

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.997/Ahd/2017
(Assessment Year : 2013-14)

M/s. Gujarat Environment Service Society, 1st Floor, Kairacan Office building, Near Ganesh Crossing, Anand – 388 001. Vs. ACIT, PC, Vadodara.

[PAN No. AAATG 1361 J]

(Appellant)

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(Respondent)

Appellant by : Shri Sunil Talati, A.R.
Respondent by : Ms. Apoorva Bhardwaj, Sr.D.R.

Date of Hearing 06/12/2018
Date of Pronouncement 30/01/2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is against the order dated 17.01.2017 passed by the Commissioner of Income Tax (Appeals)-4, Vadodara arising out of the order dated 04.01.2016 for the Assessment Year 2013-14 passed by the DCIT (Exemption), Circle-2, Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to “The Act”).

2. The assessee herein has questioned the order passed by the Learned CIT(A)-4 in confirming the rejection and denial of exemption claimed u/s 11(1)(a) of the Act and addition of Rs.44,07,704/- as made by the AO to the total income of the appellant. Further that charging of interest u/s 234A, 234B & 234C of the Act has also been charged by the assessee.

3. The brief facts leading to the case is this that the assessee society has filed its return of income on 20.09.2013 declaring its income at Rs. Nil after claiming exemption u/s 11 of the Act of Rs. 5,74,24,368/-. The assessee society is a contractor and its activities is to undertake clean the environment to the society as a whole and increase the facilities to have better environment as engaged by its member companies/concerns in the name and style of Gujarat Environment Service Society. Under scrutiny a notice u/s 143(2) of the Act, 1961 dated 25.09.2014 was issued to the assessee followed by a fresh notice u/s 143(2) r.w.s. 129 of the Act dated 19.06.2015 due to change of incumbent. Ultimately, the case was finalized by the Assessing Officer and an addition of Rs.44,07,704/- was added to the total income of the assessee upon disallowance of exemption u/s 11(1)(a) of the Act as claimed by the assessee. While doing so, the Learned AO hold that the assessee's activities is no longer charitable in view of the definition of Section 2(15) of the Act and therefore the assessee is not eligible for exemption u/s 11 of the Act. The amount of Rs.44,07,704/- as shown income over expenditure in the income expenditure account has been treated as business income of the assessee. In appeal, the said order was confirmed by the Learned CIT(A) adopting the view taken by the Learned Assessing Officer. Hence, the instant appeal.

4. The Learned Representative of the assessee contended before us that the assessee has been allowed exemption under section 11(1)(a) for the last many years and the AO has not brought out any difference between the activities of the assessee in the years preceding the current assessment year and in the current assessment year. He has relied upon the order passed by the CIT(A) in assessee's own case for the A.Y. 2010-11 and A.Y. 2011-12 whereby and whereunder the concerned AO was directed to grant exemption under section 11(1)(a) to the assessee as claimed by it.

5. Apart from that, it was further contended that the assessee's case is also covered by the order passed by the Co-ordinate Bench dated 15.05.2018 for A.Y. 2012-13 in its

favour. Copy of the said judgment has also been handed over by the assessee to us. The Learned DR made no rival submission to that effect.

6. We have heard the Learned Representative of the respective parties, perused the relevant materials available on record. We also perused the order passed by the Co-ordinate Bench for A.Y. 2012-13 in assessee's own case. Operative portion whereof is as follows:

"5. We have perused the said order; the operative portion thereof reads as follows:

"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 "presentation 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 Ld CIT(A) I do not find any reason to interfere in it. It is upheld. Both the appeals are dismissed."

"5.1 We find that the issue is identical in nature and already covered by the assessee's own case for the A.Y. 2010-11 and A.Y. 2011-12 by the decision of the Co-ordinate Bench of this learned Tribunal and, therefore, considering this particular aspect of the matter, we find no reason to interfere with the order passed by the learned CIT(A) and we thus dismiss the appeal preferred by the revenue."

Admittedly, this is a covered matter in favour of the assessee. Relying on the same we hereby allow the appeal preferred by the assessee by deleting the addition of Rs.44,07,704/- holding these assessee's activities for preservation of environment and also its objects are of chargeable in nature.

7. The ground relating to interest u/s 234A/B/C of the Act is consequential one. Since the order of addition has been deleted, the ground of charging of interest becomes infructuous.

8. In the result, assessee's appeal is allowed.

This Order pronounced in Open Court on

30/01/2019

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 30/01/2019
Priti Yadav, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-4, Vadodara.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad