

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, AHMEDABAD**  
*(Conducted through Virtual Court)*  
**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT**  
**AND**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.1574 and 1575 /Ahd/2019**

निर्धारण वर्ष/ Asstt.Year : 2015-16 and 2016-17

M/s.Variya Prajapati Samaj Seva Mandal Bhavana, Nr.Kalakendra Nana Bazar, V.V.Nagar Anand 388 120. PAN : AABTV 2560 M	Vs.	DCIT, CPC Bangalore.
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(Applicant)		(Responent)
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Assessee by :	Shri Mukund Bakshi, AR
Revenue by :	Shri Kamlesh Makana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 12/11/2021

घोषणा की तारीख /Date of Pronouncement: 16/11/2021

**आदेश/ORDER**

**PER RAJPAL YADAV, VICE-PRESIDENT:**

Present two appeals are directed at the instance of the assessee against separate orders of the Id.CIT(A)-5, Vadodara dated 2.8.2019 for the Asstt.Year 2015-16 and Asstt.Year 2016-17.

2. Though the assessee has take five grounds of appeal, but grievance revolves around a single issue. viz. the Id.Revenue authorities have erred in upholding the applicability of tax rate at

maximum marginal rate instead of normal rate on an AOP (Individual).

3. The Id.counsel for the assessee at the very outset submitted that the assessee is a charitable trust though not registered under section 12A of the Income Tax Act, 1961. Hence, while filing its return of income, it has filed it in form ITR No.7 instead of Form No.5. The Id.AO did not treat it as an AOP or individual and applied maximum marginal rate of tax on its income. Appeal to the CIT(A) did not bring any relief to the assessee.

4. With the assistance of the Id.representative, we have gone through the record carefully. We do not find any merit in this appeal, because it is the assessee who itself did not file return in ITR No.5. The tax components on account of its failure to file return of income in proper format is hardly Rs.40,000/- or Rs.50,000/- in each year. Considering smallness of the amount, and sheer negligence of the assessee, we do not find to show any indulgence, only because of the reason that the assessee is charitable institution. According to the Id.counsel for the assessee it is contributing towards the education of poor. Similar object is being achieved by the Government of India after collection of taxes. If the punishment in the shape of tax liability is disproportionate to the negligence of the assessee for not filing the return in right perform, then we could have considered the aspect and remitted the issue to the file of the AO. But after

taking note of very meager amount of tax liability, we are not going to reopen everything and condone the negligence of the assessee. This action of the Revenue is being upheld in these two assessment years merely on the basis of smallness of the amount. However, this order will not cause any prejudice to the assessee in other assessment years, where the tax liability on account of its negligence is on higher side. The assessee will be at liberty to take all legal pleas available to it for absolving itself from any tax liability on account of this small negligence. With the above observations, appeals of the assessee are dismissed.

5. In the result, the appeals of the assessee are dismissed.

**Order pronounced in the Court on 16<sup>th</sup> November, 2021 at Ahmedabad.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT**