

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 707 of 2013

FOR APPROVAL AND SIGNATURE:

**HONOURABLE MR.JUSTICE M.R. SHAH
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES
- 2 To be referred to the Reporter or not ? YES
- 3 Whether their Lordships wish to see the fair copy of the judgment ? NO
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ? NO
- 5 Whether it is to be circulated to the civil judge ? NO

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DIRECTOR OF INCOME TAX (EXEMPTION)....Appellant(s)
Versus

AHMEDABAD MANAGEMENT ASSOCIATION....Respondent(s)

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Appearance:

- MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1
- MR JIGAR M PATEL, ADVOCATE for the Respondent(s) No. 1
- MR MUKESH M PATEL, ADVOCATE for the Respondent(s) No. 1
- MR RK PATEL, ADVOCATE for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR.JUSTICE M.R. SHAH
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA**

Date : 13/06/2014

CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1. Being aggrieved and dissatisfied with the impugned judgment and order passed by the Income Tax Appellate Tribunal, 'D' Bench, Ahmedabad (hereinafter referred to as 'the tribunal') dated 22/03/2013 in ITA No. 159/Ahd/2013 for the Assessment Year 2009-10 by which the tribunal has allowed the said appeal preferred by the respondent-assessee holding that the activities of the assessee were in the field of education and the assessee was eligible for exemption under Section 11(1) of the Income Tax Act (hereinafter referred to as 'the Act') and consequently quashed and set aside the order passed by the Assessing Officer confirmed by the Commissioner of Income Tax (Appeals) assessing the income of the assessee at Rs.1,42,11,129/- with the proposed following substantial question of law;

“Whether the Appellate Tribunal has substantially erred in holding that the activities of the assessee are in the field of education and that the assessee was eligible for exemption under Section 11(1) of the Act?”

2. The assessee-Ahmedabad Management Association is a Public Charitable Trust, which is dedicated to pursue the objects of continuing education, training and research on various facets of management and related areas for the past 50 years. Various activities of the assessee and its revenues are highlighted by the Assessing Officer in paragraph 5 of the

Assessment Order;

“The summarized position of the Income & Expenditure of various of the assessee, as submitted by the assessee is as under;

Nature of Educational Programme	Income (Rs)	Expenditure (Rs)
Continuing Education Diploma & Certificate Programs	3,32,51,021	1,73,50,202
Management Development Programs	65,73,962	55,18,482
Public Talks & Seminars	0	11,59,959
Workshops & Conferences	13,65,659	21,54,199
Total as appearing in Income & Expenditure Account	4,11,90,642	2,61,82,842

In response to the query encompassing the details of various activities of the assessee mentioned below

1, 2 & 3 – Continuing Education Diploma & Certificate Programs

4 – Management Development Programs.

5 & 6 - Public Talks & Seminars.

7 & 8 – Workshops & Conferences.

the assessee submitted that ‘Public Talks & Seminars’ (as per separate list submitted) are organized completely free of charge for the benefit of the public at large and hence, in respect of the same, there is only expense, no income. The consolidated expense for all such talks is Rs.11,59,959/-. In respect of the Continuing Education, Diploma & Certificate Programs, Management Development Programs and Workshops and Conferences, Fees are charged from the participants and the same are duly reflected under the Income column. AMA recognizes merit for all its programs and hence no concession in

fees is granted on the basis of any economic criteria.”

2.1.. Thereafter, notice under Sections 143(1) and 143(2) of the Act was issued and letter calling for certain details was issued on 24/06/2011 requiring the assessee to submit the details. During the course of the assessment proceedings, the assessee submitted a list of more than 800 programmes, seminars and courses conducted during the year and also submitted the total expenses incurred in respect of each programme. It was the case on behalf of the assessee that it is entitled to exemption under Section 11 in view of the amended definition of Section 2(15) of the Act as the assessee-Ahmedabad Management Association is dedicated to pursue the objects of continuing education, training and research on various facets of management and related areas and for the said purpose the assessee-Association undertakes multi-faceted activities comprising of conducting various Continuing Education Diploma and Certificate Programmes, Management Development Programmes, Public Talks, Seminars, Workshops and Conferences. It was also submitted that the Association/assessee also runs the facilities of library and undertakes the publication of books, journals etc. both, in print and electronic media forms. It was also submitted on behalf of the assessee that public talks and seminars are organized completely free of charge for the benefit of the public at large and hence in respect of the same, there is only expense and no income. The Assessing Officer summarized the position and bifurcated the same in four categories, (i) Continuing Education Diploma & Certificate Programs, (ii) Management Development Programs, (iii) Public Talks & Seminars and (iv) Workshops & Conferences. The Assessing Officer observed

that considering the nature of courses, its durations and resultant surplus from each activity, the activity of the assessee is not considered educational, as defined by Hon'ble the Supreme Court in the case of **Sole Trustee Lok Shikshan Trust Vs. Commissioner of Income Tax** reported in **(1975) 101 ITR 234 (SC)**. The Assessing Officer also held that the activities of the assessee falls within the scope of amendment of '*advancement of any other object of general public utility and any other activity*' of Section 2(15) of the Act and, therefore, the activities of the assessee were not educational since the aggregate value of receipts were more than Rs.10 lakhs and, therefore, proviso to Section 2(15) of Act were applicable and the assessee was not entitled for exemption. The Assessing Officer therefore denied exemption under Section 11 of the Act and assessed the income of the assessee at Rs.1,42,11,129/-. Since the assessee was denied exemption, the Assessing Officer made a further addition of Rs.26,38,500/- on account of voluntary contribution to donation to the corpus received by the assessee during the year.

2.2. Being aggrieved and dissatisfied with the order passed by the Assessing Officer denying exemption under Section 11 of the Act and assessing the income of the assessee at Rs.1,42,11,129/-, the assessee preferred appeal before the Commissioner of the Income Tax (Appeals) and the Commissioner of Income Tax (Appeals) by order dated 02/01/2013 dismissed the said appeal confirming the order of assessment passed by the Assessing Officer.

2.3. Being aggrieved and dissatisfied with the aforesaid two

orders, the assessee preferred appeal before the tribunal and relying upon the decision of this Court in the case of **Gujarat State Cooperative Union Vs. CIT** reported in **195 ITR 279 (Gujarat)** the tribunal held the issue in favour of the assessee and has held that the activities of the assessee were in the field of education and, therefore, the assessee is eligible for exemption under Section 11 of the Act.

2.4. Being aggrieved and dissatisfied with the impugned judgment and order passed by the learned tribunal, the revenue has preferred the present Tax Appeal to consider the following substantial question of law;

“Whether the Appellate Tribunal has substantially erred in holding that the activities of the assessee are in the field of education and that the assessee was eligible for exemption under Section 11(1) of the Act?”

3. Shri Manish Bhatt, learned Counsel appearing on behalf of the appellant-revenue has vehemently submitted that the learned tribunal has materially erred in holding the issue in favour of the assessee and in holding that the activities of the assessee are in the field of education and, therefore, the assessee is eligible for exemption under Section 11(1) of the Act. It is submitted that the present case is for the Assessment Year 2009-10 and, therefore, amendment to proviso under Section 2(15) of the Act would be applicable. It is further submitted that the activities of the assessee are profit making and, therefore, it cannot be said to be educational activity for charitable purpose, as defined under Section 2(15) of the Act and, therefore, the assessee is not

eligible for exemption under Section 11 of the Act.

3.1. Shri Bhatt, learned Counsel appearing on behalf of the appellant has heavily relied upon the decision of the Division Bench of this Court in the case of **Saurashtra Education Foundation Vs. Commissioner of Income Tax** reported in **273 ITR 139 (Gujarat)** (paragraph nos. 40 and 41). It is submitted by Shri Bhatt, learned Counsel appearing on behalf of the appellant-revenue that in the said decision it is observed and held that while a trust is holding the property for charitable purpose of education as defined by Section 2(15) of the Act may also be an education Institution existing solely for the purpose of education, the two Institutions cannot be treated as belonging to the same class. It is further held that an Institution may be imparting educational activities without imparting formal education and without being affiliated to or accountable to any authority, such a trust can certainly be considered as qualifying for exemption under Section 11(1)(a) read with Section 2(15) of the Act, but the term “other educational institution” contemplated by Section 10(22) of the Act is a narrower concept. It is submitted that in the aforesaid case, the Division Bench has relied upon the decision of this Court in the case **Gujarat State Cooperative Union (Supra)**, the decision relied upon by the tribunal.

3.2. Shri Bhatt, learned Counsel appearing on behalf of the appellant has also relied upon the decision in the case of **Osmania University Teachers’ Association Vs. Sate of Andhra Pradesh** reported in **334 ITR 303 (Andhra Pradesh)**. Shri Bhatt, learned Counsel appearing on behalf of the appellant has also relied upon the decision of the Hon’ble

Supreme Court in the case of **State of Orissa and Anr Vs. Mamata Mohanty** reported in **(2011) 3 SCC 436** (paragraph 29) as well as another decision of the Hon'ble Supreme Court in the case of **State of Tamil Nadu and Ors. Vs. K. Shyam Sunder and Ors.** reported in **(2011) 8 SCC 737** (paragraph 24) in support of his above submissions that the activities of the assessee cannot be said to be an educational activity for charitable purpose as defined under Section 2(15) of the Act, and, therefore, the assessee is not eligible for exemption under Section 11 of the Act.

3.3. It is submitted that as such applying the ratio of the above decisions, the assessee is not carrying its activities within the meaning of educational for charitable purpose. It is submitted that it has no nexus with the formal schooling or the assessee is not having any affiliation with the Government or control over the students and, therefore, the activities of the assessee are not the activities as defined under Section 2(15) of the Act.

3.4. It is further submitted by Shri Bhatt, learned Counsel appearing on behalf of the appellant-revenue that as such the case of the assessee falls in the fourth limb of the definition of Section 2(15) of the Act, that the activities of the assessee are for the '*advancement of any other object of general public utility*' and, therefore, proviso to Section 2(15) of the Act would be applicable. It is submitted that as the assessee is carrying its activity for '*advancement in other object of general public utility*', which is in the nature of trade, commerce or business, it is not eligible for exemption under Section 11 of the Act.

3.5. It is further submitted by Shri Bhatt, learned Counsel appearing on behalf of the appellant-revenue that in the present case as such Circular No.11/2008 dated 19/12/2008 would be applicable. It is submitted that in paragraph 3 of the aforesaid Circular, it is clarified that the newly inserted proviso to Section 2(15) will apply only to entities whose purpose is '*advancement of any other object for general public utility*' i.e. the forth limb of the definition of '*charitable purpose*' contained in Section 2(15) of the Act and 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. It is further submitted that in the aforesaid Circular it is clarified that 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.

3.6. It is further submitted by Shri Bhatt, learned Counsel appearing on behalf of the appellant-revenue that, as contended before this Court by the respondent, it was not the case of the assessee before the Assessing Officer or before the Commissioner of Income Tax (Appeals) that the assessee has been granted registration as charitable institution and, therefore, the assessee is entitled for such benefit. It is submitted that therefore the activities of the assessee cannot be stated to be educational activities for charitable purpose as defined in Section 2(15) of the Act and, therefore, the assessee is not entitled to exemption under Section 11 of the Act as claimed.

3.7. Making the above submissions and relying upon the

above decisions, it is requested to allow the present Tax Appeal and hold that the tribunal has erred in holding that the activities of the assessee are in the field of the education and, therefore, the assessee is eligible for exemption under Section 11 of the Act.

4. The present Tax Appeal is opposed by Shri Mukesh Patel, learned advocate appearing on behalf of the respondent-assessee. It is submitted by Shri Mukesh Patel, learned advocate appearing on behalf of the respondent-assessee that in the facts and circumstances of the case the tribunal has not committed any error in holding that the activities of the assessee are in the field of education and, therefore, the assessee is eligible for exemption under Section 11(1) of the Act.

4.1. It is submitted by Shri Patel, learned advocate appearing on behalf of the assessee that as such the assessee is founded as Public Charitable Trust by the illustrious visionary of India Dr. Vikram Sarabhai and is dedicated to pursue the objects of continuing education, training and research on various facets of management and related areas for the past 50 years. It is submitted that the summarized position of the various activities of the assessee and its revenues has been highlighted by the Assessing Officer in paragraph 5 of the Assessment Order. It is submitted that as per the same, nearly 80% i.e. Rs.3,32,51,021, out of the total income i.e. Rs.4,11,90,642/-, is derived out of Continuing Education Diploma and Certificate Programme, around Rs.65,73,962/- comes from Management Development Programme and Rs.13,65,659/- is generated from Workshops and Conferences.

It is submitted that the assessee organizes public talks and seminars, which are completely free of charge. It is submitted that all the aforesaid clearly highlights the fact that the activity of the assessee is wedded to the cause of education as defined in Section 2(15) of the Act. It is submitted that as such for Assessment Year 1995-96 to 2008-09, the Department has consistently held that the objects and activities of the assessee are related to 'education'. It is submitted that accordingly the income of the assessee has always been treated as entitled to exemption under Section 11 of the Act, which is applicable to the trust whose activities are for any charitable purpose within the meaning of Section 2(15) of the Act. It is submitted that only in the Assessment Year 2009-10 the Assessing Officer has held that the activities of the assessee cannot be considered as educational and the same will fall within the scope of "any other object of general public utility rendering service to any other trade, commerce or industry" as per the amended definition of Section 2(15) of the Act. It is further submitted that the finding recorded by the Assessing Officer that the activities of the assessee cannot be held as educational as defined by the Hon'ble Supreme Court in the case of **Lok Shikshan trust Vs. CIT** reported in **101 ITR 234 (SC)** and the assessee is not entitled to claim the benefit of exemption under Section 10(23C)(iiad) of the Act since the same was meant for any University or other educational institution existing solely for educational purposes and not for the purposes of profit and the assessee did not qualify for the same is grossly irrelevant, in as much as the assessee has never claimed the benefit of this exemption.

4.2. Shri Patel, learned advocate appearing on behalf of the

assessee has submitted that to appreciate the issue/question raised in the present Tax Appeal it would be worthwhile appreciating the legislative objective of the amendment to Section 2(15) of the Act effective from Assessment Year 2009-10 as duly explained in the Circular No.11/2008 dated 19/12/2008. It is submitted that Section 2(15) of the Act defines "**charitable purpose**" to include the following;

- (i) *Relief of the poor*
- (ii) *Education*
- (iii) *Medical relief, and*
- (iv) *The advancement of any other object of general public utility.*

It is submitted that any entity with a charitable object of the above nature was eligible for exemption from tax under Section 11 of the Act or alternatively under Section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of '*charitable purpose*' and, therefore, Section 2(15) of the Act was amended vide Finance Act, 2008 by adding a proviso which states that the '*advancement of any other object of general public utility*' shall not be a charitable purpose if it involves the carrying on of-(a) any activity in the nature of trade, commerce or business; or (b) 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. It is submitted

that therefore the newly inserted proviso to Section 2(15) of the Act will not apply in respect of the first three limbs of Section 2(15) of the Act i.e. relief of the poor, education or medical relief, it will constitute '*charitable purpose*' even if it incidentally involves the carrying on of commercial activities. It is submitted that 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) of the Act. 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. It is submitted that there are industry and trade associations who claim exemption from tax under Section 11 of the Act on the ground that their objects are for '*charitable purpose*' as these are covered under '*any other object of general public utility*'. It is submitted that under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. It is submitted that in such cases, there must be complete identity between the contributors and the participants. It is further submitted that therefore where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to Section 2(15) owing to the principle of mutuality. It is submitted that however, if such organizations have dealings with non-members, their claim to be charitable

organizations would now be governed by the additional conditions stipulated in the proviso to Section 2(15) of the Act. It is submitted that 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. It is submitted that in such a case, the object of '*general public utility*' will be only a mask or a 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.

4.3. It is submitted by Shri Patel, learned advocate appearing on behalf of the assessee that a close reading of the aforesaid Circular clearly highlights the following aspects, which go to support the assessee's submissions that it is not hit by the amended provisions of Section 2(15) of the Act as sought to be contended by the Assessing Officer;

(i) The amended provisions will not apply in respect of the first three limbs of Section 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 (as in the case of AMA) or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.

(ii) The proviso to Section 2(15) of the Act 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) of the Act. It has been further clarified 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 relate to any trade, commerce or business. According to the CBDT Circular, such entities will not be eligible for exemption under Section 11 or under Section 10(23C) of the Act. It needs to be appreciated that the activities of AMA as seen hereinbefore do not involve in any manner 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.

(iii) The Circular also indicates that industry and trade associations, engaged in any activity in the nature of trade, commerce or business or rendering any service in relation to trade, commerce or business, who claim exemption from tax under Section 11 of the Act on the ground that their objects are for charitable purpose, would fall under the proviso to Section 2(15) of the Act as these are covered under 'any other object of general public utility'. Understanding the spirit of the Circular, it is quite clear that the legislative intention of the amendment is to cover within its scope industry and trade associations.

4.4. It is further submitted by Shri Patel, learned advocate appearing on behalf of the assessee that the tribunal has rightly relied upon the ratio of the decision of this Court in the case of **Gujarat State Cooperative Union Vs. CIT** reported

in **195 ITR 279 (Gujarat)** wherein the decision of **Lok Shikshan Trust (Supra)** also came to be considered and has rightly held that the assessee is engaged in the activity of education within the meaning of Section 2(15) of the Act. Shri Patel, learned advocate appearing on behalf of the assessee has heavily relied upon the decision of the Division Bench of this Court in the case of **Gujarat Sate Cooperative Union (Supra)**. It is submitted that in the aforesaid decision the Division Bench has in detail explained the decision of the Hon'ble Supreme Court in the case of **Lok Shikshan Trust (Supra)**. It is submitted that in the aforesaid decision the Division Bench has specifically observed that the observations made by the Hon'ble Supreme Court while dealing with the provisions of Section 2(15) of the Act, which defines 'charitable purposes' reads as under;

"The sense in which the word 'education' has been used in Section 2(15) of the Act in the systematic instruction, schooling or training given to the young is preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word 'education' has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge... but that is not the sense in which the word 'education' is used in Clause (15) of Section 2. What 'education' connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling."

4.5. It is submitted that therefore the observations of the Hon'ble Supreme Court in the case of **Lok Shikshan Trust (Supra)** do not confine the word 'education' only to scholastic instructions but other forms of education also that are included in the word 'education'.

4.6. It is submitted that as such the tribunal has rightly held that the activities of the assessee is for educational purpose and, therefore, is entitled to exemption under Section 11 of the Act. It is further submitted by Shri Patel, learned advocate appearing on behalf of the assessee that as such the tribunal has also dealt with and considered in detail the decision of this Court in the case of **CIT Vs. Sorabji Nusserwanji Parekh** reported in **201 ITR 939 (Gujarat)** as well as in the case of **Saurashtra Education Foundation Vs. CIT** reported in **CIT 273 ITR 139 (Gujarat)** and has rightly observed that as such the aforesaid decisions would assist the assessee rather than the revenue.

4.7. Making the above submissions and relying upon the above decisions, it is requested to dismiss the present Tax Appeal and answer the question in favour of the assessee and against the revenue.

5. Heard the learned advocates appearing on behalf of the respective parties at length. The question, which is posed for consideration of this Court is, *whether the tribunal has committed any error in holding that the activities of the assessee are in the field of education and that the assessee was eligible for exemption under Section 11(1) of the Act?*

5.1. At the outset, it is required to be noted that the dispute is for the Assessment year 2009-10. The assessee declared the total income of Rs.62,523/- and claimed exemption under Section 11 of the Act on the ground that the activities of the assessee are educational activities and, therefore, they are entitled to exemption under Section 11 of the Act. The various activities, which are conducted by the assessee during the period under consideration are enumerated in paragraph 4 and 5 of the Assessment Order. The summarized position of various activities of the assessee as submitted by the assessee before the Assessing Officer is as under;

“The summarized position of the Income & Expenditure of various of the assessee, as submitted by the assessee is as under;

Nature of Educational Programme	Income (Rs)	Expenditure (Rs)
Continuing Education Diploma & Certificate Programs	3,32,51,021	1,73,50,202
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In response to the query encompassing the details of various activities of the assessee mentioned below

1, 2 & 3 – Continuing Education Diploma & Certificate Programs

4 – Management Development Programs.

5 & 6 - Public Talks & Seminars.

7 & 8 – Workshops & Conferences.

the assessee submitted that 'Public Talks & Seminars' (as per separate list submitted) are organized completely free of charge for the benefit of the public at large and hence, in respect of the same, there is only expense, no income. The consolidated expense for all such talks is Rs.11,59,959/-. In respect of the Continuing Education, Diploma & Certificate Programs, Management Development Programs and Workshops and Conferences, Fees are charged from the participants and the same are duly reflected under the Income column. AMA recognizes merit for all its programs and hence no concession in fees is granted on the basis of any economic criteria."

5.2. Relying upon the decision of the Hon'ble Supreme Court in the case of **Lok Shikshana Trust (Supra)** the Assessing Officer held that the activities of the assessee cannot be said to be educational activity and, therefore, is not entitled to the exemption under Section 11 of the Act as claimed. In appeal, the Commissioner of Income Tax (Appeals) confirmed the order passed by the Assessing Officer. However, on further appeal, the tribunal has held in favour of the assessee and relying upon the decision of the Division Bench of this Court in the case of **Gujarat State Cooperative Union Vs. CIT (Supra)** that the activities of the assessee can be said to be an educational activity and, therefore, is entitled to exemption under Section 11 of the Act as claimed. At this stage, it is required to be noted that all throughout for the previous years, right from the Assessment Year 1995-96 till 2008-09 the revenue has considered the activities of the assessee as educational activity and has granted the benefit under Section

11 of the Act.

5.3. **Section 11** of the Act provides that subject to the provisions of Section 60 to 63 the income derived from property held under trust wholly for charitable or religious purposes to the extent to which such income is applied to such purposes in India, and, where any such income is accumulated or set apart for application to such purposes in India shall not be included in the total income of the previous year of the person in receipt of the said income.

“Charitable purpose” is defined under Section 2(15) of the Act, which reads as under;

“Charitable purpose” includes relief of the poor, education, medical relief [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest] and the advancement of any other object of general public utility.

However, subsequently and with effect from Assessment Year 2008-09 proviso to Section 2(15) of the Act has been added and Section 2(15) has been amended by the Finance Act, 2008 by adding the proviso which states that the ‘*advancement of any other object of general public utility*’ shall not be a charitable purpose if it involves the carrying on of-(a) any activity in the nature of trade, commerce or business; or (b) any activity of rendering any service in relation to any trade, commerce or business for cess or fee or any other consideration, irrespective of the nature of use or application,

or retention of the income from such activity. The revenue has denied the exemption claimed by the assessee under Section 11 of the Act mainly relying upon the amended Section 2(15) of the Act by submitting that the case of the assessee would fall under the fourth limb of the definition of '*charitable purpose* i.e. '*advancement of any other object of general public utility*' and, therefore, the assessee shall not be entitled to exemption from tax under Section 11 of the Act.

Therefore, the first question, which is posed for consideration of this Court is, *whether proviso to Section 2(15) of the Act would be applicable in case where it is found that the activity of the assessee is an educational activity and whether the activities of the assessee can be said to be educational activities or not?*

5.4. Now while considering whether the activities of the assessee can be said to be educational activities or not the decision of this Court as well as Hon'ble the Supreme Court is required to be referred to and considered. In the case of **Gujarat State Cooperative Union (Supra)** it is held by the Division Bench of this Court that mere existence of profit will not disqualify institution for exemption under Section 10(22) of the Act, if sole purpose of its existence is not profit making but is educational activities. In the said decision the Division Bench also considered the decision of Hon'ble the Supreme Court in the case of **Lok Shikshana Trust (Supra)**, which has been relied upon by the Assessing Officer as well as the learned Counsel appearing on behalf of the revenue. In the said decision the Division Bench of this Court has observed as under;

*“It appears to us that the decision of the tribunal which seeks to rest it on the observations made by the Supreme Court in **Loka Shikshana Trust’s (Supra)** for holding that, the assessee is not entitled to exemption under Section 10(22) of the Act is based on a complete misreading of the observations of the Supreme Court. In **Loka Shikshana Trust’s (Supra)** the Supreme Court, while dealing with the provisions of Section 11 read with Section 2(15) of the Act, which defines “charitable purpose” observed as under;*

“The sense in which the word ‘education’ has been used in Section 2(15) of the Act in the systematic instruction, schooling or training given to the young is preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word ‘education’ has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge....but this not the sense in which the word ‘education’ is used in Clause (15) of Section 2. What ‘education’ connotes in that Clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling?

The Supreme Court, in the above observations by

referring to the systematic instruction, schooling or training given to the young has only cited an instance in order to indicate as to what the word "education" appearing in Section 2(15) of the Act which defines "charitable purposes" is intended to mean. We are certain that these observations were not intended to keep out of the meaning of the word "education", persons other than "young. The expression "schooling" also means "that schools, instructs or educates" (The Oxford English Dictionary Vol. IX, page 217). The Supreme Court has observed that the word "education" also connotes the whole course of scholastic instruction which a person has received. This clearly indicates that the observations of the Supreme Court were not intended to give a narrow or pedantic sense to the word "education". By giving further illustrations of a traveler gaining knowledge, victims of swindlers and thieves becoming wiser, the visitors to night clubs adding to their knowledge the hidden mysteries of life, the Supreme Court has indicated that the word "education" is not used in a loose sense so as to include acquisition of even such knowledge. The observations of the Supreme Court only indicate the proper confines of the word "education" in the context of the provisions of Section 2(15) of the Act. It will not be proper to construe these observations in a manner in which they are construed by the tribunal when it infers from these observations, in paragraph 17 of its judgment, that the word "education" is limited to schools, colleges and similar institutions and does not extend to any other media for such acquisition of knowledge. The observations of the Supreme Court do not confine the

word “education” only to scholastic instructions but other forms of education also are included in the word “education”. As noticed above, the word “schooling” also means instructing or educating. It, therefore, cannot be said that the word “education” has been given an unduly restricted meaning by the Supreme Court in the said decision. Though, in the context of the provision of Section 10(22), the concept of education need not be given any wide or extended meaning, it surely would encompass systematic dissemination of knowledge and training in specialized subjects as is done by the assessee. The changing times and the ever widening horizons of knowledge may bring in changes in the methodology of teaching and a shift of the better in the institutional setup. Advancement of knowledge brings within its fold suitable methods of its dissemination and though the primary method of sitting in a classroom may remain ideal for most of the initial education, it may become necessary to have a different outlook for further education. It is not necessary to nail down the concept of education to a particular formula or to flow it only through a defined channel. Its progress lies in the acceptance of new ideas and development of appropriate means to reach them to recipients.”

5.5. Now so far as reliance placed upon the decision of the Division Bench of this Court in the case of **Saurashtra Education Foundation (Supra)** by the learned advocate appearing on behalf of the revenue is concerned, it is required to be noted that as such the tribunal has considered the same

in detail and has rightly held and observed that as such the said decision would assist the assessee rather than the revenue. It is also required to be noted that as such in the said decision the Division Bench has not taken any contrary decision that of the decision of **Gujarat State Cooperative Union (Supra)**. It is to be noted that, on facts, it was held that the assessee cannot be said to be an educational institution and, therefore, the assessee would not be entitled to exemption as contemplated under Section 10(22) of the Act.

5.6. Now applying the ratio of the decision of the Division Bench of this Court in the case of **Gujarat State Cooperative Union (Supra)** reproduced hereinabove and the activities of the assessee such as Continuing Education Diploma and Certificate Programme; Management Development Programme; Public Talks and Seminars and Workshops and Conferences etc., we are in complete agreement with the view taken by the tribunal that the activities of the assessee is educational activities and/or is in the field of education.

5.7. Now in view of the the aforesaid finding that the activities of the assessee is in the field of education, whether the assessee is entitled to exemption under Section 11 of the Act or not and whether in the facts and circumstances of the case the assessee can be denied exemption under Section 11 of the Act relying upon and/or considering the proviso to Section 2(15) of the Act is concerned so far as the amendment in Section 2(15) of the Act amended vide Finance Act, 2008 and insertion of proviso to Section 2(15) of the act is concerned, as such the same has been explained vide Circular No.11/2008

dated 19/12/2008. It is clarified that where industries or trade association claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to Section 2(15) of the Act owing to the principles of mutuality. From the Circular No.11/2008 dated 19/12/2008 it appears that the the newly inserted proviso to Section 2(15) of the Act will apply to entities whose purpose is advancement of any other object of general public utility i.e. fourth limb of definition of 'charitable purpose' contained in Section 2(15) of the Act and 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. Thus, on fair reading of Section 2(15) of the Act the newly inserted provision Section 2(15) of the Act will not apply in respect of the first three limbs of Section 2(15) of the Act i.e. relief to the poor; education or medical relief. Thus, 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 incidentally involves the carrying on of the commercial activities. Thus, on fair reading of Section 2(15) of the Act read with Circular No.11/2008 dated 19/12/2008 it appears that if the case of the assessee does not fall within the first three limbs of Section 2(15) of the Act i.e. relief to the poor; education or medical relief and if it falls in the fourth limb i.e. advancement of any other object of general public utility and it is found that such activity of advancement of any other object of general public utility involves carrying on of (a) any activity in the nature of trade, commerce or business; or (b) 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 same shall not be considered for “charitable purpose” and shall not be entitled to exemption under Section 11 of the Act.

5.7. In the present case, as observed hereinabove and rightly held by the tribunal, the activities of the assessee would fall within the definition of “charitable purpose” as per Section 2(15) of the Act and, therefore, would be entitled to exemption under Section 11 of the Act.

6. In view of the above, we are in complete agreement with the view taken by the tribunal that the activities of the assessee is related to education and, therefore, is entitled to exemption under Section 11 of the Act. At this stage, it is required to be noted that right from the Assessment Year 1995-96 till 2008-09 the activities of the assessee has been considered by the revenue as educational activities. Considering various activities of the assessee as narrated by the Assessing Officer in paragraph nos. 4 and 5 of the Assessment Order and considering the decision of the Division Bench of this Court in the case of **Gujarat State Cooperative Union (Supra)** we confirm the view taken by the tribunal that the activities of the assessee-Ahmedabad Management Association is related to education and, therefore, is entitled to exemption under Section 11 of the Act as claimed.

7. Under the circumstances, the question raised in the present Tax Appeal is answered against the revenue and in

favour of the assessee. Consequently, the present Tax Appeal deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(M.R.SHAH, J.)

(R.P.DHOLARIA, J.)

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