

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" SMC" BENCH, AHMEDABAD**  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA Nos. 360-361/AHD/2021

निर्धारण वर्ष/Asstt. Years: 2016-2017 & 2017-18

Bhetasi Kelvani Mandal Bhetasi, 1, Bhetasi, Ta. Anklav Dist. Anand, Bhetasi-388307  <b>PAN: AAATB2505M</b>	Vs.	D.C.I.T., CPC, Bangalore.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri B.T. Thakkar, A.R
Revenue by :	Shri Abhimanyu Singh Yadav, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **03/06/2022**  
घोषणा की तारीख/**Date of Pronouncement**: **15/06/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned two appeals have been filed at the instance of Assessee against the separate orders of the Learned Commissioner of Income Tax (Appeals)-9, Ahmedabad, arising in the matter of processing of income tax return under s. 143(1) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-17 & 2017-18.

2. At the outset, we note that the order of the learned CIT-A was served upon the assessee dated 31 August 2020 but the appeals were presented before the Tribunal against the order of the learned CIT-A dated 30 December 2021 with the delay about 426 and 423 days in ITA **Nos. 360-361/Ahd/2021 for AYS 2016-17 & 2017-18 respectively**. It was explained by the learned AR that the appeals have been filed within the extended time as provided by the Hon'ble Supreme Court in the MA No. 665 of 221 **Cognizance for Extension of Limitation, reported in [2022] 134 taxmann.com 307 (SC)**. Accordingly, the learned AR prayed for the admission of the appeal filed by the assessee. The learned DR has not controverted the prayer made by the learned AR for the assessee.

3. Heard the rival contentions of both the parties and perused the materials available on record. The Hon'ble Supreme Court, suo-motu in the matter cited above, has observed as under:

*8. Therefore, we dispose of the M.A. No. 665 of 2021 with the following directions: -*

- I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 2-10-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2021, if any, shall become available with effect from 3-10-2021.*
- II. In cases where the limitation would have expired during the period between 15-3-2020 till 2-10-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 3-10-2021. In the event the actual balance period of limitation remaining, with effect from 3-10-2021, is greater than 90 days, that longer period shall apply.*
- III. The period from 15-3-2020 till 2-10-2021 shall also stand excluded in computing the periods prescribed under sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*

4. The case of the assessee falls in the limitation period extended by the Hon'ble Supreme Court as discussed above. Accordingly, we condone the delay happened in filing the appeals by the assessee and proceed to adjudicate the issue on merit.

**ITA No. 360/Ahd/2021 for A.Y.2016-17**

5. The only issue raised by the assessee is that the Ld.CIT(A), erred in confirming the intimation issued by the CPC, Bangalore by applying the maximum marginal rate of tax on the income which was below the taxable limit.

6. The necessary facts as emerged from the order of the authorities below are that the assessee in the present case is a trust and filed its return of income declaring an income of Rs. 74,692/- under the head "income from other sources". The assessee in the return of income claimed an exemption of Rs. 74,592/- under the provision of section 10(23C). However, the AO denied the exemption claimed by the assessee and treated the assessee as an Association of Person in the intimation generated u/s 143(1) of the Act, dated 01/03/2019 whereby the tax at the maximum marginal rate was applied without giving any benefit of exemption as applicable in the case of an individual. Accordingly, the demand of tax including interest was raised for Rs. 36,350/- in the name of assessee under the intimation issued u/s 143(1) of the Act.

7. On appeal, the Ld. CIT(A) confirmed the intimation issued u/s 143(1) of the Act.

8. Being aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

9. The Ld. AR before us submitted that this Tribunal in the case of Jain sangh Parabdi Khayu Trustee in ITA nos. 353-354/Ahd/2021 for the Assessment Years 2016-17 & 2017-18 involving identical facts and circumstances vide order dated 20/05/2022 has allowed the appeal in favour of the assessee.

9.1 As per the Ld. AR the assessee should be made subject to tax at the rate applicable to an individual after allowing the basic exemption limit and that too at slab rate of tax.

10. On the other hand the Ld. DR could not controvert the arguments advanced by the Ld. AR for the assessee.

11. However, the Ld. AR and Ld. DR vehemently supported the order of the authorities below.

12. We have heard the rival contention of both the parties and perused the materials available on record. At the outset we note that this tribunal in the case of Jain Sangh parabdi Khayu Trustee (*supra*) involving the identical facts and circumstances have decided the issue in favour of the assessee. The relevant extract of the order is reproduced as under:

*9. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessee being a trust was registered under Bombay Public Trust Act 1950. However the registration under section 12A of the Act was not available. Thus, there is no ambiguity to the fact that the benefit of the exemption as provided under section 11 of the Act shall not be available to the assessee.*

*9.1 The controversy arises for our adjudication whether the rate of an individual should be applied or the maximum marginal rate of tax in the manner as provided under the provisions of section 164 of the Act. Admittedly, the person has filed the return of income in the representative capacity in the manner as provided under clause (iv) of section 160 of the Act. To this proposition, there is no dispute. It is also not under challenge that the trust on hand is a non-discretionary trust meaning thereby the beneficiaries of the trust are not known. In other words the trust being public trust was formed to carry out the charitable activities. This fact was not controverted by the learned CIT-A. Indeed learned CIT-A accepted that the assessee as public charitable trust, the relevant observation of the learned CIT-A reads as under:*

*I have carefully considered the facts of the case as well as the submission filed by the appellant. It is observed that the appellant is a Public Charitable Trust registered under the Bombay Charitable Trust Act.*

*9.2 At this juncture, it is noteworthy to make a reference to the CBDT circular bearing No. 320 issued on 11<sup>th</sup> of January 1982 which reads as under:*

*"Similarly, in the cases of registered societies, trade and professional associations, social and sports clubs, charitable or religious trusts, etc., where the members or trustees are not entitled to any share in the income of the association of persons,*

*the provisions of new section 167A will not be attracted and, accordingly, tax will be payable in such cases at the rate ordinarily applicable to the total income of an association of persons and not at the maximum marginal rate.”*

9.3 *It is the admitted position that the members of the trustees are not entitled to any share in the income of the Association of persons. Accordingly, we are of the view that the circular issued by the CBDT as discussed above is squarely applicable in the given facts and circumstances. Thus we hold that the rate applicable as to an individual for charging the income tax after allowing the basic exemption limit, shall be applicable to the assessee on hand. Hence the ground of appeal of the assessee is allowed.*

9.4 *In the result appeal of the assessee is allowed.*

12.1 **Before us, no material** has been placed on record by the Revenue to demonstrate that the decisions of Tribunal as discussed above has been set aside / stayed or overruled by the higher Judicial Authorities. Before us, Revenue has not placed any material on record to point out any distinguishing feature in the facts of the case for the year under consideration and that of case referred above nor has placed any contrary binding decision in its support. Thus, respectfully following the above decision of the Co-ordinate Bench, we allow the ground of appeal of the assessee.

13. In the result, the appeal filed by the assessee is allowed.

**Coming to ITA No. 361/Ahd/2021 an appeal by the assessee for A.Y. 2017-18**

14. The only issue raised by the assessee is that the Ld. CIT(A), erred in confirming the intimation issued by the CPC, Bangalore by applying the maximum marginal rate of tax on the income which was below the taxable limit.

15. At the outset we note that the issues raised by the Assessee in its grounds of appeal for the AY 2017-18 are identical to the issues raised by the assessee in ITA No. 360/AHD/2021 for the assessment year 2016-17. Therefore, the findings given in 360/AHD/2021 shall also be applicable for the year under consideration i.e. AY 2017-18. The ground appeal of the assessee for the assessment 2016-17 has

been decided by us vide paragraph No.12 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2016-17 shall also be applied for the year under consideration i.e. AY 2017-18. Hence, the grounds of appeal filed by the assessee is hereby allowed.

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

16. In the combined result, both the appeals of the assessee are **allowed**.

**Order pronounced in the Court on 15/06/2022 at Ahmedabad.**

**Sd/-  
(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER**

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

Ahmedabad; Dated **(True Copy)**  
15/06/2022  
*Manish*