

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.819/PUN/2024

निर्धारण वर्ष / Assessment Year : 2017-18

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|--|-----|---------------------------------|
| Mahatma Gandhi Charitable Medical Trust,<br>At Post New Pargaon,<br>Wathar Warananagar Road,<br>Taluka Hatkanagale,<br>Kolhapur – 416 113<br>Maharashtra<br>PAN : AAATM1893K | Vs. | ITO Exemption Ward,<br>Kolhapur |
| Appellant  |     | Respondent                      |

Assessee by : None  
Revenue by : Shri Abdesh Kumar Jha

Date of hearing : 11.06.2024  
Date of pronouncement : 11.06.2024

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 23.11.2023 for the assessment year 2017-18.

2. Brief facts of the case are as under :

The appellant is a Charitable Trust formed with the object of imparting education. The appellant trust was duly registered u/s.12A of the Income-tax Act, 1961 (hereinafter referred to as 'The Act'). No regular return of income for the A.Y. 2017-18 under the provisions of section 139(1) was filed by the appellant trust. The Assessing Officer issued notice u/s.142(1) calling upon the appellant trust to file the

return of income. In response to notice u/s.142(1), the appellant trust had filed the Return of Income claiming exemption u/s.11 of the Act. Against the said return of income, the assessment was completed by the AO vide order u/s.144 dated 27.12.2019 after making addition of Rs.19,50,000/- u/s.68, being cash donations received from the students in connection with admission for BDS course for the failure of the trust to prove the genuineness, creditworthiness and identity of the donors.

3. Being aggrieved, an appeal was filed before the CIT(A) who vide impugned order confirmed the action of the AO for non-prosecution without going into the merits of the issue.

4. Being aggrieved, the appellant is in appeal before the Tribunal in the present appeal

5. When the appeal was called on, none appeared on behalf of the appellant despite due service of notice of hearing. After hearing the Id. DR and perusing the material on record, I proceed to dispose of the appeal *ex parte* qua the appellant trust.

6. I heard the Id. Sr. DR and perused the relevant material on record. The issue in the present appeal relates to exemption of cash donations received from the donors for admission of students in BDS course. From the mere reading of the assessment order, it would reveal that the appellant trust had received cash donations in connection with the admission of students for BDS course. This is nothing but collection of capitation fee which is prohibited under the provisions of the Maharashtra Educational Institution (Prohibition of Capitation Fees) Act, 1987, therefore the appellant trust is not eligible for exemption u/s 11 as the practice of collection of capitation fees is also contrary to the law laid down by the Hon'ble Apex Court in the case of *Islamic Academy of Education v. State of Karnataka [2003] 6 SCC 697*. Thus,

the act of collection of donations in connection with admission of students for BDS course is contrary to the public policy which does not qualify for exemption u/s.11 of the Act.

7. The Coordinate Bench in the case of *Sinhagad Technical Education Society Vs. DCIT [2022] 139 taxmann.com 270 (Pune - Trib.)* held that collection of fees from the students for admission in various courses under the management quota amounts to breach of trust and the objects cannot be said to be charitable in nature. Relevant paragraphs from the said decision are reproduced below :

“32. It is settled position of law that the amount of capitation fees received over and above the prescribed under the provisions of the Maharashtra Educational Institution (Prohibition of Capitation Fees) Act, 1987 is not eligible for exemption u/s 11 as the practice of collection of capitation fees is contrary to the law laid down by the Hon'ble Apex Court in the case of *Islamic Academy of Education v. State of Karnataka [2003] 6 SCC 697* and also against public policy and the contrary to the provisions Maharashtra Educational Institution(Prohibition of Capitation Fees) Act, 1987. Thus, the appellant is not eligible for exemption of income of capitation fees received outside books of accounts u/s 11 and the Assessing Officer had rightly brought to tax. Accordingly, the ground appeal no. 1 to 7 stands dismissed.”

8. In the light of above discussion, I do not find any merit in the appeal filed by the appellant trust, accordingly the appeal stands dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 11<sup>th</sup> day of June, 2024.

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 11<sup>th</sup> June, 2024.

*Satish*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच,  
पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.