

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "B", अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL AT AHMEDABAD,**  
**"B" BENCH**

**सर्वश्री श्री जी.सी.गुप्ता, माननीय उपाध्यक्ष, एवं अनिल चतुर्वेदी, लेखा सदस्य के समक्ष ।**  
**BEFORE S/SHRI G.C. GUPTA, VICE-PRESIDENT AND**  
**ANIL CHATURVEDI, ACCOUNTANT MEMBER**

ITA No.670/Ahd/2013  
[Asstt.Year : 2009-2010]

Sabarmati Ashram Gaushala Trust Nr. Gandhi Ashram Ashram Road, Ahmedabad Pin : 380 027.	बनाम/Vs.	ADIT (Exemption) Nagture View Building Ashram Road Ahmedabad.
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PAN : AAAJS 0266 L

**(अपीलार्थी / Appellant)**

**(प्रत्यर्थी / Respondent)**

निर्धारिती की ओर से/ Assessee by	:	Shri Sanjay R. Shah
राजस्व की ओर से/ Revenue by	:	Shri Alok Johri, CIT-DR
सुनवाई की तारीख/ Date of Hearing	:	10 <sup>th</sup> May, 2013
घोषणा की तारीख/ Date of Pronouncement	:	07/06/2013

**आदेश / ORDER**

**PER G.C. GUPTA, VICE-PRESIDENT:** This appeal by the assessee for the assessment year 2009-2010, is directed against the order of the CIT(A)-XXI, Ahmedabad dated 26.12.2012.

2. The grounds of the appeal of the assessee are as under:

*"1. The order passed by the learned CIT(A) is erroneous and contrary to the provisions of law and facts and therefore*

*requires to be quashed. It is submitted that it be so held now.*

2. *The learned CIT(A) has erred in law and on facts by holding that the object of the appellant trust is 'any other object of general public utility' and accordingly covered by proviso to Section 2(15) of the Act, he has accordingly denied benefit of Section II of the Act. The appellant submits that its object is 'relief to the poor' and accordingly proviso to Section 2(15) is not applicable to its case. It is therefore entitled to benefit under Section II of the Act. It is submitted that it be so held now.*

3. *The learned CIT(A) has erred on facts by holding that the activities of the appellant trust are commercial in nature. It is submitted that the activities of the trust are in the nature of 'relief to the poor' and are carried on, on non-commercial principles. It is submitted it be so held now.*

4. *The learned CIT(A) has erred in not directing the AO to exclude capital grants of Rs.1,08,60,086/- from total income when capital expenditure was not allowed since benefit of section 11 has been denied.*

5. *The learned CIT(A) has erred in not directing the AO to grant depreciation as per the Act on capital expenditure of Rs.1,66,30,885 incurred during the year under consideration when deduction of such expenditure was not granted in view of denial of benefit under section 11 of the Act.*

6. *The learned CIT(A) has erred in not appreciating the fact that the appellant is a trust created before commencement of Income Tax Act, 1961 to whom the provisions of Section 11(1)(b) are applicable and accordingly its income derived from property held under trust for the purpose for which trust has been created would not be included in the total income of trust. It is submitted that it be so held now."*

3. The learned counsel for the assessee submitted that the AO and the CIT(A) have erred in denying the benefit of section 11 of the Act to the assessee-trust. He submitted that objects of the

assessee-trust were “relief to the poor”, and accordingly the proviso to section 2(15) of the Act has been wrongly applied to the case of the assessee. He submitted that department has wrongly held that the activities of the assessee-trust were commercial in nature. In fact the activities of the trust were carried out on non-commercial principle. He submitted that the section 2(15) of the Act was inserted by the Finance Act, 2008 w.e.f. 1.4.2009, and was applicable for the relevant assessment year 2009-2010. However, a plain reading of provision of section 2(15) read with its proviso makes it clear that the proviso shall be applicable only when the activities of the assessee are run on commercial lines with a motive to make profit, and not in a case where the activities are conducted on non-commercial line, and the profit received by the trust was merely incidental in nature. He referred to the objects of the assessee-trust and submitted that it has been registered by the Charity Commissioner, as well as under Section 12A of the I.T.Act. He referred to page no.1 of the trust-deed wherein it is mentioned that after returning from South Africa to India in the year 1915, Mahatma Gandhi acquired some of the land in Ranip and Wadaj villages of Taluka Daskroi, District Ahmedabad and established an institution named “Satyagrah Ashram” and started *Gaushala* as one of the part of his constructive activities, and that, the said *Gaushala* was run separately as an independent institution and the eminent personalities of the country were named as its trustees from time to time, including that of Shri G.V.Mavlankar.

The objects of the said trust were to breed the cattle and endeavour to improve the quality of the cows and oxen in view of the need of good oxen as India is prominent agricultural country and the cow milk as food is both conducive to and requisite for good health and longevity of human life, and likewise, other objects. He referred to the order of the Joint Commissioner of Sales-Tax (Legal), Gujarat State, Ahmedabad wherein the assessee-trust was not considered as “trader” for the sales-tax purpose, and it was specifically mentioned that the activities are also not business like but are allied activities to meet the objectives of the Trust. This order of the Joint Commissioner of Sales-Tax (Legal) has been filed as additional evidence before the Tribunal. He submitted that the issue is covered in favour of the assessee with the decisions of the Hon’ble Delhi High Court in the case of Institute of Chartered Accountants of India Vs. DGIT, 13 Taxmann.com 175 dated 19-9-2011 and the case of ICAI Accounting Research Foundation Vs. DIT(Exemption), 183 Taxmann 462, and that of ITAT, Chandigarh in the case of Himachal Pradesh Environment Protection and Pollution Control Board Vs. CIT, 42 SOT 343 and decision of the ITAT, Nagpur in the case of Sevagram Ashram Pratishtan Vs. CIT, 129 TTJ 506. He also referred to the article on the effect of proviso to section 2(15) of Shri V.P.Gupta, Advocate in 23 Taxman.com 421 (Article). The learned counsel for the assessee further submitted that the assessee has interest income on investment amounting to Rs.26,15,060/-, and if the same is excluded from the income side,

there shall be excess of expenditure over the income for the relevant year ending on 31-3-2009. He referred to the income and expenditure of the assessee trust of the relevant accounting year filed in the paper book before the Tribunal.

4. The learned CIT-DR has opposed the submissions of the learned counsel of the assessee. He submitted that the language of proviso to section 2(15) is very clear and that it has been provided that “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....” He submitted that the order of the Joint Commissioner of Sales-Tax (Legal) has no relevance to the issue before the Tribunal, as there are different parameters in the Sales tax Act for levy of sales-tax. The assessee was selling cattle semen, fodder, milk etc. at a profit over the years. He submitted that the assessee-trust has a price mechanism, and therefore this is a case where the assessee is carrying on activities in the nature of trade, commerce or business, and therefore directly hit by the proviso of section 2(15) of the Act. He relied on the order of the AO and the CIT(A).

5. We have considered rival submissions and perused the orders of the AO and the CIT(A), and also copies of various documents filed in the compilation by the assessee. We have also perused the contents of trust-deed of the assessee-trust filed in the compilation before the Tribunal. We find that the proviso to

section 2(15) of the Act was inserted by the Finance Act, 2008 w.e.f 1.4.2009, and therefore is applicable to the relevant assessment year 2009-2010 in appeal before us. The only issue before us for adjudication is that whether the proviso to section 2(15) is applicable to the facts of the case of the assessee for the relevant assessment year 2009-2010. The proviso provides that 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 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. The second proviso to section 2(15) provides that aforesaid first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is Rs.10 lakhs (Rs.25 lakhs from 1.4.2012) or less in the previous year. We find that whether a charitable trust is carrying an activity in the nature of trade, commerce or business is question of fact, which will be decided based on the nature, scope, extent and frequency of the activity, and also after considering overall facts and circumstances of the case in its entirety. The proviso is applicable only in relation to last limb of the definition of charitable purpose i.e. “advancement of any other object of general public utility” which means the activities which promote the welfare of the general public and not the individual interest of some person or persons or private profit and

private gain. To understand the true meaning of proviso to section 2(15), the speech of the Hon'ble Finance Minister while piloting the Finance Bill, 2008 is also relevant, which is reproduced hereinunder.

*"I once again assure the House that genuine charitable organizations will not in any way be affected. The CBDT will, following the usual practice, issue an explanatory circular containing guidelines for determining whether an entity is 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. Whether the purpose is a charitable purpose will depend on the totality of the facts of the case. Ordinarily, Chambers of Commerce and similar organizations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as "advancement of any other object of general public utility."*

We find that the CBDT vide Circular No.11/2008 dated 19.12.2008 has explained the amendment as under:

*"The newly inserted proviso to section 2(15) will apply only to entities whose purpose is 'advancement of any other object of general public utility' i.e. the fourth limb of the definition of 'charitable purpose' contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact, which will be decided based on the nature, scope, extent and frequency of the activity."*

We find that reading of the proviso to section 2(15) along with speech of the Hon'ble Finance Minister and Circular of the

CBDT reproduced above make it clear that only the institutions carrying on commercial activities are intended to be covered by the proviso, not the genuine charitable institutions. The activity will be deemed to be in the nature of trade, commerce or business, only if same is carried on with the intention to earn profit. The Courts in series of decisions have held that it is an activity carried on in a systematic manner with a view to earn profit, which will be termed as “business”. Accordingly, in order to hold that the activity is in the nature of trade, commerce or business, there should be profit motive. If during the course of carrying out any activity on non-commercial lines, some profit is received by the Trust, which is incidental to the activities of the trust, the same shall not be construed to be activity in the nature of trade, commerce or business of the assessee. We find that the present trust before us was in a way founded by the Father of the Nation, late Mahatma Gandhi. On page no.1 of the trust-deed, it is mentioned that after returning from South Africa to India in the year 1915, Mahatma Gandhi acquired some land in Ranip, Wadaj villages of Daskroi, District Ahmedabad and have established an institution named “Satyagrah Ashram” and started *Gaushala* as one of the part of the constructive activities. However, its administration and property were kept separately as a separate department i.e. Trust from the beginning. Some eminent personalities of the country were its trustees. The objects of the trusts are reproduced hereunder:

- 1. To breed the cattle and endeavor to improve the quality of the cows and oxen in view of the need of good oxen as*



*India is prominent agricultural country and the cow milk as food is both conducive to and requisite for good health and longevity of human life. In order to improve the quality of the cattle, it is very essential to use a high quality bulls. Hence to produce and to get produced the best pedigreed bulls and to castrate the scrub bulls and propagate the work to prepare bullocks by castrating the bulls which do not become good bulls.*

- 2. To produce and to sell the cow milk and its various preparations so as to popularize the use of cow milk and do all other works for the same.*
- 3. To hold and cultivate or get cultivated agricultural lands, to keep grazing lands etc necessary or desirable for cattle keeping and breeding or to rehabilitate and assist Rabaris and Bharwads.*
- 4. To hold and cultivate other land also in order to experiment in the improvement in agriculture and obtain financial support in all the activities of the institution.*
- 5. To make necessary arrangements for getting informatics: and scientific knowledge and to do scientific research with regard to keeping and breeding of the cattle, agriculture, use of milk and its various preparations etc and to establish scientific laboratories , libraries, reading rooms relating to the keeping of the cattle, improvement of agriculture etc and recognize or assist such institutions.*
- 6. To establish other allied institutions like leather work etc and to recognize and help them in order to make the cow keeping economically viable successfully.*
- 7. To publish books, periodicals, monthlies, advertisements, pamphlets, statements etc from time to time and for that matter to arrange for printing press, building etc in order to popularize the objects of the*

*trust.*

8. *To accept all the trusts and benefactions not inimical to the trust objects conditionally or otherwise.*
9. *To open schools and hostels for imparting education in cow keeping and agriculture having regard to the trust objects or to help such schools and hostels and to make suitable arrangements for training workers required for the trust work.*
10. *To get the money from time to time as required for the trust work by way of gift, borrow on securities of the trust properties or obtain in any other way as deemed fit by the trustees.*
11. *To undertake such other activities from time to time for achieving or helping the trust objects as deemed fit by the trustees.*

7. We find that the assessee trust was registered with Charity Commissioner and the copy of the certificate issued by the Charity Commissioner has been filed in the compilation before us. The Commissioner of Income-tax, Gujarat has registered the assessee-trust under Section 12A. The Joint Commissioner of Sales-Tax (Legal) vide its order dated 2.9.2006 has noted that the activities of the assessee-trust are also not business like, but are allied activities to meet the objectives of the trust, and hence as per the exception in notification (notification section 2(10)), the applicant cannot be considered as trader. We find that for the applicability of proviso to section 2(15), the activities of the trust should be carried out on commercial lines with intention to make profit. Where the trust is carrying out its activities on non-

commercial lines with no motive to earn profits, for fulfillment of its aims and objectives, which are charitable in nature and in the process earn some profits, the same would not be hit by proviso to section 2(15) of the Act. We find that the aims and objects of the assessee-trust are admittedly charitable in nature, and was granted registration by the Charity Commissioner as well as by the Commissioner of Income-Tax (Exemption) under Section 12A of the Act. The assessee has carried out its activities for the fulfillment of its object of breeding the cattle and to improve the quality of the cows and oxen and had sold semen, fodder, milk etc. and in the process some profit was earned by the assessee-trust, which is incidental in nature. The activities undertaken by the assessee-trust for the fulfillment of its charitable objects on non-commercial lines are not hit by the proviso to section 2(15) of the Act. We find that for the applicability of newly inserted proviso to section 2(15) of the Act, the objects of the trust, the purpose and manner of activities of the Trust, whether to make profit or whether the profit earned was incidental to the activities of the trust, overall facts and circumstances in its entirety, the volume of the profit received by the trust, and whether the activities of the trust were conducted in a way to fulfill its object of the trust, which have essentially to be charitable in nature, and the intention of the trustees, all have to be considered to arrive at a just and fair conclusion. In fact the cases where profit making is the object should be distinguished from the cases, where, although the objects of the trust are wholly

charitable, but some profit was made out of the activities undertaken by the Trust for the purpose of achieving the objects of the general public utility. The objective of the proviso to section 2(15) is to deny exemption to such assessee who are engaged in business activities in the garb of charitable purpose. It shall however not effect the cases of charitable institutions, which are carrying on charitable activities genuinely and the facts of the each case has to be seen to decide whether the proviso to section 2(15) is applicable to the facts of the case of the assessee. Mere selling some product at a profit will not *ipso facto* hit the assessee by applying the proviso to section 2(15) and deny the exemption available under Section 11 of the Act. The intention of the trustees and the manner in which the activities of the charitable trust/institution are undertaken are highly relevant to decide the issue of applicability of proviso to section 2(15) of the Act.

The Hon'ble Delhi High Court in Institute of Chartered Accountants of India Vs. DGIT (supra) has considered this controversy. The facts of the case were that DCIT(Exemption) passed an order under Section 263 of the Act, taking a view that ICAI was running a coaching class and it was a business activity, and therefore it has violated the provision of Income Tax Act. The Tribunal held that the order passed by the DIT(Exemption) was not correct in the facts of the case. The Hon'ble High Court after going through the facts and discussing the legal position,

held that in the case of the institute, it cannot be said that it was carrying on business and has observed as under:-

*"20. The purpose and object to do business is normally to earn and is carried out with a profit motive; in some cases the absence of profit motive may not be determinative. The appellant has given no such finding as far as the activities of the institute are concerned. The appellant without examining the concept of business has held that the institute was carrying on business as coaching and programmes were held by them and a fee is being charged for the same."*

In ICAI Accounting Research Foundation Vs. DIT (E) (supra), the Hon'ble Delhi High Court has considered the controversy, wherein the department has taken a view that research foundation was carrying on research activity by taking fees and charges, and therefore it is not eligible for exemption as charitable institution. The Hon'ble High Court has considered the concept of business and charitable purpose and also the proviso to section 2(15) and held that the research foundation was not carrying on any business activity and it was eligible as charitable institution. The Hon'ble Delhi High Court's observations are as under: -

*"The amended definition of 'charitable purpose' would not alter this position. No doubt, proviso to this definition clarifies that advancement of any other object of general public utility will not be treated as charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering service in relation to trade, commerce or business. However, what is not appreciated by the respondent No. 1 is that the merely on undertaking those three research*

*projects at the instance of the Government/local bodies the essential character of the Petitioner Foundation cannot be converted into the one which carries on, cannot be treated as the activity which carries on trade, commerce or business or activity of rendering any service in relation to trade, commerce or business."*

ITAT, Chandigarh Bench in the case of Himachal Pradesh Environment Protection and Pollution Control Board Vs. CIT (supra) considered the scope of proviso to section 2(15) and observed that –

*"Tribunal observed that "it is also important to bear in mind that insertion of proviso to section 2(15) does not mean that in case an assessee is to receive any payment for anything done for trade, commerce or business, the assessee will be hit by the said proviso." Further, the Tribunal has observed as under in this regard:-*

*"As CBDT rightly puts it, sweeping 'generalizations are not possible' and 'each case will have to be decided on its facts'. The question then arises whether on the present set of facts it can be said that the assessee was engaged in trade, commerce or business or in rendering of a service to trade, commerce or business. As far as assessee being engaged in trade, commerce or business is concerned, it is not even learned Commissioner's case that running a organization, set up under the statute law, for controlling, preventing and abating pollution, is pursuing trade, commerce or business. Obviously, a trade, commerce or business implies an activity with profit motive even though public good may be a secondary benefit from such an activity. This is not the case before us. The legal framework under which the assessee is set up is quite clear and unambiguous and it reflects will of the lawmakers in no uncertain terms, which is to prevent pollution."*

8. These decisions of the Hon'ble Courts/Tribunal make the scope of applicability of proviso to section 2(15) of the Act clear that to decide the applicability of the said proviso, the entirety of the facts and circumstances of the case, and in particular the fact that the activities of the trust/institution whether are carried out with a motive to earn profit or profit earned was merely incidental while conducting the charitable objects of the trust, have to be considered. In this case before us, if the interest on investment received by the assessee during the year amounting to Rs.26,15,060/- is taken away from the income side of the assessee, there is a net excess of expenditure over the income during the relevant period, and it cannot be said that the assessee has carried out its activities in the advancement of its charitable objects in a way to earn profit on commercial line. Even if at the end of the accounting year, there is some profit received by the assessee while conducting the charitable objects of the Trust, the same shall be merely incidental in nature and shall not attract the applicability of proviso to section 2(15) of the Act. There is no material/evidence brought on record by the Revenue which may suggest that the assessee was conducting its affairs on commercial lines with motive to earn profit or has deviated from its objects as detailed in the Trust Deed of the assessee. In these facts and circumstances of the case, we have no hesitation in holding that the proviso to section 2(15) is not applicable to the facts and circumstances of the case, and the assessee was entitled

to exemption provided under Section 11 of the Act for the relevant assessment year, and we direct accordingly.

However, we make it clear that this decision is delivered in peculiar facts and circumstances of the case, and shall not be taken as a precedent for charitable trusts doing business or trade under the garb of charitable activities.

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

Order pronounced in Open Court on the date mentioned hereinabove.

Sd/-  
(अनिल चतुर्वेदी / ANIL CHATURVEDI)  
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-  
(जी.सी.गुप्ता/G.C. GUPTA)  
उपाध्यक्ष / VICE-PRESIDENT

Copy of the order forwarded to:

- 1) : Appellant
- 2) : Respondent
- 3) : CIT(A)
- 4) : CIT concerned
- 5) : DR, ITAT.

BY ORDER

DR/AR, ITAT, AHMEDABAD