NEUTRAL CITATION
2024:GUJHC:25111-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 89 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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N H KAPADIA EDUCATION TRUST
Versus
THE ASSISTANT COMMISSIONER OF INCOME TAX (EXEMPTIONS)

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Appearance:
MR M.R.BHATT, LD.SR.ADV WITH MS SHAILEE S JOSHI(11582) for the Appellant(s) No. 1
MS MAITHILI MEHTA, LD.SR.STANDING COUNSEL FOR THE RESPONDENT
NOTICE SERVED for the Opponent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 04/03/2024
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Advocate Mr.M.R.Bhatt with learned advocate Ms.Shailee S. Joshi for

NEUTRAL CITATION
2024:GUJHC:25111-DB

the appellant and learned Senior Standing Counsel Ms.Maithili Mehta for the respondent.

2. This Tax Appeal is filed under Section 260A of the Income Tax Act, 1961 (for short 'the Act') raising following substantial questions of law arising out of the judgment and order passed by the Income Tax Appellate Tribunal, Ahmedabad 'C' Bench (for short 'the Tribunal') dated 14th July 2023 in the ITA No.685 of 2019 for the A.Y.2013-14 :

> *"A. Whether on the facts and circumstances of the case and in law, the Tribunal is justified in confirming the addition of Rs.5,00,60,184/- to the income of the assessee by holding that the same cannot be treated as a corpus donation and is not eligible for exemption under Section 11(1)(d) of the Act B. especially in light of the decision of the very Tribunal passed in the favour of the very appellant in the same set of facts and circumstances for previous A.Y.s.*

NEUTRAL CITATION
2024:GUJHC:25111-DB

B. Whether the Tribunal is right in law and on facts in reversing the order passed by the CIT (A without specially adverting to the findings of the said first appellate authority that the facts and circumstances for the present year were identical for the earlier assessment years wherein similar issue was decided in favour of the assessee by the ITAT."

3. The brief facts of the case are as under :

3.1. The assessee is a charitable trust. The activity of the trust is mainly of educational institution i.e. schooling from pre-primary to higher secondary at different locations.

3.2. The assessee filed its Return of Income on 21.09.2013 declaring its income at a loss of Rs. 60,84,191/-. The assessee also filed revised return of income declaring its income

NEUTRAL CITATION
2024:GUJHC:25111-DB

at a loss of Rs. 5,68,80,691/-. The trust received donation aggregating to Rs.5,00,60,184/- collected from students as corpus donation of which the assessee also claimed benefit of exemption under Section 11(1)(d) of the Act amounting to Rs.5,00,60,184/- collected from the students as "corpus donation".

3.3. The assessing officer on 18.03.2016, passed an order of assessment under Section 143(3) of the Act wherein the income of the assessee was declared as 'Nil'. Further, the assessing officer observed that the assessee had received one time admission fees of Rs.5,00,60,184/- from parents/guardians which was treated as corpus fund and directly credited in its balance sheet as an earmarked fund. The Assessing Officer further observed

NEUTRAL CITATION
2024:GUJHC:25111-DB

that in the copies of the receipts issued to students for the payment of the one-time admission fee it was mentioned that the amount paid was for the one-time admission fees and held that the said receipt/fee was not a voluntary contribution given with a specific direction to treat the same as corpus donation which can be claimed as exempt in Section 11(1)(d) of the Act. Therefore, the Assessing Officer treated one-time admission fees of Rs.5,00,60,184/- as income of the assessee and added back to the total income of the assessee.

3.4. The Assessing Officer also disallowed the claim of depreciation of Rs.63,77,413/- on the ground that the assessee had claimed the capital expenses as application towards object of the Trust and therefore the claim of depreciation would amount to double deduction

NEUTRAL CITATION
2024:GUJHC:25111-DB

since the benefit of 100% deduction of the expenses has already been allowed to the Assessee-Trust.

3.5. The Assessing Officer therefore reduced the amount of disallowance of Rs.50060184/- towards development fund not offered as income and disallowance of depreciation of Rs.6377413/- from the loss declared by the assessee-Trust of Rs.56880691/- and determined the gross income of the Trust as Rs.(-)4,43,094/- and accordingly assessed the total income as Rs.Nil.

3.6. Being aggrieved by the Assessment Order passed under Section 143(3) of the Act, the assessee preferred an appeal before the Commissioner of Income Tax (A) (for short 'the CIT(A)').

NEUTRAL CITATION
2024:GUJHC:25111-DB

3.7. The CIT(A) by order dated 12.02.2019 deleted the addition made by the assessing officer. The CIT(A) relied on decision of Tribunal in ITA Nos.279, 280 and 281 of 2013 for Assessment Year 2004-05, 2005-06 and 2009-10 and ITA Nos.1321 and 1420 of 2011 dated 03.02.2012 for Assessment Year 2008-09 in which similar issues in case of appellant were under adjudication. It was held that contribution towards different corpus funds were in nature of the corpus fund and liable to be exempted under Section 12 of the Act.

3.8. Being aggrieved by the decision rendered by CIT(A), the Revenue preferred an appeal before the Tribunal.

3.9. The Tribunal vide order dated 14.07.2023 held that admission fee cannot be

NEUTRAL CITATION
2024:GUJHC:25111-DB

treated as 'corpus donation' and consequently, the same is not eligible for grant under Section 11(1)(d) of the Act. Further, the Tribunal stated from the facts placed on record, neither the admission fee charged from the students qualify as "voluntary" donation nor there was a specific direction that the same may be used only for the purpose of corpus of the Trust. Therefore, the development fund amount cannot be treated as corpus donation and accordingly, the assessee is not eligible for benefit of exemption under Section 11(1)(d) of the Act. However, if in case the amount is treated as the income of the assessee-trust, then the assessee is eligible for deduction/allowance of expenses incurred against the aforesaid receipts towards objects of the trust.

3.10. Therefore, being aggrieved by the

NEUTRAL CITATION
2024:GUJHC:25111-DB

order passed by the tribunal dated 14.07.2023, the appellant has filed this appeal.

4.1. Learned Senior Advocate Mr.M.R.Bhatt for the appellant submitted that the Tribunal is erroneous in view of the decisions rendered by the Tribunal for the assessment years 2004-05, 2005-06, 2008-09 and 2009-10, 2010-11, 2011-12 and 2012-13 and has misdirected itself by holding that the aforesaid frees charged from the students were neither voluntary not were directed to be used solely for the purpose of the corpus.

4.2. Learned Senior Advocate Mr.M.R.Bhatt submitted that the Tribunal has failed to differentiate as to how the facts leading to the decisions rendered by the very forum for assessment years 2004-05, 2005-06, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 are

NEUTRAL CITATION
2024:GUJHC:25111-DB

different than the facts of the assessment year under consideration as also the fact that the accounting system for the aforesaid assessment years and the assessment year under consideration remains unchanged.

4.3. It was submitted that it is a settled position of law that if the Tribunal is reversing the findings of the first appellate authority, it will have to spell out the reasons for not agreeing with the findings of the said first appellate authority and in such a situation, the Tribunal is not excepted to act as the original authority. Learned Senior Advocate Mr.M.R.Bhatt further submitted that in the present case, the Tribunal has not given any finding as to why it is not agreeing with the finding recorded by the CIT (A).

4.4. Learned Senior Advocate Mr.M.R.Bhatt

NEUTRAL CITATION
2024:GUJHC:25111-DB

submitted that the Tribunal ought to have appreciated that for the assessment years 2004-05, 2005-06, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13, the issue with regard to the corpus donation has become final even up to the stage of this Hon'ble Court and reference is made to order passed by this Court in Tax Appeal No.356 of 2012 and Tax Appeal Nos.860, 861 and 862 of 2013.

4.5. Learned Senior Advocate Mr.M.R.Bhatt therefore submitted that the Tribunal has failed to appreciate that no detailed inquiry was carried out by the Assessing Officer for determining the nature of the contribution and upon cursory satisfaction, the Tribunal has arrived at a conclusion that there is no element of voluntariness in the donation made/ admission fees paid by the students/parents and had not even perused the stated documents

NEUTRAL CITATION
2024:GUJHC:25111-DB

i.e. Admission Formsa and the Resolution which categorically evidenced the aspect of corpus donation.

5.1. On the other hand, this Appeal has been opposed by learned Senior Standing Counsel Ms.Maithili Mehta for the respondent. Learned Senior Standing Counsel Ms.Maithili Mehta would submit that no error, not to speak of any error of law could be said to have been committed by the Tribunal in passing the impugned order. Learned Senior Standing Counsel Ms.Maithili Mehta would submit that there is no iota of material to indicate that the assessee had indulged in any illegal activity and is not existing for the eduction purpose.

5.2. Learned Senior Standing Counsel Ms.Maithili Mehta invited our attention to the

NEUTRAL CITATION
2024:GUJHC:25111-DB

judgment delivered by this Court in the Tax Appeal No.356 of 2012 decided on 28th September, 2018. The Tax Appeal No.356 of 2012 was filed by the Revenue against the very same assessee who is here before us. The issue before the Court in the Tax Appeal No.356 of 2012 was with regard to the restoration of the registration in favour of the Trust accorded under Section 12A of the Act, 1961. According to learned Senior Standing Counsel Ms.Maithili Mehta, the observations made by the Co-ordinate Bench in the said judgment speak for itself. Learned Senior Standing Counsel Ms.Maithili Mehta invited our attention to few relevant observations made by the CIT (A) as well as by the Appellate Tribunal, more particularly, with regard to the corpus donation.

5.3. In such circumstances referring to

NEUTRAL CITATION
2024:GUJHC:25111-DB

above, the learned Senior Standing Counsel Ms.Maithili Mehta prays that there being no merits in this appeal, the same may be dismissed and the substantial questions of law may be answered in favour of the Revenue and against the assessee.

6. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that fall for our consideration is whether the Appellate Tribunal committed any error in passing the impugned order.

7. The issue raised in this appeal are no more res-integra in view of the decision of this Court rendered in Tax Appeal No.356 of 2012 in the case of the appellant wherein, after considering similar facts and the provisions of the Sections 11 to 13, this

NEUTRAL CITATION
2024:GUJHC:25111-DB

Court has held as under :

> *"22 The concurrent finding of fact, as recorded by the CIT(A) and the Appellate Tribunal, is that the amount paid by the parents of the students admitted to the assessee's – educational institution was towards the corpus donation account and the same was not collected by way of capitation fee. If it is the case of the Revenue that the amounts paid by the parents of the students admitted to the assessee's – educational institution was not towards the corpus donation account, but it was collected only by way of capitation fee and such amount of capitation fee is not exempted in the hands of the assessee institution, then the assessing authority ought to have taken pains to undertake a detailed inquiry in this regard by oral examination of parents, etc. who admitted their children in the school. There is no doubt and it goes without saying that if the donation is found to have been given for material gain in securing admission, the same cannot be characterised as*

NEUTRAL CITATION
2024:GUJHC:25111-DB

donation towards charitable purpose and the assessee would not be entitled to have the benefit, but, unfortunately in the case on hand, in the absence of any material on record, we are unable to take such a view.

23 In such circumstances referred to above, we are of the view that we should not disturb the order passed by the Tribunal affirming the order passed by the CIT(A).

24 Before we close this matter, we would like to observe something important.

25 The Apex Court in the case of Ms. Mohini Jain v. State of Karnataka and Ors. (1992) 3 SCC 666, held that capitation fee was nothing but price of selling education and such "teaching shops" were contrary to the Constitutional scheme and abhorrent to our Indian culture.

26 The Supreme Court's decisions in case of TMA Pai Foundation Vs. State of Karnataka (2002) (8 SCC 481), Islamic

NEUTRAL CITATION
2024:GUJHC:25111-DB

Academy of Education Vs. State of Karnataka (2003) (6 SCC 697) and P.A. Inamdar Vs. State of Maharashtra (2005) (6 SCC 537) also supports the fact that the education is not a commercial activity.

27 Education would remain as a charity only in a case where education is imparted systematically for a fee prescribed by Government. A private aided or unaided professional institution or any other educational institution of a State is required to collect fees with regard to infrastructure and benefit of students of that educational institution. Collection of money over and the above fees prescribed by the Committee would amount to collection of capitation fee and such an institution would face the legal consequences for same (Vodithala Education Society Vs. ADIT, [2008] 20 SOT 353 (HYD.))

28 In the case of SCIENTIFIC EDUCATIONAL ADVANCEMENT SOCIETY v. UNION OF INDIA AND ANOTHER [2010], 323 ITR 84

NEUTRAL CITATION
2024:GUJHC:25111-DB

(P&H), the High Court held that the Educational institution should exist solely for purposes of education and if it is not, the society is not eligible for exemption u/s 10 (23C)(vi) of the Act.

29 In the cases of the present nature, the Assessing Officer is well advised to undertake a detailed inquiry by recording the statements of the parents. What we are trying to convey is that there should be a meaningful inquiry.

30 In the result, all the three Tax Appeals fail and are hereby dismissed. The substantial questions of law as formulated are answered in favour of the assessee and against the Revenue."

8. In the present case, the CIT (Appeals) while deleting the addition, has followed the decision of the Tribunal in earlier years and has observed as under :

NEUTRAL CITATION
2024:GUJHC:25111-DB

"6.2 I have carefully considered rival contentions and the observations made by the A.O. in the assessment order. Appellant submitted that this issue is decided in favour of the appellant by Hon'ble ITAT, Ahmedabad in ITA No. 279,280 & 281/Ahd/2013 for A. Y.2004-05, 2005-06 & 2009-10 and ITA No. 1321/Ahd/2011(D) & ITA No. 1420/Ahd/2011 dtd. 03-02-2012 for A.Y. 2008-09. CIT(A)-XXI allowed the appeal of the appellant in the earlier A.Y. 2010-11, following the order of Hon'ble ITAT in ITA Nos.279,280 & 281/Ahd/2013, by holding as under:-

> *"7.2 I have considered the assessment order and the submissions made by the appellant. The Hon'ble ITAT in appellant's own case for Asst. Years 2004-05, 2005-06 & 2009-10 in ITA no.279,280 & 281/Ahd/2013 on identical facts, has held that contribution towards different corpus funds were in the nature of corpus fund and as such exempt u/s.12 of the I.T. Act. The relevant observation is reproduced as under:-*

NEUTRAL CITATION
2024:GUJHC:25111-DB

"Taking into account all the facts as discussed in the foregoing paragraphs in holding that contribution towards different corpus funds aggregating to Rs. 1.9 crores as current income of the assessee liable to be taxed whereas the CIT(A) was justified in her finding that the said contributions were in the nature of corpus funds and as such exempt u/s. 12 oi the Act. Therefore, the order of Id. CIT(A) is confirmed with respect to this Issue.

7.3 Respectfully following the order of the Hon'ble ITAT, the addition made by the Assessing Officer on this account is deleted.

Since the facts are identical for A.Y: 2012-13 respectfully following the order of Hon'ble ITAT, Ahmedabad and order of CIT(A)-XXI, I am of the considered opinion that the A.O. was not justified in making addition of Rs.5,00,60,184/- on account of corpus donations. The A.O. is hereby

NEUTRAL CITATION
2024:GUJHC:25111-DB

directed to delete the addition of Rs. 5,00,60,184/-. Thus this ground of appeal is allowed.

7. Ground no.4.1 is regarding not allowing the deduction of 15% towards accumulation u/s. 11(1)(a). This alternate ground taken by the appellant becomes infructuous as the ground no.3 has been allowed as discussed above. The same is therefore, dismissed."

9. However, the Tribunal without considering the decision of the Co-ordinate Bench in similar facts has held as under :

"7. We have heard the rival contentions and perused the material on record. On going to the facts of the instant case, we observe that on perusal of the receipts issued to the students for one-time admission fee, it is evident that the aforesaid admission-fees cannot be treated as 'corpus donation' and the same is not eligible for grant of exemption under section 11(1)(d) of the Act. From the facts placed on record, neither is the

NEUTRAL CITATION
2024:GUJHC:25111-DB

aforesaid admission-fee charged from the students qualify as a "voluntary donation" nor is there a specific direction that the same may be used only for purpose of "corpus" of the trust. Accordingly, we are in agreement with the arguments of the Ld. DR that the aforesaid amount cannot be treated as corpus donation and accordingly, the assessee is not eligible for benefit of exemption under section 11(1)(d) of the Act. However, we are also of the considered view, that in case the aforesaid amount is treated as income of the assessee trust, then the assessee is eligible for deduction/allowance of expenses incurred against the aforesaid receipts, towards objects of the trust. Accordingly, looking into the facts of the case, the issue is set aside to the file of the assessing officer to treat the aforesaid amount as taxable income of the assessee trust and further, the assessee may also be granted deduction of amount spent towards utilization of the aforesaid amount, towards the objects of the trust, after carrying out the necessary verification. ”

NEUTRAL CITATION
2024:GUJHC:25111-DB

10. In view of decision of this Court in case of the appellant, the amount paid by the parents of the students admitted to the education institution run by the appellant is required to be held as a payment towards corpus donation and same was not collected by way of capitation fee.

11. As observed by this Court while considering such issue in Tax Appeal No.356 of 2012, the Assessing Authority has not taken any inquiry with regard to examination of parents who admitted the students in School as to whether the payment is made towards corpus fund or capitation fee. It is true that the donation is bound to have been given for material gain in securing admission, the same cannot be characterised as donation towards charitable purpose and the appellant would not

NEUTRAL CITATION
2024:GUJHC:25111-DB

be entitled to have the benefit but in the facts of the case, in absence of any material on record, such view cannot be taken in the circumstances, the Tribunal has committed an error by treating the admission fee charged from the students as not forming part of the corpus of the Trust. Therefore, in this case, following the decision in Tax Appeal No.356 of 2012, this appeal is also allowed. The substantial questions of law as formulated are answered in favour of the assessee and against the revenue.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA,J)

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