

आयकर अपीलिय अधिकरण,सुरत न्यायपीठ, सुरत
INCOM TAX APPELLATE TRIBUNAL-SURAT-BENCH-SURAT
श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
BEFORE C .M. GARG, JM & O. P. MEENA, AM

आ.अ.सं./I.T.A No.1691/Ahd/2014: निर्धारण वर्ष/Assessment Year: 2010-11

The Institute of Civil Engineering Architects of India, Gordhan Hall , Suryapur Society Rander Road, Surat PAN:AAAAT 5360K	V.	Assistant Commissioner of Income Tax, Circle-3 Surat
अपीलार्थी Appellant		प्रत्यर्थी/Respondent
निर्धारिती की ओर से Assessee by		Shri Viral Marfatia, CA
राजस्व की ओर से Revenue by		Shri R.P. Rastogi, Sr.DR
सुनवाई की तारीख Date of hearing		01.08.2018
उद्घोषणा की तारीख Date of pronouncement		18.09.2018

आदेश /ORDER

PER O. P. MEENA, AM

1. This appeal at the instance of the Assessee is directed against an order dated 06.01.2014 passed by learned Commissioner of Income tax (Appeals)-IV, Surat(in short "the CIT (A)") for the Assessment Year 2010-11.

Condonation of delay in filing of appeal before Tribunal.

2. At the outset, the learned Counsel submitted that there was a delay in filing of the appeal. Shri Viral P Marfatia, the Power of Attorney holder of the assessee in affidavit submitted that dtd. 19.05.2014 deposed that the order of CIT (A) IV dtd. 06.01.2014 was received on 10.03.2014. According to which the appeal was to be filed by 10.05.2014. The Power of Attorney holder has prepared the appeal papers and dispatched the same on 09.05.2014 by RPAD to Assistant Registrar, Parshvanath

Chambers ITAT Ahmedabad 380014(copy of acknowledgement filed) by mistake hence, same returned back with remarks left. Hence, delay was occurred.

3. The Id. D.R. did not oppose the small delay.

4. We have heard the rival submissions and perused the relevant material on record. We find that there is genuine reasons for small delay in filing of appeal, which has been satisfactorily explained, hence, same is condoned and the appeal is allowed to be admitted and being decided on merit.

5. Ground no. 1 to 3 states that the assessment order made by the assessing officer (the AO) is bad-in-law and CIT (A) erred in confirming the disallowance of exemption of Rs. 8,76,910 claimed under section 11(1)(a) and under section 11(2) of the Act on the ground of comparison of income and expenditure ratio.

6. The AO noted that total expenses were of Rs. 4,64,032 , whereas expenses on scholarship and charity were at Rs. 35,000 and Rs. 15,355 respectively, which amounted to 11% of total expenses. It was further observed that expenses incurred towards the object of trust amounted to only 3.75% of the total receipts shown by the assessee. The main source of assessee`s income was from Sthapatya Exhibition for which the assessee has received net income of Rs. 11,16,462. In view of these facts, the AO rejected the contention of the assessee that activity of Sthapatya Exhibition was not for advancement of general public utility and provide education awareness and concluded that the activity was aimed to earn money and that activity was itself was nothing more than a trade fair , a business activity organized to earn

money. Hence, covered by provisions of section 2(15) of the Act. Hence, the AO held that the activity were not for “charitable purpose” and the assessee was not eligible for exemption under section 11, 11(1) (a) and 11(2) of the Act, hence, income was assessed at Rs. 8,76,910.

7. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). The CIT (A) observed that the expenses incurred for “charitable purpose” were at 11% of expenses and 3.75% of receipts. Sthapatya Exhibition is a trade fair organized by the assessee from it has received net gain of Rs. 11,16,462. This activity has been carried on for fees, which has been realized from person who would have put stalls in the exhibition. The assessee activity is therefore, outside the purview of “charitable purpose” as defined under section 2(15) of the Act.

8. The learned counsel for the assessee referred the para 3.2 of Objects of Trust (PB-51). According to which, the trust is engaged to promote esthetic, scientific and practical efficiency of architects and civil engineers. To fulfill the above objects of advancement of general public utility and provide education in regard to building material new construction technique and innovative, the trust is organizing Sthapatya Exhibition without charging any fees/cess to general public for entry as well as parking, organizes various seminars of faculties on various topics for the benefit of members as well as general public. Hence, the activity is carried out on non-commercial principle. Sthapatya Exhibition is being carried out from 1997. The assessee has generated Rs. 11,63,408 from above activity. The learned counsel for

the assessee contended that proviso to section 2(15) will not apply in respect of charitable activity carried out by the assessee trust, where the activity is being carried on to promote architects and civil engineering education. The provision of section 2(15) are applicable where activity are being carried on for advancement of any other object of general public utility. It was submitted that where purpose of trust is to impart education in field of civil engineering the activity would constitute “charitable purpose” even if it accidentally involves carrying on commercial activity. The learned counsel for the assessee submitted that issue is covered by the decision in the case of Sabarmati Ashram Gaushala Trust v. ADIT [2013] 35 taxmann.com 552 (Ahmedabad)/ [2013] 144 ITD 280 (Ahmedabad) wherein it was held that Where aims and objects of assessee-trust were charitable and profit earned from said activities was incidental in nature, assessee was not hit by proviso to section 2(15). He submitted that the issue is covered in favour of the assessee with the decisions of the Hon'ble Delhi High Court in the case of Institute of Chartered Accountants of India v. Dy. IT [2011] 13 taxmann.com 175/202 Taxman 1 and the case of ICAI Accounting Research Foundation v. DIT (Exemption) [2009] 183 Taxman 462 (Delhi), and that of ITAT, Chandigarh in the case of Himachal Pradesh Environment Protection and Pollution Control Board v. CIT [2010] 42 SOT 343 and decision of the ITAT, Nagpur in the case of Sevagram Ashram Pratishtan v. CIT [2010] 129 TTJ 506.

9. Per contra, Learned Departmental Representative submitted that only Rs. 35,000 is used for “charitable purpose” and rest are administrative expenses and

main source of the assessee is fair, hence, the activity is commercial in nature and which is hit by proviso to section 2(15) of the Act. Hence, the AO and CIT (A) were justified in doing the exemption under section 11(1) (a) of the Act.

10. We have heard the rival submissions and perused the relevant material on record. We have also perused the contents of trust-deed of the assessee-trust filed in the compilation before the Tribunal. We find that the proviso to section 2(15) of the Act was inserted by the Finance Act, 2008 w. e. f 1.4.2009, and therefore is applicable to the relevant to assessment year 2009-2010nd afterwards. The only issue before us for adjudication is that whether the proviso to section 2(15) is applicable to the facts of the case of the assessee for the relevant assessment year under consideration. The proviso provides 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. The second proviso to section 2(15) provides that aforesaid first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is Rs.10 lakhs (Rs.25 lakhs from 1.4.2012) or less in the previous year. We find that whether a charitable trust is carrying an activity in the nature of trade, commerce or business is question of fact, which will be decided based on the nature, scope, extent and frequency of the activity, and after

considering overall facts and circumstances of the case in its entirety. The proviso is applicable only in relation to last limb of the definition of charitable purpose i.e. "advancement of any other object of general public utility" which means the activities, which promote the welfare of the public and not the individual interest of some person or persons or private profit and private gain. We find that the CBDT vide Circular No.11/2008 dated 19.12.2008 has explained the amendment as under: "The newly inserted proviso to section 2(15) will apply only to entities whose purpose is 'advancement of any other object of general public utility' i.e. the fourth limb of the definition of 'charitable purpose' contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact, which will be decided based on the nature, scope, extent and frequency of the activity."

11. We find that reading of the proviso to section 2(15) along with Circular of the CBDT reproduced above make it clear that only the institutions carrying on commercial activities are intended to be covered by the proviso, not the genuine charitable institutions. The activity will be deemed to be in the nature of trade, commerce or business, only if same is carried on with the intention to earn profit. The various Courts in series of decisions have held that it is an activity carried on in a systematic manner with a view to earn profit, which will be termed as "business". Accordingly, in order to hold that the activity is in the nature of trade, commerce or

business, there should be profit motive. If during the course of carrying out any activity on non-commercial lines, some profit is received by the Trust, which is incidental to the activities of the trust, the same shall not be construed to be activity in the nature of trade, commerce or business of the assessee. The Hon'ble Gujarat High Court in the case of Director of Exemption v. Sabarmati Ashram Gaushala Trust [2014] 44 taxmann.com 141 (Gujarat) (2014) 362 ITR 539 ((Gujarat) has observed as "*Many activities of genuine charitable purposes which are not in the nature of trade, commerce or business may still generate marketable products. After setting off of the cost, for production of such marketable products from the sale consideration, the activity may leave a surplus. The law does not expect the trust to dispose of its produce at any consideration less than the market value. If there is any surplus generated at the end of the year, that by itself would not be the sole consideration for judging whether any activity is trade, commerce or business particularly if generating 'surplus' is wholly incidental to the principal activities of the trust; which is otherwise for general public utility, and therefore, of charitable nature. The Tribunal took into account the objects of the trust noted that the objects were admittedly charitable in nature. The surplus generated was wholly secondary. It was, therefore, that the Tribunal held that the proviso to section 2(15) would not apply. [Paras 9 & 10]*"

12. Thus, the Hon'ble High Court has laid down that where object of trust is of charitable in nature, then any surplus arising thereon would be secondary and not hit by proviso to section 2(15) of the Act. We find that for the applicability of proviso

to section 2(15), the activities of the trust should be carried out on commercial lines with intention to make profit. Where the trust is carrying out its activities on non-commercial lines with no motive to earn profits, for fulfillment of its aims and objectives, which are charitable in nature and in the process earn some profits, the same would not be hit by proviso to section 2(15) of the Act. We find that the present trust before us is registered with Assistant Charity Commissioner from 11.12.1991 and also registered under section 12A (a) / 12AA(1)(b)(i) vide order dated 02.08.2006 of CIT-I, Surat. We further find that the object of trust to promote esthetic, scientific and practical efficiency of architects and civil engineers. To fulfill the above objects of advancement of general public utility and provide education in regard to building material new construction technique and innovative, the trust is organizing Sthapatya Exhibition without charging any fees/cess to general public for entry as well as parking, organizes various seminars of faculties on various topics for the benefit of members as well as general public. Hence, the activity is carried out on non-commercial principle. The Sthapatya Exhibition is being carried out from 1997 and the exemption being allowed to assessee therefore; some surplus generated out of Sthapatya Exhibition does not change its basic aims and objects of the assessee-trust, which is admittedly charitable in nature. Therefore, we hold that some profit is received by the Trust, which is incidental to the activities of the trust; the same shall not be construed to be activity in the nature of trade, commerce or business of the assessee. Similarly, the Hon`ble Delhi High Court in the case of *Institute of*

Chartered Accountants of India v. DGIT Exemption [2012] 347 ITR 99/[2011] 202 Taxman 1/13 taxmann.com 175 (Delhi) has considered the controversy, wherein the department has taken a view that research foundation was carrying on research activity by taking fees and charges, and therefore it is not eligible for exemption as charitable institution. The Hon'ble High Court has considered the concept of business and charitable purpose and the proviso to section 2(15) and held that the research foundation was not carrying on any business activity and it was eligible as charitable institution. The Hon'ble Delhi High Court's observations are as under: - ***"The amended definition of 'charitable purpose' would not alter this position. No doubt, proviso to this definition clarifies that advancement of any other object of general public utility will not be treated as charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering service in relation to trade, commerce or business. However, what is not appreciated by the respondent No. 1 is that the merely on undertaking those three research projects at the instance of the Government/local bodies the essential character of the Petitioner Foundation cannot be converted into the one which carries on, cannot be treated as the activity which carries on trade, commerce or business or activity of rendering any service in relation to trade, commerce or business."***

13. In the light of above facts and circumstances of the case and judicial decision We find that that the activities of the trust of Sthapatya exhibition are not being are carried out with a motive to earn profit but profit or surplus earned was merely

incidental while conducting the charitable objects of the trust. Therefore, we hold that the proviso to section 2(15) is not applicable to the facts and circumstances of the case, and the assessee was entitled to exemption provided under Section 11 of the Act for the relevant assessment year, and we direct accordingly. Accordingly, Ground No. 1 to 3 are allowed.

14. In the result, the appeal of the assessee stands allowed.

15. The order pronounced in the open Court on 18.09.2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

सुरत Dated: 18/09/2018

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1.अपीलार्थी/ The Appellant; 2. प्रत्यर्थी/ The Respondent; 3. आयकरआयुक्त (अपील) The CIT(A)4.आयकरआयुक्त / Pr. CIT 5.विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/D.R. (ITAT) 6. गार्डफाईल / Guard file ITAT.

By order

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Assistant Registrar, Surat