

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR**

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
& SHRI RAM LAL NEGI, JUDICIAL MEMBER)**

**ITA. No: 212/RPR/2014
(Assessment Year: 2011-12)**

DY.CIT 1(1), Raipur (C.G)	V/S	Raipur Development Authority Bajrang Market, G.E. Road, Raipur (C.G)
(Appellant)		(Respondent)

PAN: AAALR0107R

Appellant by : Shri P.K. Mishra, D.R.
Respondent by : Shri Rajesh Kumar Chabra, C.A.

(आदेश)/ORDER

Date of hearing : 07 -04-2018
Date of Pronouncement : 16 -04-2018

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

1. With this appeal, the Revenue has challenged the correctness of the order of the Ld. CIT(A), Raipur dated 03.07.2014 pertaining to A.Y. 2010-11.

2. The only grievance of the revenue is that the ld. CIT(A) erred in deleting the addition of Rs. 21.62 crores made by the A.O. by disallowing the claim of benefits of Section 11 of the Act.
3. Briefly stated the facts of the case are that the assessee is a local authority who is engaged in the business of buying, developing and selling of lands, plots, flats and developed properties. It also receives rent from commercial properties and other places. The assessee received its registration u/s.12AA of the Act on 16.01.2008.
4. The return for the year was filed on 31.03.2012 declaring total income at Rs. NIL. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.
5. During the course of the scrutiny assessment proceedings, the A.O. examined the objects of the assessee. The A.O. was of the opinion that the nature of activities carried on by the assessee are hit by the amendment brought to the provisions of Section 2(15) of the Act. Drawing support from the said Section, the A.O. treated the entire surplus of Rs. 21.62 crores as the income taxable for the year.
6. Assessee carried the matter before the ld. CIT(A) and vehemently contended that the A.O. has grossly erred in drawing support from the amended provisions of Section 2(15) of the Act as the pre dominant object of the assessee is to carry out charitable activities and not to earn profit. The ld. CIT(A) was convinced and directed the A.O. to delete the addition of Rs. 21.62 crores.

7. Aggrieved by this, the revenue is before us. Representatives of both sides were heard at length. Case records carefully perused.

8. The objects of the assessee local authority is mentioned in the MP & CG Nagar Tatha Gram Nivesh Adhiniyam, 1973 which is as under:-

'Section 38(2) - the duty of implementing the proposal in the development plan, preparing one or more town development schemes and acquisition and development of land for the purpose of expansion or implementation of the area specified in the notification under sub-section (1) shall, subject to the provision of this act vest in the town and country development authority for the said area.'

9. It is on these objects registration u/s. 12AA of the Act was granted to the assessee.

10. The bone of contention is the applicability of the proviso to Section 2(15) of the Act. Section 2(15) as it stood in the statute after the repeal of the 1922 Act read as under:-

*Section 2(15) - "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility **not involving the carrying on of any activity of profit.***

This provision remained unchanged till its amendment by the Finance Act, 1983 and with effect from 1.4.1984 "not involving the carrying on of any activity of profit" was omitted.

The Section remained unchanged till it was amended by the Finance Act, 2008 w.e.f 1.4.2009. This means that till the amendment brought by the Finance Act, 2008 the Revenue was convinced that the assessee-trust was not carrying out

any commercial activity in the garb of charitable purpose. The activities of the trust were genuine and were for the charitable purpose.

11. All that has to be decided now is whether the activities of the assessee constitutes carrying on of any activity in the nature of trade, commerce or business to come within the purview of the proviso to Section 2(15) of the Act.

12. The Hon'ble Supreme Court in the case of the assessee GIDC in 227 ITR 414 had the occasion to consider the objects of the GIDC qua the claim of exemption u/s. 10(20A) of the Act. The relevant observations of the Hon'ble Supreme Court reads as under:-

7. The Division Bench of the High Court while agreeing that 'industrial activity is one of the facets of general development' adopted a reasoning that since development of an area would require roads, buildings, sanitation, parks, sports, educational institutions and several other amenities 'a city or town or village could be well developed without any industry'. The Division Bench posed a question and answered it in the following manner:

"The question, therefore, is whether when a particular Corporation is established for the purpose of developing or establishing industries in any particular area, can any one say that it is for the purpose of planning, developing or improving a particular city, town or village or a particular area ? One may establish an industry in a given area. That area for the purpose of industry may develop. But it does not necessarily mean that particular area develops by that industry alone. There may be advantages and disadvantages. On the one hand, because there are industrial activities in the area, some trade and commerce may grow, but that does not necessarily mean that it would develop that particular area. It may also create pollution and several other problems. Apart from that, the question which is required to be considered is as to whether the purpose of the

corporation or the object of the corporation is to develop any city, any town or any particular area. The answer would be in the negative."

8. The Gujarat Act was enacted 'to make special provision for securing the orderly establishment of industries in industrial areas and industrial estates in the State of Gujarat, and to assist generally in the organization thereof, and for that purpose to establish an Industrial Development Corporation and for purposes connected with the matters aforesaid' as can be discerned from the preamble thereof.

9. Section 2(g) of the Act defines 'industrial area'¹ as any area declared to be an industrial area by the State Government by notification in the Official Gazette which is to be developed and where industries are to be accommodated. Section 2(h) defines 'industrial estate' as any site selected by the State Government where the Corporation builds factories and other buildings and makes them available for any industries or class of industries. Section 13 of the Gujarat Act enumerates the functions of the Corporation and they contain, inter alia, 'to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Gujarat'.

10. We have no doubt that a proper planning is absolutely necessary for creation of an industrial area. Inside roads, sub-roads, buildings, sanitation, parks and other amenities have also to be provided in a planned industrial area as per the modern concept of any industrial complex. Even educational institutions may have to be provided in such complex. Therefore, development of industrial area would have its direct impact on the development or improvement of that part of the city or town or village where such area is located. Delinking industrial area from the scope of development of any area is thus, without any practical sense.

11. In this context, a reference to the Maharashtra Industrial Development Act, 1962, which is almost analogous to the Gujarat Act, is of some use. While examining issues relating to the validity of the Maharashtra Act, a Division Bench

of this Court has said in Shri Ramtanu Co-operative Housing Society Ltd .v. State of Maharashtra [1 970] 3 SCC 323 :

"The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing building, allotting buildings, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also/that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of ~the sole purpose of establishment, growth and development of industries. The Corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of the work of the Corporation."

12. The scheme of the Gujarat Act, as is seen from a survey of the relevant provisions referred to above, would indicate that the Corporation set up thereunder is to chalk out plans for development of industrial area and industrial estate in different places which may locate in cities or towns or villages. Such schemes would normally involve planning and development of such areas.

13. The word 'development' in section 10(20A) should be understood in its wide sense. There is no warrant to exclude all development programmers relating to any industry from the purview of the word 'development' in the said sub-section. There is no indication in the Act that development envisaged therein should confine to non-industrial activities. Development of a place can be accelerated through varieties of schemes and establishment of industries is one of the modes of developing an area.

One of the reasons for incorporating a specific provision of exemption from income-tax such as section 10(20A) is to protect public bodies created under law for achieving the purpose of developing urban or rural areas for public good.

When the object is such, an interpretation which would preserve it should be accepted even if the provision is capable of more than one interpretation. That principle of interpretation is very much applicable to fiscal statutes also, [vide State of Tamil Nadu v. M.K. Kandaswami 1976 (1) SCR 38]. This Court has reiterated the said principle in Calcutta Jute Manufacturing Co. v. CTO JT 1997(5) SC 690.

15. The position is, therefore, clear that the authorities constituted by law for facilitating all kinds of development of cities, towns and villages for public purposes shall not be subjected to the liability to pay income-tax. The Division Bench of the High Court seems to have interpreted the exemption clause too rigidly and narrowly which resulted in the anomaly of bringing authorities like the appellant-corporation within the tentacles of the income-tax liability while the authorities dealing with the housing schemes which provide houses to private individuals would stand outside the taxing sphere.

16. In the/ result, we allow these appeals, 'set aside the judgment under challenge. The answer to the question will, therefore, be in favour of the assessee and against the revenue.

13. The constitutional validity of the Maharashtra Act was challenged before the Hon'ble Supreme Court by a writ and the Hon'ble Apex Court dismissed the writ petition. The relevant observations of the Hon'ble Supreme Court reads as under:-

3. The true character, scope and intent of the Act is to be ascertained "with reference to the purposes and the provisions of the Act. The Act is one to make a special provision for securing the orderly establishment in industrial areas and industrial estates of industries in the State of Maharashtra, and to assist generally in the organisation thereof, and for that purpose to establish an Industrial Development Corporation, and for purposes connected with the matters aforesaid.

4. *The Corporation is established for the purpose of securing and assisting the rapid and orderly establishment and organisation of industries in industrial areas and industrial estates in the State of Maharashtra. The Corporation consists of 8 members two of whom are nominated by the State Government of whom one shall be the Financial Adviser to the Corporation, one member nominated by the State Electricity Board, one member nominated by the Housing Board and three members nominated by the State Government, from amongst persons appearing to Government to be qualified as having had experience of, and having shown capacity in industry or trade or finance or who are in the opinion of the Government capable of representing the interest of persons engaged or employed therein, and the Chief Executive Officer of the Corporation, who shall be the Secretary of the Corporation.*

7. *We have referred to these expressions, "industrial area", "industrial estate", "development" and "amenity" in order to appreciate the general powers of the Corporation to discharge the functions of the Corporation in regard to the establishment, growth and development of industries in the State. These powers are to acquire and hold property, movable and immovable for the performance of any of its activities, and to lease, sell, exchange or otherwise transfer any property held by the Corporation on such conditions as may be deemed proper by the Corporation and also to purchase by agreement or to take on lease or under any form of tenancy any land, to erect such buildings and to execute such other works as may be necessary for the purpose of carrying out its duties and functions, to provide or cause to be provided amenities and common facilities in industrial estates and industrial areas and construct and maintain or cause to be maintained works and buildings therefore, to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings to construct buildings for the housing of the employees of such industries, to allot factory sheds or such buildings or parts of buildings, including residential tenements to suitable persons in the industrial estates established or developed by the Corporation and to do such other things and perform such acts as it may think necessary or expedient for the proper conduct of its functions, and the carrying into effect the purposes of this Act.*

8. *Broadly stated the functions and powers of the Corporation are to develop industrial areas and industrial estates by providing amenities of road., supply of water or electricity, street lighting, drainage, sewerage, conservancy and other conveniences, secondly to construct works and buildings, factory sheds and*

thirdly, to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings and to allot factory sheds, buildings, residential tenements to suitable persons in industrial estates established or developed by the Corporation and to lease, sell, exchange or otherwise transfer any property held by the Corporation on such conditions as may be deemed proper by the Corporation.

9. The development of industrial areas and industrial estates is intended to serve two objects. In the first place, there is to be an orderly establishment and growth of industries in the Bombay Poona sector. The second object is to secure dispersal of industries from the congested areas of the Bombay Poona sector to the underdeveloped parts of the State. The industrial areas are broadly classified into two categories, namely, first, those meant for engineering and other industries which are not obnoxious and secondly those meant for chemical industries. The establishment and growth of industries in the State is inextricably bound up with availability of land. Available land is limited. Such limited supply leads to speculation in land. Power is therefore required for compulsory acquisition of land to achieve the purposes of the Act. At the same time, land owners are not to be deprived of the legitimate benefit of reasonable increase in land values in a developing economy.

11. *The principal functions of the Corporation in regard to the establishment, growth and development of industries in the State are first to establish and manage industrial estates at selected places and secondly to develop industrial areas selected by the State Government. When industrial areas are selected the necessity of acquisition of land in those areas is apparent. The Act, therefore, contemplates that the State Government may acquire land by publishing a notice specifying the particular purpose for which such land is required. Before the publication of the notice, the owner of the land is given an opportunity to show cause as to why the land should not be acquired. After considering the cause shown by the owner the State Government may pass such orders as it deems fit. When a notice is published for acquisition of land, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances. Where the land has been acquired for the Corporation or any local authority, the State Government shall, after it has taken possession of the land, transfer the land to the Corporation or that local authority, for the purposes for which the land has been acquired subject to such terms and conditions which the State Government may deem fit to impose. We have already noticed that for*

the purpose of the Act, namely, the establishment and development of industries the State the Corporation will establish industrial estates and develop industrial areas.

12. *Apart from establishing industrial estates and developing industrial areas the Corporation may dispose of any land acquired by the State Government and transfer to the Corporation without undertaking or carrying out any development thereof or transfer such land after undertaking or carrying out any development as it thinks fit. These powers of the Corporation with respect to the disposal of land are to be exercised so far as practicable, that where the Corporation proposes to dispose of by sale any such land without any development having been undertaken or carried out thereon, the Corporation shall offer the land in the first instance to the persons from whom it was acquired if they desire to purchase it subject to such requirements as to its development and use as the Corporation may think fit to impose. Again, the persons who are residing or carrying on business or other activities on any such land shall, if they desire to obtain accommodation on land belonging to the Corporation and are willing to comply with any requirements of the Corporation as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.*

16. *The petitioners contended that the Corporation was a trading one. The reasons given were that the Corporation could sell property, namely, transfer land that the Corporation had borrowing powers ; and that the Corporation was entitled to moneys by way of rents and profits. Reliance was placed on the report of the Corporation and in particular on the income and expenditure of the Corporation to show that it was making profits. These features of transfer of land or borrowing of moneys or receipt of rents and profits will by themselves neither be the indicia nor the decisive attributes of the trading character of the Corporation. Ordinarily, a Corporation is established by shareholders with their capital. The shareholders have their Directors for the regulation and management of the Corporation. Such a Corporation set up by the shareholders carries on business and is intended for making profits. When profits are earned by such a Corporation they are distributed to shareholders by way of dividends or kept in reserve funds. In the present case, these attributes of a trading corporation Corporation are absent. The Corporation is established by the Act for carrying out the purposes" of the Act. The purposes of the Act are development*

of industries in the State. The Corporation consists of nominees of the State Government, State Electricity Board and the Housing Board. The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing buildings, allotting buildings, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of sole purpose of establishment, growth and development of industries.

18. The Corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of work of the Corporation. The fund of the Corporation consists of moneys received from the State Government, all fees, costs and charges received by the Corporation, all moneys received by the Corporation from the disposal of lands, buildings and other properties and all moneys received by the Corporation by way of rents and profits or in any other manner. The Corporation shall have the authority to spend such sums out of the general funds of the Corporation or from reserve and other funds. The Corporation is to make provision for reserve and other specially denominated funds as the State Government may direct. The Corporation accepts deposits from persons, authorities or institutions to whom allotment or sale of land, buildings, or sheds is made or is likely to be made in furtherance of the object of the Act. A budget is prepared showing the estimated receipts and expenditure. The accounts of the Corporation are audited by an auditor appointed by the State Government. These provisions in regard to the finance of the Corporation indicate the real role of the Corporation, viz., the agency of the Government in carrying out the purpose and object of the Act which is the development of industries. If in the ultimate analysis there is excess of income over expenditure that will not establish the trading character of the Corporation. There are various departments of the Government which may have excess of income over expenditure.

19. There are two provisions of the Act which are not to be found in any trading Corporation. In the first place, the sums payable by any person to the Corporation are recoverable by it under this Act as an arrear of land revenue on the

application of the Corporation. 'Secondly on dissolution of the Corporation the assets vest in and the liabilities become enforceable against the State Government.

20. The underlying concept of a trading Corporation is buying and selling. There is no aspect of buying or selling by the Corporation in the present case. The Corporation carries out the purposes of the Act, namely, development of industries in the State. The construction of buildings, the establishment of industries by letting buildings on hire or sale, the acquisition and transfer of land in relation to establishment of industrial estate or development of industrial areas and of setting up of industries cannot be said to be dealing in land or buildings for the obvious reason that the State is carrying out the objects of the Act with the Corporation as an agent in setting up industries in the State. The Act aims at building an industrial town and the Corporation carries out the objects of the Act. The hard core of a trading Corporation is its commercial character. Commerce connotes transactions of purchase and sale of commodities, dealing in goods. The forms of business transactions may be varied but the real character is buying and selling. The true character of the Corporation in the present case is to act as an architectural agent of the development and growth of industrial towns by establishing and developing industrial estates and industrial areas. We are of opinion that the Corporation is not a trading one.

14. In the light of the aforementioned judicial decisions of the Hon'ble Supreme Court, it is settled that the assessee is not a trading corporation. Let us now consider the various aspect of the impugned provision.

"General means pertaining to whole class,

"Public" means the body of people at large including any class of the public,

"Utility" means usefulness.

Therefore, the advancement of any object of benefit to the public or a section of the public as distinguished from individual and group of individuals would be a charitable purpose. An object of public utility

need not be an object in which the whole of the public is interested. It is sufficient if well defined section of the public benefits by the objects which means that the expression "object of general public utility" is not restricted to objects beneficial to the whole mankind. An object beneficial to a section of the public is an object of general public utility. In the case of CIT Vs Swastik Trading Co. Ltd. 113 ITR 852, the Hon'ble Gujarat High Court has held that establishing and maintaining Gaushalas and Panjrapole constitutes charitable purpose.

16. The Hon'ble Finance Minister while presenting the Finance Act 2008 in his budget speech stated as follows:

"Charitable purpose includes relief of the poor, education, medical relief and any other objects 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 purpose would also fall under "charitable purpose". Obviously, this was not the intention of the Parliament and hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.

18. The CBDT Circular No. 11/2008 dt. 19.12.2008 has explained the implications arising from the amendment brought to the provisions of Sec 2(15) of the Act. The CBDT clarifies that the newly inserted proviso to Sec. 2(15) will not apply in respect of the first three limbs of Sec. 2(15) i.e. relief of the poor, education or medical relief. Consequently where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute charitable purpose, even if it is

incidentally involves the carrying on of commercial activity. The Board further clarified that " the newly inserted proviso to Sec. 2(15) will apply only to entities whose purpose is advancement of any other object of general public utility i.e. 4th limb of the definition of the charitable purpose contained in Sec. 2(15). The Circular further clarified "in the final analysis, whether the assessee has for its objects the advancement of any other object or general public utility **is a question of fact**. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of general public utility will be only a mask or device to hide the true purpose which is trade commerce or business or the rendering of any service in relation to trade, commerce or business. **Each case would therefore be decided on its own facts and no generalization is possible.**

19. Thus, even the CBDT does not lay down any guidelines for determining whether the entity is carrying on any commercial activity. **Each case would therefore to be decided on its own facts and as the CBDT has clarified generalization is not possible.**

15. In the case of Sole Trustee, Loka Shikshana Trust vs. CIT 101 ITR 234, the Hon'ble Justice J. Baig speaking for the Apex Court thus said that:

" If the profits must necessarily feed a charitable purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity".

16. The test for carrying on of any activity in the nature of trade, commerce or business as mentioned in the first proviso to Sec. 2(15) would be satisfied if profit making is not the real object. The Hon'ble Delhi High Court in the case of ICAI Vs Director General of Income Tax (Exem) 347 ITR 99 had the occasion to consider the grievance of the ICAI which was denied exemption u/s. 10(23C)(iv) of the Act because in the opinion of the DGIT (Exem.) the institute was holding coaching classes and therefore was not an educational institution, consequently the institute was covered under the last limb of charitable purpose i.e. advance of any other object of general public utility in the light of the amendment brought o Sec. 2(15) of the Act as the institute was charging fees for conducting coaching clauses and making huge money in a systematic and organized manner. Considering the facts in the light of the amended provisions of Sec. 2(15), the Hon'ble Delhi High Court held that the order denying the exemption was not valid.
17. After considering the entire facts in totality, in the light of the decisions discussed hereinabove and also drawing support from the speech of the Hon'ble Finance Minister and subsequent clarifications issued by the CBDT within the frame work of the amended provisions of Sec. 2(15) of the Act, in our considered view, there was no material which may suggest that the assessee was conducting its affairs solely on commercial lines with a motive to earn profit. There is also no material brought on record which could suggest that the appellant company deviated from its objects for which it has been constituted. In our humble opinion and understanding of law, the proviso to Sec. 2(15) of the Act is not applicable on the facts of the case.

18. Accordingly, we uphold the order of the First Appellate Authority. Appeal dismissed.

19. Before parting, the revenue relied upon another amendment in the Act by way of introduction of section 13(8) which came through Finance Act of 2012 with retrospective effect from 01.04.2009 which provided that the benefit of Section 11 or Section 12 would not be available if the receipts from the activity in the nature of trade or business exceeded the threshold provided for in the proviso to Section 2(15) of the Act. Section 13 (8) of the Act reads as under:-

[(8)“Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous.”]

20. A perusal of the aforementioned section shows that it would be applicable if the provisions of the first proviso to clause (15) of Section 2 become applicable. However, we have held that the first proviso to Section 2(15) is not applicable in the case of the assessee on the facts of the case.

Order pronounced in Open Court on	16 - 04- 2018
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Sd/-

(RAM LAL NEGI)
JUDICIAL MEMBER True Copy
RAIPUR: Dated /04/2018

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –