

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.2377/Ahd/2016  
Assessment Year: 2013-14**

Asstt. Commissioner of Income Tax  
(Exemptions),  
Circle-1, Ahmedabad.  
  
(Appellant)

vs. Naroda Enviro Projects Ltd.,  
Plot No.512-515, Phase-1,  
GIDFC Estate, Naroda,  
Ahmedabad – 382 330.  
[PAN – AAFN 9138 D]  
(Respondent)

Appellant by : Smt. Aparna M. Agarwal, CIT (D.R.)  
Respondent by : None

Date of hearing : 13.11.2018  
Date of pronouncement : 29.11.2018

**ORDER**

**PER MAHAVIR PRASAD, JUDICIAL MEMBER:**

This appeal has been preferred by the Revenue against order of Id. CIT(A) dated 22.07.2016 for the Assessment Year 2013-14.

2 The Revenue has taken following grounds of appeal :-

- “1. Whether on the facts and in the circumstances of the case the learned CIT(A) is justified in allowing the assessee’s appeal negating the findings of the Assessing Officer denying the benefits of section 11 & 12 of the I.T. Act and deleting the additions made of Rs.6,41,35,336/-..
2. Whether on the facts and in the circumstances of the case the learned CIT(A) is justified in treating the assessee’s activity as charitable activity as per Section 2(15) of the Act.
3. On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeal) ought to have upheld the order of the Assessing officer.
4. It is, therefore, prayed that the order of the Ld. Commissioner of Income Tax (Appal) may be set aside and that of the Assessing officer be restored.”

3. Facts of the case are that the assessee is engaged in the activity of preservation of environment by abatement and controlling pollution of environment i.e. land, water and air and for this objective, the assessee is providing pollution control treatment for disposal of liquid and solid industrial hazardous waste. The assessee was originally registered as a commercial company under the Companies Act, 1956 on 19/10/1995. Thereafter, the assessee company was subsequently converted into a company limited by shares, incorporated u/s. 25 of the Companies Act, 1956; i.e. a company which does not exist for earning the profit as such but exist for promotion of welfare and wellbeing of the society and people at large. The assessee company presently has been accorded registrations u/s.12AA of the Income Tax Act by the Director of Income Tax (Exemption), Ahmedabad and also had been approved and recognized as an institution u/s.80G(5) of the Income Tax Act, 1961 and the jurisdiction of the assessee company rests with the Deputy Director of Income-tax (Exemption), Ahmedabad. This registration u/s. 12AA and approval u/s.80(G)(5) of the I.T. Act are in force even as on this date.

3.1 In point of fact, the company was incorporated with a sole object to comply with the direction of the Hon'ble High Court of Gujarat in public interest litigation for the industries of Naroda GIDC and promoted by Naroda Industries Association for the establishment and running of Common Effluent Treatment Plant at Naroda (CETP) and treatment, storage and disposal facility at Odhav, Ahmedabad (TDSF) and work for pollution abatement and environmental protection. Thus, the project was set up under the direction, guidance and support of Hon'ble Gujarat High Court and various local and State level agencies viz. Collection, GIDC, AMC, GPCB, etc.

3.2 For the assessment year under consideration the assessee has filed its return of income on 30/09/2013 declaring total income at Rs. Nil. The assessee has also filed Auditors Report u/s. 12A(b) of the Income Tax Act in Form No.10B. The said return was processed u/s. 143(1) accepting the income as returned.

3.3 The assessee's case came to be selected for scrutiny and in response to notice issued u/s. 143(2) and 142(1), the assessee caused appearance before the Assessing Officer and furnished all the details called for by him. The assessee filed elaborate and detailed written submissions dated 17/12/2015 explaining and justifying its claim of exemption u/s. 11 and 12 of the I.T. Act. The assessee submitted before the

Assessing Officer that the assessee is a charitable institution, it is a company registered u/s. 25 of the Companies Act, 1956 which does not exist for profit nor has it any profit motive, that it is registered u/s.12AA of the I.T. Act and registered was accorded by the Director of Income Tax (Exemption), Ahmedabad who has also accorded approval u/s.80(G)(5) of the I.T. Act, that the activities of the appellant in preservation of environment by abatement and controlling of pollution of environment i.e. land, air and water, that income of the appellant is also exempt on principle of mutuality and that the appellant's claim for exemption u/s.11 & 12 was duly examined and verified by his predecessor Assessing Officer in the scrutiny assessment made in A.Y. 2006-2007 & 2008-09 who had allowed the assessee the benefits of Section 11 and 12. The appellant has also brought to the notice of the Assessing Officer that even as per the amended provisions of Section 2(15) of the I.T. Act, the appellant continued to be a charitable institution and its activities are charitable in nature.

3.4 It was also explained before the Assessing Officer that in A.Y. 2009-10 in the assessee's own case, the predecessor Assessing Officer has denied the assessee the benefit of Section 11 and 12 in the scrutiny assessment made u/s. 143(3) but on appeal filed against the assessment order, the CIT (A) had held that the assessee is engaged in charitable activities as defined in section 2(15) of the I.T. Act and that it is not engaged in carrying any business activity as such and that it is eligible for exemption u/s.11 & 12 of the I.T. Act. It was also submitted before the Assessing Officer that the appeal filed by the department against the order of CIT(A) for A.Y. 2009-10 was dismissed by the ITAT vide appellate order dated 29/01/2015 in ITA No. 546/Ahd/2013 wherein the ITAT has affirmed the finding of the CIT (A) to the effect that the assessee is a charitable institution u/s.2(15) of the I.T. Act and the proviso to section 2(15) is not applicable to it and that the assessee is eligible for the benefits of section 11 & 12. It was also explained before the Assessing Officer that on the basis of the assessment order u/s.143(3) for A.Y. 2009-10, the Director of Income Tax (Exemption), Ahmedabad had issued notice u/s.12AA(3) of the I.T. Act for cancellation of the registration which was granted to the assessee. But, after due verification of the facts and the activities carried on by the assessee, the Director of Income Tax was duly satisfied that the assessee is genuinely engaged in charitable activities and accordingly he dropped the proceedings u/s. 12AA (3) vide his order dated 20/3/2013.

The Assessing Officer without appreciating the facts in proper perspective and in utter disregard to the fact that the activities carried on by the assessee in preservation of the environment and abatement and control of pollution of land, air and water are of charitable nature as per the definition of Section 2(15) of the I.T. Act, finalized the assessment for A.Y. 2013-14 by his order u/s. 143(3) dated 18.03.2016 determining total income of Rs.6,41,35,336/- and charged tax thereon.

4. Thereafter, assessee preferred first statutory appeal before the Id. CIT(A) who partly allowed the appeal of the assessee. Now the Department is before us against the order passed by the Id. CIT(A).

5. At the outset, Id. Authorised Representative cited an order of ITAT in assessee's own case in ITA No.546/Ahd/2013 for the Assessment Year 2009-10 wherein in similar circumstances the ITAT has given relief to the assessee and relevant paragraphs of ITAT's order is reproduced hereunder :-

*"4. After going through rival submissions and material on record, we find that main object of assessee company was converted as per Section 25 of Companies Act clarifies that assessee company is in area of environmental protection, abatement of pollution of water, air, solid, etc. generated by industrial units in and around Vatva and Odhav area of Ahmedabad. Accordingly, Assessing Officer has not disputed the fact that assessee is doing basic activity of treatment of various pollutants generated by industrial units. It is also not disputed by Assessing Officer that surplus generated is not distributed to its members/shareholders, etc. The assessee cannot loose exemption merely on the ground that it has made surplus as long as assessee is not generating surplus for private profit of the settler or any other person. In this situation, Assessing Officer was not justified in holding that assessee was generating surplus or profit making was the predominant object of assessee. Assessee company was incorporated with a sole object to comply with directions of Hon'ble High Court of Gujarat in a PIL for industries of Naroda GIDC for establishment in running of Common Effluent Treatment Plant and its storage and disposal facility at Odhav, Ahmedabad. The project was setup under the directions and guidelines of Hon'ble High Court of Gujarat and various local and state level agencies viz. Collector, GIDC, AMC, GPCB, etc. As per directions of Hon'ble High Court of Gujarat, it was sine-qua-non for industrial units to become member of assessee company for meeting the pollution control parameters laid down by GPCB. The amount collected from the members varied depending upon the quantum of effluent, nature of effluent to be treated as well as other factors pertaining to pollutant of different kind coming from the industrial units. Thus, assessee is engaged in the activity of preservation of environment by abatement and controlling pollution of environment i.e. land, water and air. For this objective, assessee is providing pollution control treatment for disposal of liquid and solid industrial waste. It is undisputed that assessee was incorporated u/s. 25 of the Companies Act. Assessee was duly*

registered u/s. 12AA and also u/s. 80G(5) of the Income-tax Act. The said certificates were issued after due verification by concern authorities. Assessing Officer has ignored modified objects of assessee's MOU after its conversion as Company u/s. 25 of the Companies Act. The plain reading of objects of company reveals that main object is protection of environment by abatement of pollution of various kinds like water, air, soil, etc. In this background, activities of assessee company squarely falls u/s. 2(15) of the Income-tax Act. The proviso to Section 2(15) is applicable to objects of general public utility. The same was also clarified vide CBDT Circular No. 11 dated 19.12.2008. Since assessee company is directly engaged in preservation of environment as per Section 2(15), the proviso as pointed by Assessing Officer is not applicable in the instant case. Accordingly, Assessing Officer was not justified to conclude that assessee is not doing any charitable activity. With regards to Assessing Officer's contention that assessee is carrying out business activity and is in the nature of profit making, we find that benefit of exemption cannot be denied on the ground that it had made surplus/profits as long as it is not meant for private profit of seller. Profit making is not predominant object of activity. Under the facts and circumstances, CIT(A) was justified in holding that assessee is doing charitable activity as per Section 2(15) of the Income-tax Act, benefit of Section 11 & 12 of the Income-tax Act is available to it. Accordingly, CIT(A) was justified in directing Assessing Officer to treat the activity of assessee company as charitable and further rightly directed to delete the addition of Rs.2,53,21,438/-. This reasoned finding of CIT(A) needs no interference from our side. We uphold the same.

5. *In the result, appeal filed by Revenue is dismissed."*

6. Since ITAT has given relief to the assessee and has dismissed the appeal of the Revenue, therefore, respectfully following the order of the ITAT in assessee's own case for Assessment Year 2009-10, we dismiss the appeal of the Revenue.

7. In the result, appeal filed by the Revenue is dismissed. Order pronounced in the open Court on this 29<sup>th</sup> day of November, 2018.

Sd/-  
**(WASEEM AHMED)**  
Accountant Member

Sd/-  
**(MAHAVIR PRASAD)**  
Judicial Member

**Ahmedabad, the 29<sup>th</sup> day of November, 2018**  
**PBN/\***

Copies to:	(1) The appellant	(2) The respondent
	(3) CIT	(4) CIT(A)
	(5) Departmental Representative	(6) Guard File

By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad