

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.2488/Del/2024
(ASSESSMENT YEAR 2006-07)**

Yamuna Expressway Industrial Development Authority, Greater Noida, First Floor, Commercial Complex, Gautambudh Nagar, Uttar Pradesh-201308. PAN-AAALT0341D	Vs.	CIT(Appeal), Ghaziabad.
(Appellant)		(Respondent)

Assessee by	Shri Saif Ali, Adv. & Sh. Jasmeet Singh, Adv.
Department by	Shri Ajay Kumar Arora, Sr. DR
Date of Hearing	08/07/2025
Date of Pronouncement	26/09/2025

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [Id. CIT(A) for short] in Appeal No. CIT(A), Ghaziabad/11054/2017-18 dated 20.03.2024 arising out of the order passed u/s 271A of the Income Tax Act, 1961 dated 20.11.2017 for Assessment Year 2006-07.

2. Brief facts of the case are that assessee is a Local Authority and constituted in terms of section 3 of Uttar Pradesh Industrial Area Development Act, 1976. The

assessee is granted registration u/s 12AA of the Act in terms of the order of Id. CIT(E), Lucknow dated 08.05.2017 as a charitable institution carrying out activity of General Public Utility. The assessee is functioning as an arm of State Government through its officers and engaged in the work of village development, infrastructure development for the whole area including municipal infrastructure like sewer, water, electricity, roads, and social infrastructure. The surplus generated is utilized for the development works as provided in the objects of the assessee. The assessment was reopened in terms of the notice issued u/s 148 of the Act on 26.03.2013, in response to which, the assessee filed the return of income. The assessment was completed u/s 147(3)/147 on 03.03.2014 wherein income of the assessee was assessed at Rs.14,75,758/- by disallowing the expenses of Rs.7,95,021/- on which no TDS was made in addition to surplus of Rs.6,80,737/- held as taxable income. The AO concluded that assessee is artificial judicial person and is liable to tax under Income Tax Act as Local Authority based on the judgment of Hon'ble Allahabad High Court in the case of Noida Development Authority. AO simultaneously initiated penalty proceedings u/s 271A for non-maintenance of books of account as prescribed u/s 44AA of the Act and further initiated the penalty proceedings u/s 271B for failure to get the accounts audited. Thereafter, the AO proceeded to levy of penalty in terms of the order dated 20.11.2017 and penalty of Rs.25,000/- is levied u/s 271A of the Act for non-maintenance of books of accounts.

3. Against the said order, an appeal was filed before Id. CIT(A) who dismissed the appeal of the assessee thus, present appeal is filed by the assessee before the Tribunal.

4. Before us, Ld. AR of the assessee submits that assessee is a local authority and is a non-profit organization and not required to maintain books of accounts as prescribed u/s 44AA of the Act which provides maintenance of books of accounts in respect of those assessee's who are engaged in business or profession. The Ld. AR further submits that assessee is maintaining books of accounts which are sufficient to deduce surplus, if any, and to identify the assets as well as liabilities of the assessee. He further submits that on the basis of such books of accounts financial statements were prepared and produced before the AO during assessment proceedings. The financial statements reflect all the particulars of assets, liabilities, income and expenditure from which the surplus is worked out. He further submits that books of accounts of the assessee are subjected to audit as per sub-section 2 of section 22 of Uttar Pradesh Industrial Development Act, 1976 and, accordingly, it could not be held that assessee is not maintaining books of accounts.

5. Ld. AR further submits that Rule 17AA of the Income Tax Rules, 1962 provides list of books of accounts and other documents to be kept and maintained by the institutions having registration u/s 12A and/or 10(23C) of the Act and this Rule is inserted w.e.f. 10.08.2022 and prior to insertion of this Rule there was no provision under the Act which prescribed books of accounts to be maintained by any institutions or Local Authority which is registered u/s 10(23C) or 12A of the Act. It is thus submitted that the penalty levied u/s 271A for non-maintenance of books of accounts is liable to be quashed.

6. On the other hand, Sr. DR vehemently supported the orders of lower authorities and submitted that assessee is working on profit basis. Therefore, it is carrying out business or profession, and accordingly, provisions of section 44AA of the Act are applicable and assessee is required to maintain regular books of

account which have not been maintained, therefore, AO has rightly imposed penalty u/s 271A of the Act. He prayed for confirmation of the same.

7. Heard both the parties and perused the materials available on record. In the instant case, assessee is granted registration u/s 12A in terms of order dated 01.05.2017. Regarding the period prior to registration u/s 12A, assessee claimed that since it is a Local Authority engaged in the development of the area assigned to it as per the Uttar Pradesh Development Act, 1976 and, therefore, its receipts are exempted in terms of section 10(46) of the Act. It is further seen that Hon'ble Supreme Court in the case of ***CIT(Exemptions) vs. Ahmedabad Urban Development Authority [2023] 4 SCC 561*** has held that assessee is eligible for registration u/s 12A of the Act and further held that its activities are not commercial in nature and are eligible for exemption u/s 10(46) of the Act. The relevant para No. 199 and 200 of the said order are as under:

“199. The term "commercial" is closely similar to, if not identical, with the phrase "in the nature of trade, commerce or business". The other condition in Section 10(46) is that the specified income to be exempted, is to be notified by the Central Government in the Official Gazette. Facially the allusion to commercial activity, appears to be in the nature of a complete bar to activities which are akin to commerce or business, yielding profit. However, what needs to be kept in mind is that the object of Section 10 is to remove from the taxable net, an entire class of receipts of income. Given this object of Section 10, the interpretation of "commercial" activity has to be on the same lines as in the case of income derived by GPU charities, in the course of their actual functioning, by involving in activities in the nature of trade, commerce or business. Thus, if statutory corporations within Section 10(46) derive their income by charging a nominal markup over the cost of service rendered or goods supplied, meant to recover the costs of the activities they engage in primarily or to achieve the object for which they were set up, such as development of housing, road infrastructure, water supply, sewage treatment, supply of foodgrains, medicines, etc. with or without regulatory powers, the mere fact that some surplus or gain is derived would not disentitle them from the benefit of Section 10(46).

200. *In this context, it would be useful to consider the judgment of the Delhi and Allahabad High Courts in Greater Noida Industrial Development Authority Union of India+3 (hereafter "GNIDA") and CIT v. Yamuna Expressway Industrial Development Authority 152. In GNIDA43, the High Court drew a distinction between bodies set up by the Government with commercial purpose and objects which are motivated by profit, and other government bodies. The Court held, correctly so that other government bodies are not entitled to exemption as they are motivated by profit. Then, dealing with the term "commercial activity" under Section 10(46), it was held that the decisive test is whether the activities for which consideration in the form of fee, service charge. etc. is collected, is "intrinsically associated, connected and had minimum nexus with the object of regulating and administering the activity for the benefit of the public". It was also held that if the activity is not carried on commercial lines i.e. with the profit motive in mind, but the body is assigned an administrative role, having regard to the objects of the controlling statute or law, exemption cannot be denied under Section 10(46). As juxtaposed, activities for profit or activities which clearly were motivated by profit - carried on by Government or statutory bodies, cannot avail of exemption. The judgment in Yamuna Expressway Industrial Development Authority is along the similar lines."*

8. Further, in terms of Notification No. 94/2022 dated 10.08.2022, Rule 17AA is inserted which provides that every funds or institutions or trust or any university or other educational institutions or medical institutions which are required to keep and maintain books of accounts, documents u/s 10(23)(c) or 12A should maintain books of accounts as prescribed under this Rule. As this Rule is inserted from 10.8.2022 thus is not applicable for the period prior to that and the year under appeal is AY 2006-07 where this Rule was not exist.

9. Undisputedly, assessee is a Local Authority and its income is exempted u/s 10(46) of the Act thus it is not required to maintain books of accounts as specified section 44AA of the Act since this section is applicable to the person engaged in the business or profession. As the assessee is not engaged in business or profession and is a Local Authority providing general public utility services, therefore, the provisions of section 44AA of the Act are not applicable and, accordingly, no penalty can be levied u/s 271A for non-maintenance of books of account. It is also

a matter of fact that assessee is maintaining books of accounts from which financial statements were prepared thus it is not the case where no books of account were maintained. In view of the above discussion, we hereby delete the penalty levied of Rs.25,000/- u/s 271A of the Act. Thus, all the grounds of appeal of the assessee are allowed.

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

Order pronounced in the open Court on 26.09.2025.

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Dated:26.09.2025

PK/Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**