

आयकर अपीलअ अधकरण, राजकोट ँयायपीठ, राजकोट ।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

**BEFORE SHRI RAJPAL YADAV,
HON'BLE JUDICIAL MEMBER
AND
SHRI WASEEM AHMED
HON'BLE ACCOUNTANT MEMBER**

ITA No.304/RJT/2016

अधकरण वर्षः Asstt. Year: 2013-14

Gayatri Gyan Mandir Charitable Trust Vrundavan Complex Nr. Shitala Kund Road, Junagadh.	Vs.	ITO, Ward-1(1) Junagadh.
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(Applicant)		(Responent)
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Assessee by :	None
Revenue by :	Shri Anil Kumar Das, DR

सुनवाई कः तारखः /Date of Hearing : 19/09/2019

घोषणा कः तारखः /Date of Pronouncement: 19/09/2019

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-3, Rajkot dated 21.6.2016 passed for the Asstt.Year 2013-14.

2. In response to the notice of hearing, an adjournment application was filed by Srhi Samir Jani, Tax Consultant. However, after going through the same, we do not find any force in this adjournment application. It is rejected.

3. Brief facts of the case are that the assessee was not enjoying certificate of registration under section 12AA of the Act, though it claimed itself as a trust who is not having registration under the Income Tax Act. It has filed its return of income electronically on 8.1.2015 showing gross income of the trust

at Rs.6,65,190/-. The Trust has claimed expenses related to its activities at Rs.4,91,510/- and net income of Rs.1,73,680/- was required to be taxed. But CPC has transferred this case to the jurisdictional AO who has processed ITR and did not allow expenditure claimed by the assessee while processing return under section 143(1) of the Act.

4. Dissatisfied with the action of the AO an application under section 154 of the Act was filed which was rejected by the AO. Dissatisfied with the order of the AO, the assessee filed an appeal before the Id.CIT(A). The Id.CIT(A) rejected the appeal of the assessee on the ground that adjustment or relief sought by the assessee does not fall within the ambit of *prima facie* apparent error which can be rectified under section 154 of the Act.

5. With the assistance of the Id.DR, we have gone through the record carefully. It is pertinent to observe that even if the trust was not having registration under section 12AA then also only net income is required to be taxed and not the gross income. The assessee has not claimed any benefit under section 11(1)(a) or 11(1)(d) of the Act. Its grievance is that whatever activities it has been carried out, the expenses incurred for such activity deserves to be allowed, and only the net income is to be taxed. In other words, even if we construe that the activities of the assessee as business, for the sake of arguments, then also only net income has to be carved out for taxation. This was apparent error which ought not to have been processed by the CPC or the AO under section 143(1). The moment it was brought to the notice of the AO, he should have immediately rectified it. The scope of section 143(1) is not available with the AO to make such an adjustment. Therefore, the Id.CIT(A) has erred in putting the blame upon the assessee that it is seeking adjustment of such which are beyond the scope of section 154; the dispute is other way around. It is the AO who has exercised powers

beyond his jurisdiction under section 143(1), and immediately when such error was pointed out to him, he should have rectified the mistake. We accordingly allow the appeal of the assessee, and direct the AO to take only net income shown by the assessee for taxation.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 19th September, 2019 at Rajkot.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER