

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH – "SMC", AHMEDABAD**

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER

ITA.No.1233 and 2520/Ahd/2015
निर्धारण वर्ष/Asstt.Year : 2010-2011 and 2011-12

ITO (Exemptions) Ward Baroda Baroda.	Vs	Gujarat Environment Service Society Kaira can Office Building 1 st Floor, Nr.Ganesh Char Rasta Anand 388 001.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Revenue by :	Shri Santosh Karnani, Sr.DR
Assessee by :	Shri Sunil Talati, AR

सुनवाई की तारीख/Date of Hearing : 12/10/2017
घोषणा की तारीख /Date of Pronouncement: 25/10/2017

आदेश/O R D E R

Present two appeals are directed at the instance of Revenue against separate orders of Id.CIT(A)-2, Vadodara dated 26.2.2015 and 13.5.2015 passed for Asstt.Years 2010-11 and 2011-12 respectively.

2. Revenue has taken four grounds of appeal in the Asstt.Year 2010-11 and three grounds of appeal in the Asstt.Year 2011-12. However, its grievance in both years revolves around a single issue viz. whether the assessee is entitled for benefit of section 11(1)(a) of the Income Tax Act, 1961 or not.

3. Brief facts of the case are that the assessee has filed its return of income 24.9.2010 and 23.9.2011 declaring total income at NIL in the Asstt.Years

2010-11 and 2011-12 respectively. The assessee is a Society registered under Society Registration Act, 1860. It was granted registration under section 12(A)(a) of the Income Tax Act w.e.f. 1.6.1984. Main objects of the assessee have been reproduced by the Id.First Appellate Authority in its finding recorded in the Asstt.Year 2010-11. I will be reverting to that finding in the later part of this order, but it is pertinent to mention that all along in the past the assessee was granted benefit under section 11 of the Income Tax Act. The AO has denied this benefit to the assessee on account of amendment carried out in section 2(15) of the Income Tax Act which provides definition of "charitable purpose". According to the AO a *proviso* was inserted in section 2(15) by way of Finance Act (2) 2009. The AO was of the opinion that activities of the assessee is in the nature of business, and therefore, it is not entitled for exemption under section 11(1)(a) of the Act. He assessed taxable income of the assessee in the Asstt.Year 2010-11 at Rs.43,07,960/- and Rs.41,32,020/- in the Asstt.Year 2011-12.

4. The order passed in the Asstt.Year 2010-11 has been followed in the Asstt.Year 2011-12 because there is no disparity on facts.

5. I have heard Id.representatives and perused records. I find that the Id.CIT(A) has made a lucid analysis of the facts and law, therefore, I deem it pertinent to take note of finding recorded by the Id.CIT(A) in the Asstt.Year 2010-11, which reads as under:

"4.3. I have considered the facts of the case, the AO's observations and submission made by the AR of the appellant. From the submissions and documents furnished by the appellant, it is seen that the appellant society was established by representatives of several institutional organizations with following main objectives:

To fulfill the Main object of Preservation of environment the society undertakes various activities, which are as under:

- *To undertake activities necessary for providing the dean environment to society as a whole and to increase the facilities to have better environment and to give necessary guidance and assistance to the members and others to carry out these activities.*
- *To undertake programs in environmental extension aimed at improving the health of people.*
- *To provide services for the testing of the water, air, sewage etc.*
- *To provide services to its members and others for protecting the environment.*
- *To provide services for tree plantation etc.*
- *To provide sanitation and other services for the maintenance of clean environment.*
- *To provide horticultural services for putting the lawns, ornamental plants and their maintenance.*
- *To conduct research and study of water, sewage, air and ecological balances, contribute to its funds and raise funds for the same.*
- *To provide training and educational services for the study of the environmental and its protection.*
- *To maintain nurseries and orchards.*

In this regard it is stated that the main object of the trust is to promote and improve the surrounding environment of the organization premises and improving the health of the people. Hence the main activity of the trust is within the per view of Section 2(15) of the Income Tax Act 1961."

4.3.1. Thereafter, the appellant trust was granted registration u/s 12A and it has been allowed deduction as per provisions of section 11(1)(a). But, in the current assessment order, the AO has denied this deduction by observing that the appellant's objects does not involve relief to the poor, education, medical relief and preservation of environment including water sheds, forests and wild life. The AO has observed that the appellant's activities/services are rendered for the advancement of other objects of general public for which it has charging fees. The AO further observed on the basis of the directions issued by the JCIT, Anand Range that the activity carried out by various companies or institutions as Banas Dairy, GCMMF, IRMA, Mother Dairy etc. who spends for the expenditure for the preservation of environment such as gardens and the appellant is simply a contractor and has to carry out the work as specified and agreed to maintain with the companies or institutes. Hence, the appellant is not eligible for deduction u/s 11(1)(a) of the IT Act.

4.3.2. In this regard, it is observed that the appellant has been allowed exemption u/s 11(1)(a) for last so many years and the AO has not brought out any difference between the activities of the appellant in the years preceding the current assessment year and in the current assessment year. The main objects of the appellant society are for the purposes of preservation of environment and under such circumstances, the amended provisions of the Section 2(15) relating to the receipt of fees etc. for carrying out the activities of the trust are not applicable in this case. Under such circumstances, the AO has to demonstrate that the appellant's activities are no longer charitable in nature. The only observation made by the AO in this regard is that the companies who are making the payments for maintenance of garden etc. are doing job of preservation of environment and the appellant is simply a contractor for this purpose.

4.3.3. The Hon'ble Gujarat High Court in its decision in the case of Ahmedabad Management System 47 Taxman.com 162 (Guj) has held that duly inserted proviso of Section 2(15) will apply to institution whose purpose is advancement of any other object of general public utility, but, will not apply to institutions engaged in activities in nature of relief to poor, education or medical relief. For this purpose, the court has referred to Circular No. 11/2008 dated 19/12/2008. It may be mentioned here that subsequent to the issue of this circular, preservation of environment was also specifically included in the definition u/s 2(15). Hence, evidently, the newly inserted proviso to section 2(15) will also not apply to the institutions engaged in the activities in the nature of preservation of environment. Moreover, in this decision, the court has observed that all throughout the previous years, right from AYs 1995-96 till 2008-09, revenue has considered activities of the assessee as charitable activity and has granted benefit u/s 11. In the current case also, the revenue has considered the activities of the appellant as charitable activity for previous years and have granted exemption u/s 11. Now from AY 2009-10, the main object of the appellant trust are covered by the clause relating to preservation of environment and hence, the provisions relating to advancement of any other object of general public utility are not applicable to the appellant. The AO has no where mentioned in his order that the exemption granted to the appellant by CIT as been cancelled at the time or before passing the assessment order. The Gujarat High Court in its decision mentioned above has held as follows:

"5. Term "Charitable Trust" is defined in Section 2(15) of the Act which includes the relief to the poor, education, medical relief,

preservation of environment; including water sheds, forests and wildlife and preservation of monuments or places or objections of artistic or historic interest and advancement of any other object of general public utility. Proviso to Section 2(15) and further proviso whereof inserted by Finance Act 2010 w.e.f. 1st April 2000 read, thus -

"provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty five lakh rupees or less in the previous year."

6. The legal controversy in the present Tax Appeal centers around the first proviso. In the plain terms, the proviso provides for exclusion from the main object of the definition of the term "Charitable purposes" and applies only to cases of advancement of any other object of general public utility. If the conditions provided under the proviso are satisfied, any entity, even if involved in advancement of any other object of general public utility by virtue to proviso, would be excluded from the definition of "charitable trust". However, for the application of the proviso, what is necessary is that the entity should be involved in carrying on activities in the nature of trade, commerce or business, or any activity of rendering services in relation to any trade, commerce or business for a cess or fee or any other consideration. In such a situation, the nature, use or application, or retention of income from such activities would not be relevant. Under the circumstances, the important elements of application of proviso are that the entity should be involved in carrying on the activities of any trade, commerce or business, for a cess or fee or any other consideration. Such statutory amendment was explained by the Finance Minister's speech in the Parliament. Relevant portion of which reads as under:

"I once again assure the House that genuine charitable organizations will not in any way be affected. The CBDT will,

following the usual practice, issue an explanatory circular containing guidelines for determining whether the entity is carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business. Whether the purpose is a charitable purpose will depend on the totality of the facts of the case. Ordinarily, Chambers of Commerce and similar organizations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as "advancement of any other object of general public utility."

4.3.4. It may be mentioned here that the ITAT Mumbai Bench in its decision in the case of New Saibaba Nagar Welfare Society 25 Taxman.com 226 (Mum) has held that activity of maintenance and development of park could fall within words, 'preservation of environment' u/s 2(15). Thus, the activities of the appellant trust are in the nature of charitable activities as defined u/s 2(15) of the IT Act, 1961. Moreover, on account of similar activities, the appellant has been granted exemption u/s 11(1)(a) in preceding years and as on the date of passing of assessment order, the registration granted to the appellant trust u/s 12A was still in force. Hence, the AO is directed to grant exemption u/s 11(1)(a) to the appellant as claimed by it. Accordingly, these grounds of appeals are allowed."

6. Before embarking upon an inquiry on the view point of the AO as to whether he failed to construe objects of the assessee as for charitable purpose or not, I deem it pertinent to take note of section 2(15) of the Act. It reads as under:

"charitable purpose" includes relief of the poor, education, [yoga,] medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

[Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

- (i) *such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*
- (ii) *the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;]]*

7. The ld.counsel for the assessee has pointed out that a bare perusal of this clause would indicate that the *proviso* is applicable on the expression “advancement of any other object of general public utility”. The assessee is engaged in preservation of environment including watersheds, forests and wildlife etc. This activity in itself is for charitable purposes and it stands apart from “advancement of any other object of general public utility”. Thus, the *proviso* is not applicable upon activities of the assessee. The ld.DR on the other hand relied upon the order of the AO.

8. As discussed above, objects of the assessee has been reproduced by the ld.CIT(A) in the finding extracted (supra). Main object of the assessee was for providing clean environment to the society, maintenance of garden, plantation, horticulture etc. These objects and activities of the assessee were in the nature of charitable purpose, and as such accepted by the Revenue in the past. Exemption under section 11(1)(a) of the Act has been granted to the assessee in the past, and there is no change in the facts and circumstances. Registration granted under section 12A has not been cancelled. The activity of the assessee does not fall in the expression “advancement of any other object of general public utility”. It is specifically fall within the ambit of “preservation of environment”. The ld.CIT(A) has considered both these aspects and accepted explanation of the assessee that it is meant for preservation of environment as well as its objects are of charitable nature. The ld.CIT(A) has put reliance upon the judgment of the Hon’ble Gujarat High Court in the case of Ahmedabad Management System, 47 taxmann.com

162 (Guj). After considering well reasoned order of the Id.CIT(A) I do not find any reason to interfere in it. It is upheld. Both the appeals are dismissed.

9. In the result, the appeals of the Revenue are dismissed.

Order pronounced in the Court on 25th October, 2017 at Ahmedabad.

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER