

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A.No's.494 & 495/AHD/2017

निर्धारण वर्ष/Assessment Year : -

Shree Modh Patni Ganchi Gnyati Trust, Bahulbaug, Pirchhadi Road, Haripura, Surat. [PAN: AABTS 2898 D]	Vs.	The Commissioner of Income Tax(Exemptions), Ahmedabad.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by:	Ms. Chetali Shah - CA
राजस्व की ओर से /Revenue by:	Shri Sreenivas T. Bidari - CIT-DR

सुनवाई की तारीख/ Date of hearing:	13.05.2019
उद्घोषणा की तारीख/Pronouncement on:	13.05.2019

आदेश /ORDER

PER BHAVNESH SAINI, JM:

1. Both the appeals by the assessee are directed against the different orders of Learned CIT(Exemptions), Ahmedabad dated 29.12.2016 rejecting the application u/s.80G(5) and dated 26.12.2016 rejecting the application u/s.12AA of the Income Tax Act.
2. We have heard the Learned Representatives of both the parties and perused the impugned orders.

3. The Learned CIT(Exemptions) noted in the impugned orders that assessee was asked to furnish the detailed note of activities actually carried out by the assessee trust and was also directed to file certain details and documents as are mentioned in the orders. It is further noted that the notices issued to the assessee were not responded to by the assessee. Therefore, both the applications were disposed of on the basis of material available on record.

4. The Learned CIT(Exemptions) also noted that assessee has neither carried out any charitable / religious activities nor established Corpus to undertake the charitable activities. This clearly indicates that assessee does not have intention even to start charitable / religious activities. According to Section 12AA and Section 80G(5) of the Income Tax Act, the Commissioner has to satisfy himself about the genuineness of the activities of the trust or institution and he has to verify the activities as per the objects. The Learned CIT(Exemptions) relied upon the order of ITAT Agra in the case of Hardayal Charitable and Educations Trust Vs. CIT-II, Agra, 150 TTJ 384 and accordingly dismissed the applications.

5. After considering rival submissions, we are of the view that the matter requires reconsideration at the level of Learned CIT(Exemptions), Ahmedabad. The Learned CIT(Exemptions) rejected the claim of the

assessee, because assessee did not carry out any charitable / religious activities and relied upon order of ITAT Agra Bench in the case of Hardayal Charitable and Educational Trust(supra). The aforesaid decision have been set-aside by Hon'ble Allahabad High Court in the case of Hardayal Charitable and Educational Trust Vs. CIT, 355 ITR 532 in which it was held as under :

"It was held that at the time of registration u/s 12AA, which was necessary for claiming exemption u/s 11 and 12, the CIT was not required to look into the activities, where such activities had not or were in the process of its initiation. Where a trust, set up to achieve its objects of establishing educational institution, was in the process of establishing such institutions, and receives donations, the registration u/s 12AA cannot be refused, on the ground that the Trust had not yet commenced the charitable or religious activity. Any enquiry of the nature would amount to putting the cart before the horse. At this stage only the genuineness of the objects had to be tested and not the activities, which had not commenced. It was held that the enquiry of the CIT at such preliminary stage should be restricted to genuineness of the objects and not the activities unless such activities had commenced. The Trust or society could not claim exemption, unless it was registered u/s 12AA and thus at that such initial stage the test of the genuineness of the activity could not be a ground on which the registration may be refused."

6. The orders of the Learned CIT(Exemptions) thus cannot be sustained in Law. No other reasons have been given in the orders except that assessee did not file certain required documents. Therefore, matter requires reconsideration on both the issues at the level of Learned CIT(Exemptions), Ahmedabad. We, accordingly set-aside the impugned orders and restore both the matters in issue to the file of the Learned CIT(Exemptions), Ahmedabad with a direction to re-decide both the

applications u/s.12AA and 80G(5) of the Act as per Law by giving reasonable sufficient opportunity of being heard to the assessee.

7. In the result, both appeals of the assessee are allowed for statistical purpose.

8. The order pronounced in the open court 13-05-2019.

Sd/-

(O.P.MEENA)

(लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER) (न्यायिकसदस्यतथा/JUDICIAL MEMBER)

सुरत/ Surat, दिनांक Dated: 13th May , 2019 /S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

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Assistant Registrar, Surat