आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'B'

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No.171 and 174/Ahd/2018**
निर्धारण वर्ष/**Asstt. Year: 2013-14 and 2014-15**

DCIT (Exemptions)-2 Ahmedabad.	Vs.	Nandesari Industries Association Plot No.134/1 Opp: Shopping Centre Nandesari. PAN : AAATN 6770 E

अपीलार्थी/ (Appellant)		*प्रत्यर्थी/* (Respondent)

Revenue by	:	Shri Mudit Nagpal, Sr.DR
Assessee by	:	Shri Ankit Chokshi, AR

*सुनवाई की तारीख/*Date of Hearing : 08/04/2019
*घोषणा की तारीख /*Date of Pronouncement: 10/04/2019

आदेश/**O R D E R**

PER RAJPAL YADAV, JUDICIAL MEMBER:

Present two appeals are directed at the instance of the Revenue against separate orders of the ld.CIT(A)-7, Ahmedabad dated 2.11.2017 and 16.11.2017 passed for the Asstt.Years 2013-14 and 2014-15.

2. Common grievance of the Revenue in both the assessment years relates to deletion of addition of Rs.3,28,75,751/-made on account of disallowance of capital expenditure, and addition of Rs.77,43,658/- made on account of disallowance of ECP contribution expenses by applying provisions of section 2(15) and

thereby rejecting benefit of sections 11 and 12 of the Income Tax Act for the Asstt.Year 2013-14. Similar grievance is raised in the Asstt.Year 2014-15 where amount involved is Rs.1,52,43,275/- on account of disallowance of capital expenditure and addition of Rs.90,45,483/- made on account of disallowance of ECP contribution expenses.

3. The facts on all vital points are common, therefore for the facility of reference we take the facts from the Asstt.Year 2014-15.

4. Brief facts of the case are that the assessee is a trust registered under section 12AA of the Income Tax Act. The assessee is running a common effluent treatment plant for treatment of polluted water generated by industrial units around Nandesari area, who are members of the appellant trust. The assessee has filed return of income on 7.8.2014 declaring NIL income. The case of the assessee was selected for scrutiny assessment by issuance of notice under section 143(2) of the Act. During the assessment proceedings, the AO noticed that the assessee-trust has claimed application of capital expenditure of Rs.4,71,49,186/- which included depreciation of Rs.3,19,05,911/-. The AO doubted a part of the capital expenditure of Rs.1,52,43,275/- to be disallowable on the ground that predominant object of the assessee-trust is to make profit; there was no spending of the income exclusively for the purpose of charitable activities nor any obligation on the part of the assessee to spent income or profit on charitable purpose only; that the activities carried out by the assessee was in the nature of trade, business or commercial activity, and for such activities or services

rendered by the assessee, the members have paid assessee in the form of fees, cess and charges. Therefore, the claim of the assessee was hit by provisions of section 2(15) of the Act and the assessee was not eligible for the benefit under section 11 of the Act. Similarly, assessee has claimed expenditure of Rs.90,45,483/- towards ECP contribution as revenue expenditure. However, the ld.AO denied the claim of the assessee and treated the same to be capital expenditure, and added to the income of the assessee. However, in the appeal before the ld.First Appellate Authority, both the disallowances were deleted. Now the Revenue is before the Tribunal.

5. Before us, both the parties supported the respective orders of the Revenue authorities. The ld.cousnel for the assessee further relied upon the order of the Tribunal passed in the assessee own case for the Asstt.Year 2010-11, wherein Tribunal has allowed similar claim of the assessee. He placed on record a copy of the order of the Tribunal passed in ITA No.1704/Ahd/2014 dated 28.11.2017 in the case of the assessee.

6. We have considered rival submissions and gone through the record carefully, and also order of the Tribunal passed in the assessee's own case on similar issue in the Asstt.Year 2010-11. It is an undisputed fact that the assessee is trust registered under section 12AA of the Act which formed by members of Nandesari Industries. The assessee trust is engaged in the activity of preservation of environment by treating and controlling pollution of environment i.e. land and water. As a part of its activities, trust is running a common effluent treatment plant for treatment of effluent and wastewater generated and discharged by the

Industrial units situated in and around Nandesari Industrial Units, who are members of the assessee trust. This is in accordance with the requirement of Environment Protect Act and various notifications and guidelines issues by the Central, State Governments, and Pollution Control Boards. Assessee is charging fees from members for meeting operating costs. This factual position has not been disputed by the AO. However, according to the AO provision of section 2(15) of the Act is applicable to the assessee-trust, because the predominant object of the assessee is in the nature of trade, business or commercial activities and to make profit, and therefore, there is no exclusive usage of income or profit for the charitable purpose as defined in section 2(15) of the Act, and therefore, the assessee is not entitled for benefit under section 11 of the Act. The ld.CIT(A) has considered both the issues in detail and observed that the activities of the assessee trust clearly falls within the ambit of the clause of preservation of environment and the assessee is eligible for all the benefits under sections 11 and 12 and all the capital expenditure incurred by the assessee has to be considered as application of income. By holding so, the ld.CIT(A) has also treated ECP contribution of Rs.90,45,483/- as part of application of income, and accordingly disallowance to this extent also deleted.

7. We find that similar issue was also raised by the assessee in the Asstt.Year 2010-11 and the Tribunal has allowed the claim of the assessee vide order dated 28.11.2017. The relevant part of order of the Tribunal reads as under:

> *"3. The material facts are not in dispute. The assessee before us is a trust looking after welfare and well being of industries situated in Nandesari. Te trust is also providing infrastructure facility to*

industries of Nandesari. During the relevant previous year the trust has provided water treatment services and effluent services to all members having factories in and around Nandesari Industrial area. In the course of assessment proceedings, the Assessing Officer noted that the water treatment and effluent services provided to the trustees situated in Nandesari were provided in consideration of "fees or cess" and that the receipts, in respect of the same crossed the limit of Rs.25 lakhs. It was in this backdrop the Assessing Officer required the assessee to show cause as to why he should not be treated as assessee being covered by fist proviso to section 2(15) and accordingly declined the status of charitable institution. Upon considering the submissions made by the Assessing Officer, the Assessing Officer was of the view that the assessee is rendering services in relation to trade, commerce or business in consideration for a fees that the receipts of the assessee from such services exceeds the threshold limit of Rs.35 lakhs and accordingly in the light of proviso to section 2(15) read with section 13(8) notwithstanding the registration granted to the assessee as charitable institution the benefit of section 11 & 12 are to be declined to the assessee. While computing so, the Assessing Officer observed as follows :-

"6. Facts of the case

1. Assessee is doing wok of water treatment and effluent services for the industries situated in the Nandesari area. So assessee is rendering services in relation to trade, commerce or business.

2 Association is charging fees for these services from the various industries. So assessee is providing services for a cess or fees.

3. The total amount of receipts coming from various industries by charging fees, is far beyond the 25 lakhs. So the receipts of the assessee is exceeding 25 lakhs.

4. Assessee is claiming that they are trade association and are working on the principle of mutuality, but this contention is disproved in the discussion in the para 4 as they are dealing with the non-members that is to say outside the group, hence negating the principle of mutuality. This results into the fact that they fall under the first proviso of section 2(15).

Above stated facts are giving sufficient ground to me , to take the opinion that assessee is hit by the first proviso of the subsection 15 of section 2, which was introduced by the Finance Act, 2008 (w.e.f. 1.4.2009), according to which 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 services in relation to any trade, commerce or business, for a cess or fee or

any other consideration beyond Rs.25 lakhs, irrespective of the use or application or retention, of the income from such activity. And this led to the forfeiture of exemption u/s 13(8)."

4. Aggrieved, assessee carried the matter in appeal before the ld. CIT(A) but without any success. Ld. CIT(A) while upholding the order of the Assessing Officer on this point inter alia observed as follows :-
"3.3.1. I have considered the submissions of the learned Authorized Representative and the order of the Assessing Officer. There is no dispute that the assessee is rendering services to its clients (entrepreneurs) which in turn engage in manufacturing or other business activities against payment of fee. The fee collected by the assessee is in lieu of services rendered to the industrialists, which by no stretch of imagination can be termed as charitable activity especially after the insertion of proviso to section 2(15) with effect from 1.4.2009. The assessee relied on the judgment of ICAI Accounting Research Foundation v. DGIT (Exemptions) [2009] 183 Taxman 462 (Delhi) but the facts of that case are different. The ratio laid down by the Hon'ble Delhi High Court in the aforesaid case is not applicable in the facts and circumstances of the present case.

3.3.2. The activities of the assessee are aimed at earning profit as it is carrying on activity in the nature of trade, commerce or business. Further, profit making by the assessee is not mere incidental or byproduct of the activity of the assessee. The main pre-dominant purpose of assessee is making profit, it is real object of the assessee and also there is no spending of the income exclusively for the purpose of charitable activities and profits of the assessee not used for charitable purpose under the terms of the object and there is no obligation on the part of the assessee to spend it on 'charitable purposes' only. The activities can be considered as trade, business or commercial activity because providing water treatment services and effluent services to all members having factories in and around Nandesari Industrial area involves charging of such fees. As per the amended definition of charitable purpose under Section 2(15) of the Act, w.e.f. 01.04,2009, advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activities 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 of fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

3.3.3. As discussed above, since the applicant is engaged in the activity in the nature of trade, commerce and business and is engaged in the trade of real estate business predominantly with a profit motive, its engagement in any of the activities as stated above will not affect its character as such since the proviso provides that the advancement of any other object of general public utility shall not be regarded as charitable purpose if it involves in carrying on any activity in the nature of trade, commerce or business or 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.

Assessing Officer has dealt in details all objections of the appellant and passed the order considering various case laws cited by him. There is no infirmity in the order of the Assessing Officer and the same is upheld."

5. Assessee is aggrieved and is in appeal before me. When this appeal was called out for hearing, my attention was invited to a division bench order of this Tribunal in the case of DDIT vs. Naroda Enviro Projects Ltd. ITA No.546/Ahd/2013, order dated 29.01.2015, wherein on materially identical facts of the case, similar action of the Assessing Officer was held to have been correctly reversed by the CIT(A) on the basis of following reasons:

> *"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, abetment 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 abetment 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 abetment 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 Section2(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."

6. I have also noted that on somewhat similar material facts, in case of a regulatory body i.e. Himachal Pradesh Environment Protection & Pollution Control Board vs. CIT, 9 ITR (Trib) 604, Chandigarh 'B' Bench of the Tribunal held as follows:-

"8. We have noted that the learned Commissioner has proceeded on the assumption that the scope and connotations of "regulatory function" and "charitable purposes under the Income-tax Act" are mutually exclusive. While holding that the assessee was not engaged in an activity for charitable purposes, the learned Commissioner has held that since the assessee was engaged in a regulatory function, it could not be said that the assessee was engaged in an activity which could be said to be for charitable purposes. We must, therefore, consider whether or not merely because an assessee is engaged in a regulatory activity, could it be said that the assessee is not involved in activity for charitable purposes.

9. We are unable to see any conflict in an assessee being a regulatory body and its pursuing an "object of general public utility" which qualifies to be a charitable activity under section 2(15) of the Act. The scope of expression "any other object of general public utility" is indeed very wide, though it would indeed exclude the object of private gain such as an undertaking for commercial profit even as the undertaking may sub serve general public utility. The hon'ble courts have taken a very broad view of the connotations of "objects

of general public utility". In the case of CIT v. Bar Council of Maharashtra [1981] 130 ITR 28 (SC), the hon'ble Supreme Court has held that a State Bar Council, which is clearly a regulatory body under the Advocates Act, is primarily and predominantly for the purposes of "advancement of an object of general public utility within the meaning of section 2(15)". It is not appropriate to proceed on the basis, as the learned Commissioner has chosen to proceed, that regulatory functions are not activities for charitable purposes, for the elementary reason that the expression "charitable purposes", under section 2(15), includes "any other objects of the general public utility" which, as we have noted above, is an expression of wide import. In the scheme of things which operate in the contemporary society, many of these regulatory functions are entrusted to the bodies independent of the Government and the object of the bodies so entrusted with the regulatory functions are, in our humble understanding, clearly pursuing objects of general public utility. We must emphasize once again that the connotations of "charitable purposes", in view of specific provisions of the Act, are significantly wider than connotations of this expression in common parlance."

7. Ld. Departmental Representative's main contention is (1) that so far as the decision in the case of Himachal Pradesh Environment Protection & Pollution Control Board (supra) is concerned, it is in the case of a regulatory body whereas the case before me is of a voluntary association industries and; secondly that if the same activity was to be carried out by a commercial unit, it would have been resulted in taxable income and, therefore, just because several entities are doing it together, it cannot result in tax exempt income. None of these contentions, however, merit acceptance. As for the first point made by the ld. Departmental Representative, it is not the fact of a regulatory body, which is decisive to hold whether or not the proviso to section 15 are satisfied on the nature of activities which are carried out govern that. There is no dispute, that the nature of activities is exclusively the same as carried out by the regulatory body. The limited issue before me is whether in such a situation the proviso to section 2(15) will come into play or not. I, therefore, see no reasons to come to a different conclusion in the case of this assessee just because it is not a government or regulatory body because of the fact which are material. The question before me is pari matria.

8. As regards the second point by the ld. Departmental Representative, once again it is important to bear in mind that undisputedly the assessee trust before me is having common cause and it is not even the case of the Assessing Officer that it involves any commercial venture. The limited objection of the Assessing Officer which has been upheld by the ld. CIT(A) is that proviso to section 2(15) is hit in the present case. That aspect of the matter, as I have noted earlier, has been decided in favour of the assessee by the two division bench decisions of this Tribunal. Hon'ble Telangana

and Andhra Pradesh High Court in the case of CIT (Exemptions) vs. Water Land Management Training and Research Institute [2017] 398 ITR 283 (T&AP) has also held so in the context of proviso to section 2(15) of the Act.

9. In the light of the above discussions and respectfully following the binding judicial precedents of the Division Bench as also of the Hon'ble Telangana and Andhra Pradesh High Court in the case of CIT (Exemptions) vs. Water Land Management Training and Research Institute (supra), I uphold the plea of the assessee and conclude that it was indeed not a fit case for invoking proviso to section 2(15) merely because the assessee was charging the fee for the services rendered to the industrial unit."

8. On due consideration of the facts of the case, finding of the ld.CIT(A) in both the years, and also considering order of the ITAT in the case of the assessee on similar issues extracted (supra), we do not find any reason to interfere in the orders of the ld.CIT(A) for both the assessment years, which we uphold and grounds of appeal of the Revenue in both the years are rejected.

9. In the result, appeals of the Revenue are dismissed.

Order pronounced in the Court on 10th April, 2019.

Sd/-	Sd/-
(AMARJIT SINGH)	(RAJPAL YADAV)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Ahmedabad; Dated 10/04/2019

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)
5. *विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण* / DR, ITAT,
6. *गार्ड फाईल* / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad

1.	*Date of dictation*	:	**08-04-2019**
2.	*Date on which the typed draft is placed before the Dictating Member.*	:	**09-04-2019**
3.	*Date on which the approved draft comes to the Sr.P.S./P.S*	:	
4.	*Date on which the fair order is placed before the Dictating Member for pronouncement.*	:	
5.	*Date on which fair order placed before Other Member*	:	
6.	*Date on which the fair order comes back to the Sr.P.S./P.S.*	:	
7.	*Date on which the file goes to the Bench Clerk.*	:	**10-4-2019**
8.	*Date on which the file goes to the Head Clerk.*	:	
9.	*The date on which the file goes to the Assistant Registrar for signature on the order.*	:	
10.	*Date of Despatch of the Order*	:	