आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'
[Conducted Through Virtual Court]

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1560 and 1561/Ahd/2017
With
Cross Objection No.05 and 06/Ahd/2019
निर्धारण वर्ष/Assessment Year: 2009-10 and 2010-11

Dy.CIT (Exemptions) Cir.1 Ahmedabad.	Vs	Gandhinagar Urban Development Authority, 4th Floor, Udyog Bhavan Sector 11, Gandhinagar 382 011. PAN : AAALG 0922 K

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Revenue by :	Shri Virendra Ojha, CIT-DR
Assessee by :	Shri Mehul K. Patel, AR

सुनवाई की तारीख/Date of Hearing : 29/07/2020
घोषणा की तारीख /Date of Pronouncement : 31/07/2020

O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT: Revenue is in appeal against separate orders of the ld.CIT(A)-9, Ahmedabad dated 27.4.2017 passed for the Asstt.Years 2009-10 and 2010-11 respectively. On receipt of notice in Revenue's appeals, the assessee has filed cross objection bearing CO No.5 and 6/Ahd/2019. For the sake of convenience, we dispose of all appeals by this common order.

2. Registry has pointed out that the COs. filed by the assessees are time barred by 212 days. In order to explain the delay in filing the cross objections, the assessee has filed application as well as affidavits of Shri Shantilal Odhavjibhai Patel, Accounts Officer of the assessee-authority. The application of the assessee read as under:

> *"The above-named assessee is a Trust engaged in Urban Development activity as per the Government Regulations. The assessee is getting the exemption u/s 11 of the Act since years. Even in the year under consideration, the assessee was granted the exemption u/s 11 in the original assessment framed u/s 143(3) of the Act. However, later on the assessment was re-opened u/s 147 of the Act and the said exemption was denied by the AO in the order passed u/s 143(3) rws 147 of the Act.*
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> *2. In the appeal before CIT(A), the learned CIT(A) decided the legal ground regarding the validity of re-opening in favour of the assessee and held the assessment to be null and void ab-initio. However, on merits, it is held by the learned CIT (A) that the assessee is not entitled to the exemption u/s 11 of the Act.*
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> *3. The said order was received by the Accounts Officer of the assessee, Shri Shantilal Odhavji Patel who is not conversant with income tax matters, and he remained under the bonafide impression that since the matter is decided in favour of the assessee on issue of re-opening, there is no necessity to take any further action by the assessee, and hence, he did not inform anyone about the order.*
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> *4. The Department filed appeal before Hon'ble ITAT and it was fixed for first hearing on 31/01/2019. At that time, when the relevant papers were handed to Shri Mehul.K. Patel, Advocate at Ahmedabad, it was realized and advised that the assessee needs to file cross objection on the merits of the appeal and it was immediately drafted and filed before Hon'ble ITAT on 05/02/2019, resulting in a delay of 212 days.*
>
> *5. In the above circumstances the delay has arisen-7 Sue to bonafide reasons as stated above and in the interest of justice the delay may kindly be condoned and the cross objection may kindly be decided on merits and oblige.*

6. Separate Affidavit of concerned Accounts Officer is enclosed herewith.

3. The ld.DR, on the other hand, submitted that in the application no reasons are discernible which prevented the assessee from filing the COs against the orders of the ld.CIT(A).

4. On the other hand, the ld.counsel for the assessee submitted that since the ld.CIT(A) has quashed reassessment proceedings, therefore, authority thought that there is no need to agitate the matter on merit. But when the Revenue has filed appeals and the concerned officer sought consultation with tax experts, then it was advised that cross objection should be filed. In that process, the CO has become delayed.

4. We have duly considered rival contentions and gone through the record. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross-objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression "sufficient cause" employed in the section has also been used identically in sub-section 3 of section 249 of Income Tax Act, which provides powers to the ld.Commissioner to condone the delay in filing the appeal before the Commissioner. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon'ble High Court as well as before the Hon'ble Supreme Court, then, Hon'ble Court were unanimous in their conclusion that this expression is to be used liberally. We may make reference to the following observations of the

Hon'ble Supreme court from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353:

> *"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
>
> *2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
>
> *3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
>
> *4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
>
> *5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
>
> *6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

5. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of N.Balakrishnan Vs. M. Krishnamurthy (supra). It reads as under:

> *"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to*

seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

6. We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice to say that the Hon'ble Courts are unanimous in their approach to propound that whenever the reasons assigned by an applicant for explaining the delay, then such reasons are to be construed with a justice oriented approach.

7. After going through the explanation given by the assessee, we are of the view that the assessee has been prevented by sufficient reasons for

not coming to the Tribunal well in time. It is pertinent to observe that since re-assessment orders were quashed by the ld.CIT(A), therefore, it was thought that there is no need to challenge these orders in further appeal. However, when the discussion for preparing arguments on Revenue's appeals was made, then the ld.counsel for the assessee has advised for filing cross objections on merits. He was of the opinion that if on the preliminary issue orders of the ld.CIT(A) are set aside, then the assessee would be remediless and this issue on merit would be construed as decided against the assessee. After this consultation, the CO has been filed. To our mind, there is no deliberate attempt at the end of the assessee to delay the challenge to the orders of the CIT(A) on merit. The assessee will not gain anything by delaying the filing of the COs. or by making challenge to the order of the CIT(A). Thus, it could not be seen as a delay strategy rather it happened on account of *bona fide* mistake. Therefore, we allow application for condonation of delay and proceed to decide the COs on merit along the appeal of the Revenue.

8. First we take the appeal of the Revenue for Asstt.Year 2009-10.

9. Though the Revenue has taken four grounds of appeal, the grievances pleaded in this four grounds revolve around a single issue viz. the ld.CIT(A) has erred in quashing the re-assessment order.

10. Brief facts of the case are that assessee is an entity established by the Government of Gujarat under Town Planning Act. It engaged in the development of urban areas in Gandhinagar, capital city of Gujarat which is in the nature of advancement of general public utility. Assessee has been granted registration under section 12AA. It filed its

return of income on 30.9.2009 declaring income at Rs.NIL. The said return was finalized under section 143(3) of the Income Tax Act by accepting the returned income. Thereafter, AO observed that nature of work carried out by the assessee fall out of the purview of amended provision of section 2(15) of the Act. He served a notice under section 148 of the Act on 28.3.2014 upon the assessee for reopening of the assessment for the reasons that since activities of the assessee falls outside the scope of the section 2(15) of the Act, its activities cannot be said to be 'charitable', and would not be eligible for any exemption under section 11 of the Act. The reasons recorded by the AO for issuance of notice dated 28.3.2014 reads as under:

> *REASONS RECORDED FOR ISSUE OF NOTICE U/S. 148 OF THE I.T. ACT, 1961*
>
> *The assessee AOP, Gandhinagar Urban Development Authority filed its return of income for A.Y. 2010-11 on 05.10.2010 declaring total income of NIL. The case was finalized u/s 143(3) on 15.03.2013 accepting the returned income. The assessee is engaged in development of urban areas m Gandhinagar, which is advancement of objects of public utility. Scrutiny of the assessment records revealed that the assessee had obtained registration u/s 12AA of the of the Act w.e.f. 01.04.2002 and has been claiming exemption u/s 11 of the / Act.*
>
> *It is apparent from the above that the assessee earned income by rendering services for fee or-consideration. Hence, the activities of the assessee cannot he treated as "charitable activities' and accordingly the assessee will not be eligible for any exemption u/s 11- of the Act. I have therefore reason to believe that the income chargeable to tax to the above extent had escaped assessment for the above for A.Y. 2009-10 within the meaning of Section 147 of the Act.*
>
> *I, therefore issue. notice u/s. 148 of the I.T. Act, 1961.*
>
> *Sd/-*
> *[Kamlesh Makwana]*
> *Deputy Commissioner of Income Tax*
> *Gandhinagar Circle, Gandhinagar.*
>
> *Date:-28/03/2014*
> *Place:- Gandhinagar*

11. It was explained by the assessee that assessee is a Government of Gujarat's statutory body set up for the purpose of developing the Gandhinagar Urban area in controlled and disciplined manner; that income of the assessee is mainly grants governments, and fees fixed by the government, which are utilized for development of various public welfare projects, which are not in relation to trade, commerce or business, as observed by the AO; that all the activities controlled and managed by the Government and there is no profit motive. Therefore, the claim of the assessee falls within the parameter of section 2(15), and the proposed denial exemption under section 11 by the AO be dropped. The assessee also relied upon various judicial pronouncements to support its case. However, the explanation of the assessee did not find favour from the Assessing Officer, and the AO stood by his observation that assessee was not carrying out any charitable activity, and therefore hit by proviso 1 and 2 of the Section 2(15) of the Act. Accordingly, he denied exemption claimed by the assessee. Against this order of the AO, assessee went in appeal before the ld.first appellate authority. Before theld.CIT(A) it was contended by the assessee that the reopening of the assessment is bad in law as the AO has not found any fresh material to come to a form a belief that the income has escaped the assessment. The ld.AO was in possession of all the information with regard to the activities of the assessee viz. details of its activities, objects of the assessee, nature of services rendered and fees received by the assessee, and copies of final accounts. The AO was merely trying to review of his own order rather than reassessment of its income of the basis of any material, which was not permissible in law. Assessee has

furnished all the necessary details and books of accounts fully and truly during the assessment proceedings, and there was no reason to hold that income of the assessee has been escaped so as to valid reassessment proceedings under section 147 of the Act. It was further contended that merely due to change of opinion on the part of the AO, original assessment cannot be reopened. The ld.CIT(A) after going through the explanation of the assessee and all material on record held that the reassessment order was based on the material available to the AO during the original assessment. No fresh material was with the AO so as to attract the provisions of section 147/148 of the Act, and that the re-assessment proceedings was initiated merely on the basis of same set of facts which were otherwise available during the original assessment, and such reassessment was bad in law, and accordingly, reassessment order was nullified. Aggrieved by the order of the ld.CIT(A), Revenue is in appeal before the Tribunal for both the assessment years.

12. With the assistance of the ld.representatives, we have gone through the record carefully. The ld.DR submitted that notice under section 148 was issued within four years from the end of the relevant assessment year. Therefore, benefit of provision appended to section 147 is not available to the assessee. In the present case, the AO can reopen the assessment, if he was satisfied that income has escaped assessment. On the other hand, the ld.counsel for the assessee submitted that the assessment was made under section 143(3) of the Act. There is no change in the facts and circumstances. No new thing/fact was witnessed or come to the notice of the AO. Therefore, merely on the basis of change of opinion, he has reopened the assessment. The ld.first

appellate authority has duly taken note of this fact in his order. On due consideration of all the above facts, we are of the view that the ld.AO has simply gone though the record already available to him on the basis of which a scrutiny assessment framed under section 143(3). Therefore, on the above reasoning assessment cannot be reopened. The ld.CIT(A) has properly appreciated the facts of the assessee's case. He observed that the ld.AO himself recorded a finding that after discussion and from the data made available during the course of hearing nothing adverse has been found. All the information called under section 142(1) of the Act relating to the important activities, income claimed under section 11 of the Act were submitted as well as books of accounts supported by bills and vouchers were produced before the AO for verification. He further recorded a finding that assessee has produced all the required details before the AO during the original assessment proceedings in response to the notice under section 142(1) and also reply given by the assessee in the original assessment. Even in the reasons recorded in the notice under section 148, there was no mention of adverse facts being come to the light in order to reopen the original assessment, nor any information or fresh evidence in the possession of the AO. On going through the record and the orders of the AO it is clear that the assessment was reopened merely on the basis of same set of facts, which were already available on record. Therefore, the ld.CIT(A) has rightly held that action of the AO in reopening of the assessment is wrong and null and void. We do not any infirmity in the order of the ld.CIT(A) on this issue, which is upheld.

13. As far as facts and circumstances for the Asstt.Year 2010-11 are concerned, they are identical. Similar set of reasons are recorded by the AO. Copy of which is available on page no.7 of the paper book filed by the assessee along with COs. We have perused the reasons recorded by the AO and we are of the view that these are verbatim same as that of the Asstt.Year 2009-10. The finding of the CIT(A) is also identical in the Asstt.Year 2010-11. Thus, considering parity of all the facts in the reasons as well as finding of the ld.CIT(A), we do not wish to reproduce the reasons for the sake of brevity and repetition. Following our finding for the Asstt.Year 2009-10 (supra), we do not find any merit in the appeal of the Revenue for the Asstt.Year 2010-11 also.

14. So far as issue agitated in COs are concerned the assessee has pleaded that the assessee deserves to be given benefit of section 11 and 12 being a charitable institution. The ld.counsel for the assessee submitted that this aspect has been considered by the Tribunal in assessee's own case for the Asstt.Year 2011-12, and the appeal of the assessee bearing ITA no.3621/Ahd/2015 has been allowed by the Tribunal. Copy of the order has been placed on page no.13 to 17 of the paper book. The ld.DR was unable to controvert this contention of the ld.counsel for the assessee.

15. We have duly considered rival contentions and gone through the record carefully. The discussion made by the Tribunal in the Asstt.Year 2011-12 vide order dated 23.7.2019 in the assessee's own case cited supra reads as under:

> *"3. The fact in brief is that return of income declaring loss of Rs. 24,320 was filed on 30th Sep, 2011. The case was selected under scrutiny by issuing of*

notice u/s. 143(2) of the act on 10th Sep, 2012. During the course of assessment proceedings, the assessing officer observed that the main objective of the assessee was planned and controlled development for the entire urban development area which was of the nature of advancement of object of public utility. Therefore, assessee was show caused to explain why not the exemption claimed u/s. 11 of the IT Act should 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 other public detail is also the beneficiaries. The submission of the assessee along with the judicial pronouncements has been reported at page no. 7 to 12 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 I.T.A No. 3621/Ahd/2015 A.Y. 2011-12 Page No 3 Gandhinagar Urban Development Authority vs. DCIT 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 assessee's activities were out of the purview of provisions of section 2(15) of the act, 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 ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

5. During the course of appellate proceedings before us, the ld. counsel has contended that Co-ordinate Bench of the ITAT Ahmedabad has adjudicated the identical issue on similar fact in the case of the Vodadara Urban Development Authority Vs. ITO Vide ITA No. 2751/Ahd/2014 dated 28-01-2019 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 Gandhinagar Urban Development Authority vs. DCIT 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."*
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> *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."*

16. There is no disparity on facts. In the original assessment orders, the AO has also allowed benefit of sections 11 and 12 to the assessee. These orders have been reopened by the AO by issuance notice under section 148 of the Act. We have noticed the above facts while dealing with the issues in the appeal of Revenue on the merit of reopening. The income of the assessee was determined at NIL in the original assessment orders for both the years. Considering the order of co-ordinate Bench in the Asstt.Year 2011-12 (supra), we are of the view that the assessee is entitled to benefit of sections 11 and 12, and therefore, the issue on merit also deserves to be decided in favour of the assessee. Considering the

above, we dismiss the appeals of the Revenue and allow cross objections filed by the assessee in both the years.

16. In the result, appeals of the Revenue are dismissed, and Cross Objections of the assessee are allowed.

Pronounced in the Open Court on 31st July, 2020.

Sd/-	**Sd/-**
(WASEEM AHMED)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**