

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2541/Ahd/2015
Assessment Year 2011-12**

| | | |
|---|----|--|
| The DCIT (Exemptions), Circle-1, Ahmedabad (Appellant) | Vs | Gujarat National Law University, Attika Avenue, Knowledge Coridor, Koba, Ahmedabad, PAN: AAATG6633R (Respondent) |
|---|----|--|

**Revenue by: Shri Lalit P. Jain, Sr. D.R.
Assessee by: None**

Date of hearing : 21-01-2019
Date of pronouncement : 31-01-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2011-12, arises from order of the CIT(A), Gandhinagar, Ahmedabad dated 20-04-2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The brief fact of the case is that assessee has filed return of income on 30th Sep, 2011 declaring total income of Rs. nil. Subsequently, the case was

selected under scrutiny by issuing of notice u/s. 143(2) of the act on 10th Sep 2012. The assessee has been granted registration u/s. 12AA w.e.f. 1st April, 2004. The further facts of the case are discussed under the two grounds of appeal as under :-

Ground no. 1 (interest income of Rs. 1,85,56,034/-)

3. During the course of assessment, the assessing officer noticed that assessee has claimed exemption u/s. 11 of the act. The assessee had received grant of development of Koba Campus and unutilized amount was kept with GSFS in the form of fixed deposit on which the assessee has received interest. The assessee received interest income from such investment to the amount of Rs. 1,59,15,882/- and it had also received interest from SB account and other fixed deposit to the amount of Rs. 2,28,577/- and Rs. 24,11,575/- respectively. The assessee had not shown the total interest income of Rs. 1,85,56,034/- as income but the same was shown under the University General Account. The assessing officer has treated the whole amount of interest income of Rs. 1,85,56,034/- as income of the assessee and added to the total income of the assessee.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee. The relevant part of the decision of Ld. CIT(A) is reproduced as under:-

“4.1 The Appellant's main contention as per these grounds is that the interest income of Rs.1,85,56,034/- should not be taxed as income of the Assessee as the same was accrued on Government grant received for specific purpose i.e. for campus project. The Appellant contended that the interest received on the said grant is not income of the Appellant at all by overriding title. Appellant has accordingly claimed exemption under Section 11(l)(d) of the Act for the said interest income in its return of income.

On the other hand, during the course of Assessment Proceedings, the AO contended that the interest income of Rs.1,85,56,034/- on this specific grant is income derived from the property held under the trust and not a corpus donation and accordingly, he has added such interest income in the income and expenditure account of the Appellant and ultimately assessed excess of income over expenditure of Rs.85,96,648/-in the hands of the Appellant.

During the course of Appellate Proceedings, appellant has reiterated its arguments and stated that the interest under consideration is spent only on the campus project for which the grant is received and therefore, the said interest income cannot be considered as income of the Appellant, AR alternatively submitted that the Appellant University can be considered as substantially financed by the Government within the meaning of Section 10(23)(C)(iiiab) r.w. rule 2BBB as issued by CBDT as applicable w.e.f 1/04/2015.

On careful consideration of the arguments of the Appellant and observations of the AO, it is observed that that Appellant has received Government grant for its campus project which is shown as corpus donation by the Appellant and accepted by the AO in the assessment proceedings. Therefore, the only dispute is with respect to taxability of interest income on such grant amounting to Rs.1,85,56,034/-. When it is not disputed that the amount of grant is for specific purpose and by overriding title the same cannot be considered income of the Appellant, the interest on the said grant which is required to be spent for the specific purpose for which the said grant is received, the said interest also cannot be considered as the income of the Appellant. It is pertinent to note that the similar issue had come up for consideration before the Hon'ble I.T.A.T., Ahmedabad, in the case of Gujarat State Police Housing Corp. Ltd. Vs. ACIT, GNR Circle, Gandhinagar, ITA No.2549/Ahd/2013 wherein Hon'ble ITAT, respectfully following the decisions of the Hon'ble Gujarat High Court delivered in the case of Gujarat Municipal Finance Board v. Deputy Commissioner of Income-tax [1996] 221ITR 317 (GUI) and CIT V/s Gujarat State Disaster Management Authority (Tax Appeal •No, 80 of 2010) [Gujarat High Court], dated 18th July, 2011 [against decision of Hon'ble I.T.A.T. Ahmedabad ITA No. 949/Ahd/2009 for A.Y. 2006-07] has, inter alia, held that interest received on grant received for specific purpose should not be taxed in the hands of the Appellant. The similar view has been taken by Jurisdictional High Court in the following cases:

- (i) CIT V/S GUJARAT SAFAI KAMDAR VIKAS NIGAM [Gujarat High Court] Judgment dated 2nd May 2011-Tax Appeal No. 1934 of 2009;*
- (ii) CIT V/s GUJARAT COUNCIL OF SCIENCE CITY TAX APPEAL No. 1050 of 2009 - [Gujarat High Court's Judgment 13 December, 2010].*
- (iii) CIT V/s GUJARAT SAFAI KAMDAR VIKAS NIGAM (SC). The SLP filed by the Department against the order of Hon'ble Gujarat High Court dated 2nd May 2011-Tax Appeal No. 1934 of 2009 has been rejected by the Hon'ble Supreme Court through its order dated 2nd January, 2012.*

The ratio decidendi of the above cases can be applied in the case of the Appellant as grant under consideration is received with overriding title and for specific purpose to construct the campus of the Appellant and the interest on the said grant is also spent or to be spent for the said specific purpose only. In view of the said factual and legal position it is held that the interest on specific grants exempt under Section 11(1)(d) of the Act and, therefore, the addition made by Assessing Officer for interest income of Rs. 1,85,56,034/- deleted. As addition made by AO are deleted, appellant's alternate argument regarding exemption under Section 10(23)(C) requires no adjudication. These grounds are allowed.”

Ground No. 2 (disallowance of the claim of depreciation of Rs. 29,85,467/-.)

5. During the course of assessment, the assessing officer noticed that assessee has claimed depreciation of Rs. 29,85,467/- in the return of income

for the year under consideration. The assessing officer was of the view that since the entire capital expenditure has been allowed u/s. 11 of the act, therefore, no such depreciation can be separately claimed. Therefore, he has disallowed such depreciation and added to the total income of the assessee.

6. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee. Relevant part of the decision of the CIT(A) is reproduce as under:-

“5.3 I have carefully considered the material available on records, arguments of the AR submitted through written submission. When Appellant has not claimed capital expenditure disallowance of depreciation is uncalled for and accordingly deleted. Moreover, it is observed by Hon'ble Gujarat High Court in the case Commissioner of Income-tax v. Sheth Manilal Ranchhoddas Vishram Bhavan Trust [1992] 198 ITR 598 (Gujarat) that depreciation is allowable even if capital expenditure is claimed. In any case the disallowance made by AO for depreciation is uncalled-for and therefore hereby directed to be deleted. Relevant ground of appeal is allowed.”

7. We have heard the rival contentions and perused the material on record carefully. It is noticed that Gujarat National Law University (GNLU) is an Educational Institute and there was no profit motive from the activities carried out by the GNLU. The assessee has been granted registration u/s. 12AA of the act and it has been claiming exemption u/s. 11 of the I.T. Act, 1961. The assessee receives grant from the government for carrying out its activities for specific purposes. It is observed that interest was also utilized for the purpose of grant given, therefore, we observe that such interest is to be considered a part of the grant to be treated as application of the income for the purpose of section 11(1)(d) of the act. After considering the aforesaid facts and findings of the Id. CIT(A) and the decision of the Honøble Jurisdictional High Court in the case of CIT vs. Gujarat State Disaster Management Authority (Tax Appeal No. 80 of 2010 dated 18th July, 2011,

