

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

[Coram: Pramod Kumar AM]

ITA No.470/Ahd/2015
Assessment Year: 2010-11

Video Photographers Association of Gujarat

*Punyabhai Shopping Centre
Darpan Cross Road, Naranpura
Ahmedabad 380 013 [PAN: AAAAV3774D]*

.....**Applicant**

Vs.

**Deputy Commissioner of Income-tax,
Exemptions, Ahmedabad**

.....**Respondent**

Appearances by

Sunil Talati for the appellant
T Sankar for the respondent

Date of concluding the hearing: 04.10.2018

Date of pronouncing the order: 02.01.2019

O R D E R

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 3rd September 2014 passed by the CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2010-11.

2. Grievance of the assessee, in substance, is that the learned CIT(A) erred in holding that the proviso to Section 2(15) will come into play on the facts of this case, and, consequently, the assessee appellant is to be declined the status of being engaged in a charitable activity.

3. The assessee appellant is a charitable trust registered under section 12 A of the Income Tax Act. The main objects for which the assessee was formed include, inter alia, "to improve the art of photography and videography, and, for that purpose, to procure and in turn give guidance, directions and information to the Members of the Association". During the course of scrutiny assessment proceedings, the Assessing Officer noticed that in the relevant previous year, the assessee has organized an exhibition, charged fees for stalls in the exhibition and these stalls were not only given to the Members but also to the commercial organizations. The Assessing Officer was of the view that this activity of holding exhibition cannot be treated as a charitable activity under section 2(15). It was held that since holding an exhibition is in the nature of

commercial activity and as proviso to Section 2(15) is, accordingly, invoked and the assessee is to be denied the benefit of Section 11. Aggrieved, assessee carried the matter in appeal before the CIT(A). It was pointed out that the assessee had organized various photography workshops by eminent photographers and educationalists Shri Girish Mistry and Jaljit Ajnani, and that these workshops and exhibitions were educational in nature. Learned CIT(A) rejected this plea by relying upon Hon'ble Supreme Court's judgment in the case of Sole Trustee Vs Lok Sikshan Trust (101 ITR 234). Learned CIT(A) held that holding of exhibition cannot be held to be education. The action of the Assessing Officer was upheld and the plea regarding the activity of the trust being an educational activity was also rejected. The assessee is not satisfied and is in further appeal before the Tribunal.

4. I 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.

5. I find that it is immaterial as to whether the activity of holding an exhibition *per se* is an education activity or not, because, as long as the assessee is pursuing the educational activities by holding workshops and classes- as the assessee is clearly on the facts of this case, even when his pursuing the educational objects involve an activity in the nature of commercial activity, the proviso to Section 2 (15) cannot be invoked. Section 2(15), as it stood prior to the insertion of proviso thereto with effect from 1st April 2009, was a relatively simple section which stated that **“charitable purpose includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility”** but the proviso to this sub section, inserted with effect from 1st April 2009, states that **“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”**. In plain words, all that this legislative amendment provided for was that in a situation in which, in the course of advancement of any other object of public utility, the activities of an institution involved “carrying on of any activity in the nature of trade, commerce or business” or of “any activity of rendering any service in relationship to any trade, commerce or business for a cess, fee or any other consideration”, then irrespective of what such an institution does to the income, how that income is applied or how that income is retained, the institution, to that extent, will cease to be carrying on charitable activities. All this is, however, relevant only for the residuary clause of definition, i.e. “any other object of general public utility”. In a case in which an assessee is involved in educational activity, the proviso to Section 2(15) does not come into play. As to what could be termed as an

educational activity, we find guidance from our jurisdictional High Court in the case of Gujarat State Co-operative Union v. CIT (1992) 195 ITR 279 (GUJ) wherein it is, inter alia, held that **“the changing time and the ever widening horizons of knowledge may bring in changes in the methodology of teaching and a shift for the better in the institutional setup. Advancement of knowledge bring within its fold suitable methods of its dissemination and though the primary method of sitting in a class-room may remain ideal for most of the initial education, it may become necessary to have a different outlook for further education. It is not necessary to nail down the concept of education to a particular formula or to flow it only through a defined channel. Its progress lies in acceptance of new ideas and development of appropriate means to reach them to the recipients.”** Similarly, in the case of **Director of Income Tax (Exemptions) v. Ahmedabad Management Association 366 ITR 85(Guj)**, Hon'ble jurisdictional High Court have referred to the Supreme Court decision in the case of Sole Trustee Lok Shikshan Trust (supra) and have held that 'Education' under section 2(15) does not have a restricted meaning whereby only normal schooling i.e. 'scholastic' education is covered. It has been held that section 2(15) covers education which is provided in non-scholastic manner also. On a similar note, Hon'ble Delhi High Court in the case of **Delhi Music Society Vs DGIT 357 ITR 265(Delhi)** has held that teaching and promoting all forms of music and dance, western, Indian, and any other according to the objects of the Trust is also imparting of Education. In the light of these discussions, and bearing in mind entirety of the facts of this case, I am of the considered view that teaching the art of photography, which is main and predominant object of the assessee, is also an educational activity. Therefore, the proviso to Section 2(15) is not relevant in the present context and even if the assessee is found to be holding exhibition, which may be of commercial nature but subservient to the main object which are educational; cannot be reason enough to decline the benefit of Section 11.

6. In view of the above discussions, and bearing in mind peculiar facts of this case, I am of the view that the authorities below were in error in invoking proviso to Section 2(15) on the facts of this case. I, therefore, see no reasons to deal with all other peripheral legal issues raised by the assessee and uphold the plea of the assessee for the short reasons set out above.

7. In the result, the appeal is allowed. Pronounced in the open court today on the 2nd day of January, 2019.

Sd/-
Pramod Kumar
(Accountant Member)

Dated: Ahmedabad, the 2nd day of January, 2019.

Copies to:

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

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*