

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'**

**BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER
AND
SHRI RAJPAL YADAV, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.1906/Ahd/2016

निर्धारण वर्ष/Asstt. Year: 2010-11

DCIT (Exemptions) Cir.1, Ahmedabad.	Vs.	Ahmedabad Urban Development Authority Sardar Vallabhbhai Patel Sankul Ashram Road Usmanpura Ahmedabad.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Revenue by	:	Shri Saurabh Singh, Sr.DR
Assessee by	:	Shri S.N. Soparkar, AR

सुनवाई की तारीख/Date of Hearing : 13/03/2018

घोषणा की तारीख/Date of Pronouncement: 19/03/2018

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Revenue is in appeal before the Tribunal against order of Id.CIT(A)-XXI, Ahmedabad dated 20.1.2014 passed for the Asstt.Year 2010-11.

2. Solitary grievance of the Revenue is that the Id.CIT(A) has erred in deleing penalty of Rs.101,24,35,800/- which was imposed by the AO under section271(1)(c) of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee has filed its return of income on 27.9.2010 declaring its income at Rs.NIL. An assessment order was framed under section 143(3) of the Act on 12.3.2013 determining taxable income of the assessee at Rs.327,68,11,000/-. The AO was of the opinion that the assessee had carried out activities of "advancement of other general public utility" provided under section 2(15) of the Act. According to the AO, it was not charitable activity and the assessee is not entitled for exemption under section 11(1)(a) of the Act. In other words, benefit sections 11 and 12 otherwise admissible to the assessee were denied on account of definition of "charitable purpose" provided in section 2(15) of the Income Tax Act, 1961.

4. The Id.counsel for the assessee at the very outset submitted that dispute travelled to the Hon'ble Gujarat High Court, and the Hon'ble High Court has held that the assessee is entitled for the benefit under sections 11 and 12. Its activities are to be considered for charitable purpose. Judgment of the Hon'ble Gujarat High Court is reported in 396 ITR 323. In view of Hon'ble High Court's decision, addition made by the AO would not survive and therefore, there cannot be any penalty under section 271(1)(c) of the Act.

5. We find that sub-clause (iii) of section 271(1)(c) provides mechanism for quantification of penalty. It contemplates that the assessee would be directed to pay a sum in addition to taxes, if any, payable him, which shall not be less than, but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of income and furnishing of inaccurate particulars of

income. In other words, the quantification of the penalty is depended upon the addition made to the income of the assessee. Since basis for visiting the assessee with penalty has been extinguished by the decision of the Hon'ble Gujarat High Court in the assessee's case cited supra, wherein it has held that assessee is entitled for benefits under sections 11 and 12 of the Act, the impugned penalty has no limb to stand, accordingly we are of the view that the Id.CIT(A) has rightly deleted the penalty and there is no merit in this appeal of Revenue.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 19th March, 2018.

Sd/-
(PRAMOD KUMAR)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 19/03/2018