

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.153/Ahd/2024
(Assessment Year: 2017-18)

Jamnagar Area Development Authority, Dr. Hegdewar Commercial Complex, 1 st Floor, Opp. Sat Rasta Circle, Jamnagar, Gujarat-361001	Vs.	Assistant Commissioner of Income Tax, Circle-2 (Exemption), Ahmedabad
[PAN No.AAALJ0188Q]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Vimal Desai, A.R.
Respondent by:	Shri Ravindra, Sr. DR

Date of Hearing	10.05.2024
Date of Pronouncement	20.05.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short öLd. CIT(A)ö), National Faceless Appeal Centre (in short öNFACö), Delhi vide order dated 27.12.2023 passed for Assessment Year 2017-18.

2. The Assessee has taken the following grounds of appeal:-

“1. The order passed by the Hon'ble CIT(A) is bad in law and on facts and therefore requires to be quashed.

1.1 The Hon'ble CIT(A) has erred on facts and in law in rejecting the condonation request submitted by the appellant and dismissing the appeal, thereby not providing sufficient opportunity to the appellant to present its case on merits which is against the principle of natural justice and therefore, the order is required to be quashed.

2. The Hon'ble CIT(A) has failed to appreciate that the minor delay of 13 days in filing of appeal was not due to malafied or deliberate intention but due to genuine reasons,

3. *The Hon'ble CIT(A) has erred in not adjudicating the objections raised by appellant on merits against the contentions of the learned Assessing officer that the appellant authority functions with profit motive and its activities are in the nature of trade, commerce or business*
4. *The learned Assessing Officer has erred in law as well as on facts in denying exemptions claimed u/s. 11 of the Act and the Hon'ble CIT(A) has erred in not adjudicating the same on merits.*
5. *The learned Assessing Officer has erred in law as well as on facts in determining total income of the appellant at Rs. 1,64,24,034/-and the Hon'ble CIT(A) has erred in not adjudicating the same on merits*
6. *The learned Assessing Officer has erred in law as well as on facts in not allowing exemption of Rs. 9,30,960/- claimed u/s. 11(I A) on capital account and the Hon'ble CIT(A) has erred in not adjudicating the same on merits.*
7. *The learned Assessing Officer has erred in law as well as on facts in denying exemption of Rs 1,54,93,074/- claimed u/s 11(1)(a) in respect of deemed application of income and the Hon'ble CIT(A) has erred in not adjudicating the same on merits."*

3. The brief facts of the case are that the assessee is a local authority constituted under the provisions of Gujarat Town Planning and Urban Development Act, 1976. The assessee undertakes activities like preparation of development plans for the development of area, preparation of town planning schemes, levy and collection of 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 activities etc. The assessee is granted registration under Section 12A of the Act by the Commissioner of Income Tax, Jamnagar vide No. CIT.J/Tech/12A(a)/66/2003-04/3484 on 17.03.2005. The assessee filed its return of income for the year under appeal on 15.03.2018 declaring total income at Rs. NIL after claiming exemption under Section 11 of the Act. During the course of assessment proceedings, the assessee was asked to explain and show-cause as to why the activity of the appellant authority should not be treated as in the nature of trade, comerrce or business and accordingly, the first and second provisos to Section 2(15) of the Act should

not be applied. In response, to the show-cause notice dated 14.11.2019 the assessee filed submission and explained before the A.O. as under:-

“The assessee institution came into existence on 02.02.1978/30.10.1978 under the provisions of the Gujarat Town Planning and Urban Development Act, 1976. The activities carried on by assessee authority is in the nature of advancement of any other objects of general public utility which fall within the definition of ‘Charitable Activities’ as defined u/s. 2(15) of the Act.

The assessee authority has been accordingly granted registration u/s. 12A by the Commissioner of Income Tax, Jamnagar vide number CIT./Tech/12A(a)/66/2003-04/3484 on 17.03.2005 and therefore, the assessee authority is claiming exemption u/s. 11 of the Income Tax Act, 1961.

The main purpose of forming the aforesaid Act was for setting up an authority for planning, coordinating and supervising for proper, orderly and rapid development of the areas in various region and of executing plans, projects and schemes for such development and to provide for the matters connected therewith, so that housing, community facilities, civil amenities and other infrastructural facilities are created. Having constituted to achieve the above objects, the authority performs in the area of urban renewal, environment and ecology directly or through its functional boards, and it does not only planning the urban area with master development plan and zonal development plan but also sanction projects and schemes for development. In fact, the authority is a tool of the State government for coordinated and planned development in a particular region. The authority also carries out work relating to construction of roads, sewerage, parks, play grounds, provide plots for educational, health and cultural institution for over all development of the community. The revenue generated through these activities is also finally utilized for the benefit of the public. The core activities carried out by the authority include:

- *Preparation of development plans under the provisions of the Act for the development of area*
- *Preparation and execution of town planning schemes under the provisions of the Act if so directed by the State Government*
- *Carrying out surveys in the development area for the preparation of development plans or Town Planning Schemes*
- *To levy and collect such fees for scrutiny of documents submitted to the appropriate authority for permission for development as may be prescribed by the Regulations.*
- *To execute works in connection with supply of water, disposal of sewage and provision of other services and amenities*
- *To levy and collect such fees for execution of works and for provision of other services and amenities as may be prescribed by regulation*
- *To perform such other functions as are supplemental, incidental or consequential to the activities as mentioned hereinabove.*

It is further submitted the Hon'ble Gujarat High Court has held that the authorities like assessee are eligible to claim exemption u/s. 11 of the Act. Therefore, there will be no justification in denying the benefit of exemption u/s. 11 of the Act to the assessee authority in view of the submissions made hereinabove.”

4. However, the Assessing Officer denied exemptions claimed under Section 11 of the Act. The Assessing Officer was of the view that the

objects of the assessee is to earn profits and accordingly, the assessee is not eligible for claim of benefit under Sections 11 & 12 of the Act.

5. In the assessment finalized vide order under Section 143(3) dated 18.12.2019, the Assessing Officer has determined total income of the assessee at Rs. 1,64,24,034/- after denying the benefit of exemption under Sections 11 & 12 of the Income Tax Act, 1961.

6. In appeal filed by the assessee before the Ld. CIT(A), there was a delay of 13 days in filing of appeal. The assessee filed application for condonation of delay of 13 days in filing of the appeal, however, the CIT(A) rejected the condonation request submitted by the assessee and dismissed the appeal of the assessee, confirming the additions made by the Assessing Officer, under Sections 11 & 12 of the Act.

7. The assessee is in appeal before us against the aforesaid order passed by the Ld. CIT(A).

8. The Counsel for the assessee submitted that the issue under consideration is now covered in favour of the assessee by the decision of the Ahmedabad Urban Development Authority (AUDA) vs. ACIT (Exemptions) 396 ITR 323, in which the Supreme Court has decided the issue in favour of the assessee. The Counsel for the assessee submitted that the assessee (Jamnagar Area Development) was also one of the parties on this issue before the Honøble Supreme Court and the Honøble Supreme Court has now finally decided this matter in favour of the assessee.

Accordingly, it would be useful to quote the relevant extracts of the decision of the Honøble Supreme Court for ready reference:-

“What then is the true meaning of the expressions "fee, cess or consideration"? The careful analysis of the amended proviso to section 2(15), reveals that the prohibition applies in a four-fold manner-

- (a) *The bar to engaging in trade, commerce or business,*
- (b) *The bar to providing any service in relation to trade, commerce or business,*
- (c) *Wherein "for a fee, cess or any other consideration" is the controlling phrase for both (a) and (b) (which are collectively referred to as "prohibited activities" for brevity)*
- (d) *Irrespective of the application of the income derived from such 'prohibited activities'. [Para 142]*

■ *The impermissibility of any trade, or commercial activity or service, and income, from them, was intended to be conveyed through the prohibition, in the first part of the definition of GPU charities. The necessary implication which arises is that income (received as fee, cess, or any other consideration) derived from such 'prohibited activities' is necessarily motivated by profit. The ordinary meaning of fee or consideration would be synonymous with something of value, usually in monetary terms. However, the use of the expression "cess" facially lends a different colour to all the three expressions. [Para 143]*

■ *"Fee, cess and any other consideration" has to receive a purposive interpretation, in the present context. If fee or cess or such consideration is collected for the purpose of an activity, by a state department or entity, which is set-up by statute, its mandate to collect such amounts cannot be treated as consideration towards trade or business. Therefore, regulatory activity, necessitating fee or cess collection in terms of enacted law, or collection of amounts in furtherance of activities such as education, regulation of profession, etc., are per se not business or commercial in nature. Likewise, statutory boards and authorities, who are under mandate to develop housing, industrial and other estates, including development of residential housing at reasonable or subsidized costs, which might entail charging higher amounts from some section of the beneficiaries, to cross-subsidize the main activity, cannot be characterized as engaging in business. The character of being 'state', and such corporations or bodies set-up under specific laws (whether by states or the centre) would, therefore, not mean that the amounts are 'fee' or 'cess' to provide some commercial or business service. In each case, at the same time, the mere nomenclature of the consideration being a "fee" or "cess", is not conclusive. If the fee or cess, or other consideration is to provide an essential service, in larger public interest, such as water cess or sewage cess or fee, such consideration, received by a statutory body, would not be considered "trade, commerce or business" or service in relation to those. Non-statutory bodies, on the other hand, which may mimic regulatory or development bodies - such as those which promote trade, for a section of business or industry, or are aimed at providing facilities or amenities to improve efficiencies, or platforms to a segment of business, for fee, whether charged by subscription, or specific fee, etc., may not be charitable; when they claim exemption, their cases would require further scrutiny. [Para 144] ”*

9. In response, the Ld. D.R. also submitted that the issue is now covered in favour of the assessee in view of the decision of the Honøble Supreme

Court referred to above. Accordingly, looking into the instant facts and in light of the decision of the Honøble Supreme Court reiterated to above, the appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on 20/05/2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 20/05/2024

TANMAY, Sr. PS

TRUE COPY

आदेश क० प्रत/अपील आदेश/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. प्रभागीय प्रमुख, आयकर अपील अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

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