

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “ B ” BENCH**

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No.360/Ahd/2024
Assessment Year: 2016-17**

The D.C.I.T, Circle-1(Exemption), Ahmedabad. (Appellant)	Vs	Naroda Enviro Project Limited, Plot No.512-515, Phase, GIDC, Naroda, Ahmedabad-382330. PAN: AAFN9138D (Respondent)
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**Revenue Represented: Shri Alpesh Parmar, Sr-DR
Assessee Represented: None**

Date of hearing : 22-05-2024
Date of pronouncement : 29-05-2024

आदेश/ORDER

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the Revenue as against the appellate order dated 26.12.2023 passed by the Commissioner of Income Tax (Appeals) National Faceless Appeal Centre(NFAC), Delhi, arising out of the assessment order passed under section 143[3] of the Income-tax Act, 1961 [hereinafter referred to as ‘the Act’] relating to the Asst. Year 2016-17.

2. The solitary Ground raised by the Revenue reads as under:

Whether, on the facts and circumstances of the case, Ld.CIT(A), has erred in deleting the addition of Rs.2,26,05,920/- relying upon the order of Hon’ble High Court in assessee’s own case from A.Ys 2009-10 to 2013-14 without considering the provisions of the section 2(15) of the Act, after amendment in the Act vide Finance Act, 2015 w.e.f 01-04-2016.

2. The brief fact of the case are that the assessee is engaged in the activity of preservation of environment by abatement and controlling pollution of environment i.e land, water and air and for this objective, the assessee is providing pollution control treatment or disposal of liquid and solid industrial hazardous wastes. The assessee was registered u/s.12AA and 80(G)(5) of the Act. For the Asst. Year 2016-17 the assessee filed its Return on 10.09.2016, declaring total income at Rs. Nil. The Return was taken for scrutiny assessment, during the assessment proceedings the assessee stated that it is a Charitable Institution and his company registered u/s.25 of the Companies Act, 1956 which does not exist for profit nor has it any profit motive, which was duly examined and verified by the Department by way of scrutiny assessment for the earlier assessment year 2008-09. The assessee in its reply to the notice of the AO that even as per the amended section 2(15) of the Act, the assessee continued to be a Charitable Institution and its activities are Charitable in nature. However, the AO relying upon the proviso of section 2(15) is not applicable to the assessee and denied the benefit of section 11 and 12 of the Act and demanded tax thereon.

3. Aggrieved against the assessment order, the assessee filed an appeal before the Ld CIT[A] who allowed the appeal following Co-ordinate Bench of this Tribunal which has given relief in favour of the assessee. However the same was challenged by the Revenue before the Hon'ble High Court of Gujarat in Tax Appeal No. 223 of 2020 dated 21-09-2020 wherein it was held as follows:

"...4.0. The Revenue in this appeal has raised the contention to the effect that the Tribunal as well as CIT(A) have committed an error in coming to the conclusion that activity carried on by the

respondent–assessee are charitable in question and has wrongly come to the conclusion that the preservation of environment would amount to charitable purpose and has raised the following substantial questions of law.

“A. Whether, on the facts and in the circumstances, the Income Tax Appellate Tribunal was justified in affirming the view of the Commissioner (Appeals) that the activities of the assessee fall within the ambit of “Preservation of Environment” as envisaged under Section 2(15) of the Income Tax Act, 1961 ?

B. If the above question is answered in the negative, whether the activities carried out by the assessee fall within the ambit of the proviso to Section 2(15) of the Income Tax Act, 1961 ?

C. Whether, on the facts and in the circumstances of the case and in law, the Hon’ble Tribunal is correct in deleting the additions relying on the decision of Coordinate Bench Ahmedabad in ITA No.546/AHD/2013 against which Tax Appeal 627 of 2015 filed and the decision of the Hon’ble High Court has not been accepted though further SLP was not preferred looking to the quantum of tax involved ?

*5.0. It is an admitted position that in case of the respondent – assessee itself by the judgment and order dated 29.1.2015 which relates to AY 2009-10, **the CIT(A) as well as Tribunal had come to the conclusion that the respondent- assessee is engaged in the preservation of environment and therefore, it was engaged in carrying out charitable activities.** Being aggrieved by the same, the appellant–Revenue filed Tax Appeal No.627 of 2015 (2019) 419 ITR 482 (Guj) before this Court and this Court dismissed the appeal filed by the Revenue. The said judgment has become final.*

*6.0. In the appeal filed by the Revenue for the AY 2009-10 in the case of Commissioner of Income Tax vs. Naroda Enviro Projects Ltd, **the Division Bench has extensively considered the proviso of Section 2(15), legislative amendment thereunder and has also considered the purpose of proviso to clause 15 of Section 2. The Division Bench has also considered the Memorandum of Association of the assessee company and has observed thus:***

43. *The first and the foremost question, therefore, we need to consider is whether having regard to the activities undertaken by the Company, could it be said that the Company is into “preservation of environment”. The assertion on the part of the assessee company is that it takes care of the liquid and solid industrial waste generated by the polluting industries by treating the same in the Common Effluent Treatment Plant, situated at Naroda and also the Total Suspended Disposal Facility at Odhav, Ahmedabad (TSDf) and other ancillary activities for the purpose of curbing the menace of pollution thereby preserving the environment. Whether by establishment or running of the Common Effluent Treatment Plant at Naroda (CETP) and at Odhav TSDf and other ancillary activities, could it be said that the assessee-company undertakes the activity of preservation of environment for the purpose of Section 2(15) of the Act ?*

44. *We are dealing with a taxing statute. The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a Taxing Act, it is not possible to assume any intention or the governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. (See Mathuram Agrawal vs. State of Madhya Pradesh, reported in (1999) 8 SCC 667)*

45. *The first and the foremost thing we want to clarify is that the registration of the assessee as a Charitable Institution and the license granted to the assessee as a company under Section 25 of the Companies Act would, prima facie, clothe the assessee with the character of a charitable institution. However, neither of the above two events is conclusive and the question whether the assessee is established for a charitable purpose or not must be examined independently with reference to the provisions of the Act. The registration of the assessee as a charitable institution under Section 12A of the Act, 1961 and the license granted to the assessee under s. 25 of the Companies Act are only relevant factors in reaching an appropriate conclusion. Unless the positive requirements of law are satisfied, the assessee, only by virtue of the above two events, cannot be regarded as a Charitable Institution. The objects, for which, the*

assessee is established either as a Society or as a Company should spell out any charitable purpose.

6.1. Relying upon the catena of judgments on the issue has examined the similar substantial questions of law raised by the appellant-Revenue against the same respondent –assessee and has further observed as under:

59. We now propose to examine the matter, keeping in mind the fourth limb of Section 2(15) of the Act, i.e., “the advancement of any other object of general public utility”.

60. The provision as it existed under the Act of 1922 was that once the purpose of the trust was relief of the poor, education, medical relief or advancement of any other object of general public utility, the trust was considered to be for a charitable purpose. As a result of the addition of the words “not involving the carrying on of any activity for profit” at the end of the definition in section 2(15) of the Act even if the purpose of the trust is “advancement of any other object of general public utility”, it would not be considered to be “charitable purpose” unless it is shown that the above purpose does not involve the carrying on of any activity for profit. The result, thus, of the change in the definition is that in order to bring a case within the fourth category of charitable purpose, it would be necessary to show that :

[i] the purpose of the trust is advancement of any other object of general public utility, and

[ii] the above purpose does not involve the carrying on of any activity for profit.

61. Both the above conditions must be satisfied before the purpose of the trust can be held to be charitable purpose.

62. A brief analysis of all the provisions would show that (i) providing relief of the poor; (ii) establishing institution for education; (ii) providing medical relief; and (iv) to advance any other object of general public utility are included within the definition of ‘charitable purposes’. With effect from 01.04.2009, a new definition has been substituted, in that, if the advancement of object of general public utility

involves carrying on 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 cess or fee or any other consideration, such activity shall not be a charitable purpose. Except the addition of the proviso, restricting the purport of the 'advancement of any other object of general public utility', there is not much difference in section 2(15) as it existed prior to 01.04.2009, and thereafter. After the amendment the preservation of environment including the watersheds, forest and wildlife and preservation of monuments or places/Objects of artistic or historic interest are also included in the definition 'charitable purpose'. Be that as it is, what is important is any institution or organization or entity for the advancement of object of general public utility is also considered as an institution or trust for charitable purpose. Section 11 exempts various categories of incomes as enumerated under section 11(1)(a) to (d) from the total income of the previous year. Section 12 exempts the voluntary contributions received by a trust created for charitable purposes from the total income. The benefit of Section 11 and/or 12 can be claimed only when the conditions as stipulated under Section 12A are satisfied. One such condition is that a person in receipt of the income has to apply for the registration of the trust or institution in the prescribed form on or before the expiry of a period of one year from the date of creation of the trust or establishment of institution. The proviso to Section 12A(1) confers the power on the Commissioner to entertain an application under Section 12A (1) even after the expiry of period of one year if he is satisfied that the person was prevented from making an application before the expiry of period of one year for sufficient reasons.

63. *Section 11(5) requires every trust or institution for a charitable purpose to invest or deposit the money only in the manner provided therein inter alia investment in Savings Certificates as defined in Government Savings Certificates Act, 1959, deposit with the Post Office Savings Bank, deposit in any account with the scheduled bank i.e., Reserve Bank of India or its subsidiary bank or any scheduled bank under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 or any other bank being a bank included in Second Schedule to Reserve Bank of India*

Act, 1934 and the like. The breach of Section 11(5) would attract Section 13(1)(d) of the IT Act and the benefit under Sections 11 and 12 would not be available if funds are deposited or invested contrary to Section 11(5) or in breach of Section 13(1) generally and Section 13(1)(d) specifically.

87. *The words 'public utility' or 'general public utility' are not capable of a precise meaning. The question whether service is public utility or not has to be discharged in the context of different situations but it is, as considered infra, well settled that public utility means public purpose depending upon the context in which it is used in the statute or the Rules. Indeed, in some decisions, public utility is considered very similar to one for public purpose (Hunter v A.G. 1909 AC 323, Babu Bankya Thakur v State of Bombay AIR 1960 SC 1203 and Jhandu Lal v State of Punjab AIR 1961 SC 343).*

88. *In cases arising under the Income Tax Act, 1922 as well as 1961 Act, it is held that the expression 'object of general public utility' must be construed by applying the standard of customary law and common knowledge amongst the community to which the parties interested belong. This test, applied in the Trustees of the Tribune, seems to have influenced judicial thinking in the subsequent decisions as well. The object of general public utility would include all objects which promote the welfare of the general public even it includes taking up steps effecting trade, commerce or manufacture if the primary purpose is for advancement of objects of general public utility [Andhra Chamber of Commerce(supra)], even if in an insignificant manner the person makes some profit in carrying out the objects [Surat Art Silk (supra)]. In other words, any activity for the benefit of the public or a section of the public, as distinguished from the benefit to an individual or a group of individuals, would be charitable purpose as the object is for advancement of general public utility. The expression includes all objects to promote the welfare of the public, and when an object is to promote or protect the interest of particular trade or industry that object becomes an object of public utility and would be charitable purpose (Gujarat Maritime Board (2007) 295 ITR 561 (SC) [see Commissioner of Income Tax vs. Agricultural Market Committee, (2011) 336 ITR 641 (AP)]*

89. *In our opinion, this could be termed as a charitable purpose which has as its motive advancement of an object of general public utility to which the exception carved out in the first proviso to Section 2(15) of the Act would not apply*

6.2. *Further considering the judgment of this Court in the case of Director of Income Tax (Exemption) vs. Sabarmati Ashram Gaushala Trust reported in 360 ITR 539 (Guj) has observed thus:*

91. *Carrying on an 'activity in the nature of trade, commerce, or business' or rendering of any service in relation to trade etc. is sine qua non for taking away the character of charitable purpose. An activity in the nature of trade, commerce or business is always carried on with the prior object of earning income. What is relevant is the intention of the person before undertaking such activity. A line of distinction needs to be drawn between the activities undertaken by a society, otherwise satisfying the prescription of section 2(15) 'prior to the insertion of proviso, which are aimed at earning income divorced from the objects for which it is charitable por una parte and the activities which are aimed at the attainment of the objects for which It was set up por otra parte. Whereas the former fall within the mandate of the proviso to section 2(15), the latter do not. The obvious reason is that the latter activities are in furtherance of the charitable objects of such society and income, if any, resulting from such activities and does not convert the otherwise charitable activity [within the definition of section 2(15)] into carrying on of a business, trade or commerce. It can be understood with the help of a simple illustration. Supposing an association set up for the promotion of a particular trade, has its own premises from which it carries out the activities for the promotion of such trade. If the association lets out its premises from time to time for enhancing its income, which letting out has no relation with the objects for which it was set up as a charitable institution, namely, the promotion of that particular trade, the resultant activity will amount to carrying on trade, commerce or business so as to fall within proviso to section 2(15). On the other hand, if it uses its premises for undertaking activities for which it was set up and is a charitable institution, and while doing so, there results some income, such income will not*

amount to carrying on any trade, commerce or business. The crux of the matter is to understand the object of carrying on the activity which resulted into income. If the object is to simply earn income de hors the promotion of objects for which it was set up, it will fall within the ambit of proviso to section 2(15) and if the object of the activity is to promote the objects for which it was set up, then it will not be caught within the sweep of the proviso notwithstanding the fact that there results some income from carrying out such activity. The core of the matter is to see whether the activity which resulted into some income or loss was carried on with the object of doing some trade, commerce or business, etc., or it was in furtherance of the objects (non-business) etc., for which the assessee was set up. In other words, the predominant object of the activities should be seen as to whether it is aimed at carrying on some business, trade or commerce or the furtherance of the object for which it was set up. If it falls in the first category, then, the case would be covered within the proviso to section 2(15) and, in the otherwise scenario, the assessee will be construed to have carried on its activities of general public utility. (see Society of Indian Automobile Manufactures vs. ITO, Delhi).

6.3. The Division Bench further relying upon the judgment of the Delhi High Court in the case of Institute of Chartered Accountants of India vs. Director General of Income Tax (Exemptions) reported in (2013) 358 ITR 91 has observed thus:

- 92. The Delhi High Court in the Institute of Chartered Accounts of India v. Director General of Income-tax (Exemptions), [2013] 358 ITR 91/217 Taxman 152/35 taxmann.com 140 (Delhi) observed, while disposing of a writ petition, that holding interviews for fees for the purpose of campus placements of its students does not amount to carrying on a business so as to deny exemption u/s 11 of the Act. It further observed that if the object or purpose of an institution is charitable, the fact that the institution collects certain charges does not alter the character of the institution. The Delhi High Court further observed in para 67 that “the purport of the first proviso to section 2(15) of the Act is not to exclude the entities which are essentially for charitable purpose, but are*

conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude the organizations which are carrying on regular business from the scope of "charitable purpose". The High Court also noticed the purpose of introducing the proviso to section 2(15) of the Act from the Budget Speech of the Finance Minister while introducing the Finance Bill 2008 and reproduced the relevant extract to the Speech as under: ".....Charitable purpose" includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under "charitable purpose". Obviously, this was not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected." The expressions "business", "trade" or "commerce" as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organization is charitable any incidental activity for furtherance of the object would not fall within the expressions " business". "trade" or "commerce".

- 7.0. *Consequently, we are in total agreement with the conclusion arrived at by the CIT(A) and Income Tax Appellate Tribunal. We do not find any error in the impugned orders passed by the CIT(A) as well as Income Tax Appellate Tribunal and have concurrently held that taking on overall view, the dominant objects of the assessee are charitable in nature and dominant object is not only preservation of environment but one of general public utility and, therefore, the assessee is entitled to seek exemption under Section 11 of the Act. Following the judgment of the Division Bench of this Court in the case of respondent –assessee for three assessment years and Division Bench has considered the order passed in relation to the AY 2009-10 as lead matter, we do not find any case to take a contrary view then the view taken by the CIT(A) as well as Income Tax Appellate Tribunal. We do not find that this is a fit case to interfere in appeal under Section 260-A of the Act as the findings of fact are not perverse.*

8.0. Resultantly, the appeal fails and is hereby dismissed. Substantial questions of law as framed are answered in favour of the assessee and against the Revenue. No costs.”

4. None appeared on behalf of the assessee the Ld.Sr-DR appearing for the Revenue could not submit any contra judgment in favour of the Revenue.

5. We have given our thoughtful consideration and perused the materials available on record and the judgment rendered by the Jurisdictional High Court in assessee's own case which is reproduced above. It was held that the activities carried out by the assessee falls under the category of 'preservation of environment' and therefore it is engaged in charitable activities as defined in section 2[15] of the Act and consequently eligible for exemption under sec.11 and 12 of the Act. The Revenue could not place on record whether they have preferred further appeal to the Hon'ble Supreme Court as against the judgement passed for the Asst. Year 2009-10 onwards or not preferred because of Low Tax Effect Circulars. In the absence of the same, we have no other option then to follow the binding judgement of the Jurisdictional High Court in assessee's own case. Thus, the ground raised by the Revenue is devoid of any merits and the same is liable to be dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 29-05-2024

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

**Ahmedabad : Dated (True Copy)
29/05/2024**