

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'B' BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and Mahavir Prasad JM]

ITA No.3406/Ahd/2015
Assessment Year: 2010-11

Paryavaran Edutech

*Centre for Environment Education,
Thaltej Tekra,
Ahmedabad – 380 054
[PAN: AACCP 0872 G]*

.....**Appellant**

Vs.

The DDIT (Exem)

Ahmedabad

.....**Respondent**

Appearances by

SN Divetia, for the Appellant

Saurabh Singh, for the respondent

Hearing concluded on: 28.06.2018

Order pronounced on : 25.09.2018

O R D E R

Per Pramod Kumar, AM:

1. By way of this appeal, the assessee-appellant has challenged correctness of the learned CIT(A)'s order dated 20th October 2015 in the matter of assessment under section 143(3) of the Income-tax Act, 1961, for the assessment year 2010-11.

2. Grievances raised by the appellant are as follows:-

“1.1 The order passed u/s.250 on 20.10.2015 for A.Y.2010-11 by CIT(A)-4, Abad, confirming the rejection of exemption u/s. 11 & 12 and assessing the appellant as "AOP" is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the explanations furnished and the evidence produced by the appellant.

1.3 The Ld. CIT(A) has grievously erred in law and or on facts in upholding that the activity of marketing products, literature and other material relating to environment carried out by the appellant company were not main activity but the supporting, secondary or ancillary so that did not fall under the limb "preservation of environment".

2.1 That in the facts and circumstances of the case as well as in law, the Id. CIT(A) has grievously erred in not appreciating in right perspective the activities of the appellant and upholding that it did not amount to "preservation of environment" u/s. 2(15).

- 3.1 *Without prejudice to above, the Ld. CIT(A) has grievously erred in law and or on facts in not disposing off the ground of the appellant that the activities carried out by it amounted to "advancement of any other object of public utility".*
- 3.2 *That in the facts and circumstances of the case as well as in law, the Id. CIT(A) has grievously erred in not disposing off the ground of the appellant that the activities carried out by it amounted to "advancement of any other object of public utility".*
- 4.1 *Without prejudice to above, the Ld. CIT(A) has grievously failed to appreciate that the activities carried out by the appellant trust were not covered under the proviso to section 2 (15).*
- 5.1 *The Id. CIT(A) has grievously erred in law and/or on facts in denying the exemption u/s. 11 & 12 of the Act to the appellant Company and not disposing off the ground relating to the status of "AOP".*
- 6.1 *The Id. CIT(A) has grievously erred in assessing the receipts as business receipts and computing the total income accordingly."*

3. Briefly stated, relevant material facts are as follows. The assessee before us is a company registered under section 25 of the Companies Act, 1956. The assessee is also granted registration under section 12AA of the Income-tax Act, 1961. For the assessment year under consideration, the assessee filed return of income on 17.09.2010 declaring its income at a deficit of Rs. (-)3,34,520/- after claiming exemption to the extent of Rs.49,87,439/-. During the course of scrutiny assessment proceedings, the Assessing Officer invoked section 13(8) of the Income-tax Act to decline the exemption under section 11 and 12 of the Act. While doing so, the Assessing Officer reasoned as follows:-

"3.3 On going through the submission made by the assessee dated 19.02.2013 and 18.03.2013 are considered but not accepted for the following reasons:

(1) It is seen that you are doing marketing and distribution for GEE which does not falls under the charitable activity envisaged in Section 2(15) of the I T Act i.e. relief of the poor, education, 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. Upon perusal of objects of the vis-a-vis the objects defined in the Act, it is concluded that the object of the trust is "advancement of any other object of general public utility".

(2) The assessee company is doing activity of general public utility as the assessee company is doing activity of marketing the products, materials relating to environment.

(3) It is rightly said that this company is Section 25 company but its activity does not falls under the limb of preservation of environment as its submission reveals that these are to impart knowledge and generate awareness and interest amongst the public about environment in all respect. But this company is not directly involved in activity of preservation of environment

(4) The assessee itself accepts that they are 'medium' or 'channel' through which the literature, products etc. relating to environment reached to public. In para 6 of submission dated 18.03.2013, the company is doing activity for creating awareness about environment and the sale of literature, products and other material relating to environment was the modality of creating such awareness amongst the public.

(5) Section 2(15) of the Act defines 'charitable purposes'. First proviso, thereto with effect from assessment year 2009-10 laid down that, if any trust etc. (a) is engaged in pursuing objects of general public utility ('other objects'] and (b) carries on any activity in the nature of trade, business or commerce or provides any services in relation to the trade, commerce services or business and (c) aggregate receipts there from exceed Rs. 10 lacs, it shall be considered that other objects is not a charitable purpose. If so, such a trust is not eligible for the exemption inasmuch as the primary condition of being existing for charitable purpose is not satisfied.

(6) With the introduction of Sec 13(8) of the Act, w.e.f 1/04/2009 (Finance Act 2012), it is clearly evident that the assessee whose case is squarely covered by the proviso to Sec 2(15) shall forfeit all the exemptions that are otherwise available u/s 11 and 12 of the Act. The relevant provisions are as under:

"(8) Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year."

(7) The new sub-section (8) provides that the exemption under section 11 & 12 will not be available to a Trust, in a previous year, in which the First proviso to section 2(15) becomes applicable, for that previous year.

Therefore, in the light of the provisions of Sec 13(8) of the Act, the assessee loses all the exemptions claimed u/s 11 & 12 of the Act. It is clear from the plain reading of the said provision that once proviso to Sec 2(15) becomes applicable to the facts of the case, all the exemptions otherwise allowable u/s 11 and 12 are not available to the assessee in that previous year. Therefore, the assessee is not eligible to any of the exemption claimed u/s 11 and 12 of the Act. When section 2(15) proviso 1 & 2 hit there is no need to see whether this activity earns profit or not."

4. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. The reasoning adopted by the CIT(A) is as follows:-

"7. I have gone through carefully the reasons for making addition by the A.O. and the submission of the appellant. The appellant is engaged in the business of distribution of booklets etc, to impart knowledge of and generate awareness and interest among the public about environment. The A.O. considered these activities as not charitable and not covered by the activities contained u/s 2(15) of the Act for the reasons mentioned in detail in the assessment order which has been reproduced in paras above. Whereas the appellant contended that the activities undertaken by the appellant fall well within the parameters laid down u/s 2(15) of the Act. Therefore, it should be eligible for exemption claimed u/s 11 & 12 of the Act.

7.1 As the appellant is engaged in the activities related to marketing of literature, products etc. to create awareness about the, environment among the public, such activity cannot be considered as activities related to preservation of environment, as the appellant is not directly engaged in the activities to preserve environment. The claim of the appellant is similar to the claim of 'prasad manufacturer' for temples, who may claim that his activities are of religious nature or the book seller's claim that his activities are to be considered for imparting education to public. Any supporting, secondary or ancillary activities related to the main activity cannot be considered as the main activity. The appellant's activities are of secondary or ancillary nature. Which may support the cause indirectly but not directly engaged in the activities of preservation of environment. Keeping, in view these facts, the claims of the appellant, is not found acceptable, therefore, it is rejected.

7.2 Regarding the case laws cited by the appellant in support of its claim, the facts of these case laws are distinguishable from the facts of the appellant's case; therefore, these are not relied upon.

7.3 Looking to these facts, findings given by the A.O are confirmed and appeal of the appellant is dismissed.”

5. The assessee is aggrieved and is in further appeal before us.

6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

7. In order to adjudicate on this appeal, it is necessary to take a look at the scheme of the Act first. Let us, therefore, begin with looking at the provisions of Section 2(15) and 13(8) first. These sections, as they stood for the relevant point of time, were as follows:

Section 2 (15)

“charitable purpose” includes relief of the poor, education, 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:

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

Section 13(8)

[Introduced by the Finance Act 2012 with retrospective effect from 1st April 2009]

(8) Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year.

8. What follows thus is that notwithstanding the registration granted to an assessee under section 12AA, when first proviso to Section 2(15) comes into play, i.e. when it is held that the advancement of any object of general utility ceases to be a charitable purpose on account of the assessee carrying out any activity in the nature of trade commerce or business for a cess, fees or any other consideration, the benefit under section 11 and 12 will not be applicable. Essentially, therefore, Section 13(8) can be invoked only when an assessee is covered by charitable purposes as “advancement of any other object of public utility” and when such object cease to be applicable for the reason of assessee being involved in carrying out an activity in the nature of business, trade or commerce. As a corollary to this legal position, when an assessee is involved in a charitable activity, other than the charitable activity covered by this residual clause of “advancement of any other object of public utility”, i.e. “relief of the poor, education , medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest”, the provisions of Section 13(8) cannot be invoked.

9. Let us now turn to the facts of this case. The assessee before us is a Section 25 company, i.e. a company registered under section 25 of the Companies Act, 1956, with the main objects as follows:

1. To impart knowledge and generate awareness and interest amongst the public about environment in all its aspects including nature and natural resources, historical and cultural heritage leading to sustainable use of nature and natural resources, and the conservation of historical and cultural heritage;
2. To identify, acquire, design or modify, develop, manufacture, assemble, reproduce and disseminate all types of environment educational things and materials in whatever form.

10. It is on perusal of this memorandum of association, which had only the above objects as the main objects, that the registration under section 12AA was granted to the assessee. Both of these objects are in respect of preservation of environment, and, therefore, the registration as a charitable institution is granted as in respect of this specific inclusion clause in the definition and not in the residuary clause. Viewed thus, the provisions of Section 13(8) could not have been invoked in this case because, as we have noted earlier, Section 13(8) can be pressed into service only when the registration is granted under the residuary clause i.e. in respect of “any other object of public utility”.

11. We have noted that the Assessing Officer has rejected the plea of the assessee to the effect of its being involved in preservation of environment on the ground that these objects are “to impart knowledge and generate awareness and interest amongst the public about environment in all respects but....*(the assessee)* is not directly involved in activity of preservation of environment” The CIT(A) has, on a similar note, observed that the “ as the appellant is engaged in the activities related to marketing of literature, product etc to create awareness about environment amongst the public, such activities cannot be considered as activities relating to preservation of environment as

the appellant is not directed engaged in activities to preserve the environment” and goes on to say that “the claim of the appellant is similar to that of Prasad manufacturer for temples who may claim that his activities are of charitable nature or bookseller’s claim that his activities are to be considered for imparting education to public”. This approach is clearly fallacious. Just because someone is not involved in an activity which by itself directly results in preservation in environment, but does so through focussed activities to spread awareness about it, it cannot be said that he is not engaged in the activities for preservation of environment. What is to be really seen is the thrust and dominant object of the activity. What is material is the intended end results rather than the means employed to achieve such results. When a Prasad seller makes the Prasad and sells it outside a temple, he does not do so to serve the charitable cause but to make commercial profits. Similarly, when a book seller sell books to students, that is also a commercial activity because that is the dominant object. However, when Prasad or souvenir is given to a devotee, for a consideration, by Tirumala Trupati Devasthanam, Shri Mata Vaishno Devi Shrine Board or by Siddhi Vinayak Temple, it does not become a commercial activity. These are integral parts of the charitable activities of the respective trusts, and that character will not be lost even when such an activity is carried out, on a non-commercial basis, by a separate charitable trust, with the same charitable purposes as such entities. The thrust is charitable activity in those cases as well. Similarly, everyone publishing and selling the books cannot be said to be involved in commercial activities either. These sweeping generalizations, no matter how convincing they appear to be at the first sight, have their limitations. Perhaps Geeta Press Gorakhpur has done more charitable work, by publishing hindu religious books at such low costs and spreading the message of hindu religion so far and wide, than many religious institutions directly administering the temples and shrines. Clearly, therefore, the true test is the dominant purpose of activity and actual character of the activity. As we have stated before, what is to be really seen is as to what is the dominant objective of the activities. The illustrations picked up by the learned CIT(A) are wholly inappropriate. In our considered view, this artificial demarcation between spreading awareness about preservation of environment and preservation of environment is uncalled for and irrelevant. Once it is not in dispute, as is the position in this case, that the assessee is engaged in spreading awareness about environment, it cannot be held that the assessee is not engaged in preservation of environment. That being the factual position, proviso to Section 2(15) or Section 13(8) have no relevance in the matter.

12. In any event, even if one proceeds on the basis that the registration granted to the assessee was under the residuary clause, Section 13(8) can be invoked when it is found that assessee is carrying out any activity in the nature of trade commerce or business for a cess, fees or any other consideration. What is to be thus seen is that whether the assessee was carrying out an activity in the nature of business activity. On this aspect, we find that the issue to be adjudicated by us, in that case, will be whether the assessee was actually engaged a business activity or not. As we do so, we must bear in mind that the assessee before us is a section 25 company which is essentially a non profit organisation and which is specifically prohibited from declaring any dividends to its members. These companies, now covered by section 8 of the Companies Act, 2013, which is in pari materia with section 25 in the old Act, can only use its profit and income for promoting its objects. Section 8, for ready reference, is reproduced below:-

“Formation of companies with charitable objects, etc.

8. (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

- (a) *has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;*
- (b) *intends to apply its profits, if any, or other income in promoting its objects; and*
- (c) *intends to prohibit the payment of any dividend to its members,*
the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited" , and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.
- (2) *The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.*
- (3) *A firm may be a member of the company registered under this section.*
- (4) (i) *A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.*
- (ii) *A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.*
- (5) *Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.*
- (6) *The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly:*
- Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard:*
- Provided further that a copy of every such order shall be given to the Registrar.*
- (7) *Where a licence is revoked under sub-section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that*

the company be wound up under this Act or amalgamated with another company registered under this section:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

(8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to [Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016].

(10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

(11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under Section 447."

13. Clearly, therefore, it is a normal presumption that profit earning cannot be a dominant or core objective of a non profit company registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013. Of course, when there is material to dislodge this presumption, even such companies, in appropriate case, be treated differently.

14. The question now to be considered is whether the assessee can be said to be in a business activity which is a *sine qua non* for denial of its being treated as carrying on charitable purposes in the nature of "advancement of any other object of public utility". Here is a Section 25 company which cannot declare dividends, which is promoted by the Centre for Environment Education, a centre of excellence under the Ministry of Environment & Forests, Government of India. It does not pay any sitting fees to directors or salary to the Managing Director. It is promoted by eminent and well placed citizens who are doing this public spirited work, without any monetary gains or profit motive, for larger public good. It is true that the literature on environmental awareness and the greeting cards are sold by the assessee and are not distributed free of cost but the predominant purpose for this activity is not earning of profits but spreading the environmental awareness. The assessee is dealing in these environmental awareness products only and it does not deal in any other kind of products. We have perused the

catalogue of products sold by the assessee and we find that the underlying thrust on this aspect is unambiguous and in the nature of spreading awareness about environment. As held by Hon'ble jurisdictional High Court, in the case of Ahmedabad Urban Development Authority Vs. ACIT [(2017) 396 ITR 323 (Guj)] what is important is the element of "profiteering" or the activity being in the nature of trade, commerce or business. The collection of fees by itself cannot render a non-profit activity into a business, trade or commerce; it has to be in the nature of commercial, trade or business activity as well. Given the above factual position, in our considered view, the assessee cannot be said to be engaged in business, trade or commerce. The activity of selling these products, for a consideration, spreading awareness about the environment cannot be said to be in the nature of commercial activities, as, given the facts of this case, the sale was not with a view to make profits but to spread awareness about the environment and the need of its preservation- which was clearly a dominant purpose in the present case. By no stretch of logic, in our considered view, the sale of products was commercial in character.

15. In view of the above discussions, in our considered view the assessee was engaged in pursuing its object for preservation of environment, and, in any case, the assessee was not engaged, on the facts of this peculiar case, any commercial activity.

16. To conclude, neither Section 13(8) could have been invoked on the facts of the present case to deny the exemption under section 11 and 12, nor, even on merits, the benefit of exemption could have been declined. For all these reasons, we uphold the plea of the assessee. The impugned addition of Rs 49,87,439, by declining the exemption under section 11, is thus deleted.

17. In the result, the appeal is allowed. Pronounced in the open court today on the 25th September, 2018

Sd/-

Mahavir Prasad
(Judicial Member)

Dated: 25th September, 2018

*Bt**

Copies to:

- (1) The appellant
- (2) The respondent
- (3) CIT
- (4) CIT(A)
- (5) DR
- (6) Guard File

Sd/-

Pramod Kumar
(Accountant Member)

True Copy

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad