

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा0 मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 685/JP/2023
निर्धारण वर्ष / Assessment Year : 2016-17

Indian Medical Trust B-28 & 29, Govind Marg Near Moti Doongri Circle, Adrash Nagar, Jaipur – 302 005	बनाम Vs.	The DCIT Central Circle-1 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATI 1398 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 730/JP/2023
निर्धारण वर्ष / Assessment Year : 2016-17

The DCIT Central Circle-1 Jaipur	बनाम Vs.	Indian Medical Trust B-28 & 29, Govind Marg Near Moti Doongri Circle, Adrash Nagar, Jaipur – 302 005
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATI 1398 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 775/JP/2023
निर्धारण वर्ष / Assessment Year : 2017-18

Indian Medical Trust B-28 & 29, Govind Marg Near Moti Doongri Circle, Adrash Nagar, Jaipur – 302 005	बनाम Vs.	The DCIT Central Circle-1 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATI 1398 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 21/JP/2024
निर्धारण वर्ष/Assessment Year : 2017-18

The DCIT Central Circle-1 Jaipur	बनाम Vs.	Indian Medical Trust B-28 & 29, Govind Marg Near Moti Doongri Circle, Adrash Nagar, Jaipur – 302 005
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATI 1398 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri G.M. Mehta, CA
राजस्व की ओर से / Revenue by: Shri Arvind Kumar, CIT-DRसुनवाई की तारीख / Date of Hearing : 31/01/2024
उदघोषणा की तारीख / Date of Pronouncement: 10 /04 /2024आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The above mentioned appeals are cross appeal against two different orders of the Id.CIT(A)-4, Jaipur dated 21-09-2023 and 23-10-2023 for the assessment years 2016-17 and 2017-18 respectively wherein both the parties have filed the following grounds of appeal.

ITA NO. 685/JP/2023 – A.Y. 2016-17 (Assessee)

1. The Id. CIT(A) has erred in law in sustaining addition of Rs.3,49,10,237/- solely based on the order of Pr. CIT (Central), Jaipur who withdrew registration u/s 12AA(3) and also approval u/s 10(23C) (vi) of the Act vide order dated 16th Jan. 2018, ignoring the fact that said order did not attain finality for the reason that the appeal of the assessee was admitted by the Hon'ble Rajasthan High Court on total six substantial question of law in respect of said order dated 16-01-2016 of Pr. CIT(C), Jaipur.

2. The ld. CIT(A) was not justified in sustaining disallowance of Rs.2,64,16,748/- for expenses incurred on practical training of students of Bachelor and Master Degree in Mass Communication (BJMC & MJMC) and by ignoring the decision of Jurisdictional High Court (reported at 414 ITR 296) who had followed the law laid down by Hon'ble Supreme Court of India.”

ITA NO. 730/JP/2023 – A.Y. 2016-17 (Revenue)

“1. On the facts and in the circumstances of case and in law the ld CIT(A) has erred in directing to allow depreciation to the assessee in term of DIT (Exemption) vs Charanjiv Charitable Trust (2014) 267 CTR 305 without appreciating the fact that the said case of Charanjiv Charitable Trust is AY 2006-07 & 2007-08 while the case of the assessee, the assessment year involved is 2016-17 and the provision of the Act have been changed vide an amendment in Sec 11 by insertion of clause (6) by the Finance Act,2014 w.e.f. 01-04-2015.”

2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in allowing depreciation to the assessee as per provision of Sec. 11 of the Act, 1961 without appreciating the fact that the assessee's appeal against the withdrawal of exemption u/s 10(23C) and rejection of registration u/s 12AA is pending before Hon'ble High Court for adjudication. Therefore, the relief allowed by CIT(A) allowing depreciation to the assessee is premature at this stage.

ITA NO. 775/JP/2023 – A.Y. 2017-18 (Assessee)

“1. The ld. CIT(A) has erred in law in sustaining addition of Rs.6,20,75,811/- (33,42,26,670 – 27,21,50,859) relief of depreciation for exemption u/s 11(1)(a) of the Act solely based on the order of Pr. CIT(Central), Jaipur who withdrew registration u/s 12AA(3) and also approval u/s 10(23C)(vi) of

I.T. Act vide order dated 16th Jan. 2018 and thjat too after order u/s 245D(4) of the Hon'ble ISTC, ignoring the fact that said order of th eld. CIT(A) had not attained finality as the appeal of the assese trust was admitted by the Hon'ble Rajasthan High Court on total six substantial question of law in respect of order dated 16-01-2016 of Pr. CIT (C), Jaipur

ITA NO. 21/JP/2024 – A.Y. 2017-18 (Revenue)

“1. On the facts and in the circumstances of case and in law the ld CIT(A) has erred in directing to allow depreciation to the assessee in term of DIT (Exemption) vs Charanjiv Charitable Trust (2014) 267 CTR 305 without appreciating the fact that the said case of Charanjiv Charitable Trust is AY 2006-07 & 2007-08 while the case of the assessee, the assessment year involved is 2017-18 and the provision of the Act have been changed vide an amendment in Sec 11 by insertion of clause (6) by the Finance Act,2014 w.e.f. 01-04-2015.”

2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in allowing depreciation to the assessee as per provision of Sec. 11 of the Act, 1961 without appreciating the fact that the assessee's appeal against the withdrawal of exemption u/s 10(23C) and rejection of registration u/s 12AA is pending before Hon'ble High Court for adjudication. Therefore, the relief allowed by CIT(A) allowing depreciation to the assessee is premature at this stage.

2.1 Brief facts of the case are that a Search and seizure operation u/s. 132 of I.T. Act took place in this case on 30th Oct. 2014. The matter travelled up to stage of Hon'ble Settlement Commission, who after admitting the appeal, passed order under 245D(4) of Act on 30.06.2017.

2.1 As regards the Ground No. 1 & 2 of the assessee, the assessee has advanced the following written submission for consideration before the Bench to adjudicate upon the issues.

“(ITA 685/JPR/ 2023 for the A.Y. 2016-17)

BRIEF FACTS OF CASE:

Search and seizure operation u/s. 132 of I.T. Act took place in this case on 30th Oct. 2014. The matter travelled up to stage of Hon’ble Settlement Commission, who after admitting the appeal, passed order under 245D(4) of Act on 30.06.2017. For the year in appeal, as against nil taxable income, the income assessed by ld. AO was Rs.26,28,95,700/- for the reason that ld. AO did not allow depreciation of Rs.16,66,58,482, educational expenses of Rs.2,64,16,748/- incurred on practical training to the students of BJMC (Bachelor degree in journalism and mass communication) and MJMC (Master degree in journalism and mass communication) though allowed in earlier years and deduction under section 11(1)(a) of Rs.3,49,10,237/- (up to 15% of gross receipt) was denied as the registration under sec. 12AA of I.T. Act was cancelled and approval under sec. 10(23C)(vi) of the Act was withdrawn vide order(s) dated 16.01.2018 by ld. Pr. CIT(C), Jaipur for which show-cause notice was issued on 27.11.2017, for which reason appears to nullify the effect of order of Hon’ble ITSC. Appeal of the Assessee Trust against cancellation of registration u/s. 12AA and withdrawal of approval under sec. 10(23C)(vi) of Act was partly allowed by this Hon’ble ITAT {(2019) 198 TTJ 256(JP)} with relief for applicability for the year of order of ld. Pr. CIT(C) otherwise upheld the order of ld. Pr. CIT(C). Against the said order, appeal under sec. 260A of Act is pending before Hon’ble Rajasthan High Court who admitted the appeal on total six substantial questions of law, discussed hereunder- meaning thereby, the order of Hon’ble ITAT for cancellation of registration u/s. 12AA and withdrawal under section 10(23C)(vi) had not attained finality.

GROUND OF APPEAL:

GROUND No (1) Ld. CIT(A), has erred in law in sustaining addition of Rs.3,49,10,237/- solely based on the order of Pr. CIT (Central), Jaipur who withdrew registration under section 12AA(3) & also approval under sec. 10(23C) (vi) of I.T. Act vide order dated 16th Jan. 2018, ignoring the fact that said order did not attain finality for the reason that the appeal of the assessee was admitted by the Hon’ble Rajasthan High Court on total six substantial questions of law in respect of said order dt.16.01.2016 of Pr. CIT (C), Jaipur.

On following six substantial questions of law, the appeal of the Assessee Trust was admitted and is pending before the Hon’ble Rajasthan High Court (**Paper book pages 6 to 8**):

1. *Whether the registration of the trust can be cancelled with retrospective date u/s. 12AA(3) of the Act ?*
2. *Whether adjudication can travel beyond the show cause notice and accordingly whether the order dated 16.01.2018 passed by learned PCIT in cancelling the registration U/s. 12AA of the Act with retrospective effect was not illegal, void and bad in law?*
3. *When there was no doubt about the genuinity of the educational, medical and other activities of the appellant trust which are in accordance with the objectives of the trust considered while granting the registration, whether registration granted and renewed U/s. 12AA of the Act could be cancelled or withdrawn de hors the grounds mentioned in Section 12AA (3) of the Act ?*

4. *Whether the learned Income tax Settlement Commission had exclusive jurisdiction to deal with the case of the appellant for the relevant period by virtue of the Section 245F(1) of the Act, whether the learned PCIT could have exercised the power of cancellation of registration U/s. 12AA (3) of the Act, which has the effect of annulling the order of Income tax Settlement Commission?*
5. *Whether in the facts and circumstances of the case, the learned Tribunal was justified in treating voluntary donations received by the appellant Trust as capitation fee which too is against the final findings of revenue in earlier years in this case, leading to cancellation of registration u/s. 12AA(3) of the Act ?*
6. *Whether the PCIT has power to cancel the registration U/s. 12A given before the amendment in 12AA(3) in 2004?*

Otherwise also, the registration under section 12AA and approval under sect 10(23C)(vi) of I.T. Act could be withdrawn from the date of show-cause notice which is 27.11.2017 (**P.B. Pages 9 to 19**) as held recently by Hon'ble coordinate bench of ITAT, B Bench, Chandigarh, after following different judicial pronouncements of higher authorities (**P.B. pages 20 to 59**).

Therefore, ld. CIT(A) was not justified in not allowing benefit under section 11(1)(a) of Income tax Act for the surplus of Rs.3,49,10,237/- which was within the limit of 15% of gross receipts prescribed under the relevant provisions.

GROUND No. (2) Ld. CIT(A) was not justified in sustaining disallowance of Rs.2,64,16,748/- for expenses incurred on practical training of students for Bachelor and Master degree in Mass Communication (BJMC & MJMC) and by ignoring the decision of jurisdictional High Court (reported at 414 ITR 296) who had followed the law laid down by Hon'ble Supreme Court of India.

The assessee Trust is running educational courses in different fields. In its unit "Nims School of Media and Mass Communication" in which, after successful completion of courses and practical training in media, mass communications, and journalism, it is providing degrees of BJMC (Bachelor degree in journalism and mass communication) and MJMC (Master degree in journalism and mass communication) (**P.B. pages 60 to 84**). For practical training of the students in these courses, it had incurred following expenses on salary and cable distribution expenses of T.V. Channel which is for the practical training of students (compared to two preceding years) (repeated by ld. AO at top of page 17 of order appealed against):

S.N	Assessment year	Expenses incurred
1.	A.Y. 2014-15	24,17,755
2.	A.Y. 2015-16	2,70,48,145
3.	A.Y. 2016-17*	2,66,74,705

(*in appeal before this Hon'ble ITAT)

No disallowance of the nature was made in earlier years whereas Rs.2,66,74,705/- was totally disallowed by the ld. AO, treating it as not in accordance with the law governing benefit given to the charitable Trust or institution whereas no such law was referred to by the ld. AO nor by CIT(A) in sustaining disallowance. Ld. AO even did not recognize that BJMC and MJMC are educational courses for which practical training through production of TV programs, telecast of news etc. is needed. Without practical training of the students, the courses of BJMC and MJMC will have no recognition in jobs to the students who are degree holders of courses of BJMC and MJMC.

The controversy for investment on TV channel for educational courses was also considered by the Hon'ble Rajasthan High Court, in appellant's own case in writ petition against order of the

Hon'ble ITSC. Vide part No. (39) at Page 329 of 414 ITR, Hon'ble Rajasthan High Court (**P.B. Pages 85 to 121**) has held as under:

“The exclusion of the investment made by the petitioner-trust in the TV Channel appears to be one such perversity. On a glance of the facts and materials available on record of the case in hand, it is evident that the said TV Channel was acquired by the petitioner-trust for educational training in “journalism” and “Mass Communication”, as it was offering, courses for graduation and post-graduation in “Mass Communication” and “Journalism”. The apex court of land in the case of Maharishi Mahesh Yogi Vedic Vishwavidyalaya Vs. State of Madhya Pradesh (2013) 15 SSC 677 held thus:

“Having considered the various submissions and the analysis made based on detailed circumstances leading to the intricacies of Vedas, the field it covers, as noted by Division Bench, as well as the concept of education, which has been explained by very many learned and prominent persons to whom we have made detailed references to in the earlier part of our judgment, we are of the considered view that education is the base for every other subject to be taught in the process of learning. Therefore, establishment of the University as a preamble goes to state was to provide for education in forefront. It will be appropriate to hold that such a provision for education in so far as the appellant-university was concern, should concentrate and focus in the prosecution of research in Vedic learning and practices and to provide for matters connected therewith or incidental thereto. While holding so, it will have to be stated in uncontroverted terms that merely because such specific reference was made to prosecution of research in Vedic learnings, it could be held that the imparting of education in the appellant-University should be restricted to the said subject along and not in other subject.

78. In our considered view, such a narrow interpretation would be doing violence to the very basic concept of education, and would create a serious restrain on the University, where, imparting of education is the primary objective and dealing with any specific subject may be for enabling any one to acquire special knowledge on such subject. In other words, any such restrictive interpretation would go against the basic tenets of the concept of education, which no court can venture to state”.

40. Applying the principle aforesaid, it is evident that education cannot be confined to the meaning of one subject only and keeping this precedent in mind, it is concluded that the said investment in television channel shall be considered to be in consonance with the objectives and in purview of the objects of the trust”.

Hon'ble jurisdictional High Court, after following the law laid down by the in different judicial pronouncements and the Hon'ble Supreme Court has held that the education cannot be confined to a narrow meaning. Therefore the expenditure on educational courses in “mass communication” and “journalism” and for their practical training through Televisions channel cannot be disallowed. The disallowance of Rs.2,64,16,748/- by the ld. AO on expenditure on TV channel, used for practical training of the students of “mass communication” and “journalism” is not justified in view of the decision of the Hon'ble jurisdictional High Court who had followed the decision of the Hon'ble Apex Court. Therefore the disallowance of Rs. 2,64,16,748/- is totally arbitrary which is against the provisions and intention of law. “

2.2 During the course of hearing, the ld.DR strongly relied upon the orders of the ld.CIT(A) that the facts regarding the nature and scope of activities being carried out by the assessee were adjudicated by the Coordinate Bench of ITAT, Jaipur in ITA No. 252 & 253/JP/2018 and dismissed the ground and ultimately decided the appeal in favour of the Revenue. It is also noted worthy to mention that the ld. DR during the course of hearing strongly relied upon the operative para 2.1 to 2.8 of the decision of ITAT Coordinate Bench in ITA No. 252 & 253/JP/2018.

2.3 We have heard the counsel of both the parties and perused the materials placed on record including the orders passed by the Revenue Authorities and the judgement cited by the respective parties. After analyzing the facts of the present case, we found that this ground has already been decided by the ITAT Coordinate Bench in assessee's own case in favour of the Revenue. However, in this regard, the ld. AR submitted before us that the issue of cancellation of registration of Trust u/s 12AA(3) of the Act has not attained finality as the assessee has already filed the appeal before the Hon'ble Rajasthan High Court against the order of the Tribunal and Hon'ble Rajasthan High Court has admitted the appeal of the assessee on this issue. Therefore, in this way, the order of the Tribunal has not attained finality.

However, before proceeding further, we would like to evaluate the findings recorded by the Coordinate Bench of ITAT, Jaipur. While deciding the identical

issue which is mentioned at para 2.1 to 2.8 of the order of the Coordinate Bench in assessee' own case in ITA No. 252 & 253/JP/2018 which is reproduced as under:-

“21..... A global search and seizure action were carried out by the income Tax department and Investigation Wing of the department on 30/10/2014 at various premises of the assessee Trust as well as the residential premises of the trustees. Though, various incriminating materials/documents and unexplained investments and cash was found, however, in the present case, we are concerned mostly with the documents and seized material which indicates that the assessee Trust has been receiving 'capitation fee' in a very systematic and organized manner from various students right from the A.Y. 2006-07 till the date of search. The quantification of the 'capitation fee' which could be unearthed from the search and post search enquiry were quantified to 650 students as tabulated by the department which is also forming part of the impugned order marked as "Annexure-A". In the said annexure, detail analysis of unaccounted capitation fee received by the assessee Trust has been given which highlights the details of seized annexure number, page number, financial year to which capitation fees pertain, date of fees received, name of the student, name of the father/relative of the student. professional courses opted by the student, address, mobile number courses, amount received in lacs, and the name of the trustee in whose handwriting it has been written and other details. These entire capitation fees have been received in cash and it an undisputed fact that from the assessment years 2009-10 onwards, such capitation fees have neither been recorded in the books of account nor have they been disclosed in the audited financial statements or income and expenditure account. These entries of capitation fees have been found from the diary kept by the trustees in their own handwriting. The department has quantified the amount of capitation fee in various years at Rs. 79.9 crores starting from the financial year 2006-07 to 2014-15

22. This issue of unaccounted capitation fee had been the subject matter of settlement before the ITSC wherein the Settlement Commission has quantified the undisclosed capitation fee chargeable to tax of Rs. 21,63,46,000/- from A.Y. 2009-10 to 2015-16. For the A.Y. 2006-07 to 2008-09, the capitation fees has not been quantified by the ITSC for the reason that, for these three years, the capitation fee has been duly recorded in

the books of account and also disclosed as a part of income and expenditure account wherein the details of receipts as well as utilization has been given. Apart from that, the income and expenditure account were subjected to scrutiny assessments u/s 143(3) of the Act and in the assessment made, no adverse inference has been drawn, Even before us, the department could not establish that the capitation fee from the period A.Y. 2006-07 to 2008-09 found from the seized document were not recorded in the regular books of account; and perhaps that is the reason why the ITSC also has also quantified the undisclosed capitation fee only from the A.Y. 2009-10 onwards.

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23. From a careful analysis of the findings given in the impugned order as well as the seized documents shown before us, it is quite glaring that the assessee has been receiving huge money in cash over and above the regular course fees and hostel fees from the parents/guardians of the students in various years for the various courses run by the trust. The Id. Pr.CIT had given various instances where the capitation fee has been collected from various students who were not from NRI or management quota but were from general quota. For various medical courses, cash has been charged from the students/parents which have been clearly specified and not only that, fixed schedule of installments have been granted for payment of such cash. There is very systematic and organized manner in which such cash fees are being charged from the students for various courses and in fact trustees have devised a 'package system whereby the students were given fixed packages of capitation fee, hostel fee and admission fee which this clearly goes to prove that the students were required to compulsorily pay the capitation fee to receive their degrees. Only when such cash was received, the student was given "No Dues Certificate". Such huge cash received over and above the regular course fees and hostel fees, which have been termed as 'capitation fee' by the department and 'voluntary donation' by the assessee has not been recorded in the books of account at all and which fact has also been admitted by the assessee from right from the A.Y. 2009-10. The reason given by the assessee for not recording these cash fees/voluntary donation /capitation fees before the authorities below and also tment has left the job

after assessment year 2008-09 and therefore, these amounts could not be recorded in the regular books of account for all the subsequent years. Such a reasoning and the argument ostensibly cannot appeal to the conscience of any court, because if the assessee has recorded all other receipts which are running into hundred of crores of rupees in the regular books of account then to say that these cash fees/voluntary donations could not be recorded due to the lack of head of accounts is very vague and lame excuse. One of the reasons for not recording such huge cash fees in the books of account perhaps could be due to the fact that by this time, various courts including the Hon'ble Supreme Court have come out very heavily against the private educational institutions especially the private medical colleges for receiving such huge capitation fees from the students and such judicial pronouncement later got ratified by subsequent Constitutional Bench judgments of the Hon'ble Apex Court in several cases holding it to be illegal, which we shall be discussing in brief in succeeding paragraphs. In so far as assessee's contention that once the assessments have been completed u/s 143(3) from A.Y. 2009-10 to A.Y. 2011-12, therefore, no adverse inference should be drawn, is not tenable at all, because admittedly these cash donation/capitation fees have neither been recorded in the regular books of account nor has been disclosed in the audited financial statements and even though, the assessments have been completed U/s 143(3) earlier, but the issue of capitation fees/cash donation only surfaced after the search and seizure wherein huge incriminating material and evidence were found, which could not have been subject matter of scrutiny, because assessments were made much prior to the date of search on the basis of entries made in the regular books of account and amount shown in the audited income and expenditure account. Thus such a plea raised by the assessee lacks merits.

24. Now the moot question before us is that, whether in the wake of clinching evidences found during the course of search and corroborated by post search enquiry that the assessee has been receiving huge capitation fees which admittedly was unaccounted money, can it be held that the assessee's activities are genuine or not. First of all, such huge cash fees have been received over and above the regular fees claimed to be in the nature of 'voluntary donation' by the assessee, cannot be treated as voluntary at all because the concept of 'voluntary' is to the concept of free will and choice and here cannot be any element of force. The nature and pattern of amount of cash received shows that, firstly, they are over and above the regular fees and hostel fee charged; and secondly, there is a systematic pattern of fixing

of the capitation fees course wise devised in a package system and also there is a schedule for making the payments of such fees in installments. Such systematic way of receiving cash fees cannot be held to be given by consent or free choice and willingly, because there cannot be any fixed amount for a sum which is given by free will and choice and it completely lacks element of voluntariness. The donation has element of free will and there cannot be any fixed amount and herein this case it has been brought on record by the department that once this amount is given then only 'no dues certificate has been issued to the students by the trustees. Thus, under no circumstances, such a cash fees can be held to be given voluntarily or is in the nature of voluntary donation, it is undoubtedly in the nature of enforced fee charged over and above the regular fees by the assessee trust through its trustees which has neither any sanction of law nor has been recorded in the books of account.

25. This issue of charging of 'capitation fee' by private Medical Colleges and other educational institutions has received judicial frown and admonition not only by the various Hon'ble High Courts but also by the Hon'ble Supreme Court and that to be by the Constitutional Bench on several occasions. Providing education for various levels to the citizens is one of the paramount goals of a welfare state and is regarded as the fundamental duty of the State to provide the education to its citizens. Rather the Constitution of India has enshrined such a goal in "Directive Principles" which is a mandate not only for the Central Government but also upon the State Governments and that is why it is in the 'Concurrent List of the Constitution whereby the Central and State Government have to ensure that proper education in all the fields is provided to its citizens as well as the children. Providing education is most solemn duty of the government and to establish adequate number of educational institutions in the country at all levels including technical, scientific, professional and medical to cater to the varied sections of the society. Since looking to the size of our country and increasing need of education in all walk of life, the State has encouraged private educational institutions to fulfill the Constitutional for providing education, therefore. State has always given a separate status to education and has treated it distinct with other economic activities. That is why there are various Regulations and Acts passed by the various State Governments and Central Government to regulate and control educational activities both for the private institutions as well as for State institutions. For this reason alone the providing of education has been treated to be one of the paramount activities

of charity and has been enshrined as one of the "charitable purposes us2(15) of the Act. Carrying out such charitable activity by any Trust or institution has been provided with certain benefits and exemptions under Chapter III of the Act, especially under Section 10(23C) and Sections 11 to 13 of the Act. If any Trust or institution transgresses such a noble activity of education on a commercial line which is tainted with commerciality and for profiteering, then same has to be adversely viewed and any such benefits enjoyed by the Trusts or institutions has to be withdrawn or they have to be derecognized from the exemption provisions.....

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27. Now the issues, whether receiving of a 'capitation fee' can be held to be genuine or not, or whether it is for the purpose of education. One of the main contentions raised by the assessee was that all such cash fees received, though not recorded in the books has been fully utilized in the construction of college/hospital buildings and being used for expanding the infrastructure and therefore, no adverse inference can be drawn regarding non-genuineness. Such an argument is delusive and flawed, firstly for the reason that it is purely based on hypothesis as no evidence or material has been brought on record or has been found during the course of search that these cash fees has been utilized for the purpose of construction of building or applied for charitable purposes and secondly, such illicit charging of fees enforced upon the students cannot be genuine education activity. If the assessee is receiving huge unaccounted cash fees. which are not recorded in the books of account and neither its application has been recorded then there cannot be any presumption that such cash received deemed to have been applied for charitable purposes. At no stage assessee could substantiate such utilization of unaccounted receipts with any evidence. In any case, even if some of the such capitation fees has been utilized for construction of buildings, but that cannot justify the illicit money from students. Here the end cannot justify the means. Thus, we reject the contention of the Id. counsel for the assessee that the assessee's cancellation of registration is not justified simply because the entire money received in the form of capitation fee /donation has been fully utilized for the purpose of education. The capitation fee per se has been strictly condemned and castigated by the Hon'ble Constitutional Bench of the Hon'ble Supreme Court comprising of seven judges in the case of P.A. Inamdar & ors. Vs State of Maharashtra

(2005) 6 SCC 537, wherein while referring the principle laid down by the Hon'ble Constitutional Bench of 11 Judges in T.M.A. Pai Foundation & ors. Vs. State of Kamataka(2002) 8 SCC 481, the Hon'ble Court had observed as under:-

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28. Thus, the law as its stands is very clear that the educational institution cannot charge capitation fees and are not permitted to charge any such fee. Strong contempt and obloquy have been expressed by the Supreme Court of Land that the capitation fee and profiteering by the educational institution defeats the noble cause of education and it has to be checked and regulated. If an educational institution is charging capitation fees, then educational institution's activity cannot by any means be reckoned to be genuine. Thus, this reason alone is sufficient to hold that the activities of the assessee trust are not genuine and accordingly, we hold that the Ld. Pr.CIT is justified in law and an facts in cancelling the approval/notification issued U/s 10/23C) of the Act and also registration granted U/s 12AA of the Act."

From the above it is clear that the appellant has been engaged in activities which are not as per its objects. Further Sections 11 and 12 of the IT Act provides for exemption with respect to certain incomes earned by charitable or religious trusts. As per Section 13(1) the income or property of the trust should not be used directly or indirectly for the benefit specified persons and in this regard section 13(2) enlists certain specified circumstances where it is deemed that the income or property of the trust is used or applied for the benefit of specified persons. Also the appellant has used the structure of trust for personal benefit of the trustees also as per factual finding of the Ld. AO in para 4.2.4 of the assessment order If the case of a trust falls under Section 13, then the entire exemption provided under Sections 11 and 12 of the IT Act stands denied and the income is to be computed as provisions. Reference in this regard is made to judgement of Hon'ble Delhi High Court in DIT (Exemption) v. Charanjev Charitable Trust [2014] 43 taxmann.com 300 (Delhi)/[2014] 223 Taxman 71 (Delhi)/[2014] 267 CTR 305 (Delhi) 18-03-2014) and judgement of Hon'ble Kerala High Court in Agappa Child Centre v. Commissioner of Income-tax [1997] 92 Taxman 327 (Kerala)/[1997] 226 ITR 211 (Kerala)/[1997] 137 CTR 295 (Kerala)(08-08-1996).

Further, the Ld. AO has specifically discussed the issue of increase in the fees of numbers of the courses during the impugned year ie. AY 2016-17 and also extracted the scan of letters in this regards. The Ld. AO has stated that the appellant did not submit any approval of state level fees fixation committee and has merely furnished a letter intimating the Chairman NEET regarding the revise pay structure and that the appellant has violated the UGC Guidelines. The Ld. AO has also placed reliance upon the judgment of Hon'ble Supreme Court in the case of M Aamira Fathima Vs Annamalai University in this regard. The Ld. AO has also held that the activities of the trust not as per its stated objective and that assessee has not eligible to claim exemption on its surplus and application of income. The appellant has not challenged these facts and findings in the appeal and thus these are treated to have attained finality.’’

After carefully going through the order passed by the ITAT Jaipur Bench (supra) in assessee's own case and also taking into consideration regarding the facts of the present assessment year, we found it clear from the records that the assessee has been engaged in the activities which are not as per its objects. It is clear from the records that nature and scope of activities being carried out by the assessee were adjudicated in detail by the Coordinate Bench in ITA No. 252 & 253/JP/2018 and now new facts and circumstances have been brought before us nor contract/ rebut these lawful findings recorded by the Coordinate Bench of ITAT. While deciding the identical issues which is mentioned at para 2.1 to 2.8 of the order of the Coordinate Bench of ITAT, Jaipur (supra) and, therefore, while adhering to the principles of consistency and judicial discipline, we rely upon the decision of ITAT Jaipur Bench (supra) and dismiss the Ground No. 1 of the assessee.

3.1 Now we take up the Ground NO. 2 of the assessee wherein the Id . AR of the assessee had advanced his submission hereinabove.

3.2 On the contrary, the Id.DR supported the order of the AO.

3.3 After hearing both the parties and perusing the materials available on record, we noticed that it is an undisputed fact that the assessee trust is running the educational courses in different fields and in its units ‘Nims School of Media and Mass Communication’ in which after completion of courses and practical training in Media, Mass Communication and Journalism, it is providing degree of BJMC (Bachelor degree in journalism and mass communication and MJMC (Master degree in journalism and Mass Communication (PB 60 to 84). It is noted that For practical training of the students in these courses, it had incurred following expenses on salary and cable distribution expenses of T.V. Channel which is for the practical training of students. It was also pointed out before us that identical expenses were also incurred in the preceding years and the details of which have already been submitted by the assessee and for the sake of convenience, the same is also produced as under

S.N	Assessment year	Expenses incurred
1.	A.Y. 2014-15	24,17,755
2.	A.Y. 2015-16	2,70,48,145
3.	A.Y. 2016-17*	2,66,74,705

(*in appeal before this Hon'ble ITAT)

We also noticed that no disallowance of the nature was made in earlier years whereas Rs.2,66,74,705/- was totally disallowed by the Id. AO, treating it as not in accordance with the law governing benefit given to the charitable Trust or institution whereas no

such law was referred to by the ld. AO nor by CIT(A) in sustaining disallowance. In the order, it was specifically mentioned by the AO that BJMC and MJMC are educational courses for which practical training through production of TV programs, telecast of news etc. is needed. Whereas on the contrary, it was specifically mentioned practical training of the students, the courses of BJMC and MJMC will have no recognition in jobs to the students who are degree holders of courses of BJMC and MJMC. After analyzing the facts of the present case, we noted the controversy for investment on TV channel for educational courses was also considered by the Hon'ble Rajasthan High Court, in appellant's own case in writ petition against order of the Hon'ble ITSC. Vide part No. (39) at Page 329 of 414 ITR, Hon'ble Rajasthan High Court (**P.B. Pages 85 to 121**) has held as under:

“The exclusion of the investment made by the petitioner-trust in the TV Channel appears to be one such perversity. On a glance of the facts and materials available on record of the case in hand, it is evident that the said TV Channel was acquired by the petitioner-trust for educational training in “journalism” and “Mass Communication”, as it was offering, courses for graduation and post-graduation in “Mass Communication” and “Journalism”. The apex court of land in the case of Maharishi Mahesh Yogi Vedic Vishwavidyalaya Vs. State of Madhya Pradesh (2013) 15 SSC 677 held thus:

“Having considered the various submissions and the analysis made based on detailed circumstances leading to the intricacies of Vedas, the field it covers, as noted by Division Bench, as well as the concept of education, which has been explained by very many learned and prominent persons to whom we have made detailed references to in the earlier part of our judgment, we are of the considered view that education is the base for every other subject to be taught in the process of learning. Therefore, establishment of the University as a preamble goes to state was to provide for education in forefront. It will be appropriate to hold that such a provision for education in so far as the appellant-university was concern, should concentrate and focus in the prosecution of research in Vedic learning and practices and to provide for matters connected therewith or incidental thereto. While holding so, it will have to be stated in uncontroverted terms that merely because such specific reference was made to prosecution of research in Vedic learnings, it could be held that the imparting of education in the appellant-University should be restricted to the said subject along and not in other subject.

78. In our considered view, such a narrow interpretation would be doing violence to the very basic concept of education, and would create a serious restraint on the University, where, imparting of education is the primary objective and dealing with any specific subject may be for enabling any one to acquire special knowledge on such subject. In other words, any such restrictive interpretation would go against the basic tenets of the concept of education, which no court can venture to state”.

40. Applying the principle aforesaid, it is evident that education cannot be confined to the meaning of one subject only and keeping this precedent in mind, it is concluded that the said investment in television channel shall be considered to be in consonance with the objectives and in purview of the objects of the trust”.

3.3.1 After going through the orders of Hon’ble Rajasthan High Court in assessee’s own case, we found that Hon’ble Rajasthan High Court has categorically held that the definition of word “Education” cannot be confined to a narrow meaning and such a narrow interpretation would be doing violence to the very basic concept of education and would create a serious restraint on the University, where, imparting of education is the primary objective and dealing with any specific subject may be for enabling any one to acquire special knowledge on such subject. In other words, the Hon’ble High Court while relying upon the decision of Hon’ble Supreme Court categorically mentioned that any such restrictive interpretation would go against the basic tenets of the concept of education, which no court can venture to state. Therefore, following the law laid down by the different judicial pronouncement and order of Hon’ble Supreme Court as well as Hon’ble Rajasthan High Court order in assessee’s own case, we are of the view that Education cannot be confined to a narrow meaning. Therefore, the expenditure on educational courses in Mass Communication and

Journalism and for the practical training through TV channel cannot be disallowed very particularly no such disallowance were made by the Revenue in the previous years. It is also noteworthy to mention that the Revenue is expected to maintain consistency in the decision and thus the disallowance made by the AO as to expenditure on TV Channel used for practical training of the students and Mass Communication and Journalism is not justified in view of the decision of Hon'ble Jurisdictional High Court who had followed the decision of Hon'ble Apex Court. Therefore, the disallowance made by the AO and sustained by the ld. CIT(A) is totally arbitrary and against the provision of law. In this view of the matter, we do not concur with the findings of the ld CIT(A) and thus Ground No. 2 of the assessee is allowed.

4.1 Now we take up the appeal of the Revenue for the assessment year 2016-17 for adjudication wherein it is noticed that there is delay 9 days in filing the appeal by the Department for which the ld DR submitted that this minor delay took place in filing the appeal on account of collection of orders and other concerning document. We allow this delay and proceed to adjudicate upon the issue.

4.2 Apropos Ground No. 1 & 2 of the Revenue in ITA No. 730/JP/2023 for the assessment year 2016-17, the facts as emerges from the order of the ld. CIT(A) are as under:-

8.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

(i) This issue has not been expressly dealt with by the Ld. AO in the assessment order. When the exemption u/s 11&12 are not available to an assessee the income is to be calculated as per chapter profit and gains of business & profession. The appellant has stated that the depreciation was stated in the return of income. The appellant has stated that depreciation not optional and the same is to be allowed in view of explanation 5 to section 32 of the Act. At the same time the appellant will not be eligible to claim depreciation on the assets which are treated as application of income by the appellant u/s 11/12. This is because if depreciation deduction allowed again on these assets u/s 32 which have already been allowed as deduction u/s 11/12 then in that case it would lead to double deduction of the same expenditure. Further when the assets are acquired and treated as application in provisions applicable to trust in those years the provisions of chapter pertaining to profit and gains of business & profession are not applicable and there is no addition to the block of assets and hence the asset is not part of block eligible for depreciation. At the same time an assets which has not being claimed/allowed as application in any year and the same is otherwise eligible for depreciation as per terms and conditions in chapter IV-D pertaining to business & profession the assessee will be eligible to claim the depreciation on such assets.

(ii) Reference in this regard is also made to the judgement of Hon'ble Delhi High Court in the case of Director of Income-tax (Exemption) v. Charanjiv Charitable Trust [2014] 43 taxmann.com 300 (Delhi)/(2014) 223 Taxman 71 (Delhi)/[2014] 267 CTR 305 (Delhi) [18-03-2014]. In the case of Charanjiv Charitable Trust (supra) it is held by the Hon'ble Delhi High Court as under:-

"30. So far as the claim of depreciation is concerned the decision of the Tribunal cannot be countenanced. The Tribunal

has overlooked that the cost of the assets has already been allowed as a deduction as application of income, as held by the CIT (Appeals) as well as the assessing officer. It was their view that allowing depreciation in respect of assets, the cost of which was earlier allowed as deduction as application of income of the trust, would actually amount to double deduction on the basis of the ruling of the Supreme Court in Escorts Ltd. (supra). In respect of the additions to the fixed assets made during the previous year relevant to the assessment year 2006-07, the CIT (Appeals) held that since the cost of the assets was not allowed as a deduction by way of application of income, depreciation should be allow. The CIT (Appeals) has thus made a distinction between assets the cost of which was allowed as deduction as application of income and assets, the cost of which was not so allowed. The Tribunal has not kept this distinction in view, but has proceeded to rely upon a judgment of this Court in Vishwa Jagrati Mission (supra). In the judgment of this Court the question was whether the income of the assessee, which was a charitable trust, should be computed on commercial principles and if so, whether depreciation on fixed assets used for charitable purposes should be allowed as a deduction. This Court noticed that there was a consensus of judicial opinion on this aspect and held, after referring to those authorities as well as a circular of the CBDT issued on 19.07.1968, that while computing the income of the trust available for application for charitable purposes, depreciation on assets used for charitable purposes should be allowed. The point to be noticed is that in this judgment, this Court referred to and distinguished the judgment of the Supreme Court in Escorts Ltd. (supra) on the ground that in Escorts Ltd. (supra), the Supreme Court was concerned with a case where the deduction of the cost of the asset was allowed under Section 35(1) as capital expenditure incurred on scientific research and, therefore, no deduction for depreciation on the very same assets was held allowable under general principles of taxation, as it would amount to double deduction. The judgment of this Court in Vishwajagrati Mission (supra) reinforces the principle that if the cost of the asset has been allowed as deduction by way of application of income then depreciation on the same asset cannot be allowed in the

computation of the income of the trust. The distinction has not been kept in view by the Tribunal which seems to have erroneously relied on the judgment of this Court to direct allowance of depreciation ever (in respect of assets the (Cost of which has already been allowed as application of income We accordingly hold that the Tribunal was not justified in directing the allowance of depreciation in respect of such assets."

The Ld. AO is directed to allow the depreciation to the appellant in terms of the discussion above. Accordingly, this ground of appeal is treated as partly allowed.’’

4.3 During the course of hearing, the ld.DR strongly supported the order of the AO.

4.4 On the contrary, the ld. AR of the assessee relied upon the order of the ld. CIT(A).

4.5 After hearing both the parties and perusing the materials available on record, it is noticed that the ld. CIT(A) has directed the AO to allow the depreciation to the appellant in terms of the discussion made in para 5.2 of his order (supra)which need not required to adjudicate afresh and we concur with the findings of the ld.CIT(A). Thus the appeal of the Revenue is dismissed.

5.1 As regards the cross appeals namely ITA No. 775/JP/2023 (Assessee) and ITA No.21/JP/2024 (Revenue), it is not imperative to repeat the facts of the case as the decision taken by the us in the ITA No. 685/JP/2023 (Assessee for A.Y.

2016-17) & ITA No/ 730/JP/2023 (Revenue for the A.Y. 2016-17) shall apply mutatis mutandis in ITA No. 775/JP/2023 (Assessee) and ITA No.21/JP/2024 (Revenue), .

6.0 In the result, the appeals of the assessee are partly allowed and that of the revenue are dismissed.

Order pronounced in the open court on 10/04/2024.

Sd/-

(डा० मीठा लाल मीना)
(Dr. Mitha Lal Meena)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10/04/2024

***Mishra**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Indian Medical Trust, Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle-1 ,Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 685/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar