



2024:DHC:5081-DB



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

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**Judgment reserved on: 13 May 2024**  
**Judgment pronounced on: 11 July 2024**

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W.P.(C) 4711/2021

NEW OKHLA INDUSTRIAL DEVELOPMENT  
AUTHORITY

..... Petitioner

Through: Mr. Balbir Singh, Sr. Adv. with  
Mr. Jasmeet Singh, Mr.  
Mahinder Singh Hura, Mr. Saif  
Ali, Mr. Pushpendra S. Bhadoria,  
Mr. Karan Sachdev, Mr. Vijay  
Sharma, Ms. Mamta  
Chakraborty, Mr. Pranav Menon  
& Mr. Ransiv Khatana, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Nidhi Raman, CGSC with  
Mr. Zubin Singh, Adv. for  
Resp./UOI.  
Mr. Ruchir Bhatia, SSC with Mr.  
Anant Mann, JSC.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR  
KAURAV**

## **J U D G M E N T**

### **YASHWANT VARMA, J.**

1. The New Okhla Industrial Development Authority<sup>1</sup>, an entity constituted under the **Uttar Pradesh Industrial Area Development**

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<sup>1</sup> NOIDA



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**Act, 1976**<sup>2</sup> impugns the order dated 24 December 2020 in terms of which the **Central Board of Direct Taxes**<sup>3</sup> has refused to accede to its prayer for being accorded appropriate certification as contemplated in terms of Section 10(46) of the **Income Tax Act, 1961**<sup>4</sup>. The aforementioned statutory provision enables the CBDT to certify the specified income of a body or authority constituted under a Central, State or Provincial enactment or one which is created by the Union or the State Governments with the object of regulating and administering any activity for the benefit of the general public and which is not engaged in any commercial activity to be exempt from taxation with the income so specified not being liable to be included in its total income of the previous year.

2. The impugned order has come to be passed based on an application made in November 2011 by NOIDA for being accorded the requisite certification under Section 10(46) of the Act. The record would reflect that since the said application had remained pending for a considerable period of time, the petitioner was constrained to approach this Court by way of W.P.(C) 5574/2020 which came to be disposed of on 24 August 2020 with the Court directing the CBDT to decide the petitioner's application within 12 weeks.

3. As would be evident from a reading of the order impugned before us, the CBDT has principally drawn an adverse inference in light of NOIDA having extended loans to various entities. This becomes

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<sup>2</sup> UPID Act

<sup>3</sup> CBDT/Board

<sup>4</sup> Act



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evident from a reading of the facts as encapsulated in Para 7.1 of the impugned order which is extracted hereinbelow:-

“7.1 Vide reply dated 10.12.2020, the Authority also furnished the Balance Sheet for FY 2017-18 to 2018-19. Perusal of the same indicates that loans as under have been advanced:

(Amount in Rs.)

FY	2016-17	2017-18	2018-19
Loan to UPSIDC	4,50,00,000	4,50,00,000	2,31,19,86,565
Loan to UP Textiles Corporation	9,39,19,851	9,39,19,851	9,39,19,851
Loan to UPIDA	1,00,00,000	1,00,00,000	1,00,00,000
Loan to UP Handloom Corp	5,00,00,000	5,00,00,000	5,00,00,000
Loan to Yamuna Expressway Authority	11,61,15,33,332	11,52,81,33,332	11,52,81,33,332
Loan to Greater Noida Authority	33,29,91,13,945	33,29,91,13,945	32,83,70,02,704
Loan to UPPCL	2,50,00,00,000	2,50,00,00,000	2,50,00,00,000
Loan to Agra Development Authority	59,12,52,176	59,12,52,176	32,39,04,333
Loan to Amarpali Silicon City-IRP	-	1,05,00,000	1,05,00,000
Loan to YEIDA-Jewar Airport	-	3,30,00,00,000	-

4. Holding that the reply furnished by NOIDA was inconsistent and that the extension of loans appear to be activities undertaken otherwise than for the benefit of the general public, the impugned order observes as follows:-

“7.2 The replies furnished by the applicant have been seen and found to be inconsistent. **It is not clear as to how the loans and advances given to UP Textiles Corporation, UP Handloom Corporation, UPRRN and also to private parties like M/s Amarpali Silicon City are keeping with the objectives of the Authority.** The perusal



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of the above reply indicates that you are engaged in the activities of advancing loans and advances on a routine basis, thereby undertaking an activity in the nature of trade, commerce or business or rendered in relation to trade, commerce or business. The fact that the applicant is constituted by the state government and is established with the object of regulating or administering the activity for the benefit of the general public is being used as a mask or device to hide the true purpose which is trade, commerce or business or in the nature of commercial activity, aiming at earning a profit. Any institution claiming its activity to be of general public activity shall eschew any activity which is in the nature of commercial activity, otherwise it defeats the purpose of the provisions of the Act.

**7.3** The financial statements furnished by the Authority shows that there are huge Loans and approximately Rs. 5,000 crores that have been advanced in FY 2018-19 and more than Rs. 5000 Crores in FY 2017-18 to various entities including private parties, which have no direct, immediate and fundamental connection with the role, objective, function and duties of the applicant. The applicant has earned huge interest income to the tune of Rs. 793 crores in AY 2018-19 and approx Rs. 350 crores in AY 2017-18. It is pertinent to mention that the money and funds received by the applicant are to be used for only planned development of the Municipal Services which shall be in the nature of public good. In fact, it is observed that the applicant Authority has advanced loans to private parties like M/s Amarpali Silicon City out of its funds. The activities of advancing such loans is in contravention of section 20(2) of the UPID Act which provides that the fund shall be applied towards meeting the expenses incurred by the Authority in the administration of this Act and **for no other purposes**. Since, both the income and application of money as discussed in the above table has no bearing with the objectives of the Authority and is resorted to with the sole motive of making profit, there should not be any ambiguity w.r.t. taxability of such income. There is no argument against utilization of funds by the Authority in making investments or advancing loans, however, the income generated from such instruments cannot be claimed to be exempt from taxation. The Authority may utilize the funds as it deems fit, but at the same time must pay the taxes due to the exchequer.”

5. Apart from the above, the CBDT has also observed that NOIDA had made huge investments in bonds, shares of various entities and



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created interest yielding fixed deposits which again could not be said to have had any “direct, immediate and fundamental connection” with the role assigned to it under the UPID Act and thus being in contravention of Section 20(2) thereof. On an overall consideration of the above, the CBDT came to conclude that NOIDA was systematically indulging in activities which were commercial in character and undertaken with the view to earning profit. In view of the above, the CBDT concluded that the petitioner did not fulfill the conditions for grant of exemption as contemplated under Section 10(46). It is the aforesaid view as taken by CBDT which is assailed before us.

6. Before proceeding to chronicle the rival submissions which were addressed, it would be appropriate to advert to the salient facts which would be relevant for the purposes for rendering a decision on the present writ petition. The application for the registration and issuance of an appropriate notification in terms of Section 10(46) was initially made by the writ petitioner on 15 November 2011. On 10 December 2014, it supplemented the aforesaid application by specifying the heads of income which were sought to be notified. The aforesaid communication is extracted hereinbelow: -

“No. Noida /F.C./2014/ 699

Date: 10.12.2014

To,  
Additional CIT (OSD) ITA-Division  
Ministry of Finance  
Department of Revenue (CBDT}  
(ITA. 1 Division)

Reg: New Okhla Industrial Development Authority PAN: AAALN01201A



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Sub: Application for exemption filed under section 10(46) of the Income Tax Act, 1961

Dear Sir,

This is with the reference to meeting with your good self on 28.11.2014. Please find the list of income sought to be notified for the purpose of section 10(46) of the Income Tax Act, 1961.

Following income are requested to be notified for the purpose of section 10(46):

- 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.

Thanking You.

Yours faithfully  
For New Okhla Industrial Development Authority

Authorised Signatory  
G.P. Singh  
Finance Controller NOIDA”

7. In a related development, the Allahabad High Court while ruling on ITA No. 107/2016 and other connected cases in **CIT(E), Lucknow vs. M/s Yamuna Expressway Industrial Development Authority**<sup>5</sup>, and which batch included an appeal involving the writ petitioner as one of the respondent authorities, came to hold that the respondents could not be said to be carrying on any activity aimed at generation of profits and directed the respondents therein to be accorded registration in terms of Section 12AA of the Act. The relevant extracts of that decision are reproduced hereinbelow: -

“55. Section 20(2) says that funds shall be applied by Industrial

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<sup>5</sup> 2017 SCC OnLine All 3848



Development Authority towards meeting the expenses incurred in administration of UPIAD Act, 1976 and for no other purposes. Therefore, there is a complete bar that the funds of the authorities can be used only for the purpose of UPIAD Act, 1976 and not otherwise. As we have already said, they are for general public utility and not for an individual or any individual group or otherwise. The State Government after due approval by Legislature by law, grant advances, etc. to "Industrial Development Authority" for performance of functions under UPIAD Act, 1976. Similarly, an "Industrial Development Authority" may also borrow money by way of loan or debenture from such sources, other than the Government, on such terms and conditions as may be approved by the State Government. For re-payment of borrowed money, an "Industrial Development Authority" is required to maintain a sinking fund. Accounts of the "Industrial Development Authorities" are to be audited vide section 22, in the area declared as "industrial township". There may not be constituted any "municipality" though it is obligatory under article 243Q of the Constitution, but proviso to article 243Q(1) authorises the Governor to specify an "Industrial Development Authority" as "industrial township" and municipal services thereof shall be provided by the "Industrial Development Authority" in that area. Therefore, within the area, the "Industrial Development Authorities" have been declared industrial township and municipal services are to be provided by them.

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**58.** With reference to section 6(2)(i), Industrial Development Authority acquire land, develop the same and sell at the cost of acquisition plus development. For the purpose of maintenance cost, it charges lease rent from the allottee of the land. If any surplus arises or remains with "Industrial Development Authorities", it has to be consumed/utilised for meeting the expenses incurred by the "Industrial Development Authorities" in administration of UPIAD Act, 1976 and not for any other purpose.

**59.** Thus, whatever amount is received by "Industrial Development Authorities" under different heads, whether tax, rent, fee, sale consideration, etc., it has to be used in discharge of objectives and functions provided under UPIAD Act, 1976, for the benefit of general public.

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**71.** The entire discussion, if we summarise, can be placed in a small arena of judicial analysis, that is, a body or institution which is



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functioning for advancement of objects of general public utility and its activities are not in the nature of trade, business or commerce and also not a sheer profit making, such institution is entitled to claim itself to be constituted for "charitable purposes" and seek registration under section 12A(1) of the Act, 1961.”

8. Reverting to the application that was made by the writ petitioner, the CBDT in terms of its letter of 03 September 2013 sought an explanation with respect to the petitioner qualifying the requirements of Section 10(46). This was responded to by the petitioner providing various details as embodied in its replies dated 18 and 31 October 2013. Further representations in support of the application which were made were submitted before the CBDT on 20 June and 30 July 2018.

9. It becomes pertinent to note that the **Greater Noida Industrial Development Authority**<sup>6</sup>, yet another entity constituted under the UPID Act, approached this Court aggrieved by the refusal on the part of the CBDT to issue a notification referable to Section 10(46). The aforesaid writ petition came to be allowed in terms of the judgment rendered in **GNIDA vs. Union of India**<sup>7</sup> and the order of the CBDT dated 08 June 2015 impugned therein was quashed and set aside. The Court on that occasion came to conclude that GNIDA’s activities could not be said to be commercial in nature and which may thus fall within the disqualification comprised in clause (b) of Section 10(46). Directions were consequently framed for the CBDT to issue the necessary notification in respect of GNIDA’s specified income. While allowing the aforesaid writ petition, the Court while expounding upon

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<sup>6</sup> GNIDA

<sup>7</sup> 2018 SCC OnLine Del 7536





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the meaning to be ascribed to the phrase “commercial activity” drew a parallel from the considerations which imbue Section 2(15) of the Act and the various decisions that had been rendered in the context of that provision. This would be evident from the following passages which form part of the judgment of the Court:-

“12. The expression "commercial activity" in clause (46) of 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 the common parlance interpretation principle. Reference is made to the dictionary meaning to interpret 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 v. 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 v. Union of India* case (1996) 3 SCC 507 ; [1996] SCC (L and 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, pages 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,



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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.

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**16.** Way back in 1970, a Constitution Bench of five judges in Shri Ramtanu Co-operative Housing Society Ltd. v. State of Maharashtra (1970) 3 SCC 323, had examined the validity of Maharashtra Industrial Development Act, 1961 (3 of 1962) and in that context had referred to the functions performed by the Maharashtra Development Corporation, which was to establish and manage industrial estate on selected basis and to develop industrial area



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selected by the State Government and for this purpose acquire and transfer land by way of sale, lease, etc.,. The 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.

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



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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 the 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 v. DGIT (Exemptions)* (2012) 347 ITR 99 (Delhi) referring to the meaning of the terms "commerce" and "business", it was held as under (page 123):

"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,



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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 in fact in the nature of business. The test as prescribed in *State of Gujarat v. Raipur Manufacturing Co. Ltd.* (1967) 19 STC 1 (SC) and *CST v. Sai Publication Fund* (2002) 258 ITR 70 (SC) ; (2002) 126 STC 288 (SC) can be applied. The six indicia stipulated in *Customs and Excise Commissioner v. Lord Fisher* (1981) 2 All ER 147 ; [1981] STC 238 are also relevant. Each case, therefore, has to be examined on its own facts.

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."

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**19.** After extensively referring to the judgments of the Supreme Court in *State of Punjab v. Bajaj Electricals Ltd.* (1968) 70 ITR 730 (SC), *Barendra Prasad Ray v. ITO* (1981) 129 ITR 295 (SC), *CIT v. Lahore Electric Supply Co. Ltd.* (1966) 60 ITR 1 (SC) and *State of Gujarat v. Raipur Manufacturing Co. Ltd.* (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. The 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.

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**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 CIT (Exemption) v. Yamuna Expressway Industrial Development Authority/Greater Noida Industrial Development Authority reported in (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, the petitioner was entitled to registration under section 12AA read with section 2(15) of the Act.

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**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 a 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 primary and constitute the core of the provision. Sub-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 sub-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 sub-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. Sub-clause (b) of section 10(46) does not require and mandate that interest income or the like alone would be exempt.



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**27.** Clause (46) of 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 sub-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 sub-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 sub-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 *Addl. CIT v. 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 sub-clause (b) of 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 sub-clause (b) of section 10(46) of the Act.

**31.** Thus, there is need to distinguish commercial activity which constitutes disqualification under sub-clause (b) of section 10(46) of the Act, and charging and payment of fee, service charges,



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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, sub-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 sub-clause (b) and would be denied registration. Authority/body satisfying the requirements of sub-clause (a) can also be denied registration if it carries on any commercial activity, i.e., economic activity unconnected and unassociated 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 sub-clause (a) would not incur disentitlement under sub-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 sub-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





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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 sub-clause (b) of 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.** The Allahabad High Court in CIT (Exemption) v. Greater Noida Industrial Development Authority (2017) 395 ITR 18 (All) 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. The 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. The petitioner does not earn profits or income from any other activity unconnected with their



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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.”

10. The judgment rendered in *GNIDA* was assailed by the respondents before the Supreme Court by way of SLP (Civil) No. 34332/2018 which ultimately came to be dismissed on 25 November 2019. Undisputedly, the specified income of GNIDA came to be consequently notified on 23 June 2020. The petitioners also rely upon the certification which was granted by the Board in favour of the **M/s Yamuna Expressway Industrial Development Authority**<sup>8</sup>, yet another body which owes its creation to the UPID Act on 24 April 2020. It is in the aforesaid backdrop that NOIDA assails the validity of the impugned order.

11. Appearing in support of the writ petition, Mr. Balbir Singh, learned Senior Counsel addressed the following submissions. Mr. Singh contended that NOIDA is an authority duly constituted under Section 3 of the UPID Act and which represents a State enactment and whose objectives are essentially for the benefit of the general public. Learned Senior Counsel in this regard, drew our attention to Section 6 of the UPID Act which reads as follows: -

**“Section 6: Function 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 :–

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<sup>8</sup> YEIDA



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- (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 or 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”

12. Mr. Singh pointed out that the Board has clearly erred in holding that the petitioner is engaged in commercial activity, bearing in mind the statutory mandate of Section 20 of the aforesaid enactment which makes the following provisions: -

**“Section 20: Fund of the Authority–**

- (1) The authority shall have and maintain its own fund to which shall be credited–
  - (a) all moneys received by the Authority from the State Government by way to grants, loans advances or otherwise;
  - (b) all moneys borrowed by the Authority from sources other than the State Government by way of loans or debentures;
  - (c) all fees, tolls and charges received by the Authority under this Act;
  - (d) all moneys received by the Authority from the disposal of lands, buildings and other properties movable and immovable; and
  - (e) all moneys received by the Authority by way of rents and profits or in any other manner or from any other sources
- (2) The fund shall be applied towards meeting the expenses incurred by the Authority in the administration of this Act for no other



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purposes.

(3) Subject to any directions of the State Government, the Authority may keep in current account of any Scheduled Bank such sum of money out of its funds as it may think necessary for meeting its expected current requirements and invest any surplus money in such manner as it thinks fit.

(4) The state Government may, after due appropriation made by Legislature by law in that behalf, make such grants, advances and loans to the Authority as that Government may deem necessary for the performance of the functions of the authority under this Act, and all grants, loans and advances, made shall be on such terms and conditions as the State Government may Determine.

(5) The Authority shall maintain a sinking fund for the repayment of moneys borrowed under sub-section (5), and shall pay every year into the sinking fund such sum as may be sufficient for repayment within the period fixed of all moneys so borrowed.

(7) The sinking fund or any part thereof shall be applied in, or towards, the discharge of the loan for which such fund was created, and until such loan is wholly discharged it shall not be applied for any other purpose.”

13. Mr. Singh submitted that the petitioner is in one sense a wing of the State Government itself constituted for the purposes of regulating and undertaking planned development of the industrial development area falling under its jurisdiction and thus subserves the interests of the general public. Learned Senior Counsel also laid stress upon NOIDA having been declared to be an industrial township in terms of the Proviso to Article 243Q (1) of the Constitution bearing in mind the undisputed fact that it performs municipal functions as contemplated under Schedule XII of the Constitution.

14. According to learned Senior Counsel, the CBDT has taken a wholly erroneous and untenable view while proceeding to hold against the petitioner solely on the basis of it having generated a surplus and



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the revenue generated by it. Mr. Singh submitted that a reading of the UPID Act as well as the functions discharged by NOIDA would unerringly lead one to arrive at the conclusion that profit making is clearly not its predominant objective. Mr. Singh in this respect sought to draw support from the following pertinent observations as they appear in **Shri Ramtanu Coop. Housing Society Ltd. vs. State of Maharashtra**<sup>9</sup>:-

“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

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<sup>9</sup> (1970) 3 SCC 323



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out of any business or trade but out of sole purpose of establishment, growth and development of industries.

**17.** The Corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of work of the Corporation. The found of the Corporation consists of moneys received from the State Government, all fees, costs and charges received by the Corporation, all moneys received by the Corporation from the disposal of lands, buildings and other properties and all moneys received by the Corporation by way of rents and profits or in any other manner. The Corporation shall have the authority to spend such sums out of the general funds of the Corporation or from reserve and other funds. The Corporation is to make provision for reserve and other specially denominated funds as the State Government may direct. The Corporation accepts deposits from persons, authorities or institutions to whom allotment or sale of land, buildings, or sheds is made or is likely to be made in furtherance of the object of the Act. A budget is prepared showing the estimated receipts and expenditure. The accounts of the Corporation are audited by an auditor appointed by the State Government. These provisions in regard to the finance of the Corporation indicate the real role of the Corporation viz. the agency of the Government in carrying out the purpose and object of the Act which is the development of industries. If in the ultimate analysis there is excess of income over expenditure that will not establish the trading character of the Corporation. There are various departments of the Government which may have excess of income over expenditure.

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**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



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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.”

15. Our attention was also drawn to a more recent decision rendered by the Supreme Court in **CIT vs. Ahmedabad Urban Development Authority**<sup>10</sup> and where, in the context of statutory bodies, it was pertinently observed as under: -

“**206.4.** The determinative tests to consider when determining whether such statutory bodies, boards, authorities, corporations, autonomous or self-governing government sponsored bodies, are GPU category charities:

**206.4.1.** Does the State or Central law, or the memorandum of association, constitution, etc. advance any GPU object, such as development of housing, town planning, development of industrial areas, or regulation of any activity in the general public interest, supply of essential goods or services — such as water supply, sewage service, distributing medicines, of foodgrains (PDS entities), etc.

**206.4.2.** While carrying on of such activities to achieve such objects (which are to be discerned from the objects and policy of the enactment; or in terms of the controlling instrument, such as memorandum of association, etc.), the purpose for which such public GPU charity, is set up — *whether for furthering the development or a charitable object or for carrying on trade, business or commerce or service in relation to such trade, etc.*

**206.4.3.** Rendition of service or providing any article or goods, by such boards, authority, corporation, etc. on cost or nominal markup basis would ipso facto not be activities in the nature of business, trade or commerce or service in relation to such business, trade or commerce.

**206.4.4.** Where the controlling instrument, particularly a statute imposes certain responsibilities or duties upon the body concerned,

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<sup>10</sup> (2023) 4 SCC 561



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such as fixation of rates on predetermined statutory basis, or based on formulae regulated by law, or rules having the force of law, setting apart amenities for the purposes of development, charging fixed rates towards supply of water, providing sewage services, providing foodgrains, medicines, and/or retaining monies in deposits or government securities and drawing interest therefrom or charging lease rent, ground rent, etc. per se, recovery of such charges, fee, interest, etc. cannot be characterised as “*fee, cess or other consideration*” for engaging in activities in the nature of trade, commerce, or business, or for providing service in relation in relation thereto.

**206.4.5.** Does the statute or controlling instrument set out the policy or scheme, for how the goods and services are to be distributed; in what proportion the surpluses, or profits, can be permissively garnered; are there are limits within which plots, rates or costs are to be worked out; whether the function in which the body is engaged in, is normally something a Government or State is expected to engage in, having regard to provisions of the Constitution and the enacted laws, and the observations of this Court in *NDMC [NDMC v. State of Punjab, (1997) 7 SCC 339]* ; whether in case surplus or gains accrue, the corporation, body or authority is permitted to distribute it, and if so, only to the Government or State; the extent to which the State or its instrumentalities have control over the corporation or its bodies, and whether it is subject to directions by the Government, etc. concerned.

**206.4.6.** As long as the statutory body, corporation, authority, etc. concerned while actually furthering a GPU object, carries out activities that entail some trade, commerce or business, which generates profit (i.e. amounts that are significantly higher than the cost), and the quantum of such receipts are within the prescribed limit [20% as mandated by the second proviso to Section 2(15)] — the statutory or government organisations concerned can be characterised as GPU charities. It goes without saying that the other conditions imposed by the seventh proviso to Section 10(23-C) and by Section 11 have to necessarily be fulfilled.

**206.5.** As a consequence, it is necessary in each case, having regard to the first proviso and seventeenth proviso (the latter introduced in 2012, w.r.e.f. 1-4-2009) to Section 10(23-C), that the authority considering granting exemption, takes into account the objects of the enactment or instrument concerned, its underlying policy, and the nature of the functions, and activities, of the entity claiming to be a GPU charity. If in the course of its functioning it collects fees, or any





consideration that merely cover its expenditure (including administrative and other costs plus a small proportion for provision) — such amounts are not consideration towards trade, commerce or business, or service in relation thereto. However, amounts which are significantly higher than recovery of costs, have to be treated as receipts from trade, commerce or business. It is for those amounts, that the quantitative limit in proviso (ii) to Section 2(15) applies, and for which separate books of account will have to be maintained under other provisions of the IT Act.

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***B. Authorities, corporations, or bodies established by statute***

**274.** The amounts or any money whatsoever charged by a *statutory* corporation, board or any other body set up by the State Governments or Central Government, for achieving what are essentially “public functions/services” (such as housing, industrial development, supply of water, sewage management, supply of foodgrain, development and town planning, etc.) may *resemble* trade, commercial, or business activities. However, since their objects are essential for advancement of public purposes/functions (and are accordingly restrained by way of statutory provisions), such receipts are *prima facie* to be *excluded* from the mischief of business or commercial receipts. This is in line with the larger Bench judgments of this Court in *Shri Ramtanu Coop. Housing Society* [*Shri Ramtanu Coop. Housing Society Ltd. v. State of Maharashtra*, (1970) 3 SCC 323] and *NDMC* [*NDMC v. State of Punjab*, (1997) 7 SCC 339] .

**275.** However, at the same time, in every case, the assessing authorities would have to apply their minds and scrutinise the records, to determine if, and to what extent, the consideration or amounts charged are *significantly higher* than the cost and a nominal markup. If such is the case, then the receipts would indicate that the activities are in fact in the nature of “trade, commerce or business” and as a result, would have to comply with the quantified limit (as amended from time to time) in the proviso to Section 2(15) of the IT Act.

**276.** In clause (b) of Section 10(46) of the IT Act, “commercial” has the same meaning as “trade, commerce, business” in Section 2(15) of the IT Act. Therefore, sums charged by such *notified* body, authority, board, trust or commission (by whatever name called) will require similar consideration — i.e. whether it is at cost with a nominal markup or significantly higher, to determine if it falls within



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the mischief of “commercial activity”. However, in the case of such notified bodies, there is no quantified limit in Section 10(46). Therefore, the Central Government would have to decide on a case-by-case basis whether and to what extent, exemption can be awarded to bodies that are notified under Section 10(46).”

16. The grounds which form the basis for rejection of the petitioner’s application were then assailed by Mr. Singh, who submitted that the various loans and advances extended by the petitioner to other governmental entities were made pursuant to directions and instructions issued by the Government of Uttar Pradesh and which NOIDA was statutorily obliged to comply with by virtue of Section 41 of the UPID Act. The details of the various directions and the corresponding documents which are sought to be relied upon to contend that the loans were in fact granted basis the directives of the State Government have been provided in a tabular statement which is extracted hereinbelow: -

**“STATE GOVERNMENT INSTRUCTIONS FOR EXTENDING  
LOANS TO STATE BODIES AND AGREEMENTS WITH STATE  
INSTRUMENTALITIES FOR PUBLIC WORKS**

<b>S.</b>	<b>DOCUMENT WHICH WAS BASIS OF THE DISBURSEMENT (Loan or advance or expense contribution in insolvency proceedings)</b>
1.	Letter dated 18.05.2001 of the Principal Secretary to NOIDA directing it to provide loan of ₹10 Crores to <b>UP State Handloom Corporation Ltd.</b>  The above loan amount was modified vide letter dated 2.6.2001 to ₹5 Crores.
2.	Minutes of 107th Meeting of Board of NOIDA dated 21.11.2001.  A. Approval of ₹10 Crores loan to Taj Expressway Authority (now Yamuna Expressway Authority); and B. Approval of ₹5 Crores loan to <b>UP State Handloom Corporation Ltd.</b> C. Loan Agreement of NOIDA with <b>UP State Handloom Corporation Ltd.</b> for advancing ₹5 Crores loan by the former to the latter.
3.	Agreement dated 15.5.2005 between NOIDA and UP Rajkiya Nirman Nigam (“UPRNN”) appointing latter as consultant for development work in Residential Sectors 98, 99, 100 and 134.



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4.	Agreement dated 17.8.2000 between NOIDA and UP Rajkiya Nirman Nigam ("UPRNN") appointing latter as consultant for development work in Sectors and construction of proposed houses of various category Sectors within Noida.
5.	In relation to ₹1,05,00,373.46 given to IRP Amrapali Silicon Valley for CIRP cost under Insolvency & Bankruptcy Code, 2016: 1. NOIDA's noting dated 27.10.2017 mentioning IRP's letter of demand dated 25.10.2017. 2. IRP Rajesh Samson's letter acknowledging receipt of aforesaid amount from NOIDA. 3. IRP Rajesh Samson's letter dated 7.5.2019 requesting for release of further amounts towards CIRP Cost.
6.	Minutes of Meeting (held on 17.08.2013), dated 23.08.2013, issued by the Chief Secretary, Government of Uttar Pradesh, directing NOIDA to provide a loan of Rs. 100 to Agra Development Authority for developing "Agra Inner ring road"
7.	Minutes of Meeting (held on 17.07.2014), dated 08.08.2014, issued by the Chief Secretary, Government of Uttar Pradesh, directing NOIDA to provide a loan amount of Rs.479 Crores to Uttar Pradesh State Industrial Development Corporation ("UPSIDC") for the establishment of theme park in Agra and True Translation.
8.	Memorandum of Understanding dated 18.01.2019 between NOIDA and Uttar Pradesh State Bridge Corporation Limited ("UPSBC") for DPR and Construction of Elevated corridor from Delhi to Noida along Shahadara Drain.
9.	Memorandum of Understanding dated 10.04.2008 between NOIDA and Uttar Pradesh Rajkiya Nirman Nigam ("UPRNN") for 'construction of boundary wall to secure Sector 95, Noida'.
10.	Memorandum of Understanding dated 16.10.2014 between NOIDA and Uttar Pradesh Rajkiya Nirman Nigam ("UPRNN") for 'appointment of UPRNN as consultant in NOIDA's project of constructing a Hospital at Sector 39, Noida'.
11.	Memorandum of Understanding dated 27.02.2009 between NOIDA and Uttar Pradesh Rajkiya Nirman Nigam ("UPRNN") for 'laying pipeline and UGR of 80 qusec for the Ganga Jal Pariyojana'.
12.	Official Noting by NOIDA for release of ₹1,73,79,115/- to Uttar Pradesh Power Corporation Limited ("UPPCL") for development work in Sector 70, Noida.

17. Proceeding along these lines, Mr. Singh further disclosed that the loans given to the UP Rajkiya Nirman Nigam was for carrying out



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engineering and construction works on behalf of the petitioner. It was further submitted that the sale and purchase of land, buildings and other connected activities are intrinsic to the regulatory and administrative role which is assigned to the authority by virtue of the various provisions of the UPID Act. According to Mr. Singh, the profits or surplus generated from such activities as well as any interest earned from loans and advances are reapplied by the petitioner exclusively for the purposes of undertaking activities in furtherance of the functions specified in Section 6. Viewed in light of the above, Mr. Singh would contend that it would be wholly incorrect for the CBDT to have assumed that the petitioner was either proceeding solely for the purposes of earning profits or undertaking activities which could be termed as 'commercial'. According to learned Senior Counsel, the profits as well as the interests that may be earned are judiciously applied by it in bonds, shares and fixed deposits so as to maximize the funds available at its disposal and for economically rational purposes.

18. Mr. Singh further contended that the amount which was made over to the **Interim Resolution Professional**<sup>11</sup> of M/s Amarpali Silicon City has also been clearly misconstrued since the same only represented the burden liable to be borne by the petitioner towards **Corporate Insolvency Resolution Process**<sup>12</sup> costs. The aforesaid expenditure, according to Mr. Singh, was undertaken only in order to secure the financial interest of the petitioner and pursuant to the statutory

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<sup>11</sup> IRP

<sup>12</sup> CIRP



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requirements of the **Insolvency and Bankruptcy Code, 2016**<sup>13</sup> and could not have possibly been treated as the undertaking of a commercial activity.

19. It was then submitted that the petitioner stands on a footing identical to GNIDA and YEIDA both of which are authorities which also owe their genesis to the UPID Act and have been accorded certification under Section 10(46). According to learned Senior Counsel, there thus existed no rationale or justification for the petitioner having been denied identical reliefs. It was in the aforesaid context that Mr. Singh contended that the judgment rendered by this Court in *GNIDA* squarely applies and the impugned order is consequently liable to be quashed and set aside.

20. It was lastly submitted that during the course of consideration of the application that was originally made, the respondents had sought various clarifications from time to time and all of which were duly attended to with the petitioner clarifying that it was not undertaking any activities of a commercial nature. Our attention was drawn to the various responses which were placed for the consideration of the respondents and details whereof have been set forth in tabular form as under: -

**“QUERIES BY CBDT AND RESPONSES BY NOIDA QUA  
NATURE OF ACTIVITY**

S.	PARTICULARS (of correspondence by the Department-Revenue)	RESPONSE (of NOIDA-Petitioner)
1.	Revenue's letter dated 27.5.2013, enquiring	NOIDA's CA's letter dated 19.6.2013

<sup>13</sup> IBC



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	about the nature of activity carried out by NOIDA and they are commercial in nature?	stating specifically the functions carried out by it as per the mandate of UPIAD Act, 1976, are for the benefit of the general public and <b>not commercial</b> in nature.
2.	Revenue's letter 3.9.2013 requesting from NOIDA details in prescribed format including nature of activity and if they are <b>commercial</b> in nature? The <b>Balance Sheets</b> for the last 3 year were also sought for in Sl.18 of the prescribed format	<p>NOIDA's CA's letter dated 18.10.2013 providing details as sought in prescribed format, explaining that the nature of NOIDA's activity was <b>not commercial</b> and sought time to furnish the <b>Balance Sheet</b> for last three years.</p> <p>NOIDA's CA's letter dated 31.10.2013 wherein the copies of <b>Balance Sheets</b> for the last three years – 2008-09, 2009-10, 2010-11 were provided.</p>
3.	Revenue's letter dated 25.4.2014 requesting from NOIDA details in prescribed format (same as above). The <b>Balance Sheets</b> for 2010-11, 2011-12 and 2012-13 were also sought for.	NOIDA's CA's response letter dated 7.5.2014 providing details as sought in prescribed format with detailed supporting explanations. The <b>Balance Sheets</b> for 2010-11, 2011-12 and 2012- 13 were enclosed as mentioned in Sl.19 of the prescribed format
4.	-	NOIDA's response to Revenue's letter which stated that NOIDA's activity is commercial in nature because it is earning huge profits out of the activity of acquiring and selling land for residential, industrial and commercial purpose. NOIDA explained that the same is <b>not commercial</b> in nature.
5.	Revenue's letter dated 13.11.2020 requesting NOIDA to explain, inter alia, the loans and advances given to various entities between FY 2006-07 and 2011-12. Revenue also sought for the <b>financial statements</b> of last three years	NOIDA's response letter dated 10.12.2020 explaining, inter alia, the purpose of giving loans to various entities identified by the Revenue in its letter. The <b>financial statements</b> for 2016-17, 2017-18 and 2018-19 were also enclosed.



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21. Controverting the aforementioned submissions, Mr. Bhatia, learned counsel appearing for the respondents submitted that on a plain reading of Section 10(46), it is apparent that apart from an entity seeking certification being found to have been established or constituted under a Central, State or Provincial Act, it has to be further established that the said entity has been created with the avowed objective of discharging functions for the benefit of the general public and is not engaged in any commercial activity.

22. Mr. Bhatia submitted that from the financial statements which were tendered by the petitioner it is apparent that it had advanced loans of more than INR 5,000 crores to various entities including private parties and which had no direct or fundamental connection with the objective and duties statutorily placed upon the petitioner. It was further submitted that the financial statements revealed that the petitioner had earned INR 793 crores in **Assessment Year**<sup>14</sup> 2018-19 and INR 350 crores in AY 2017-18 as interest income.

23. Mr. Bhatia drew our attention to Section 6 of the UPID Act to contend that none of its provisions contemplate loans being advanced by the petitioner to other entities, whether they be governmental or otherwise. Learned counsel also relied upon Section 20(2) of the UPID Act and on the basis whereof he submitted that the funds standing in the hands of the petitioner are liable to be applied only towards meeting expenses incurred in the administration of the said Act and for no other

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<sup>14</sup> AY



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purpose. In view of the above, it was his contention that the activities undertaken by the petitioner by way of advancing money to other entities or generating interest income would clearly not fall within the protective umbrella of Sections 6 and 20 of the UPID Act.

24. It was further submitted that a reading of Para 7.1 to 7.5 of the impugned order itself would indicate that the petitioner had been undertaking such activity with sufficient regularity and thus being liable to be viewed as a profit-making activity which was undertaken, and which would clearly fall in the category of commercial activity. In view of the aforesaid, it was Mr. Bhatia's submission that the application made with reference to Section 10(46) of the Act was rightly rejected.

25. Insofar as the decision of this Court in *GNIDA* is concerned, it was Mr. Bhatia's contention that the aforesaid judgment had been rendered in a completely distinct and distinguishable set of facts and that while rendering judgment in that matter, this Court was not called upon to examine whether advancement of loans or investment of funds for the purposes of earning interest would satisfy Section 10(46). In fact, Mr. Bhatia submitted that the authority in the matter of *GNIDA* was not found to be engaged in advancing loans to other authorities. Mr. Bhatia also sought to draw sustenance from the observations appearing in paragraphs 30 to 33 of *GNIDA* and which have been extracted hereinabove.

26. According to learned counsel, the scope and ambit of Section 10(46) also fell for consideration of the Supreme Court in its recent





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decision in *Ahmedabad Urban Development Authority* and where while examining the activities which could be permissibly undertaken by general public utility entities, the Supreme Court had made the following pertinent observations: -

“204. The manner in which GPU charities have been dealt with under the definition clause i.e. Section 2(15), indicates that even though trading or commercial activity or service in relation to trade, commerce or business appears to be barred — nevertheless the ban is lifted somewhat by the proviso which enables such activities to be carried out if they are *intrinsically* part of the activity of achieving the object of general public utility. Furthermore, in the case of GPU charities there is a quantified limit of the overall receipts, which is permissible from such commercial activity. In the case of local authorities and corporations covered by Section 10(46) no such activities are seemingly permitted.”

27. It was in the aforesaid backdrop that Mr. Bhatia submitted that since the petitioner had been found to be regularly and on a systematic basis engaging in advancement of loans and earning interest income, it becomes apparent that it was indulging in commercial activity and consequently would not satisfy the tests enumerated in Section 10(46).

28. Having noticed the rival submissions which were addressed, we find that although a string of communications was exchanged between the petitioner and the respondents calling upon the former to provide all financial details, the petitioner does not appear to have been specifically placed on notice to answer or tender any explanation with respect to the amount of interest income that was earned from bonds, shares and fixed deposits. Insofar as this aspect is concerned, one must also bear in mind that such interest income was not a head in respect of which the benefit of Section 10(46) had been claimed. As would be evident from a perusal of the heads of specified income in respect of which exemption



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had been sought, it is manifest that interest income did not form part thereof.

29. Notwithstanding the above and bearing in mind the undisputed position that the claim of the petitioner had remained pending right from 2011 coupled with the fact that parties have had the opportunity to place the entire material before this Court in these proceedings, we find no justification to fault the respondents solely on this score. Moreover, since learned counsels for parties have had an occasion to address submissions on the merits and pertaining to all facets of the dispute which arises, we proceed further. However, and before we proceed to evaluate the primary questions which arise, it would be beneficial to advert to the relevant provisions of the UPID Act which would govern.

30. The UPID Act, as would be evident from its Preamble, provides for the constitution of a statutory authority for the development of certain areas in the State of U.P. into industrial and urban townships and for matters connected therewith. The expression 'industrial development area' is defined by Section 2(d) to mean an area declared as such by the State Government by way of a notification. In terms of Section 3, the State Government stands empowered to constitute an industrial development authority for every notified industrial development area. The petitioners here came to be constituted as one such authority by virtue of a Notification dated 17 April 1976.

31. The functions of the authority are spelt out in Section 6 of the UPID Act, and which reads as follows: -



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**“Section 6: Function 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 :–

- (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 or 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”

32. The power of the petitioner to sell, lease or otherwise transfer any land or building belonging to it stands conferred by virtue of Section 7. Section 11 enables the authority to levy such taxes with the previous approval of the State Government as it may consider necessary in respect of any site or building situate in the industrial development area. Chapter VII of the UPID Act proceeds to incorporate provisions pertaining to Finance, Accounts and Audit. The subject relating to the funds of the authority is regulated by Section 20 which reads as follows: -

**“Section 20: Fund of the Authority–**

(1) The authority shall have and maintain its own fund to which shall be credited–

- (a) all moneys received by the Authority from the State Government by way of grants, loans advances or otherwise;
- (b) all moneys borrowed by the Authority from sources other than the



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State Government by way of loans or debentures;

(c) all fees, tolls and charges received by the Authority under this Act;

(d) all moneys received by the Authority from the disposal of lands, buildings and other properties movable and immovable; and

(e) all moneys received by the Authority by way of rents and profits or in any other manner or from any other sources

(2) The fund shall be applied towards meeting the expenses incurred by the Authority in the administration of this Act for no other purposes.

(3) Subject to any directions of the State Government, the Authority may keep in current account of any Scheduled Bank such sum of money out of its funds as it may think necessary for meeting its expected current requirements and invest any surplus money in such manner as it thinks fit.

(4) The state Government may, after due appropriation made by Legislature by law in that behalf, make such grants, advances and loans to the Authority as that Government may deem necessary for the performance of the functions of the authority under this Act, and all grants, loans and advances, made shall be on such terms and conditions as the State Government may Determine.

(5) The Authority shall maintain a sinking fund for the repayment of moneys borrowed under sub-section (5), and shall pay every year into the sinking fund such sum as may be sufficient for repayment within the period fixed of all moneys so borrowed.

(7) The sinking fund or any part thereof shall be applied in, or towards, the discharge of the loan for which such fund was created, and until such loan is wholly discharged it shall not be applied for any other purpose.”

33. As would be evident from a reading of the aforesaid provision, the Fund of the petitioner would stand comprised of all monies received by it from the State Government by way of grants, loans, advances or otherwise, monies borrowed by the authority from sources by way of loans or debentures and which could be sources other than the State Government as well as fee, toll and other charges that it may receive. Apart from the above, the authority is also enabled to collect monies from the disposal of land, buildings and other properties, movable or immovable, and credit the same to its Fund. Of significance is clause



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(e) of Section 20(1) and which speaks of monies received by the authority by way of “*rents and profits or in any other manner or from any other sources*”. The accounts of the petitioner are liable to be audited by the Accountant General, U.P. or the Comptroller and Auditor General of India.

34. Section 41 deals with the control that the State Government may exercise over an authority constituted under the Act. That provision, as borrowed from the Uttar Pradesh Urban Planning and Development Act, 1973 reads thus: -

**“41. Control by State Government –**

(1) The (Authority, the Chairmen or the Vice-Chairman) shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with the exercise of its power and discharge of its functions by the (Authority, the Chairman or the vice-Chairman) under this Act any dispute arises between the (Authority, the Chairman of the Vice Chairman) and the State Government the decision of the State Government on such dispute shall be final.

(3) The State Government may, at any time, either on its own motion or an application made to it in this behalf, call for the records of any case disposed of or order passed by the Authority or the Chairman for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may thin fit. Provided that the State Government shall not pass on order prejudicial to any person without affording such person a reasonable opportunity of being heard.

(4) Every order of the State Government made in exercise of the powers conferred by this Act shall be final and shall not be called in question in any court.”

35. Section 58 provides for the consequences which would ensue pursuant to the dissolution of an authority created under the Act and makes the following provisions: -

**“58. Dissolution of Authority –**



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

(2) From the said date –

(a) all properties, funds and dues which are vested in, or releasable by the Authority shall vest in or be reliable by the State Government.

(b) all nazul lands placed at the disposal of the Authority shall revert to the State Government.

(c) all liabilities which are enforceable against the Authority shall be enforceable against the State Government; and

(d) for the purpose of carrying out any development which has not been duly carried out by the Authority and for the purpose of realising properties, funds and dues referred to in clause (a) the functions of the Authority shall be discharged by the State Government”

36. During the course of prosecution of its application for grant of exemption, the petitioner was at different stages called upon to furnish various details with respect to its funds as also to provide requisite particulars concerning its financial statements. A tabulated statement reflective of the financials of the petitioner appears at page 1105 of our record. It becomes apparent from a perusal of the said financial statement that the assumption of the respondents that it was a profit-making entity or in the nature of a trading entity stands completely negated. This we observe considering the disclosures which appear therein and constitute evidence of the nominal margin between its income and expenditure.

37. Insofar as the various loans extended by it are concerned, the same was explained in the written note as being disbursements and loan



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facilities extended to various corporations of the State Government in terms of directions issued to it by the Government of Uttar Pradesh. It was in the aforesaid context that it had been argued that the petitioner being bound to act in terms of the directives of the State Government had no option but to act in accordance therewith. Details of the directives issued by the State Government to the petitioner have already been extracted hereinabove. It would be pertinent to recall that Section 41 of the U.P. ID Act empowers the State Government to issue such directions from time to time.

38. The petitioner had explained the backdrop in which loans came to be extended to YEIDA as well as the U.P. State Handloom Corporation Ltd. in terms of approvals and Board resolutions which have been placed on the record. The payments made to UP Rajkiya Nirman Nigam was explained to be in the context of the latter's appointment as a consultant for development activities to be undertaken in different residential sectors falling within the industrial development area as well as in connection with the construction of houses in different sectors. Similar was the explanation which was proffered with respect to the loans and credit facilities extended to Agra Development Authority, the U.P. State Industrial Development Corporation and the U.P. State Bridge Corporation Ltd. The fact that the aforesaid facilities were extended pursuant to directives of the State Government was neither questioned nor doubted by the respondents before us. Despite the explanation so proffered, the respondents have proceeded to reject the claim for grant of exemption under Section 10(46) taking the



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position that the loans and advances extended by the petitioner were liable to be viewed as commercial activity.

39. It becomes pertinent to note that Section 41 of the Act clearly obliges the petitioner to act in terms of directions that may be issued to it from time to time by the State Government. Mr. Singh, learned counsel appearing for the petitioner, had also alluded to the development activities undertaken by different authorities of the State of U.P. as being part of a collaborative exercise and a concerted effort to undertake development in the industrial development area and to achieve various developmental goals. We cannot possibly ignore a situation where a sovereign State Government, may by virtue of a statutory power to issue directions, require one of its arms or constituents to transfer funds *inter se* to tide over a financial contingency and which may be warranted in larger public interest and for the overall development of infrastructure or facilities in an area. The extension of such credit facilities based on a directive of the State Government, and which would enable another government body to partner in overall development of a region cannot possibly be viewed as activity undertaken with a profit motive. The assumption to the contrary, as appearing in the impugned order, is thus rendered wholly unsustainable.

40. The Court finds that admittedly both GNIDA as well as YEIDA are authorities which stand constituted under the provisions of the UPID Act and stand created for the development of industrial development areas on lines identical to those which the petitioner is





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statutory obliged to pursue. It is also an admitted position before us that both GNIDA and YEIDA were ultimately granted the requisite certification contemplated under Section 10(46) of the Act. From the explanation which has been proffered by the petitioners before us in these proceedings we are also inclined to accept their contention that the funding facilities which were extended to other governmental entities working under the aegis of the Government of U.P. was essentially to aid the development activities that the petitioner was liable to undertake in the industrial development area. Thus, in our considered opinion, the respondents clearly appear to have erred in viewing the extension of loans to such government entities as amounting to a commercial venture undertaken by the petitioners.

41. One of the allied issues which was raised by the respondents appears to be in respect of certain payments which were made to the IRP appointed under the IBC to administer the affairs of M/s Amarpali Silicon City, a corporate debtor which was undergoing CIRP. The aforesaid payments have been explained by the petitioner as being payments made to meet the proportionate cost of debt resolution and restructuring. On an overall consideration of all of the above, we find that there clearly appears to be no justification for the respondent taking the view that the loans and advances were being extended on a routine basis. Regard must be had to the fact that the extension of those credit facilities were themselves prompted by clear directives of the Government of U.P. This was thus not an activity or a venture which was undertaken by the petitioners with a motive to earn profit.



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42. We also bear in consideration the unequivocal assertion of the petitioners that the interest income was liable to be ploughed back to its own fund for the purposes of undertaking development activity and discharging the various statutory obligations placed upon it under the UPID Act. In our considered opinion, a prudent deployment of funds and investments, surplus or otherwise, which may enable a statutory authority to earn a reasonable return and the same being utilised to aid that entity in the discharge of its statutory obligations cannot be described to be a “commercial activity”. One cannot lose sight of the fact that the amounts standing to the credit of such bodies is principally public money. It would thus be wholly erroneous and illogical to expect the petitioner to desist from investing surplus or dormant funds to a use which may give rise to economic returns and which in turn could be utilized towards fulfilment of its statutory obligations. This we observe, although in the facts of the present case, the petitioner did not claim exemption of interest income earned from bonds and shares for the purposes of Section 10(46) of the Act. All that we thus seek to emphasize is that the placement of funds and the interest income could not have constituted a valid ground for denial of exemption under Section 10(46).

43. The submission resting on Section 20(2) of the UPID Act is also clearly misconceived. As is manifest from a reading of Section 20(1) of the said enactment, the authority is enabled to credit to its Fund not just the amounts placed in its hand by the State Government or loans and advances received but also all rents, profits and all other income



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derived from various sources. The income derived from other sources once credited to the Fund loses all characteristics of independence and becomes part of the larger corpus that the authority holds. It is this Fund so created and constructed which is then liable to be applied in accordance with Section 20(2). We note that the respondents did not dispute the assertion that interest income had been ploughed back for the purposes of carrying out the statutory functions and duties cast upon the petitioner. In view of the above, we have no hesitation in holding that the respondents have taken a wholly erroneous view in denying exemption under Section 10(46).

44. As is manifest from a reading of Section 10(46), the statute creates a disqualification if it be found that the entity claiming exemption was engaged in commercial activity. As was aptly held by this Court in *GNIDA*, the expression ‘commercial activity’ is liable to draw colour from the word ‘commerce’. It was in the aforesaid context that our Court pertinently held that the phrase ‘commercial activity’ would be an expression of wide import and cover any transaction or activity which could be placed under the broad genre of trade, commerce or business. The Court in *GNIDA* noticing the decision handed down by the Constitution Bench in *Shri Ramtanu Co-operative Housing Society Ltd.* had observed:

“16. Way back in 1970, a Constitution Bench of five judges in *Shri Ramtanu Co-operative Housing Society Ltd. v. State of Maharashtra* (1970) 3 SCC 323, had examined the validity of Maharashtra Industrial Development Act, 1961 (3 of 1962) and in that context had referred to the functions performed by the Maharashtra Development Corporation, which was to establish and manage



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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,. The 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. ..

19. There are two provisions of the Act which are not to be found in any trading Corporation. In the first place, the sums



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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 the 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."

45. The Court in *GNIDA* while expounding upon the meaning to be assigned to the expression 'commercial activity' as appearing in Section 10(46) then drew a parallel between the said provision and the Proviso to Section 2(15) of the Act. It would be pertinent to recall that Section 2(15) broadly defines what would constitute a charitable purpose. The Proviso thereto then spells out activities which would not amount to the advancement of any other object of general public utility by stipulating that the carrying on of any activity in the nature of trade,



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commerce or business or any activity of rendering any service in relation thereto, would not amount to a charitable purpose. The Court in *GNIDA* in that light held:

“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 v. DGIT (Exemptions) (2012) 347 ITR 99 (Delhi)* referring to the meaning of the terms "commerce" and "business", it was held as under (page 123):

"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 in fact in the nature of business. The test as prescribed in *State of Gujarat v. Raipur Manufacturing Co. Ltd. (1967) 19 STC 1 (SC)* and *CST v. Sai Publication Fund (2002) 258 ITR 70 (SC)* ; (2002) 126 STC 288 (SC) can be applied. The six indicia stipulated in *Customs and Excise Commissioner v. Lord Fisher (1981) 2 All ER 147* ; [1981] STC 238 are also relevant. Each case, therefore, has to be examined on its own facts.

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



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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."

46. The phrase "in the nature of trade, commerce or business" was then explained to entail the undertaking of any activity with a profit motive. This was further elaborated upon with the Court observing as under:

**"19.** After extensively referring to the judgments of the Supreme Court in *State of Punjab v. Bajaj Electricals Ltd.* (1968) 70 ITR 730 (SC), *Barendra Prasad Ray v. ITO* (1981) 129 ITR 295 (SC), *CIT v. Lahore Electric Supply Co. Ltd.* (1966) 60 ITR 1 (SC) and *State of Gujarat v. Raipur Manufacturing Co. Ltd.* (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. The 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.

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**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 *CIT (Exemption) v. Yamuna Expressway Industrial Development Authority/Greater Noida Industrial Development Authority* reported in (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



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rejected. In other words, the petitioner was entitled to registration under section 12AA read with section 2(15) of the Act.

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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 a 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.

47. Dealing specifically with Section 10(46) the Court in *GNIDA* held:

“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 primary and constitute the core of the provision. Sub-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 sub-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 sub-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. Sub-clause (b) of section 10(46) does not require and mandate that interest income or the like alone would be exempt.

27. Clause (46) of 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 sub-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 sub-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 sub-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 Addl. CIT v. 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 sub-clause (b) of 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 sub-clause (b) of section 10(46) of the Act."

48. Of significance are the following observations appearing in paragraphs 31 & 32 of the report:

"31. Thus, there is need to distinguish commercial activity which constitutes disqualification under sub-clause (b) of 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, sub-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 sub-clause (b) and would be denied registration. Authority/body satisfying the requirements of sub-clause (a) can also be denied registration if it carries on any commercial activity, i.e., economic activity unconnected and unassociated 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 sub-clause (a) would not incur disentanglement under sub-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 sub-clause (a) of section 10(46) of the Act.”

49. The Court then proceeded to negate the contention of the respondent there and who appear to have asserted that any activity for which a fee or consideration were charged or paid would fall within the ambit of the phrase ‘commercial activity’. This is evident from the following passages of the said decision:

**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



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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 sub-clause (b) of 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.** The Allahabad High Court in CIT (Exemption) v. Greater Noida Industrial Development Authority (2017) 395 ITR 18 (All) 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. The petitioner, given the regulatory and administrative functions performed is required and charges fee, cost and consideration in the



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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. The 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.”

50. The Court in *GNIDA* had also cited with approval a decision handed down by the Allahabad High Court in respect of a similar claim laid by *YEIDA* in respect of its prayer for classification under Section 11 of the Act. The Allahabad High Court upon an extensive review of the provisions of the UPID Act in the *YEIDA* judgment, and which has been noticed by us hereinabove, had held as under:

“61. The aforesaid observations applied from all corners to respondent- authorities, i.e., "Industrial Development Authorities" and it is a complete answer in the present case also to the argument that cess/fee and other considerations realised by the "Industrial Development Authorities" render their activities in the nature of trade, business or commercial so as to exclude them from the definition of "charitable purposes" by application of proviso to section 2(15) of the Act, 1961. It was also observed that there are two features, which are normally not found in trading Corporation (1) that the sums payable to the Corporation are recoverable as arrears of rent under the Act and (2) on dissolution, assets vest in and liabilities become enforceable against the State Government. The court also said that underlying concept of trading Corporation is buying and selling, but in the case of the Corporation under the aforesaid Act, there was no aspect of buying or selling. Corporation carries out the purpose of Act, i.e. development of industries in the State. Constructions of buildings, establishment of industries by letting building on hire or sale, acquisition and transfer of land, in relation to establishment of industrial estates, or development of industrial areas and setting up of industries, it cannot be said to be



relating to land or buildings for the reason that State is carrying out the object of Act with the Corporation as an agent in setting up industries in the State. Act aims at buildings and industrial town and the Corporation carries out objects of the Act. The court further said that:

"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 the opinion that the Corporation is not a trading one."

(emphasis added)

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XXXX

XXXX

71. The entire discussion, if we summarise, can be placed in a small arena of judicial analysis, that is, a body or institution which is functioning for advancement of objects of general public utility and its activities are not in the nature of trade, business or commerce and also not a sheer profit making, such institution is entitled to claim itself to be constituted for "charitable purposes" and seek registration under section 12A(1) of the Act, 1961."

51. More recently, the Supreme Court in *Ahmedabad Urban Development Authority*, had an occasion to review Sections 2(15) and 10(46) of the Act. While dealing with statutory corporations, authorities or bodies and their claim for being treated as entities engaged in activities which could be viewed as charitable, the Supreme Court makes the following pertinent observations:

**“193.** It would be essential now to deal with certain kinds of receipts which GPU charities, typically statutory housing boards, regulatory authorities and corporations may be entitled to, if mandated to collect or receive. During the course of hearing, the learned counsel highlighted that statutory boards, and corporations have to recover the cost of providing essential goods and services in public interest, and also fund large-scale development and maintain public property.



These would entail recovering charges or fees, interest and also receiving interest for holding deposits. It was further pointed out that in some cases, income in the form of rents — having regard to the nature of the schemes which the board, trust or corporation concerned may be mandated or permitted to carry on, has to be received. For instance, in some situations, for certain kinds of properties, the boards may be permitted only to lease out their assets and receive rents.

**194.** The answers to these, in the opinion of this Court, are that the definition ipso facto does not spell out whether certain kinds of income can be excluded. However, the reference to specific provisions enabling or mandating collection of certain rates, tariffs or costs would have to be examined. Generically, going by statutory models in enactments (under which corporations boards or trust or authority by whatsoever name, are set up), the mere fact that these bodies have to charge amounts towards supplying goods or articles, or rendering services i.e. for fees for providing typical essential services like providing water, distribution of foodgrains, distribution of medicines, maintenance of roads, parks, etc. ought not to be characterised as “commercial receipts”. The rationale for such exclusion would be that if such rates, fees, tariffs, etc. determined by statutes and collected for essential services, are included in the overall income as receipts as part of trade, commerce or business, the quantitative limit of 20% imposed by the second proviso to Section 2(15) would be attracted thereby negating the essential general public utility object and thus driving up the costs to be borne by the ultimate user or consumer which is the general public. By way of illustration, if a corporation supplies essential foodgrains at cost, or a marginal markup, another supplies essential medicines, and a third, water, the characterisation of these, as activities in the nature of business, would be self-defeating, because the overall receipts in some given cases may exceed the quantitative limit resulting in taxation and the consequent higher consideration charged from the user or consumer.

**(a) Interpretation of Section 10(46) and Section 2(15)**

**195.** Clause (20-A) to Section 10 was inserted by the Finance Act, 1970 with effect from 1-4-1962. It had excluded certain classes of income, of corporations [ “**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—\*\*\*(20-A) any income of an authority constituted in India by or under any law enacted either for the purpose of dealing



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with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;”]. This Court had occasion to deal with the provision while it was in force in the *GIDC case* [*Gujarat Industrial Development Corpn. v. CIT*, (1997) 7 SCC 17 : 1997 Supp (3) SCR 466]. The Court had then emphasised that the expression “development” in Section 10(20-A) should be understood widely; thus, all development programmes “relating to any industry” fell within the purview of “development”. The Court also highlighted that nothing in the IT Act laid down how a corporation could be termed as a development corporation nor was there anything mandating that fee chargeable by such corporations was confined to non-industrial activities.

**196.** The decision in *Gujarat Maritime Board* [*CIT v. Gujarat Maritime Board*, (2007) 14 SCC 704 : (2007) 12 SCR 962] was rendered in the context of Section 10(20). That provision exempts income accruing to local authorities, from taxation. By the Finance Act, 2002, an Explanation was added to Section 10(20) which defined “local authority” retrospectively. The Board ceased to enjoy exemption which it had hitherto, in the absence of the retrospective definition. It, therefore sought exemption, as a GPU category charity claiming that it was controlled by objects of general public utility having regard to the provisions of its parent Act i.e. the Gujarat Maritime Board Act. This Court refuted the argument of the Revenue that if a corporation did not fall within the definition of “local authority” it could not claim to be a GPU charity. It was held that Section 10(20) and Section 11 of the 1961 Act operate in totally different spheres. Even if the Board is not considered as a local authority, it is not precluded from claiming exemption under Section 11(1) of the 1961 Act. Therefore, the Court read Section 11(1) in light of the definition of the words “charitable purposes” as defined under Section 2(15). This Court also relied upon the ruling in *A.P. SRTC v. CIT* [*A.P. SRTC v. CIT*, 1971 SCC OnLine AP 253 : (1975) 100 ITR 392] where APSRTC — constituted under the Road Transport Corporation Act, 1950 — having regard to the objectives of the Act, was held to be a GPU charity, thus entitling it to exemption in terms of the IT Act.

**197.** In the light of these decisions, it is evident that the Revenue's narrow construction by which tax exemption is denied on the ground that if an entity is not covered by Section 10(20-A) — or the newly applicable Section 10(46), it cannot claim benefit as a GPU charity under Section 11, is unsound. These two provisions confer different though overlapping benefits. If an entity does not fulfil the



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requirement of one provision because it does not answer the description of a body under that provision, that ipso facto is not a bar for it to claim benefit of another provision.

**198.** Section 10(46) reincarnated so to say Section 10(20-A), which had been deleted w.e.f. 1-4-2003. This provision i.e. Section 10(46) was inserted with effect from 1-4-2009 *retrospectively* by the Finance Act, 2011 [ **“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—**\*\*\***(46) any specified income arising to a body or authority or Board or Trust or Commission (by whatever name called) or a class thereof 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.] . The conditions for applicability of Section 10(46) i.e. that specified income or a class of specified income of ports, trusts or commissions, etc. established or constituted by or under Central or State enactments with the object of regulating or administering any activity in the general public, is on similar lines as in the case of GPU charities. Like in the case of GPU charities, there is a prohibition by Section 10(46)(b) against such corporations, etc. engaging in commercial activity. This restriction has been introduced for the first time [as that prohibition was absent in the now repealed Section 10(20-A)].

**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





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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 v. Union of India* [*Greater Noida Industrial Development Authority v. Union of India*, 2018 SCC OnLine Del 7536 : (2018) 406 ITR 418] (hereafter “GNIDA”) and *CIT v. Yamuna Expressway Industrial Development Authority* [*CIT v. Yamuna Expressway Industrial Development Authority*, 2017 SCC OnLine All 3848 : (2017) 395 ITR 18] . In *GNIDA* [*Greater Noida Industrial Development Authority v. Union of India*, 2018 SCC OnLine Del 7536 : (2018) 406 ITR 418] , 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* [*CIT v. Yamuna Expressway Industrial Development Authority*, 2017 SCC OnLine All 3848 : (2017) 395 ITR 18] is along the similar lines.

**201.** As far as boards and corporations which are tasked with development of industrial areas, by statute, the judgments of this Court, in *Shri Ramtanu Coop. Housing Society* [*Shri Ramtanu Coop. Housing Society Ltd. v. State of Maharashtra*, (1970) 3 SCC 323] and *Gujarat Industrial Development Corpn.* [*Gujarat Industrial Development Corpn. v. CIT*, (1997) 7 SCC 17 : 1997 Supp (3) SCR 466] have declared that these bodies are involved in “development” and are not essentially engaged in trading. In *Shri Ramtanu Coop.*



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*Housing Society [Shri Ramtanu Coop. Housing Society Ltd. v. State of Maharashtra, (1970) 3 SCC 323]* this Court, by a five-Judge Bench, held that *Maharashtra Industrial Development Corpn. [CCE v. Maharashtra Industrial Development Corpn., 2017 SCC OnLine Bom 10021, paras 10-12]* is not a trading concern, and observed as follows : (*Shri Ramtanu Coop. Housing Society case [Shri Ramtanu Coop. Housing Society Ltd. v. State of Maharashtra, (1970) 3 SCC 323]* , SCC pp. 328-29, paras 16-17 & 20)

“16. 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.

17. The Corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of work of the Corporation. The fund of the Corporation consists of moneys received from the State Government, all fees, costs and



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charges received by the Corporation, all moneys received by the Corporation from the disposal of lands, buildings and other properties and all moneys received by the Corporation by way of rents and profits or in any other manner. The Corporation shall have the authority to spend such sums out of the general funds of the Corporation or from reserve and other funds. The Corporation is to make provision for reserve and other specially denominated funds as the State Government may direct. The Corporation accepts deposits from persons, authorities or institutions to whom allotment or sale of land, buildings, or sheds is made or is likely to be made in furtherance of the object of the Act. A budget is prepared showing the estimated receipts and expenditure. The accounts of the Corporation are audited by an auditor appointed by the State Government. These provisions in regard to the finance of the Corporation indicate the real role of the Corporation viz. the agency of the Government in carrying out the purpose and object of the Act which is the development of industries. If in the ultimate analysis there is excess of income over expenditure that will not establish the trading character of the Corporation. There are various departments of the Government which may have excess of income over expenditure.

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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



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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.”

**202.** In *Shri Ramtanu Coop. Housing Society [Shri Ramtanu Coop. Housing Society Ltd. v. State of Maharashtra, (1970) 3 SCC 323]* no doubt, this Court did not have to decide whether Maharashtra Industrial Development Corporation was entitled to tax exemption. However, it examined the provisions of the Act, and the *ratio*, that such industrial development corporations are not engaged in trading, is binding. Like in that case, here too, the State Acts concerned (the Gujarat Industrial Development Act, 1962 and the Karnataka Industrial Areas Development Act, 1966) tasked the boards with planning and development of industrial areas. Their personnel are appointed under the enactments and are deemed to be public servants. The State Government is empowered to acquire land, in exercise of eminent domain power, for their purposes; their audits are by the Accountant General of the State concerned, or auditors appointed by the State. They are authorised by law, to levy rates and charges, for the services they provide, on predetermined basis. In the light of these provisions, clearly, these boards and authorities perform objects of general public utility; and they are not driven by profit motive.

**203.** There is a twofold distinction between the now—deleted Section 10(20-A) and the newly added Section 10(46) (w.e.f. 1-6-2011). Firstly, that the erstwhile Section 10(20-A) applied to a limited class of undertaking i.e. the bodies, or corporations, constituted by or under any law—confined to the planning and development of housing infrastructure. However, the newly added Section 10(46) is wider in comparison and the activities of any body or authority or board constituted by or under any Central or State Act with “*the object of regulating or administering any activity for the benefit of the general public*”, has broader import. In a sense, the newly added Section 10(46), resembles a GPU category charity classified under Section 2(15). The second distinction is that Section 10(20-A) did not bar any board, or corporations, etc. from indulging in commercial activities. However, sub-clause (b) of Section 10(46) imposes such a bar, and the body concerned cannot claim tax exemption if it engages in commercial activity.

**204.** The manner in which GPU charities have been dealt with under the definition clause i.e. Section 2(15), indicates that even though trading or commercial activity or service in relation to trade,



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commerce or business appears to be barred — nevertheless the ban is lifted somewhat by the proviso which enables such activities to be carried out if they are *intrinsically* part of the activity of achieving the object of general public utility. Furthermore, in the case of GPU charities there is a quantified limit of the overall receipts, which is permissible from such commercial activity. In the case of local authorities and corporations covered by Section 10(46) no such activities are seemingly permitted.

**205.** As was observed in the earlier part of this judgment — while considering whether for the period 1-4-2003 — 31-5-2011, statutory boards, corporations, etc. could have lawfully claimed to be GPU charities, this Court has observed that the nature of such corporations is not to generate profit but to make available goods and other services for the benefit of public weal. If such corporations [falling within the description of Section 10(46)] applied to the Central Government for exemption, the treatment of their receipts, should be no different than how such receipts can and should have been treated for the purposes of determining whether they are GPU charities, during the period when Section 10(46) was not in existence. Furthermore, this Court is of the opinion that having regard to the observations in *Gujarat Maritime Board case [CIT v. Gujarat Maritime Board, (2007) 14 SCC 704 : (2007) 12 SCR 962]*, the denial of exemption under one category cannot debar such corporations from claiming income exempt status under another category.

***(b) Summary in relation to statutory authorities/corporations***

**206.** In light of the above discussion, this Court is of the opinion that:

**206.1.** The fact that bodies which carry on statutory functions whose income was eligible to be considered for exemption under Section 10(20-A) ceased to enjoy that benefit after deletion of that provision w.e.f. 1-4-2003, does not ipso facto preclude their claim for consideration for benefit as GPU category charities, under Section 11 read with Section 2(15) of the Act.

**206.2.** Statutory corporations, boards, authorities, commissions, etc. (by whatsoever names called) in the housing development, town planning, industrial development sectors are involved in the advancement of objects of general public utility, therefore are entitled to be considered as charities in the GPU categories.

**206.3.** Such statutory corporations, boards, trusts, authorities, etc. may be involved in promoting public objects and *also* in the course



of their pursuing their objects, involved or engaged in activities in the nature of trade, commerce or business.

**206.4.** The determinative tests to consider when determining whether such statutory bodies, boards, authorities, corporations, autonomous or self-governing government sponsored bodies, are GPU category charities:

**206.4.1.** Does the State or Central law, or the memorandum of association, constitution, etc. advance any GPU object, such as development of housing, town planning, development of industrial areas, or regulation of any activity in the general public interest, supply of essential goods or services — such as water supply, sewage service, distributing medicines, of foodgrains (PDS entities), etc.

**206.4.2.** While carrying on of such activities to achieve such objects (which are to be discerned from the objects and policy of the enactment; or in terms of the controlling instrument, such as memorandum of association, etc.), the purpose for which such public GPU charity, is set up — whether for furthering the development or a charitable object or for carrying on trade, business or commerce or service in relation to such trade, etc.

**206.4.3.** Rendition of service or providing any article or goods, by such boards, authority, corporation, etc. on cost or nominal markup basis would ipso facto not be activities in the nature of business, trade or commerce or service in relation to such business, trade or commerce.

**206.4.4.** Where the controlling instrument, particularly a statute imposes certain responsibilities or duties upon the body concerned, such as fixation of rates on predetermined statutory basis, or based on formulae regulated by law, or rules having the force of law, setting apart amenities for the purposes of development, charging fixed rates towards supply of water, providing sewage services, providing foodgrains, medicines, and/or retaining monies in deposits or government securities and drawing interest therefrom or charging lease rent, ground rent, etc. per se, recovery of such charges, fee, interest, etc. cannot be characterised as “fee, cess or other consideration” for engaging in activities in the nature of trade, commerce, or business, or for providing service in relation in relation thereto.

**206.4.5.** Does the statute or controlling instrument set out the policy or scheme, for how the goods and services are to be distributed; in what proportion the surpluses, or profits, can be permissively



garnered; are there are limits within which plots, rates or costs are to be worked out; whether the function in which the body is engaged in, is normally something a Government or State is expected to engage in, having regard to provisions of the Constitution and the enacted laws, and the observations of this Court in *NDMC* [*NDMC v. State of Punjab*, (1997) 7 SCC 339] ; whether in case surplus or gains accrue, the corporation, body or authority is permitted to distribute it, and if so, only to the Government or State; the extent to which the State or its instrumentalities have control over the corporation or its bodies, and whether it is subject to directions by the Government, etc. concerned.

**206.4.6.** As long as the statutory body, corporation, authority, etc. concerned while actually furthering a GPU object, carries out activities that entail some trade, commerce or business, which generates profit (i.e. amounts that are significantly higher than the cost), and the quantum of such receipts are within the prescribed limit [20% as mandated by the second proviso to Section 2(15)] — the statutory or government organisations concerned can be characterised as GPU charities. It goes without saying that the other conditions imposed by the seventh proviso to Section 10(23-C) and by Section 11 have to necessarily be fulfilled.

**206.5.** As a consequence, it is necessary in each case, having regard to the first proviso and seventeenth proviso (the latter introduced in 2012, w.r.e.f. 1-4-2009) to Section 10(23-C), that the authority considering granting exemption, takes into account the objects of the enactment or instrument concerned, its underlying policy, and the nature of the functions, and activities, of the entity claiming to be a GPU charity. If in the course of its functioning it collects fees, or any consideration that merely cover its expenditure (including administrative and other costs plus a small proportion for provision) — such amounts are not consideration towards trade, commerce or business, or service in relation thereto. However, amounts which are significantly higher than recovery of costs, have to be treated as receipts from trade, commerce or business. It is for those amounts, that the quantitative limit in proviso (ii) to Section 2(15) applies, and for which separate books of account will have to be maintained under other provisions of the IT Act.”

52. Indisputably, NOIDA, the petitioner herein, has been constituted under the UPID Act with the avowed objective of undertaking developmental activities in an industrial development area. It is in that



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sense acting as an arm and an adjunct of the State charged with undertaking planned development in the industrial development area. In that connection, the petitioner undertakes planning and development of the area, acquires land and property, engages in construction of housing units or industrial units. In order to fulfil the aforesaid objectives, it is provided funds by the State Government and additionally creates a corpus from the revenue and receipts generated and received in the course of its operations. It is manifest from a reading of the various provisions of the UPID Act that the petitioner acts primarily as an agent of the Government obligated to undertake planned development of areas placed under its control. It cannot possibly be viewed as being a corporation intended to have been incorporated for a profit or commercial motive. The provisions of the UPID Act as well as the material placed before us clearly dispels any notion of the petitioner being a “*hardcore trading corporation*” as some precedents have chosen to describe commercial enterprises. As the Constitution Bench in *Shri Ramtanu Coop. Housing Society* aptly observed, bodies like the petitioner, are intended to act as an “*architectural agent*” of development and growth.

53. In our considered opinion, the respondents have clearly erred in holding that the loans and advances extended by the petitioner would fall within the ambit of commercial activity. The aforesaid conclusion not only fails to bear in consideration the directives of the State Government which prompted and facilitated the said action, the grant of those loans has also not been established to have been motivated with a





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view to profiteer. As was noticed hereinabove, past precedents rendered in the context of Sections 2(15) and 10(46) guide us in this regard to apply the test of activities undertaken with a profit motive and intent. That clearly does not appear to be the case which obtains here.

54. We additionally find that some of those loans came to be extended to finance activities supportive and supplemental to the development activity that was liable to be undertaken by the petitioner. The finding in the impugned order that the petitioner had advanced loans to private entities such as M/s Amarpali Silicon City has been found to be factually incorrect. Equally destructive of any assumption of commercial activity are the details appearing in the financial statement that has been placed on the record and which establishes that the nominal margin in percentage terms between the income and expenditure of the petitioner has primarily remained in the negative during the period FY 2011-12 to FY 2022-23 [barring a few years].

55. The impugned order is additionally rendered arbitrary bearing in mind the exemptions granted to YEIDA and GNIDA which too are bodies which stand constituted under the UPID Act and function on lines identical to the petitioner. The Court also takes into consideration the exemption granted to various government bodies in respect of similar specified income. This is evident from the table appearing in Para 52 of the writ petition and which is reproduced hereinbelow: -

S.N.	Entity & Notification	Specified Income
1.	Competition Commissions of India.	a) Amount received from government grants; b) fees received under the Competition Act, 2002;



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	Notification dated 19.2.2016	and c) interest accrued on Government grants and interest accrued on fees received under the Competition Act, 2002.
2.	Punjab State Electricity Regulatory Commission Notification dated 10.4.2015	(a) amount received in the form of processing fee for determination of tariff; (b) amount received in the form of licence fee; (c) amount in the form of petition fee; and (d) amount of interest income earned on bank deposits.
3.	Rajasthan State Pollution Control Board Notification dated 10.4.2015	(a) amount received in the form of government grants; (b) amount received as license fees and fines; (c) interest earned on government grants, license fees and fines.
4.	Haryana Electricity Regulatory Commission Notification dated 10.4.2015	(a) grants and loans made by the Government of Haryana; (b) fees received under the Electricity Act, 2003 (36 of 2003); (c) interest earned on government grants and loans and fees received under the Electricity Act, 2003 (36 of 2003).
5.	Uttar Pradesh Electricity Regulatory Commission Notification dated 10.3.2015	(a) amount received in the form of government grants; (b) amount received as license fees and fines; (c) interest earned on government grants, license fees and fines.
6.	Tamil Nadu Water Supply and Drainage Board Notification dated 20.1.2015	(a) centage at rates prescribed by the Government of Tamil Nadu; (b) water charges (at Water Tariff fixed by the Government of Tamil Nadu) collection from local bodies for bulk water supply; (c) interest on bank deposits and investments, rent and deposits received from local bodies.
7.	Gujarat State Council for Blood Transfusion Notification dated 20.1.2015	(a) grants from Government of Gujarat and the Government of India; (b) donations; and (c) income arising or by way of interest.



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8.	Karnataka Livestock Development Agency Notification dated 20.1.2015	(a) amount received in the form of grants-in-aid from Government of India; and (b) income arising out or derived from interest on grants-in-aid.
9.	National Council of Science Museums Notification dated 20.1.2015	(a) amount received in the form of grants-in-aid and subsidies from Government of India; (b) fees or subscription by sale of tickets; (c) charges for maintenance recovered for use of auditorium and other public facilities for scientific and educational purposes; and (d) income arising or derived by way of interest received from investment.

56. Accordingly, and for all the aforesaid reasons, we allow the instant writ petition and quash the order dated 24 December 2020 impugned herein. The respondents are consequently directed to process the application for exemption made by the petitioner under Section 10(46) of the Act bearing in mind the observations made hereinabove.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**JULY 11, 2024/rw/kk**