

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

ITA No.1410/Bang/2024
Assessment year : 2016-17

Al-Badar Educational & Charitable Trust, Sy.No.12, Naganhalli Road, Dariyapur, Kalaburagi – 585 102. <b>PAN: AABTA 7444B</b>	Vs.	The Deputy Commissioner of Income tax, Central Circle, Ballari.
APPELLANT		RESPONDENT

ITA Nos.1481 & 1483/Bang/2024
Assessment years : 2016-17 & 2017-18

The Deputy Commissioner of Income tax, Central Circle, Ballari.	Vs.	Al-Badar Educational & Charitable Trust, Kalaburagi – 585 102. <b>PAN: AABTA 7444B</b>
APPELLANT		RESPONDENT

Assessee by	:	Shri Rajkumar Hanchal, CA
Revenue by	:	Smt. Neha Sahay, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	18.03.2025
Date of Pronouncement	:	22.04.2025

**ORDER**

*Per Prakash Chand Yadav, Judicial Member*

These are 3 appeals, 2 appeals are filed by the revenue for the AYs 2016-17 & 2017-18 and one appeal has been filed by the assessee for AY 2016-17 against the common order of the CIT(Appeals)-2, Panaji dated 27.5.2024 having DIN ITBA/APL/M/250/2024-25/1065142470(1) & DIN ITBA/APL/M/250/2024-25/1065142596(1) respectively.

2. The brief facts of the case as coming out from the orders of authorities below are that the assessee is a charitable trust registered with Registrar of Trusts, Kalaburagi and has registration u/s. 12A of the Income-tax Act, 1961 [the Act]. The assessee is carrying out charitable activity in the field of education by running a Dental Science College and is also having income from other sources. For the AY 2016-17 assessee has filed return of income on 29.9.2016. The same was processed u/s. 143(1) of the Act. Thereafter a survey u/s. 133A of the act was conducted at the premises of assessee on 06.9.2017. It is pertinent to note here that this survey has been converted into search on the same day and hence search was carried out on the assessee on 06.09.2017.

3. During the course of search total 300 receipts were seized and impounded by the search team marked as Annexure ABDCH/01, ABDCH/02 & ABDCH/03. It is an admitted fact that out of these 300 receipts 124 receipts have been issued on receipt of payment as evident

from the fact that only the counterfoils were there. These 124 receipts were duly accounted by the assessee in its books of account. The remaining 176 receipts have been prepared and kept ready in the receipt books. However these receipts were not entered in the books of account. It is relevant to mention here that these 176 receipts were also containing the original and duplicate in the receipt book itself. It is the case of assessee that since the payments have not come, the original receipts were there and not issued to the students. On the other hand it is the case of revenue that since these are unaccounted receipts, the assessee was keeping them and these are receipts of capitation fees, which are generally not given to the students in order to avoid tax evasion actions. Thereafter, the AO relying upon the statement of the Accountant of the assessee viz., Mr. Parsuram Jewargikar and the statement of Secretary, Dr. M. Abdul Mujeeb, came to the conclusion that the amounts mentioned in 176 receipts is unaccounted money received by the assessee on account of capitation fees from the innocent students and hence the AO taxed these receipt at maximum marginal rate as per the provisions of section 164(2) of the Income Tax Act.

4. Aggrieved from the order of the AO, the assessee filed appeal before the Id. CIT(Appeals), who vide order dated 27.5.2024 partly allowed the appeal of the assessee. It is pertinent to note here that in para 4.5 of the order, the CIT(Appeals) has categorically held that *“the AO was right in holding that the appellant trust had received unaccounted cash from students and they were not recorded in the*

*books of account as income.*” This finding of fact is now final inasmuch as the assessee has not challenged this finding before us in appeal by way of any ground. The Id. CIT(A) however allowed the appeal of the assessee on the ground that these receipts are part of assessee income and the same were applied for charitable purposes. Aggrieved with the order of the CIT(Appeals), both the assessee and Revenue are in appeals before us.

5. We will first decide the appeals of the Revenue for AYs 2016-17 & 2017-18. The revenue has taken the following common grounds of appeal:-

“(i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2,47,06,000/- made LA 164(2) of the IT Act , on account of unaccounted receipts, without appreciating the fact that the addition was made based on the seized materials marked as `annexure Nos. ABDCH/01, ABDCH/02, and ABDCH/03' and statements of Shri Parasuram Jawargikar and Shri. Abdul Mujeeb, recorded u/s 132(4) of the Act during the search proceedings.

(ii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the addition was made based on the statement recorded u/s 132(4) of the IT Act from the responsible person, accountant of the trust Shri Parasuram Jawargikar who admitted that the receipts found in the seized materials were never accounted in the books of accounts of the trust and the entire collection of unaccounted receipts in cash was handed over to Shri. Abdul Mujeeb who is the Secretary of the trust.

(iii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the addition was made based on the statement recorded u/s 132(4) of the IT Act from the secretary of the trust Shri. Abdul Mujeeb,

who confirmed that the entries found in the seized material were unaccounted receipts and distributed among the trustees of the assessee and spent for various purposes other than trust activities.

(iii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deciding that the total income of the assessee trust to be arrived after allowing exemption as per provisions of section 11 of the IT Act, without appreciating the fact -that the receipts found in the seized materials are unaccounted and have not been applied for the purpose of education and other charitable purposes.

(v) Appellant craves leave to modify, amend or revise the above grounds of appeal and add further grounds of appeal, if necessary.”

6. Perusal of the above grounds of appeal would show that the revenue is aggrieved by the order of Id. CIT(Appeals) vis-à-vis deletion of amount of Rs.2,47,06,000 for AY 2016-17 and Rs.1,96,86,240 for AY 2017-18.

7. The Id. DR appearing for the revenue has drawn attention of the Bench towards the statement of the Accountant of the assessee trust recorded u/s. 132(4) of the Act and contended that while answering Q.No.21, the Accountant of the assessee has categorically accepted that 3 receipt books i.e. Annexure ABDCH 01, 02 & 03 are not entered in the account books of assessee and these are unaccounted cash receipts. The Id. DR further relied on the statement of the Secretary of the Trust recorded u/s. 132(4) of the Act and contended that the assessee trust has siphoned cash amount towards Chairman, Vice Chairman, Treasurer, Secretary and other people. The Id. DR also pointed out that assessee has given the amount of Rs.1.7 crore to Dr. Revathi for

getting increment in the number of seats of the Dental College. In other words, the Id. DR contended that assessee has paid bribe of Rs.1.7 crore to Dr. Revathi for increasing the number of seats of Dental College.

8. The Id. AR appearing on behalf of the assessee contended that the statements on standalone basis without the support of corroborative material are not reliable. He also contended that the Secretary has retracted 132(4) statement and copy of the retraction made is at page 105 of paperbook. He further relied on some case laws for the proposition that even if they are unaccounted receipts the same were form part of income of assessee and since the assessee the registration of 12A has not been withdrawn the assessee is entitled for benefits of section 11 and section 12.

### **Findings of the Bench**

9. We have heard the rival submissions and perused the material available on record. For the sake of convenience, we are not repeating the facts again. So far as the presence of unaccounted receipts is concerned, there is a categorical finding of the CIT(Appeals) in para 4.5 of his order which has been quoted by us above in this order. The assessee has not challenged this finding, therefore the finding recorded by the Id. CIT(Appeals) to the extent that assessee unaccounted cash receipts were there.

10. Now the second question would arise, whether once the assessee trust has received unaccounted cash receipts, then exemption u/s. 11 is available to those unaccounted cash or not. In our view, this issue is required to be examined in view of the fact as to whether the amount received was received as course fees or as capitation fee. The assessee has filed copies of the seized receipt book in paperbook Vol. III running from pages 1 to 141. For the sake of convenience, we are reproducing the same receipt hereunder:-

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**AL-BADAR EDUCATIONAL & CHARITABLE TRUST'S DENTAL COLLEGE, GULBARGA**

Dariyapur Village, Naganhalli Road, GULBARGA - P: 220222 - 227610 Fax: 08472-229687

**RECEIPT**

No. **01** Date **05.01.17**

Received a sum of Rs. **3000/-**

(Rupees **Three thousand only**)

from **Dr. / Miss Dr. Mehera Amena P.G. (CET)**

Student of **First year B.D.S./M.D.S.** towards the fee for Management Payment Seat / ~~Management Free Seat~~

  
Accountant / Supdt.

97

**AL-BADAR EDUCATIONAL & CHARITABLE TRUST'S DENTAL COLLEGE, GULBARGA**

Village, Naganhalli Road, GULBARGA - ☎ : 220222 - 227610 Fax : 08472-229687

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**RECEIPT**

Date 26.10.15

141

A sum of Rs. One lakh only  
₹ 1,00,000/-

Dr. Shrikant Indiraj PG course  
M.A. Urd. B.D.S./M.D.S. towards the fee 2015

Payment Seat / Management Free Seat

Head  
Accountant / Supdt

141

**AL-BADAR EDUCATIONAL & CHARITABLE TRUST'S DENTAL COLLEGE, GULBARGA**

Village, Naganhalli Road, GULBARGA - Pin : 220222 - 227610

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**RECEIPT**

Date \_\_\_\_\_

Received a sum of Rs. 10000/-

For \_\_\_\_\_

Class \_\_\_\_\_

For \_\_\_\_\_ B.D.S./M.D.S. course

Payment Seat / Management Free Seat

Accountant \_\_\_\_\_

*(Handwritten signature)*

11. Perusal of the above receipts would show that the assessee has received cash from the students for the MD Seat under the Management Seat. It is universally accepted now that management seats are given after receiving the capitation fees. Therefore, we are of the firm view that the amount of fees which was received by the assessee was in the nature of capitation fee though it is mentioned as Management fee in the receipt book unearthed during search.

12. Now the next issue would arise, whether assessee is entitled to deduction u/s. 11(a) of the Act on this receipt. For this proposition, the

Id. DR has filed copy of judgment of the Hon'ble Delhi High Court in the case of PCIT v. Maharaji Education Trust in ITA No.721/2023 dated 3.7.2024 wherein on similar facts and circumstances of the case, the Hon'ble Delhi High court has observed as under:-

**“24.** Further, the ITAT, on merits, has held that since the assessee is duly registered under Section 12A read with Section 10(23C)(iv) of the Act and the registration is still valid, the assessee is entitled for claiming benefits as per the provisions of Section 11 of the Act. Paragraph no. 56 of the order of the ITAT is culled out as under:-

"56. Even otherwise on the merits of the case, it respect to the allowing the exemption u/s 11 of the income tax act we find that the assessee is registered u/s 12 A of the act as well as u/s 10 (23C) (IV) of the act also. This registration certificate is still valid and not withdrawn. Assessee is also held to wholly exist for the purpose of education. The addition of the donation is not been made in the hence of the assessee u/s 68 of the income tax act but as income of the charitable trust denying the exemption u/s 11 of the act. We find that there is no reason to deny assessee benefit of Section 11 of the act when the assessee is registered u/s 12 A as well as u/s 10 (23C)(iv) of the act. It is the case of the revenue that assessee is not utilizing the sum so received towards educational activities. In view of this, we do not find any reason that assessee should not be allowed exemption u/s 11 is and 12 of the income tax act as assessee is doing a charitable activity. Therefore we dismiss ground number 2 and 3 of the appeal of the learned assessing officer and uphold the order of the learned CIT - A that extent."

**25.** A bare reading of Section 11 of the Act would suggest that the said provision provides for an exemption from tax for income arising out of property held by charitable trusts and institutions. For claiming such exemption, the income must be derived from properties that are operating solely for religious or charitable purposes and the entities must obtain a registration certificate under Section 12A or Section 12AA of the Act.

**26.** A salient aspect which emanates from Section 11 of the Act is that the usage of the phrase „wholly' relates to the purposes and not to the property of the trust. The word „wholly' is strikingly

different from the word „mainly'. Rather, the former should be understood to be closely akin to the phrase „solely'. Put otherwise, there is no scope for the purposes being partially public or religious in nature. It would not be sufficient if some of the objects are charitable or religious in nature. The Supreme Court in *East India Industries (Madras) (P.) Ltd. v. CIT* [1967] 65 ITR 611 (SC), while referring to the case of *Maulana Mohammad Ibrahim Riza Malak v. CIT, Nagpur* 1930 SCC OnLine PC 43, has held as under:-

"6. The view that we have expressed is borne out by the decision of the Judicial Committee in *Mohammad Ibrahim Riza v. CIT* [57 IA 260] in which it was held that if there are several objects of the trust, some of which are charitable and some non-charitable, and the trustees have unfettered discretion to apply the income to any of the object, the whole trust would fail and no part of the income would be exempt from tax. The same view has been expressed by the Court of Appeal in *Oxford Group v. Inland Revenue Commissioners* [(1949) 2 All ER 537] .

**27.** In the landmark decision of *TMA Pai Foundation (supra)*, the Supreme Court took a view that charging of capitation fee must be forbidden and the object of education is mandatorily charitable in nature. Paragraph no. 57 of the said decision is reproduced hereunder for reference:-

"57. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution."

**28.** In the case of *P.A. Inamdar (supra)*, the Supreme Court has held as under:-

"140. Capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. "Profession" has to be distinguished from "business" or a mere "occupation". While in business, and to a certain extent in occupation, there is a profit motive, profession is primarily a service to society wherein earning is secondary or incidental. A student who gets a professional degree by payment of capitation fee, once qualified as a professional, is likely to aim more at earning rather than serving and that becomes a bane to society. The charging of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialisation of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated."

**29.** With regards to the entitlement of benefits encapsulated in Section 11 and 12 of the Act, the High Court of Madras in the case of *Mac Public Charitable Trust (supra)* has held that collection of amount in excess of what has been prescribed as fee would render the objective of 'charity' a farce and the same shall disentitle the assessee from claiming benefits under the said provisions. The relevant paragraphs of the said decision are reproduced as under: -

"38. Upon a conjoint reading of the above legal provisions, it is manifest that charitable purpose, as contemplated under the Act though would include education, would not include the advancement of any other object of general public utility, if the object involved is the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. Thus, it is clear that section 10(23C) and section 11 deal with income that are not to be treated as part of total income. Section 10(23C) exempts the income received by the institution existing solely for educational purposes provided that it is registered and applies its income, wholly and exclusively to the objects for which it is established. However, incidental profit if any received in the course of its educational activities shall not

deprive the institution of its exemption. The provisions are explicit as the primary condition is that an institution must solely exist for educational purposes. Whereas, under section 11, though the object is same, it deals with income from property held by charitable or religious trusts. Section 11 of the Act states that income from property held for religious or charitable purposes shall not be included in the total income of the previous year. Section 12 deals with income of trusts or institutions from contributions. Any voluntary contribution received by such trust created wholly for charitable or religious purposes or by an institution established for such purpose, with such contribution not forming part of the corpus, shall be treated as income derived from the property, thereby section 11(1)(a) and (b) would apply to such contributions. Further, as per section 12(2), the value of any services to any person referred in section 13(3) shall not be eligible for deduction. Section 12A deals with making application for registration of the trust/association so that the said institution will have the benefit of exemption under section 11 and section 12 of the Act. It is mandatory for every institution claiming exemption to register themselves. The procedures for registration and cancellation are contemplated in section 12AA. As per section 12AA(1)(b) of the Income-tax Act, 1961, the Commissioner before granting the registration is to be satisfied about the objects of the trust and the genuineness of its activities. However, the Commissioner is vested with the power under 12AA(3) to cancel the registration if the activities are not genuine. The objects are irrelevant, when the activities are not genuine. The application of the funds is also subject to scrutiny by the Commissioner. Further, similar to section 10(23C), the requirement under section 12 is that the trust must be "wholly" for charitable purpose. If it turns out that the activities are not genuine or are not being carried out in accordance with the objects of the trust, not only is the registration liable to be cancelled, the claim of exemption under section 11 is also liable to be rejected. The word "genuine" must be read as in compliance with all the laws of the land. If the institution or trust is used as a cloak to violate law, irrespective of whether any benefit is achieved or not, the benefit of registration cannot be permitted to accrue to the assessee. Section 12AA(3) is an independent provision as the right to cancel the registration is not restricted just towards the fulfilment or not of the objects of the trust or association.

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41. Juxtaposing the provisions of both the Acts, *viz.*, Income-tax Act, 1961 and the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992, with

each other, it is explicit that collection of any amount in excess of what has been prescribed as fee or in the nature of donation or voluntary contribution either directly or indirectly to the institution or through some other person or institution or trust, as quid pro quo for the seat in any educational institution, would render the activity of both the entities ungenune. Such actions would render the object of "charity" a farce and the transaction will have to be treated as a commercial activity, depriving the assessee of the benefits of sections 11 and 12 of the Act."

**30.** Reverting to the facts of the present case, undisputedly, the assessee has engaged itself in **charging capitation fee which is dehors the objective of the charitable trust**. Therefore, the claim of the assessee for exemption as per Section 11 and 12 of the Act does not hold any water. In view of the aforementioned pronouncements of law, the ITAT has wrongly sustained the exemption claimed by the assessee."

13. Perusal of the above findings would show that the Hon'ble Delhi High Court following the judgment of Hon'ble Madras High Court in the case of Mac Public Charitable Trust [2022] 144 taxmann.com 54 (Madras) / 450 ITR 368 (Mad) has categorically held in para 29 that entitlement of benefits enumerated in section 11 & 12 are not available for capitation fees because charging of capitation fee from the students in lieu of management seats is not a charitable object at all depriving the benefit of sections 11 & 12 to the assessee.

14. The Id. counsel for the assessee has also argued that retraction was filed before the lower authorities. When the Bench asked the Id. counsel as to why retraction has been signed by the CA, the Id. counsel of the assessee contended that as an authorised representative the CA and Advocates are entitled to file retraction before the lower authorities and there is no such rule under the I.T. Act or I.T. Rules which lays

down that retraction should be signed from the person who has given the statement u/s. 132(4).

15. The Id. DR for rebutting this argument of the Id. counsel for assessee, has drawn attention of the Bench to Hon'ble Madras High Court judgment in the case of Mac Public Charitable Trust (supra) and contended that a retraction should be made within short span of time and duly supported by sworn affidavit, only then such retraction is a valid retraction. For the sake of convenience, we reproduce the relevant observations of the Hon'ble Madras High Court hereunder:-

“ It must be held that statement recorded under section 132(4) and later, confirmed in statement recorded under section 131, cannot be discarded simply by observing that the assessee has retracted the same, because such retraction ought to have been generally made within a reasonable time or by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duly sworn affidavit or statement supported by convincing evidence. Such a statement when recorded at two stages cannot be discarded summarily in cryptic manner by observing that the assessee in the belatedly filed affidavit have retracted from their statements. Such retraction is required to be made as soon as possible or immediately after the statement of the assessee was recorded. Duration of time when such retraction was made, assumes significance and in the present case, retraction has been made by the assessee after eight months to be precise, 237 days. [Para 61]”

16. In view of the above observations of the Hon'ble Madras High Court, we do not find any force in the argument of the Id. counsel for the assessee and hence the retraction made is termed as an afterthought and same is not relevant.

17. We further note that the Id. CIT(A)'s observation that the AO should have ascertained the total income of the appellant by adding unaccounted cash receipts to the declared income of the appellant and verified whether there was any accumulation of income over and above 15% or not, is not at all relevant having regard to the fact that the impugned cash is capitation fees and the Hon'ble Delhi High Court and the Hon'ble Madras High court have categorically held that benefits of section 11 & 12 are not meant for amount collected as capitation fees. We further observe that filing of affidavits by the students before the AO is also of no use because no person would give any statement against his own interest. If in this case, the student affirms that they have paid capitation fee, then they will also be in trouble in terms of the provisions of the Act. Therefore, the affidavits of the students have no relevance.

18. In view of the above, the appeals of the revenue are allowed.

19. Now coming to the assessee's appeal in ITA No.1410/Bang/2024 for AY 2016-17, the assessee has raised as many as 10 grounds of appeal challenging the various aspects of the matter. The assessee has filed written submissions.

20. Ground No.1 is general in nature and hence the same is dismissed.

21. In respect of ground No.2, the assessee has challenged the time given by the AO for filing return of income in response to notice u/s.

153A is not in accordance with law. However, we observe that in this case notice u/s. 153A was issued on 25.11.2019 and the assessee has filed return of income on 18.12.2019 which means more than 30 days time was given by the AO and not 7 days time as alleged by the counsel for the assessee. Therefore, this ground of appeal is dismissed.

22. In ground No.3, the Id. counsel for the assessee contended that the approval granted u/s. 153D of the Act was mechanical. However, there is no copy of approval before us neither the Id. counsel for the assessee has requested the Bench to call for the records pertaining to the approval. Making an argument without support of any material is not at all justifiable. Further this ground is raised for the first time before the Tribunal without raising the same as an additional ground and without seeking permission for admission of the additional ground in terms of the ITAT rules. Therefore, this ground is also dismissed.

23. In ground No.4, the assessee has challenged the action of the AO for referring the valuation of the college building to the Valuation Cell. However, this issue, in our view, is not at all relevant for deciding the issue on merits which we have decided in the departmental appeal and therefore dismissed.

24. In ground No.5, the Id. counsel for the assessee has raised certain legal ground vis-à-vis making reference to valuation cell. However these grounds were not raised before the lower authorities and no application for admission of additional ground has been filed before us. Further no material has been placed before us to support the

averments made in this ground. Not a single argument has been made by the Id. counsel for the assessee with respect to this ground. Therefore, the same is dismissed.

25. Similarly, in respect of ground no.6 also, the Id. counsel for the assessee has failed to demonstrate with the help of any material as to how the assessment is time barred and hence it is dismissed.

26. Ground Nos.7 & 8 are no more relevant because we have allowed the departmental appeal.

27. In ground No.9 the assessee has contended that claim of carry forward of adjustment of previous year expenses is not allowed by the AO. However, no argument has been advanced before us for this ground.

28. Ground No.10 regarding levy of interest u/s. 234A, B & C is mandatory and consequential and therefore this ground is dismissed.

29. The appeal of the assessee is dismissed.

30. In the result, the appeals of the revenue are allowed and the appeal of the assessee is dismissed.

Pronounced in the open court on this 22<sup>nd</sup> day of April, 2025.

Sd/-

Sd/-

( WASEEM AHMED )  
ACCOUNTANT MEMBER

( PRAKASH CHAND YADAV )  
JUDICIAL MEMBER

Bangalore,

Dated, the 22<sup>nd</sup> April, 2025.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.