

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "G" BENCH, MUMBAI**

**Before Shri Prashant Maharishi, Accountant Member  
&  
Shri Narender Kumar Choudhry, Judicial Member**

**ITA No. 1483/Mum/2023**

(Assessment Year: 2016-17)

The Cathedral Vidya Trust  
06, Pushottamdas Thakurdas  
Marg, G.P.O.  
Mumbai 400001

ACIT (Exemption), Circle-1  
6th Floor, MTNL Telephone  
Vs. Cumballa Hills, Poddar Road,  
Mumbai

PAN – AABTT5706B

**Appellant**

**Respondent**

Appellant by: Shri Viral Shah, Ld. CA  
Respondent by: Shri H.M. Bhatt, Ld. Sr. D.R.

Date of Hearing: 07.08.2023

Date of Pronouncement: 18.08.2023

**ORDER**

**Per: N.K. Choudhry, JM**

This appeal has been preferred by the Assessee against the order dated 09.03.2023 impugned herein passed by the learned Commissioner of Income Tax (Appeal)/National Faceless Appeal Centre, Delhi (NFAC) (in short 'Id. Commissioner') under section 250 of the Income Tax Act, 1961 (in short 'the Act') for AY 2016-17.

**2.** In this case, the Assessee trust is registered as a charitable organisation with the Charity Commissioner and CIT (Exemption), Mumbai under section 12A of the Act as well as under section 80G of the Act. The Assessee for the year under consideration declared its total income at Rs. 'Nil' by filing its return of income on 01.10.2016, which was selected for scrutiny and therefore the AO issued various statutory notices, in response to which the Assessee

filed its reply. The Assessing Officer (AO) ultimately denied the benefit of exemption under section 11 of the Act by holding that it is abundantly clear that the Assessee trust is indulging in commercial activities (which are contradiction to its charitable objects by charging huge fees from students).

**3.** The Assessee being aggrieved challenged the assessment order dated 14.02.2018 passed under section 143(3) of the Act by filing first appeal, before the learned Commissioner. However, in spite of affording various opportunities by the learned Commissioner, the Assessee neither appeared nor filed any adjournment petition or written submissions. Therefore, in the constrained circumstances, the learned Commissioner dismissed the appeal of the Assessee and affirmed the action of the AO in denying the benefit of exemption under section 11 of the Act and computing the income at Rs. (-)1,47,94,999/-.

**4.** The Assessee being aggrieved is in appeal before us.

**5.** Heard the parties and perused the material available on record. The Assessee claimed that though the appeal was instituted on 11.01.2019 against the assessment order referred to above, however, first notice was issued for the date of hearing only on 5<sup>th</sup> January, 2021, i.e. after 2 years and thereafter further notices were issued on 02.02.2023 and 18.02.2023, i.e. after two years and therefore that could be a reason which can be construed as valid reason for non-appearance before the learned Commissioner. The Assessee further claimed that the Hon'ble Coordinate Benches of the Tribunal vide orders dated 24.10.2017 and 27.11.2018 passed respectively in ITA Nos. 4958/Mum/2015 and 6997/Mum/2016 for the assessment years 2011-12 and 2012-13 also dealt with identical

issues and allowed the exemption as claimed under section 11 of the Act.

**6.** We observe that in the absence of proper reply and/or documents the learned Commissioner failed to decide the appeal in proper manner, hence considering the peculiar facts and circumstances in totality, for just decision of the case and for the ends of substantial justice, we are inclined to remand the instant case to the file of the learned Commissioner for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee trust.

**7.** In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Pronounced in the open Court on 18<sup>th</sup> August, 2023.

Sd/-

**(Prashant Maharishi)**  
**Accountant Member**

Sd/-

**(Narender Kumar Choudhry)**  
**Judicial Member**

Mumbai

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT concerned*
4. *The DR, ITAT, Mumbai*
5. *Guard File*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai*

n.p.S