

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No. 435/Ahd/2018  
(Assessment Year : 2013-14)

Dy. CIT(Exemptions), Circle-2, Ahmedabad.	Vs.	Jamnagar Area Development Authority, 1 <sup>st</sup> Floor, Dr. Hedgeswar Commercial Complex, Near M.P. Shah College, Sat Rasta, Jamnagar – 361 001.
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[PAN No. AAALJ 0188 Q]  
(Appellant) .. (Respondent)

Appellant by :	Shri Satish Solanki, Sr. D.R.
Respondent by :	Shri Vimal Desai, A.R.

Date of Hearing	01/10/2019
Date of Pronouncement	03/10/2019

ORDER

**PER SHRI KUL BHARAT, JUDICIAL MEMBER :**

This appeal by the Revenue pertaining to the Assessment Year (AY) 2013-14 is directed against the order of the Ld. Commissioner of Income Tax (Appeals) - 9, Ahmedabad ('CIT(A)' for short) dated 20.12.2017. The assessee has raised the following grounds of appeal:-

- “1. *Ld. CIT(A) has erred in the law and on facts in considering the activity of the assessee is engaged in the development of urban area of Jamnagar which is in the nature of advancement of general public utility and hit by the new introduced proviso first and second of sec.2(15) of the Act.*
2. *The Ld CIT(A) has erred in the law and on facts in allowing the benefit of exemptions u/s.11 ignoring the fact that the assessee is involved in widespread commercial activities in nature of business.*

3. *The Ld CIT(A) has erred in the law and on facts in deleting the addition of Rs.43,30,488/- and Rs.1,67,12,083/- made on account of development fund and service & amenities fees considering the capital receipts would be part of balance sheet and not income of the assessee.*
  4. *The Ld CIT(A) has erred in the law and on facts in directing the AO to allow the addition of Rs.41,19,764/- considering that a capital expenditure by a person need not be a capital receipt of the person receiving that amount which the assessee has received for the discharge of its objects.*
  5. *The Ld CIT(A) has erred in the law and on facts in allowing the accumulation of Rs.1,62,53,404/- u/s.11(2) and accumulation @15% of Rs.1,63,39,242/- u/s.11(1)(a) of the Act without appreciating the fact that once the proviso to section 2(15) is applicable, the benefit of section 11 and 12 cannot be allowed further.*
  6. *The Revenue craves to add, alter, amend, modify, substitute, delete and/or rescind all or any Grounds of Appeal on or before the final hearing, in necessity so arise.”*
2. The facts giving rise to the present appeal are that the case of the assessee is picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) was framed by the order dated 29.03.2016. The Assessing Officer while framing the assessment made additions on account of disallowance of development fund, service and amenities fees and also made disallowance of accumulation u/s 11A & 11(1)(a) of the Act. Further, disallowance of capital expenditure was made. Aggrieved against this the assessee preferred an appeal before the Learned CIT(A) who after considering the submission partly allowed the appeal thereby the Learned CIT(A) following decision of the Hon’ble Gujarat High Court rendered in the case of Ahmedabad Urban Development Authority vs. Asst. Commissioner of Income Tax in Tax Appeal No.423 of 2016 with 424 of 2016 to Tax Appeal No.425 of 2016 with Civil Application (OJ) No.211 of 2016 in Tax Appeal No.423 of 2016 to Civil Application (OJ) No.213 of 2016 in Tax Appeal No.425 of 2016 decided the issue related to additions made on account of development fund, service and amenities fees in respect of the issues also decided this issue of accumulation u/s 11(2) of

the Act and capital expenditure in favour of assessee. Against this the revenue has preferred the present appeal.

Apropos to the ground raised in this appeal i.e. Ground Nos. 1 to 5, the Learned DR has placed reliance on the assessment order. On the contrary, the Learned Counsel for the assessee has reiterated the submissions as made before the Learned CIT(A). The submissions of the assessee before the Learned CIT(A) are as under:

- “1. *The appellant is a local authority [hereinafter referred to as the 'appellant authority'] constituted under the provisions of Gujarat Town Planning and Urban Development Act, 1976.*
2. *The appellant authority undertakes activities viz. preparation of development plans under the provisions of the Act for the development of area, preparation of town planning schemes, carrying out surveys in the development area for preparation of development plans or town planning schemes, levy and collect fees as prescribed by regulations for scrutiny of documents for permission for development, execute works in connection with supply of water, disposal of sewage and provision of other services and amenities etc.*
3. *The appellant authority is granted registration u/s. 12A by the Commissioner of Income Tax, Jamnagar vide number CIT.J/Tech/12A(a)/66/2003-04/3484 on 17.03.2005 with effect from 01.04.2002.*
4. *The appellant authority filed its return of income for the year under appeal on 23.03.2010 declaring total income at Rs. NIL after claiming exemption u/s. 11 of the Act.*
5. *Copies of acknowledgement of return, computation of income, audited annual accounts with audit report in Form 10B, notice of accumulation in Form No. 10 are enclosed herewith at Page No. 1-13.*
6. *In the assessment finalized vide order u/s. 143(3) dated 29.03.2016, the A.O. determined total income of the appellant at Rs. 5,77,54,980/- after making following variations to the return of income:*

<b>Sr. No.</b>	<b>Nature of disallowance</b>	<b>Amount (In Rs.)</b>	
<b>1</b>	<b>Addition on account of income not offered for taxation</b>		
<b>1.1.</b>	<b>Development Fund</b>	<b>43,30,488/-</b>	
<b>1.2.</b>	<b>Service and amenities fees</b>	<b>1,67,12,083/-</b>	<b>2,10,42,571/-</b>
<b>2.</b>	<b>Disallowance</b>		
<b>2.1.</b>	<b>Accumulation disallowed u/s 11(2) of the act</b>	<b>1,62,53,404/-</b>	
<b>2.2.</b>	<b>Accumulation disallowed u/s 11(1)(a) of the Act</b>	<b>1,63,39,242/-</b>	
<b>2.3.</b>	<b>Disallowance of Capital Expenditure</b>	<b>41,19,764/-</b>	<b>3,67,12,410/-</b>
	<b>Assessed total Income</b>		<b>5,77,54,981/-</b>

**Re: Submissions on merits**

7. *During the course of re-assessment proceedings, the appellant was asked to show cause as to why the activity of the appellant authority should not be treated as in the nature of trade, commerce or business and accordingly first proviso to Section 2(15) should not be applied.*
8. *The A.O. however did not appreciate the above submissions in proper perspective and contended that appellant authority functions with profit motive and its activities are in the nature of trade, commerce or business and as per proviso to Section 2(15), the activities carried on by the appellant authority cannot be considered as Charitable and therefore it is not eligible for exemption u/s. 11 to 13 of the Act.*
9. *We respectfully placed reliance on the decision of the Hon'ble Jurisdictional Gujarat High Court dated 02.05.2017 in case of similar authority viz. Ahmedabad Urban Development Authority (AUDA) vs. ACIT (Exemptions) wherein the Hon'ble High Court has been as under:*

*"Applying the aforesaid decision to the facts of the case on hand and the object and purpose for which the assessee is established / constituted under the provisions of the Gujarat Town Planning Act and collection of fees and cess is incidental to the object and purpose of the Act, even the*

*case would not fall under second part of proviso to Section 2(15) of the Act.*

*Considering the aforesaid facts and circumstances of the case, we are of opinion that the learned Tribunal has committed a grave error in holding the activities of the assessee in the nature of trade, commerce or business and consequently holding that the proviso to Section 2(15) of the Act shall be applicable and therefore, the assessee is not entitled to exemption under Section 11 of the Act. For the reasons stated above, it is held that the proviso to Section 2(15) of the Act shall not be applicable so far as assessee AUDA is concerned and as the activities of the assessee can be said to be providing general public utility services, the assessee is entitled to exemption under Section 11 of the Act. Both the questions are therefore, answered in favour of the assessee and against the revenue.*

*In view of the above and for the reasons stated above, the impugned order passed order passed by the learned Tribunal in respective appeals for different assessment year are hereby quashed and set aside. Accordingly, all these appeals are allowed and answered both the questions in favour of assessee and against the revenue. No costs."*

*A copy of decision is enclosed herewith at **Page No. 14-70***

- 10. In appellant's own case, the CIT(A) has allowed the deduction u/s. 11 of the Act in A.Y. 2009-10 to A.Y. 2011-12 and A.Y. 2014-15. A copy of order of A.Y. 2009-10 is enclosed herewith at **Page No. 71-118***
- 11. In view of the above, it is prayed before Your Honour that the appellant authority should be allowed the benefit of exemption u/s. 11 of the Act."*

3. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. During the course of hearing, the Learned DR fairly conceded that all these issues were before the Hon'ble Gujarat High Court in the case of Ahmedabad Urban Development Authority vs. Asst. Commissioner of Income Tax (supra). The facts are identical in the present case as well the Revenue has not brought to our notice any other binding precedent. We, therefore, following the judgment of the Hon'ble Jurisdictional High Court rendered in the case of Ahmedabad Urban Development Authority (supra). We do not see any infirmity in the finding of the Learned CIT(A) same is hereby affirmed. Grounds raised in this appeal are rejected.

4. Ground No.6 is general in nature hence no separate adjudication is required.

5. In the result, the appeal filed by the Revenue in ITA No.435/Ahd/2018 for the A.Y. 2013-14 is dismissed.

**This Order pronounced in Open Court on**

**03/10/2019**

Sd/-  
( WASEEM AHMED )  
**ACCOUNTANT MEMBER**

Sd/-  
( KUL BHARAT )  
**JUDICIAL MEMBER**

Ahmedabad; Dated 03/10/2019  
*Priti Yadav, Sr.PS*

**आदेश की प्रतिलिपि अद्येषित/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)-9, Ahmedabad.
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