

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THURSDAY, THE TWELFTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE SUDDALA CHALAPATHI RAO**

INCOME TAX TRIBUNAL APPEAL Nos: 152 OF 2008 and 337 of 2011

INCOME TAX TRIBUNAL APPEAL NO: 152 OF 2008

Income Tax Tribunal Appeal under Section 260 A of the Income Tax Act, 1961 against the Order dated 31.10.2007 passed in ITA. No. 1138/H/2006, for the assessment years 2003-04 on the file of the Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad.

Between:

Vodithala Education Society, 7-1-621/A, S.R.Nagar, Hyderabad

...APPELLANT

AND

The Director of Income Tax [Exemptions], Hyderabad

Appeal against the Sole Respondent is Disd for Default vide Court Order dated 28.10.2014.

...RESPONDENT

Counsel for the Appellant : Sri. K Vasantkumar

**Counsel for the Respondent : Sri. Vijhay K Punna (Senior Standing counsel for
Income Tax Department)**

INCOME TAX TRIBUNAL APPEAL NO: 337 OF 2011

Income Tax Tribunal Appeal Under Section 260 A of the Income Tax Act, 1961 against the Order dated 30.09.2010 passed in ITA. No.

430/H/2008, for the assessment years 2004-05 on the file of the Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad.

Between:

Vodithala Education Society, 7-1-621/A, SR Nagar, Hyderabad.

...APPELLANT

AND

The Director of Income Tax [Exemptions], Hyderabad.

...RESPONDENT

Appeal against the Sole Respondent is Disd for Default vide Court Order dated 28.10.2014.

Counsel for the Appellant : Sri. K Vasantkumar

Counsel for the Respondent : Sri. Vijhay K Punna (Senior Standing counsel for Income Tax Department)

The Court delivered the following:

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD**

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

ITTA Nos. 152 of 2008 and 337 of 2011

Dt. 12.02.2026

Between:

Vodithala Education Society

.... Appellant

and

The Director of Income-Tax(Exemptions), Hyderabad.

...Respondent

COMMON JUDGMENT: *(Per the Hon'ble Sri Justice Suddala Chalapathi Rao)*

1. The instant appeals have been filed by the appellant/assessee challenging the orders passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT') in ITA No.1138/H/06 (2003-04) and ITA.No.430/H/2008(2004-05), dt.31.10.2007 and dt.30.09.2010, respectively, in respect of the assessment years 2003-04 and 2004-05.

2. Since both appeals arise out of the proceedings relating to the same assessee and involve common issues, though pertaining to two different assessment years, they were analogously heard and disposed of by this common judgment.

3. The brief facts of the case are that the appellant/assessee is a Society engaged in running educational institutions and hostels within the state of the then composite state of Andhra Pradesh and Maharashtra. Further, for the assessment years 2003-04 and 2004-05, the assessee had filed returns on 03.12.2003 and 02.11.2004, respectively, claiming exemption under section 11 of Income Tax Act, 1961 (for short 'the Act'). Before the assessments were taken up for scrutiny, a survey was conducted on 20.07.2005 at the engineering colleges run by the assessee at Ramtek, Nagpur of Maharashtra, under which, certain incrementing material was alleged to have been seized by the authorities and in the course of survey operations, statement of one of the employees of the assessee, *namely* Mr. R.Srinivas Rao, was recorded. In the statement, the said person alleged to have stated as to certain irregularities in collection of amounts in excess of the fees prescribed by the Government from students, who were admitted under the management quota. Pursuant thereto, incriminating material was seized and basing on the same and along with the statement of Mr R.Srinivas Rao, the Assessing Officer came to the conclusion that the assessee, who was running educational institutions, had collected capitation fees from students, who were admitted under the management quota. Thus, the impugned assessment orders, dt.31.03.2006 and dt.26.12.2006, respectively were

passed for the assessment years 2003-04 and 2004-05, respectively, by rejecting the claim of the assessee for exemption under Section 11 as well as under Section 10(23C) of the Act.

4. Aggrieved by the said assessment orders, the appellant/assessee preferred appeals before the Commissioner of Income Tax (Appeals) (for short 'CIT(A)'), *inter alia* contending that due procedure had not been followed, that no opportunity was given to cross-examine Mr. R. Srinivas Rao, and that the amounts reflected in the seized material cannot be taken as excess collection of capitation fee. It was contended that the amounts collected represented the total fees payable by the students admitted under the management quota for the entire four years course, collected at one time.
5. The CIT(A), upon considering the material on record and the submissions made, dismissed the appeals holding that the assessee had violated the provisions of Section 13(1)(c) of the Act and the funds of the society were utilized for the benefit of persons in the management. It was further held that the assessee was not entitled to exemption under Section 11, as the educational trust has not derived income from the properties of the trust and that even the benefit under Section 10(23C) could not be extended, as the institution was not being run solely for

educational purposes. Thus, the CIT(A) dismissed the appeals holding that benefit of exemption under Section 11 and Section 10(23C) cannot be given to the assessee.

6. The assessee carried the matters in further appeals before the learned ITAT in ITA.No.1138/H/2006(AY 2003-04) and ITA.No.430/Hyd/08(AY 2004-05).

7. The learned ITAT initially heard the appeal ITA.No.1138/H/2006 relating to the assessment year 2003-04, and after appreciation of the facts and material on record in proper perspective, passed a detailed order on 31.10.2007 affirming the findings of the Assessing Authority and the CIT(A), and assailing the said order, the assessee filed ITTA.No.152 of 2008 before this Court.

8. Subsequently, the learned ITAT dismissed ITA.No.430/H/08, by order, dt.30.09.2010, in line with the orders passed in ITA.No.1138/H/2006, dt.31.10.2007, for the assessment year 2004-05, which is assailed before this Court in ITTA.No.337 of 2011.

9. Both the appeals were admitted to consider the following substantial questions of law:

- “1. Whether on the facts and in the circumstances of the case made in contravention of the mandatory provisions of section the ITAT was justified in upholding the order of assessment 142(3) of the Act?
 2. Whether on the facts and in the circumstances of the case. the ITAT was correct in law in not appreciating the fact that (Appeals) has called for any explanation from the Appellant neither the Assessing Officer nor the Commissioner with reference to impounded material?
 3. Whether on the facts and in the circumstances of the case u/s 10(23C)(vi) of the Act which was neither claimed in the ITAT was justified in considering the issue of exemption return of income nor considered by the CIT(A) in his appellate order?
 4. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that there was no requirement for cross-examining the Deponent by the Appellant, whose statement was the only source of the impugned assessment?
 5. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in coming to conclusion that the Appellant had collected excess fee and was utilised by the persons interested in the society, solely based on the sworn statement of Mr. R.Srinivasa Rao and without verification of books of accounts?
 6. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that the Appellant is not a charitable institution u/s 2(15) of the Act on mere surmises and presumptions?
10. In addition to the above, ITTA.No.152 of 2008 was admitted to consider the following substantial questions :

- “7. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding the provisions of Section 10(23C) (iv) of the Act are applicable despite the fact that the Appellant was granted exemption u/s 11 of the Act?
8. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that the provisions of section 11 cannot override the provision of 10(23C)(iv) of the Act?
9. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that the Appellant is not holding any property under trust so as to entitle itself for exemption u/s 11 of the Act?”

11. Heard Sri A.V.Raghu Ram, learned counsel representing Sri K.Vasant Kumar, learned counsel for appellant and Sri Vijay K Punna, learned Senior Standing Counsel for Income Tax Department for respondent/Revenue.

12. Learned counsel for the appellant/assessee contended that the entire assessment orders are vitiated in law as it was totally based on the statement of Mr. R. Srinivas Rao, who is not at all connected with the affairs of the assessee, without affording the assessee an opportunity to cross-examine him, despite specific request made before the assessing officer and also before the lower appellate authorities, and denial of such opportunity amounted to violation of principles of natural justice. It was further contended that the seized material was misconstrued by the Assessing Authority as if the amounts reflected therein amounted to collection of capitation fee or excess fee from the students, but contended that it is the aggregate fees payable by students for the entire four-year course collected at a time. The learned counsel contended that no independent verification of the books of accounts was undertaken and the Assessing Authority proceeded on surmises and presumptions and passed the impugned assessment orders, which are untenable.

13. It was also urged that the assessee, being an educational institution established for charitable purposes, was entitled to exemption under Section 11 of the Act and that the authorities erred in denying such benefit. It was further submitted that the assessee had the option to claim exemption either under Section 11 or under Section 10(23C)(vi) of the Act and that rejection of exemption under both provisions was contrary to law.

14. *Per contra*, learned Senior Standing Counsel for the respondent/Revenue, Mr. Vijay K Punna, contended that the findings recorded by the Assessing Authority, the CIT(A) and the learned ITAT were not merely based on the statement of Mr. R. Srinivas Rao but were based on the substantial incriminating material seized during the survey operations, which clearly established collection of amounts over and above the fees prescribed by the Government from students admitted under the management quota. It was further contended that such amounts were neither accounted for in the regular books nor deposited in the bank accounts of the assessee, the same were utilized by persons interested in the management of the society, thereby attracting the mischief of Section 13(1)(c) of the Act.

15. Learned Senior Standing Counsel further contended that the assessee has not derived any income from property held under Trust and that its entire income is derived from running educational institutions, thus the exemption under Section 11 is impermissible. It was further contended that the assessee had initially sought exemption under Section 10(23C)(vi), which was rejected, and thereafter attempted to invoke Section 11 as an afterthought. According to the learned counsel, the concurrent findings are recorded by the CIT(A) and the learned ITAT, who are the fact-finding authorities, as such there is no substantial question of law falling for consideration by this Court.

16. We have given earnest consideration to the submissions made by the learned counsel appearing on either side and perused the material on record.

17. The main grievance of the appellant/assessee is that the findings recorded by the authorities are vitiated as they are founded primarily on the statement of Mr. R. Srinivas Rao, who has no nexus with the affairs of the assessee, and the assessing authority without affording the assessee a fair and effective opportunity to cross-examine the said R.Srinivas Rao, and that the amounts reflected in the seized material were erroneously treated as excess or unaccounted collections.

18. In this backdrop, the only issue that arose for consideration before this Court was whether the appellant/assessee had offered a satisfactory and credible explanation with respect to the incriminating material unearthed during the survey proceedings and whether the alleged collection of additional amounts under the management quota had been duly accounted for in accordance with law.

19. A perusal of the record shows that the appellant/assessee had initially applied to the competent authority for exemption under Section 10(23C)(vi) of the Act, which was rejected. Subsequently, before the Assessing Authority, the assessee claimed that it had the option to choose between Sections 10(23C)(vi) and 11 of the Act. However, the Assessing Authority denied the said claim on the ground that there was no income from property held by the Trust and that the entire income of the assessee was derived from running educational institutions, and held that the provisions of Section 10(23C) alone were applicable.

20. The Assessing Authority categorically found that the assessee had violated the provisions of Section 13(1)(c) of the Act, by utilizing the funds of the society for the benefit of persons interested in the management and there is no income of the assessee from its properties as such exemption under Section 11 of the Act is impermissible.

21. Before the CIT(A), the issue was whether the assessee was entitled to claim exemption under Section 11 or under Section 10(23C)(vi) of the Act. The CIT(A), who is the fact finding appellate authority, noted that the assessee's main activity was running educational institutions and it did not derive any income from property held under trust, thereby making exemption under the provisions of Section 11 impermissible, and consequently, the provisions of Section 10(23C) alone would apply.

22. The CIT(A) and the learned ITAT further observed that substantial incriminating material seized during the survey operations raised serious doubt as to whether the institution was being run with a charitable object or with a profit motive. Further, it was observed that the amounts collected from the students in excess of the fees prescribed by the Government would amount to collection of capitation fee. Further, a feeble attempt is made to prove that the said amount is the aggregate of the total fee for four years course collected at once from the students admitted under management quota, but however, neither the books of accounts nor the bank account contained the said amount, thus, evidently excess fee collected, which is not accounted for as per the procedure, is capitation fee. Further, it can safely be inferred that the running of the educational institutions by the assessee is nothing but

with profit motive and the assessee has thereby deviated from its stated charitable objectives and the assessing authority rightly denied exemption under both Sections 10(23C) and 11 of the Act.

23. It is therefore a clear case of collection of amounts over and above the prescribed fees amounting to capitation fee. Thus, both the findings of the learned ITAT and the CIT(A) that the assessee-society did not exist solely for educational purposes but existed only for the profit/benefit of the management, appears to be valid and germane.

24. In the above circumstances, the submissions made by the appellant/assessee that the amounts reflected in the incriminating material represented the total fees payable by candidates for four years collected at once, was not supported by any evidence. Further, had the said claim was true, the assessee would have maintained separate books of account for each candidate and deposited such amounts in its bank accounts. No such evidence was produced. There was also nothing on record to show that the amounts allegedly collected in excess of the prescribed fees had been properly credited to the bank accounts of the assessee. However, a perusal of the statement of Mr. R. Srinivas Rao, revealed that notwithstanding his designation as a project officer, the manner in which he spoke about the affairs of the management clearly

established that he was closely associated with the society and in that view of the matter, the question of granting opportunity for cross-examination of Mr.R.Srinivasa Rao, does not amount to any violation of principles of natural justice or doctrine of fair play.

25. In the absence of any cogent or satisfactory explanation placed by the appellant/assessee to disbelieve the version of the Income-tax authorities, and in light of the concurrent findings recorded by the CIT(A) and the learned ITAT, we find no grounds to discredit the conclusions drawn by the authorities. Further, in our considered view, the CIT(A) and the learned ITAT, being the fact-finding authorities, have appreciated the facts and evidence on record in proper prospective. Though a feeble attempt was made by the appellant/assessee to assail the said findings, no material was placed on record to warrant interference with the said concurrent findings.

26. In view of the above findings, we are of the considered view that, the instant appeals are devoid of merit and liable to be dismissed. The substantial questions of law are thus, answered against the appellant/assessee and in favour of the respondent/Revenue.

27. Accordingly, both the appeals are dismissed affirming the orders passed by the learned ITAT as well as the CIT(A) and the Assessing Authority. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

SD/- N.SRIHARI
DEPUTY REGISTRAR

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SECTION OFFICER

To,

1. The Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad
2. One CC to Sri. K Vasantkumar Advocate [OPUC]
3. One CC to Sri. Vijhay K Punna (Senior Standing counsel for Income Tax Department) [OPUC]
4. Two CD Copies

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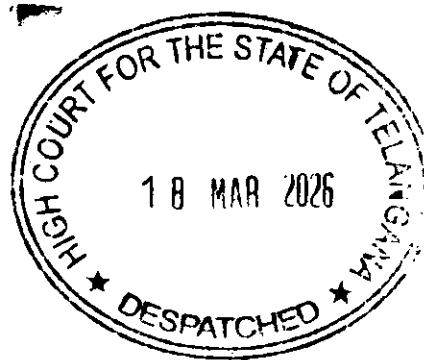
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HIGH COURT

DATED: 12/02/2026

COMMON JUDGMENT

ITTA.Nos.152 of 2008 & 337 of 2011



DISMISSING THE APPEALS

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