

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC', NEW DELHI  
BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER  
ITA No. 1310/Del./2017 : Asstt. Year : 2007-08**

Jhamman Singh, L/H Mrs. Mayawati/Mohinder Singh, House No. 1233, Sector-9, Vasundhara, Ghaziabad <b>PAN-ACGPW9138H</b>	Vs.	ITO Ward-55(4), New Delhi
[Appellant]		[Respondent]

Appellant by :	Sh. Ajay Kumar Sharma, Adv.
Respondent by :	Sh. T. Vasanthan, Sr. D.R.

Date of Hearing:	21	08	2017
Date of Pronouncement:	28	09	2017

**ORDER**

**PER DIVA SINGH, JUDICIAL MEMBER :** \_\_\_\_\_

The present appeal has been filed by the assessee assailing the correctness of the order dated 1.12.2016 of CIT(A)-19, New Delhi pertaining to 2007-08 assessment year on the following grounds :

- *“That on the facts and circumstances of the case, the addition of Rs. 20,00,000/- in the hands of the husband of the Appellant is against the law of the land merely because of the admission during the search and seizure.*
- *That, the husband of the Appellant is no more in this world. Any taxation related to him should be thoroughly examined before finalizing the assessment.”*

2. Ld. AR at the time of hearing had moved an adjournment request requesting for time on the grounds that the legal heirs were out of station and relevant documents are required to be filed.

3. However, after hearing the Ld. Sr. DR, where it is evident that for want of relevant documents/facts the appeal may be required to be restored accordingly it was deemed appropriate to proceed with the appeal on the basis of material available on record.

4. The Ld. AR and Sr. DR were both heard. The record shows that in the facts of the present case, the additions have been made on the basis of the allegation that the assessee had paid donation/ capitation fee over and above the regular fee for admission of his son Mr. Mohinder Singh in DCH course. The

assessee then alive was stated to be a pensioner who had expired on 9.8.2010. The legal heirs claimed that though the assessee had adequate sources of money, however, denied payment of donation fee adding that they were not aware of the full facts. The Revenue's case rests on the fact that Dr. P. Mahalingam, Chairman of Maharaji Educational Trust and Santosh Hospital Pvt. Ltd. has accepted that donation/capitation fee has been taken by him He is also stated to have offered for tax the unaccounted money, stated to have been received by way of donations.

4.1 However, whether donation/capitation fee was accepted in some admission cases or for all admissions is not known. Accordingly, In the peculiar facts and circumstances considering the overall factual matrix, it is deemed appropriate to set aside the impugned order back to the file of the assessing officer to consider whether as per the statement of Dr. P. Mahalingam has it been accepted that donation/ capitation fee was paid by the assessee specifically or has it been stated that for some students donation/capitation fee was received. As complete and relevant facts are not available on record accordingly, in the interests of justice, the impugned order is set aside back to the file of the AO to consider and discuss the issue with full facts and thereafter pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard.

5. In the result appeal filed by the assessee is allowed for statistical purposes.

(Order Pronounced in the Open Court on 28 /09/2017)

Sd/-  
**(DIVA SINGH)**  
Judicial Member

DATED: 28 .09.2017

\*Binita(Delhi)/Poonam(CHD)\*

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar