

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, AHMEDABAD**  
*(Conducted through Virtual Court)*  
**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT**  
**AND**  
**SHRI PRADIPKUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.1083 and 1084/Ahd/2018**

निर्धारण वर्ष/ Asstt.Year : 2012-13

DCIT (Exemptions) Cir.2, Ahmedabad.	Vs.	Ahmedabad Urban Development Authority Sardar Vallabhbhai Patel Sankul Ashram Road Usmanpura, Ahmedabad. PAN : AAALA 0233 B
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(Applicant)	(Responent)
Revenue by :	Shri Virendra Ojha, CIT-DR
Assessee by :	Shri S.N.Soparkar, Sr.Adv with Smt.Urvashi Sodhan, AR

सुनवाई की तारीख/Date of Hearing : 04/03/2021

घोषणा की तारीख /Date of Pronouncement: 25/03/2021

**आदेश/ORDER**

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

Present two appeals are directed at the instance of the Revenue against separate orders of the Id.CIT(A)-9, Ahmedabad dated 26.2.2018 passed for the Asstt.Year 2012-13. Both these appeals are disposed of by this common order.

2. Before adverting to the grievance raised by the Revenue, we would like to briefly note background giving rise to these appeals.

Sr. No.	Event	Date
1.	Assessment order under section 143(3) of the Income Tax Act	16-3-2015

	was passed in the case of the assessee	
2.	Appeal was filed by the assessee against order of the Id.CIT(A) dated 16.3.2015	08-03-2017
3.	The Id.CIT took cognizance under section 263 of the IT Act and set aside the assessment order dated 16.3.2015 directing the AO to frame a fresh assessment order	10-3-2017
4.	Fresh assessment order was passed under section 143(3) r.w. section 263 of the Act.	27-3-2017
5.	The AO has given effect to the order of the CIT(A) dated 8.3.2017. This was the order passed against the assessment order under section 143(3) of the Act.	25-5-2017
6.	Order of the CIT(A) dated 8.3.2017 was challenged before the Tribunal in ITA No.1422/Ahd/2017. The Tribunal has decided appeal along with appeal for the Asstt.Year 2013-14 by a common order.	9-10-2017

3. The Tribunal has held that original assessment order dated 16.3.2015 was passed under section 143(3) of the Act by denying exemption under sections 11 and 12 of the Act on the ground that second *proviso* to section 2(15) is applicable in the case of the assessee, and its activities are not charitable in nature. This dispute travelled upto the Tribunal in the Asstt.Year 2012-13 and the Tribunal found that the CIT(A) in the impugned order dated 8.3.2017 has

followed order of the Tribunal dated 19.4.2016 passed in the Asstt.Year 2010-11 and 2011-12 (ITA No.712 and 711/Ahd/2013). This order of the Tribunal was reversed by the Hon'ble Gujarat High Court and the decision of Hon'ble Gujarat High Court is reported in 396 ITR 323. Thus, the Tribunal found that the Id.CIT(A) has erred in principle relying upon the order of the ITAT for the Asstt.Year 2010-11 and 2011-12. The Tribunal has set aside this order of the Id.CIT(A), and restored all the issues to the file of the AO with a direction that income of the assessee be recomputed by keeping in mind judgment of Hon'ble Gujarat High Court; in other words by giving benefit of sections 11 and 12. During the pendency of the appeal before the Tribunal, the AO has given effect to the order of the Id.CIT passed in appeal filed against the assessment order under section 143(3). This order giving effect has been passed on 25.5.2017. Against this order, the assessee went in appeal before the Id.CIT(A), and the Id.CIT(A) has decided the appeal of the assessee vide order dated 26.2.2018. This order is impugned in ITA No.1084/Ahd/2018. *Qua* this appeal, we record the following finding:

4. Controversy in this appeal has arisen on account of giving effect of the Id.CIT(A)'s order dated 8.3.2017 passed in the Asstt.Year 2012-13. This order of the CIT(A) has been set aside by the Tribunal in ITA No.1422/Ahd/2017, meaning thereby, the very basis of the giving effect to this order of the CIT(A) stands extinguished. Hence, no order giving effect could be passed; if that be, there would not any proceedings at the end of the CIT(A); and whole proceedings becomes

redundant, and accordingly this appeal of the Revenue becomes infructuous. It is dismissed.

5. As far as ITA No.1083/Ahd/2018 is concerned, we record the following finding:

6. This appeal has been arisen against an assessment order passed under section 143(3) read with section 263 on 27.3.2017. Appeal against this order has been decided by the CIT(A) vide order dated 26.2.2018. Revenue has challenged this order of the CIT(A) by way of ITA No.1083/Ahd/2018. This appeal also becomes infructuous for the following reasons:

7. The order of the CIT dated 19.3.2017 passed under section 263 was challenged in ITA No.978/Ahd/2017. The Tribunal has allowed the appeal of the assessee vide order dated 16.12.2019 and held that since jurisdiction of Id.CIT under section 263 is dependent on the assessment order i.e. order dated 16.3.2015, this order was set aside by the Tribunal in the regular appeal travelled upto the Tribunal vide ITA No.1422/Ahd/2017. Thus, according to the Tribunal there could not be any 263 proceedings and the Tribunal has held that 263 proceedings become infructuous. The impugned assessment order dated 27.3.2017 has been passed on the basis of 263 order of the CIT. That order no more available, hence there are no leg to stand i.e. for second assessment order dated 27.3.2017. If that be so, the subsequent proceedings become redundant. It is also pertinent to note that while deciding the appeal against the regular assessment order dated

16.3.2015, the Tribunal has already observed that this assessment order was passed by denying deduction under sections 11 and 2 of the Act, because, the AO has held that second proviso to section 2(15) is applicable in the case of the assessee and its activities are not of charitable nature. This reasoning did not meet the approval of the ITAT on the ground that Hon'ble Gujarat High Court has reversed earlier view of the Tribunal and held that the assessee is entitled for the benefit under section 11 and 12 of the Act. The decision of Hon'ble Gujarat High Court is reported in 396 ITR 323. The Tribunal has already given direction for passing a fresh assessment order treating the assessee as a charitable institution. Thus, the original assessment order was set aside by the Tribunal, and therefore, no 263 proceedings could be sustained. Considering earlier order of the Tribunal in ITA No.1422/Ahd/2017 and 978/ahd/2017, we are of the view that both these appeals becomes *infructuous*, accordingly dismissed.

8. In the result, the both appeals of the Revenue are dismissed.

**Order pronounced in the Court on 25<sup>th</sup> March, 2021 at Ahmedabad.**

**Sd/-  
(PRADIPKUMAR KEDIA)  
ACCOUNTANT MEMBER**

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

Ahmedabad; Dated 25/03/2021