

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &  
MS PADMAVATHY S, AM**

**I.T.A. No. 90/Mum/2024  
(Assessment Year: 2018-19)**

<b>DCIT, Central Circle-7(1), Room No. 653, 6<sup>th</sup> Floor, Aayakar Bhawan, K.K. Road, Mumbai-400020.</b>	<b>Vs.</b>	<b>Dr. D. Y. Patil Vidyapeeth Society, Flat No. 101, Shree Motisagar Apartment, S. No. 473, A, Pune-411001, Maharashtra. PAN : AABTD1483B</b>
<b>Appellant)</b>	<b>:</b>	<b>Respondent)</b>

**Appellant /Assessee by** : Shri Neelkanth Khandelwal  
(Hybrid), AR

**Revenue / Respondent by** : Shri R.R. Makwana, Sr. DR

**Date of Hearing** : 26.11.2024

**Date of Pronouncement** : 05.12.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the Revenue is against the order of the Commissioner of Income Tax (Appeals)-49, Mumbai [in short 'the CIT(A)'] dated 23.10.2023 for AY 2018-19. The Revenue raised the following grounds of appeal:

*“1. On the facts and in circumstances of the case and in Law, the Ld. CIT(A) has erred in holding the Trust as "Charitable" without appreciating the fact that it has not satisfied the criteria of "charitable purpose within the meaning of Sec 2(15) of the Income Tax Act, 1961.*

2. *On the facts and in circumstances of the case and in Law, the Ld.CIT(A) was not justified in allowing the exemption u/s 11 of the Act ignoring the facts that the assessee Trust is not run in accordance with its objectives as the activities of the assessee Trust do not satisfy the criteria of "charitable purpose" envisaged under Section 2(15) of the LT. Act.*

3. *On the facts and in circumstances of the case and in Law, the Ld. CIT(A) erred in holding that the assessee is entitled to the exemption u/s 11 without appreciating the fact that the assessee Trust being an Education Institution run in the State of Maharashtra has also consistently violated the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987.*

4. *On the facts and in circumstances of the case and in Law, the Ld.CIT(A) was not justified in holding the Books of Account valid ignoring the facts that as per section 145(3), the Assessing Officer is not satisfied about the correctness of completeness of the accounts of the assessee as the activities of the assessee Trust do not satisfy the criteria of "charitable purpose" envisaged under Section 2(15) of the IT. Act.*

5. *The appellant craves leave to alter, amend, modify or substitute any ground or grounds and to add any new ground or grounds on or before the appeal is disposed of."*

2. The assessee is a charitable trust engaged in educational activities and has various colleges and institutions running under its umbrella of society. The accounts of the various institutions run by the assessee get merged under duly audited for regulatory purpose. For AY 2018-19 the assessee filed the return of income on 29.10.2019 declaring Nil income with the carry forward deficit of Rs. 18,28,31,127/-. Further, the assessee had brought forward deficit of Rs. 1,59,85,83,520/- for earlier years resulting in total carry forward deficit amounting to Rs. 1,78,14,14,647/-. The assessee's case was selected for scrutiny and the statutory notices were duly served on the assessee. The AO completed the assessment under section 143(3) of the Income Tax Act, 1961 (the Act) assessing the income of the assessee at Rs. 83,67,658/- by not allowing the cost of asset

acquired and disallowing the carry forward and set off of the deficit which was claimed by the assessee while filing the return of income. The AO while completing the assessment has also rejected the books of accounts of the assessee.

3. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) allowed the appeal in favour of the assessee by placing reliance on the decision of the Co-ordinate Bench in assessee's own case for AY 2011-12 to AY 2017-18 (ITA No. 1800 to 1806/Mum/2021 dated 29.04.2022). The Revenue is in appeal before the Tribunal against the order of the CIT(A).

4. We heard the parties and perused the material on record. The primary submission of the Id. AR is that the CIT(A) has given relief to the assessee by following the decision of the Co-ordinate Bench in assessee's own case for earlier AY and that the said decision is binding for the reason that there is no change to the facts for the year under consideration. During the course of hearing the Id. DR did not bring anything on record to contravene the submission of the Id. AR. We notice that the Co-ordinate Bench in assessee's own case has considered the impugned issues of denying exemption under section 11 and rejection of books of accounts and held that

*99. Considered the rival submissions and material placed on record. We find that the AO has denied the exemption under section 11 on the ground that the assessee is charging capitation fees which is not in accordance with the object of the Trust. Accordingly, the AO treated the assessee-trust as an AOP for the purpose of the Income-tax Act.*

*100. At the outset, we make a mention here that in the foregoing and ensuing paragraphs, we have dealt with the capitation issue and the other additions made by the AO and the merit in submissions of the assessee. Therefore, no basis remains for not allowing the exemption under section 11 claimed by the assessee.*

101. Even otherwise, we are inclined to agree with the contentions of the AR of the assessee that exemption under section 11 cannot be denied in the absence of cancellation of registration under section 12A which is also supported by the decision of the Supreme Court in the case of CIT v. Surat City Gymkhana (300 ITR 214).

102. We also find that the AO has brought nothing on record to show that the assessee-trust has not been carrying out activities are for charitable purposes as defined under section 2(15) of the Act. Further, there is also nothing on record to show that the assessee has violated the conditions laid down in section 13. As such, we are inclined to agree with the submissions of the assessee on this count also.

103. In view of the above, we direct the AO to allow exemption under section 11 to the assessee in toto. Accordingly, **ground no 5 of the assessee is ALLOWED and ground no 3 of the Department is DISMISSED.**

104 to 113. \*\*\*\*

114. Considered the rival submissions and material placed on record, we observe from the assessment order that the AO has accepted the annual accounts prepared by the assessee inasmuch as the starting point of the computation of income prepared by him is the deficit/ surplus per Income and Expenditure account. Further, while adjudicating other issues such as, disallowance of depreciation, capital expenditure etc, the AO has relied on the figures as appearing in the books of account. We also agree with the contention of the AR that the AO has not pointed out any defect in the books of account and proceeded to reject the books of account merely because an addition/ disallowance is made in the assessment order.

115. We hereby hold that an addition to total income cannot be a ground to invoke section 145(3) and reject the books of account. The AO has not brought anything on record to say that the books of account are not correct or complete.

116. In view of the above, we find no reason to interfere with the findings of the CIT(A) on this issue. Accordingly, **ground no 5 of the Department is DISMISSED.**”

5. Considering that there is no change to the facts pertaining to the year under consideration and that the revenue has not brought any contrary material on record,

we dismiss the appeal filed by the Revenue by respectfully following the above decision of the Co-ordinate Bench in assessee's own case (supra).

6. In the result, the appeal of the Revenue is dismissed.

*Order pronounced in the open court on 05-12-2024.*

***Sd/-***  
**(SAKTIJIT DEY)**  
**Vice President**

*\*SK, Sr. PS*

***Sd/-***  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**