

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH
(Conducted Through Virtual Court)
Before: **Shri Rajpal Yadav, Vice President**
And **Shri Amarjit Singh, Accountant Member**

ITA No. 577 /Ahd/2019
Assessment Year 2015-16

Dy. CIT (Exemption), Circle-2, Ahmedabad (Appellant)	Vs	Gandhinagar Urban Development Authority (GUDA), 4 th Floor, Udyog Bhavan, Sector-11, Gandhinagar (Respondent)
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Revenue by: Shri Vinod Tanwani, CIT-D.R.
Assessee by: Shri Mehul K. Patel, A.R.

Date of hearing : 17-08-2021
Date of pronouncement : 24-08-2021

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee’s appeal for A.Y. 2015-16, arises from order of the CIT(A)-9, Ahmedabad dated 21-01-2019, in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

2. The assessee has raised following grounds of appeal:-

“1. The Ld. CIT(Appeals) has erred in the law and on facts in considering the activity of the assessee as engaged in the development of urban area of Ghandhinagar which is in the nature of advancement of general public utility not hit by the newly introduced first and second proviso to sec. 2(15) of the Act.

2. The Ld CIT(Appeals) has erred in the law and on facts in allowing the benefit of exemptions u/s. 11 without considering the fact that the assessee is involved in widespread commercial activities in nature of business and the activity of the assessee is covered under first and second proviso to sec. 2(15) of the Act.

3. The Ld CIT(Appeals) has erred in the law and on facts in allowing the accumulation of Rs.39,88,00,000/- u/s.11(1)(2) and accumulation @15% of Rs.10,46,85,495/- u/s11(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.

4. The Id. CIT(Appeals) has erred in law and facts in allowing the capital expenditure of Rs. 15,07, 13, 500/- incurred out of receipts for the year under consideration 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.

5. On the facts and circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals) ought to have upheld the order of the Assessing Officer.

6. It is, therefore, prayed that the order of the Ld. Commissioner of Income-tax (Appeals) may be set aside and that of the Assessing Officer be restored.”

3. The fact in brief is that return of income declaring its income at Rs. nil was filed on 22nd Sep, 2015. The case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 26.09.2016. The assessee was incorporated to undertake the preparation of development plans, monitoring and control of development of town planning and carried out work in connection with supply for water and disposal of sewage and provisions for other services and activities for the benefit of public at large. The assessee has been granted registration u/s. 12AAA. During the course of assessment, the assessing officer observed that that the main objective of the assessee is contribution towards planned and controlled development for the entire urban development areas falls under the category of “advancement of any other object of general public utility. Therefore, the assessee was show caused to explain why not exemption claimed u/s. 11 of the act should not be denied and why not the proviso to section 2(15) of the act should be applied in the case of the assessee. The assessee explained that it is a authority established by the Government of Gujarat u/s. 27 of the Gujarat Town Planning Act with an object to develop Gandhinagar Urban Area in

controlled and disciplined manner. The source of income of the authority was mainly grants either from Government of Gujarat or Central Government and various kinds of levies in the form of fees as fixed by the Government at approved rate. The funds are used for development of various public projects and number of other public is also the beneficiaries. The submission of the assessee along with the judicial pronouncements has been reported at page no. 2 to 7 of the assessment order. The assessing officer has not accepted the explanation of the assessee. The assessing officer was of the view that the assessee was carrying out activities of providing infrastructural facilities to the public and taking various fees like betterment charges, development charges which was in the nature of advancement of general public utility. The assessing officer has stated that assessee being urban development authority charges various types of fees from the public for providing certain amenities like roads, bridges etc. which was recovered from the beneficiaries who get benefit out of development of such common infrastructure. The assessing officer concluded that proviso to section 2(15) of the act becomes applicable to the facts of the case of the assessee, therefore, its income was calculated as a normal business income and no deduction u/s. 11 and 12 were allowed to it.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee.

5. During the course of appellate proceedings before us, the Id. counsel has contended that Co-ordinate Bench of the ITAT Ahmedabad has adjudicated the identical issue on similar fact in the case of the assessee

itself for assessment year 2011-12 Vide ITA No. 3621/Ahd/2015 dated 23-07-2019 and ITA Nos. 2438, 2439 & 2440/Ahd/2017 A.Y. 2012-13 to 2014-15 in favour of the assessee, after following the decision of Hon'ble Jurisdictional High Court of Gujarat on identical issue and fact in the case of Ahmedabad Urban Development Authority vs. ACIT 396 ITR 323 (Gujarat) and CIT Vs. Gujarat Industrial Development Corporation (2017) Taxman.com 366 (Guj). On the other hand, ld. departmental representative supported the order of lower authorities and could not contradict the aforesaid submission of the ld. counsel.

6. With the assistance of ld. representatives, we have gone through the aforesaid jurisdictional pronouncements referred by the ld. counsel and it is noticed that after following the decision of Hon'ble Gujarat High Court in the cases of Ahmedabad Urban Development Authority vs. ACIT 396 ITR 323 (Gujarat) and CIT Vs. Gujarat Industrial Development Corporation (2017) taxman.com 366 (Guj) the Co-ordinate Bench of the ITAT has adjudicated the similar issue on identical fact in the case of the assessee itself Vide ITA No. 3621/Ahd/2015 dated 23-07-2019 wherein the claim of the assessee has been allowed. Relevant part of decision of Co-ordinate Bench is reproduced as under:-

“6. With the assistance of ld. representatives, we have gone through the aforesaid jurisdictional pronouncements referred by the ld. counsel and it is noticed that after following the decision of Hon'ble Gujarat High Court in the cases of Ahmedabad Urban Development Authority vs. ACIT 396 ITR 323 (Gujarat) and CIT Vs. Gujarat Industrial Development Corporation (2017) taxman.com 366 (Guj) the Co-ordinate Bench of the ITAT has adjudicated the similar issue on identical fact in the case of the Vodadara Urban Development Authority Vs. ITO Vide ITA No. 2751/Ahd/2014 dated 28-01-2019 wherein the claim of the assessee has been allowed. Relevant part of decision of Co-ordinate Bench is reproduced as under:-

“4. We have heard the respective parties, perused the relevant materials available on record. We find that in similar set of facts the Jurisdictional High Court passed the orders in the case of Urban Development Authority-vs-ACIT, where it was held as follows:

“Held, that the object and purpose of permitting the Authority to sell the plots to a maximum extent of 15% of the total area, was to meet the expenditure for providing infrastructural facilities like gardens, roads, lighting, water supply, drainage system, etc. The reasons for selling the plots by holding public auction were; (a) to avoid any further allegation of favoritism and nepotism and (b) so that the maximum market price could be fetched, which could be used for the development of the urban development area. Considering the fact that the assessee was a statutory body, an Authority constituted under the provisions of the Act, to carry out the object and purpose of Town Planning Act and collected regulatory fees for the object of the Acts, no services were rendered to any particular trade, commerce or business; and whatever income was earned by the assessee even while selling the plots (to the extent of 15% of the total area covered under the Town Planning Scheme) was required to be used only for the purpose to carry out the object and purpose of the Town Planning Act and to meet the expenditure of providing general utility service to the public such as electricity, road, drainage, water etc. and the entire control was with the State government and accounts were also subjected to audit and there was no element of profiteering at all. The activities of the assessee could not be said to be in the nature of trade, commerce and business and therefore, the proviso to Section 2(15) of the Act was not applicable so far as the assessee was concerned. Therefore, the assessee was entitled to exemption under section 11.”

Apart from that CIT-vs.-Gujarat Industrial Development Corporation, wherein it was held as follows:

“Section 2(15), read with section 11, of the Income-tax Act, 1961 – Charitable purpose (Objects of general public utility) – Assessment year 2009-10 – Whether where assessee – corporation was constituted under Gujarat Industrial Development Act, 1962, for purpose of securing and assisting rapid and orderly establishment and organization of industrial areas and Industrial estates in State of Gujarat, and for purpose of establishing commercial centers in connection with establishment and organization of such industries it could not be said that activities carried out by assessee were either in nature of trade, commerce or business, for a Cess or Fee or any other consideration so as to attract proviso to section 2(15) and same could be said to be for charitable purpose and, consequently,. Assessee was entitled to exemption under section 11- Held, yes (Paras 15 and 17)[In favour of assessee]”

5. *We find that the object of the assessee is similar to that of the corporation before the Jurisdictional High Court and on the similar set of facts the appeal was allowed in favour of the assessee hence relying upon the same we allow the claim of the assessee and the disallowance of exemption as claimed by the assessee u/s 11 of the Act to the tune of Rs.70,73,005/- is hereby quashed and addition made thereon is thus deleted.”*

Respectfully following the decision of Co-ordinate Bench as above on similar issue and identical facts, the claim of the assessee is allowed. Accordingly, the appeal of the assessee is allowed.”

The Id. counsel has also filed the copy of decision of Hon'ble Jurisdictional High Court wherein the decision of ITAT vide 2440/Ahd/2017 A.Y. 2014-15 has been confirmed vide IT Appeal 273 of 2020 dated 30th Sep, 2020. Considering the above facts and findings of the Co-ordinate

Bench in the case of the assessee itself as cited above, we do not find any infirmity in the decision of the Id. CIT(A). Accordingly, the appeal of the revenue is dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 24-08-2021

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT
Ahmedabad : Dated 24/08/2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद