SC), **Barendra Prasad Ray and others versus Income Tax Officer**, [1981] 129 ITR 295 (SC), **Commissioner of Income Tax versus Lahore Electric Supply Company Limited**, [1966] 60 ITR 1 (SC) and **State of Gujarat versus Raipur Manufacturing Company Limited**, [1967] 19 STC 1 (SC), it was held that the term "profit motive" as per the enactment may not be the sole or relevant consideration to be kept in mind. It may be one of the aspects, as normal commercial or business activity is with the intent to earn profit. For several enactments, concept and principle of "economic activity"

and not profit motive has gained acceptance as in cases relating to taxability under the sales tax, excise duty, value added tax, etc. as these are not taxes on income, but the taxable event occurs because of the economic activity involved. The charge or incidence of tax can be on the "economic activity", whereas under the Act, i.e. the Income Tax Act, the charge is on income. Word "business", it was observed, is an etymological chameleon and it suits its meaning to the context in which it is found. It is not a term of legal art. This, as observed above, is equally true when we judicially interpret and define the expression "commercial activity" in the context of an enactment.

20. This view has been followed and further elucidated in ***GS 1 India versus Director General of Income Tax (Exemption) and Another***, [(2014) 360 ITR 138 (Del)] wherein referring to the question of business or commercial activity, it was held as under:-

“25. Business activity has an important pervading element of self-interest, though fair dealing should and can be present, whilst charity or charitable activity is anti-thesis of activity undertaken with profit motive or activity undertaken on sound or recognized business principles. Charity is driven by altruism and desire to serve others, though element of self-preservation may be present. For charity, benevolence should be omnipresent and demonstrable but it is not equivalent to self-sacrifice and abnegation. The antiquated definition of charity, which entails giving and receiving nothing in return is outdated. A mandatory feature would be; charitable activity should be devoid of selfishness or illiberal spirit. Enrichment of oneself or self gain should be missing and the predominant purpose of the activity should be to serve and benefit others. A small contribution by way of fee that the beneficiary pays would not convert charitable activity into business, commerce or trade in the absence of contrary evidence. Quantum of fee charged, economic status of the beneficiaries who pay, commercial value

of benefits in comparison to the fee, purpose and object behind the fee etc. are several factors which will decide the seminal question, is it business?

21. Reference can be also made to the decision of the ***Indian Institute of Chartered Accountants of India*** (Supra), which had struck down the order passed by the respondents on remand after the first decision. Similar views have been expressed in ***Indian Trade Promotion Organization versus Director General of Income Tax (Exemptions) and Others***, [2015] 371 ITR 333 (Del) and by the Punjab and Haryana High Court in the case of ***The Tribune Trust versus Commissioner of Income Tax and Another***, [2017] 390 ITR 547 (P&H).

22. Now we would turn to the two decisions in the case of the petitioner itself. The first decision is by the Allahabad High Court in ***Commissioner of Income Tax (Exemption) versus Yamuna Expressway Industrial Development Authority*** and other connected cases, reported as [2017] 395 ITR 18 (All). This was a case relating to registration under Section 12AA read with Section 2(15) of the Act. The nature of activities undertaken by the petitioner were extensively examined and considered and the contention raised by the Revenue was rejected. In other words, petitioner was entitled to registration under Section 12AA read with Section 2(15) of the Act.

23. Counsel for the Revenue had drawn our attention to decision of the Division Bench of the Delhi High Court in ***Rakesh Projects (India) Private Limited versus Commissioner of Income Tax (TDS) and two Others***, 2017 (392) ITR 493 (Del.) and other cases. These petitions were filed by third parties and the issue involved was correct interpretation of Section 194-I of

the Act, which relates to deduction of tax at source on payments by way of rent. The contention raised was that the aforesaid payments made by the writ petitioner therein were exempt being income under Section 10(20) of the Act, being income of a local authority. Section 10(20), which came up for interpretation in the said case, reads as under:-

“10. Incomes not included in total income in computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included:

(1) agricultural income;

(20) the income of a local authority which is chargeable under the head —Income from house property “Capital gains” or “Income from other sources” or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service (not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area.

Explanation:- for the purposes of this clause the expression “local authority” means-

(i) Panchayat as referred to in clause (d) of Article 234P of the Constitution, or

(ii) Municipality as referred to in clause (e) of Article 234P of the Constitution, or

(iii) Municipal Committee and District Board, legally entitled to or entrusted by the Government with, the control or management of a Municipal or local fund; or

(iv) Cantonment Board as defined in Section 3 of the Cantonments Act, 1924 (2 of 1924)”

Reliance was placed upon notification issued by the State Government and reference was also made to Articles 243Q and 243R of the Constitution of India and the notification issued. After referring to the aforesaid Articles, it was held that the petitioner was not a local authority as defined in the Explanation to Section 10(20) of the Act. The issue involved in the said case was entirely different and related to the question whether the petitioner satisfies the said requirements of being a municipality referred to in Article 243P of the Constitution, etc. We are not in the present case concerned with the said aspect and existence of local fund. Our decision and ratio relates to a different section, the requirements of which are dissimilar and distinct. The ratio is not germane, and therefore cannot be a ground to dismiss the present writ petition.

24. Counsel for the respondents had made reference to decision of the Supreme Court in ***Agricultural Produce Market Committee versus Ashok Harikuni and Another***, (2000) 8 SCC 61. This was a case relating to definition of the term “industry” in the Industrial Disputes Act, 1947 and whether the marketing committee was an industry. The issue raised in this litigation is entirely different. A judgment relating to a different enactment whose purpose, aim and object is different is of no relevance. Lastly, counsel for the respondents had placed reliance on judgment of a single Judge of this Court dated 22nd September, 2017 passed in Writ Petition (C) No. 10411/2016, ***Uttarakhand Agricultural Produce Marketing Board and Others versus Competition Commission of India and Another***. This decision deals with interpretation of Section 2(h) of the Competition Act, 2002, which defines the word “enterprise” and excludes any activity of

Government relatable to sovereign functions, including all activities carried on by departments of Central Government dealing with atomic energy, currency, finance and space. This decision would not help and assist the respondents in any manner.

25. Having considered varied and different dimensions and contours associated with the expression “commercial activity”, we would like to pen down why and for what reason, we perceive and believe that wider definition or criteria of “economic activity” should not be applied when we interpret the said expression "commercial activity" for the purpose of Section 10 (46) of the Act.

26. Object and purpose behind Section 10(46) is to by way of a notification exempt specified income earned by an authority/body established by or under a statutory enactment, or constituted by Central or State government with the object of regulating or administering any activity for the benefit of general public. These stipulations are the primary and constitute the core of the provision. Clause (b) of Section 10(46), which states that such authority/body must not be engaged in any commercial activity, should be interpreted in harmony and symmetrically with clause (a) of Section 10(46) to fulfil the primary objective. This exemption provision is predicated on the assumption that the authority/body satisfying and meeting requirements of clause (a) of Section 10(46) would earn and have taxable income under the heads stated in Section 14 and therefore would apply and seek exemption. Perceptively, when no fee or consideration is charged and paid, the authority/body would not have any income (except interest or other income from investments) and, hence, would not require an exemption

notification under Section 10(46) of the Act. Clause (b) of Section 10(46) does not require and mandate that interest income or the like alone would be exempt.

27. Sub-Section (46) to Section 10 of the Act exempts specified income from the charge. Only specified income is granted exemption and excluded from the ambit of the charging section and not all incomes other than those specified. Therefore while granting exemption, the respondents can restrict and specify the income which would be exempt. All incomes earned from varied and different activities need not be granted exemption.

28. Bar and negative stipulation in clause (b) should not be interpreted as forbidding charging of fee, service charge or consideration while regulating and administering the activities for which the authority/body is established in general public interest. This would be impracticable and extremely restrictive and archaic interpretation. A more realistic, pragmatic and reasonable interpretation of the expression "any commercial activity" would be more acceptable and in consonance with the legislation in question.

29. At the same time it is apparent that all and every authority/body established by or under the statutory enactments or by Central or State governments with the object of regulating and administering any activity for the benefit of public are not entitled to claim exemption, for otherwise clause (b) of Section 10(46) would become superfluous and obtuse. We have to delineate and define the scope and ambit of disqualification envisaged by the words "any commercial activity" in clause (b) of the said Section. In the

absence of any clear statutory definition elucidating these words, we have to outline a definitive and clear standard and test to be applied.

30. Any activity undertaken with profit motive and intent would be certainly commercial activity. Authorities/bodies set up or created by the government with commercial purposes and objects are not entitled to exemption. This cannot be debated and challenged. Equally, reference to expansive and wider interpretative meaning attributed to the expression "charitable purpose" defined in Section 2(15), vide earlier judgments including *Commissioner of Income Tax versus Surat Art Silk Cloth Manufacturers Association*, (1980) 121 ITR 1(SC) would not be apposite and constitute affirmative precedent in view of the strict mandate and contrary language of clause (b) to Section 10(46) of the Act. Any commercial activity undertaken with profit motive even if with the intent to feed and to be utilised in activities for the benefit of general public would result in disqualification under clause (b) of Section 10(46) of the Act.

31. Thus, there is need to distinguish commercial activity which constitutes disqualification under clause (b) to Section 10(46) of the Act, and charging and payment of fee, service charges, reimbursement of costs or consideration for transfer of rights for performing and undertaking regulatory or administrative duties for general public interest, when these are not guided and undertaken with profit motive or intent. In other words, if an authority/body created and established under a statutory enactment or constituted by Central or State government, charges and is paid for regulating and administering any activity for which it was established and set up, clause (b) is not contravened and breached. Where, however, an

authority/body established is with a commercial intent and objective, i.e. on commercial lines, and intends to or earn profits as one of its goals, it would falter under clause (b) and would be denied registration. Authority/body satisfying the requirements of clause (a) can also be denied registration if it carries on any commercial activity, i.e. economic activity unconnected and un-associated with the regulatory and administrative purpose for which they were created and established, even when such receipts, income and profit generated is used for undertaking regulatory and administrative functions for the benefit of public.

32. Consequently we would hold that an authority/body satisfying the requirements of clause (a) would not incur disentitlement under clause (b) when it charges and receives money by way of fee, reimbursement or even consideration as rent or for transfer of rights in movable and immovable properties directly connected and having nexus with regulatory and administrative functions that they are obliged and mandated to perform and execute. Not to charge any fee or consideration for services rendered or for rights granted, specially from those who can afford, would be contrary to general public interest specified and stipulated in clause (a) of section 10(46) of the Act.

33. Therefore, we do not agree with the respondents that interpretation of the expression “any commercial activity” would include within its ambit and scope any activity for which fee, service charges or consideration is charged and paid. Equally, we would also not accept the specious and wide definition predicated only on the end use of the funds/income, and not the commercial manner in which income/funds are generated. The determinative test to be

applied is to examine and answer whether or not the activity for which fee, service charge or consideration was charged and paid, was intrinsically associated, connected and had immediate nexus with the object of regulating and administering the activity for the benefit of general public. Further, the activity should also not run on commercial lines i.e. with the profit motive and intent to earn profit but given the regulatory and administrative role assigned to the body or authority, the activity must be and should be for meeting and complying with the responsibility and mandate of the role prescribed and assigned. If the answer is in favour of the authority, body etc. exemption would not be denied in view of clause (b) to section 10(46) of the Act. Exemption would not be available and granted to a body or authority, which is carrying on a commercial activity with intent and motive to earn profit even when the profit and income earned is with the object to sub-serve the object of general public utility. In other words, profits which arise even when utilized for and to feed the charitable purpose i.e. the general public interest, would result in disqualification/ ineligibility.

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

the reason that it may well qualify and would be entitled to benefit under Section 2 (15) read with Sections 10 to 13 of the Act.

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

36. Resultantly, the writ petition is allowed and the impugned order dated 8th June, 2015 is set aside and quashed. The petitioner's activities, it is held,

are not “commercial activity” within the meaning of clause (b) to Section 10(46) of the Act. Directions are issued to the respondents to accordingly issue the necessary notification under the aforesaid Section in respect of the "specified income" within a period of three months from the date a copy of this order is received. No costs.

(SANJIV KHANNA)
JUDGE

(PRATHIBA M. SINGH)
JUDGE

FEBRUARY 26th, 2018
VKR/ssn

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