NEUTRAL CITATION
2026:GUJHC:48859-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9731 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

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Approved for Reporting	Yes	No
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AHMEDABAD SOUTH INDIAN ASSOCIATION CHARITABLE TRUST
Versus
THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 1, EXEMPTION, AHMEDABAD

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Appearance:
MR TUSHAR HEMANI, SENIOR ADVOCATE with MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1
MS MAITHILI D MEHTA(3206) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 03/08/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

RULE. Learned Senior Standing Counsel Ms.Mehta waives service of notice of rule for and on behalf of the respondent.

1. In this writ petition, the petitioner-Trust is challenging the notice dated 08.04.2024 issued under section 148 of the Income Tax Act, 1961 (for short "the Act") as well as the order of the even date i.e. 08.04.2024 passed under section 148A(d) of the Act seeking reopening of income tax assessment for Assessment Year (AY) 2017-18. The petitioner has also challenged the assessment

order dated 06.03.2026 passed during the pendency of this writ petition under section 147 of the Act read with section 144B of the Act along with consequential demand notice for the AY 2017-18.

2. The petitioner is a Trust, which is eligible for claiming exemption under section 10(23C)(vi) of the Act. The petitioner filed its return of income for the year under consideration on 31.10.2017 declaring total income at Rs. Nil. The case of the petitioner-Trust was selected for scrutiny assessment by issuing a notice dated 01.10.2019 under section 142(1) of the Act, and the petitioner-Trust furnished all the details and information vide letter dated 02.10.2019. However, the Assessing Officer vide notice dated 29.11.2019 issued under section 142(1) of the Act called upon the petitioner-Trust to furnish certain details in respect of transactions with persons specified under section 13(3) of the Act including details pertaining to remuneration of Rs.42,00,000/- paid to Mr.M.P.Chandran (Executive Director and Trustee). The petitioner-Trust furnished all its details along with the explanation in respect of remuneration to Mr.Chandran. Eventually, an assessment was framed under section 143(3) of the Act vide order dated 10.12.2019, whereby the claim of exemption under section 10(23C)(vi) of the Act was not disturbed by the then Assessing Officer.

3. Thereafter, the respondent - Deputy Commissioner of Income Tax Circle 1 (Exemption), issued a show-cause notice dated 28.03.2024 under clause (b) of section 148A of the Act, calling upon the petitioner-Trust to furnish information with regard to the remuneration of Rs.42,00,000/- to Mr.Chandran, which is not allowable expense in view of the order dated 13.05.2019 passed by the Fee Regulatory Committee. Further details of cash system of accounting, common expenses on the incurred staff, staff welfare were called upon, including the sponsor of J.G. University, and also the remarks made by the auditor for various divisions, fees, and entry of the amount Rs.58,07,622/- were called upon. The petitioner-Trust furnished a detailed reply to the show-cause notice vide letter dated 03.04.2024, dealing with all the objections/queries raised therein. The respondent vide order dated 08.04.2024 passed under section 148A(d) of the Act concluded that there is escapement of income chargeable to tax to the tune of Rs.3,01,56,352/- and hence, it was opined that it is a fit case for issuance of notice under section 148 of the Act. Accordingly, the notice dated 08.04.2024 was issued under section 148 of the Act seeking to reopen the case, which has been assailed in the writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER-TRUST

4. Learned senior advocate Mr.Hemani on behalf of the petitioner-Trust has submitted that the provisions of section 147 of the Act are illegally invoked in the present case as there is no escapement of income chargeable to tax. In this regard, it is submitted that the petitioner-Trust is eligible for exemption under section 10(23C)(vi) of the Act for the year in consideration. It is submitted that even if sum of Rs.3,01,56,352/- is excluded from total application of Rs.31,84,16,553/-, then also the balance sum of Rs.28,52,60,201/- will be treated as amount utilized for charitable purpose, which is more than 85%. It is thus, submitted that under such circumstances, the petitioner-Trust will still be eligible for a claim of exemption under section 10(23C)(vi) of the Act, and hence, it cannot be said that there is any escapement of income chargeable to tax.

5. It is contended and pointed out that the petitioner-Trust, extensively, explained each and every allegations leveled in the show-cause notice through its reply however, while passing the impugned order, the explanation tendered by the petitioner-Trust is entirely ignored. It is contended that the Assessing Officer has not applied mind to the provisions of section 10(23C)(vi) of the Act. In this context, he has referred

to the provisions of section 152 of the Act and has submitted that despite the petitioner-Trust having clearly demonstrated that even if the amounts which are disputed by the Revenue are excluded from the amount applied for the purpose of the petitioner-Trust, then also there will be no impact on taxable income and hence, it is urged that in view of section 152 of the Act, the reopening may be declared as illegal and invalid. Finally, he has submitted that reopening of the assessment is nothing but a change of opinion as in the scrutiny assessment all the queries relating to as mentioned in the show-cause notice were already satisfied by the petitioner-Trust by providing documentary evidence, which has been accepted by the then Assessing Officer and hence, it is urged that the action of the respondents in reopening the assessment is quite uncalled for.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

6. Opposing the present writ petition and foregoing submissions, learned Senior Standing Counsel Ms.Mehta, while referring to the impugned assessment order, has urged that the same may not be interfered with as it is precisely passed since the petitioner-Trust has failed to substantiate various claims as the application of income for charitable purpose during the year under consideration. She has referred to the conclusion drawn by the Assessing Officer in the

impugned order and has submitted that the remuneration of Rs.42,00,000/- paid to the trustee has been treated as application of income for the benefit of a specified person in view of section 13(1)(c) of the Act read with section 13(2)(c) of the Act, and also the provision for gratuity amounting to Rs.75,49,997/- has been found to be a mere book provision without evidence of actual payment or contribution to an approved gratuity fund during the relevant financial year. She has submitted that similarly, the staff welfare expenses of Rs.21,31,962/- remain unsubstantiated due to the absence of complete and verifiable supporting documentation during the reassessment proceedings. Similarly, she has referred that the claim of Rs.58,07,622/- towards fee waiver/scholarship has not been supported by documentary evidence. Finally, she has also supported the observations made by the Assessing Officer relating to sponsorship expenses of Rs.1,04,66,771/- relating to J.G. University, which have not been shown to be allowable application. Ultimately, she has submitted that the aggregate amount of Rs.3,01,56,352/- is disallowed and added to the income of assessee and penalty proceedings are also proposed under section 270A of the Act. Thus, it is urged that the writ petition may not be entertained.

ANALYSIS AND OBSERVATIONS

7. Before delving into the submissions advanced by the learned advocates of the respective parties, at this stage, we may refer that during the pendency of the writ petition, despite an interim order passed by this Court restraining the Assessing Officer to pass the assessment order, the same has been passed on 06.03.2026, without obtaining any permission from this Court.

8. This Court vide order dated 27.07.2026 had opined to initiate contempt proceedings against the Assessing Officer, who had passed the order dated 06.03.2026, though by the interim order, the Court had restrained the Assessing Officer to do so. Pursuant to that order dated 27.07.2026, learned Senior Standing Counsel Ms.Mehta has tendered the affidavit-in-reply dated 01.08.2026. The same is ordered to be taken on record. She has referred to the averments made in paragraph Nos.4 and 5, which are as under:

> *"4. I state that the Petitioner thereupon file Civil Application (for Amendment) No. 2 of 2026 in the captioned writ petition, placing on record the assessment order passed in the captioned matter without the permission of this Hon'ble Court, as directed. I further state that, upon due consideration of the said Civil Application filed by the Petitioner bringing on record the assessment order dated 06.03.2026, the deponent communicated to the office of CIT(Exemption) Ahmedabad that FAO passed the order u/s.147 r.w.s 144B of the Act on 06.03.2026 despite the Hon'ble High Court vide order dated 17.09.2025 stayed the final assessment order as*

the issue was not decided on merits. Considering the sensitivity of the matter involved and the demand being not enforceable as the final assessment way already stayed by Hon'ble High Court, the recovery of the demand has been marked as "stay" on the portal. (Annexure R1). Further, the stay order was also communicated to the assessee vide letter dated 29.07.2026. (Annexure-R2)

5. As per the directions of the Hon'ble High Court vide order dated 27.07.2026 the Hon'ble High Court has directed that by the next date of hearing i.e. 03.08.2026, either the assessment order dated 06.03.2026 shall be withdrawn, or the Court will be constrained to initiate the contempt proceedings against the concerned Assessing Officer. Best efforts were made to comply with the directions, however there exists no functionality to withdraw an Assessing Order. Further, guidance was also sought from the ITBA team (Systems) vide mail dated 29.07.2026. Reply was received and it was stated that "In this regard it is informed that there is no provision under the Income-tax Act, 1961 for withdrawal of a concluded assessment order. Accordingly, no functionality has been provided in ITBA for withdrawal or cancellation of an assessment order once it has been passed and accounted for by CPC. Further, where the assessment order has already been accounted for by CPC, the same cannot be revived or reversed through the ITBA backend, as the accounting carried out by CPC is not reversible through the system." Further as suggested by DDIT(ITBA)-5, a pendency for the assessment may be created by utilizing "set aside" functionality on ITBA. In this regard, the Hon'ble High Court may kindly grant directions to set aside the proceedings. (Annexure-R3)."

9. Thus, in the affidavit in reply, the Revenue has accepted the mistake committed in flouting the interim orders passed by this Court however, they have expressed their inability to withdraw

the assessment order dated 06.03.2026 as no functionality exists in the portal.

10. At this stage, it would be apposite to refer to the provision of section 264 of the Act, which is as under:

> ***"Revision of other orders.***
>
> ***264.*** *(1) In the case of any order other than an order to which section 263 passed by an authority subordinate to him, the Principal Commissioner or Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.*

11. In our considered opinion, as and when the Revenue is confronted with the issue of framing of the assessment order by flouting the orders of this Court, the powers by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner, as mentioned in the provisions of section 264 of the Act can always be exercised, and any order which is not prejudicial to the interest of the assessee can be passed by the Commissioner. Thus, by invoking the provision of section 264 of the Act, the Commissioner can always either revoke or set aside the order passed by the Assessing Officer which is passed

in defiance or in contravention of the interim orders or the orders passed by this court. The Revenue cannot cite the excuse of non-availability any functionality in the system of withdrawing the assessment order, which has been passed in defiance of the interim orders / orders of this Court. The power under section 264 of the Act is always available for the higher authorities i.e. the Commissioner to either modify or set aside the orders passed by the Assessing Officer in case, it is found that the Assessing Officer has passed the assessment order *de hors* the interim orders passed by this Court.

12. As far as the merits of the matter is concerned, after threadbare analysis of the impugned order as well as the documentary evidence produced by the petitioner-Trust on record, which were tendered to the Assessing Officer, we are of the opinion that the reopening of the assessment for the year in consideration demands interference, and the same is required to be quashed and set aside. The impugned notice as well as the assessment order is required to be quashed and set aside on a sole reason, which has been canvassed by the assessment in this writ petition as well as before the Assessing Officer

to the extent that there would be no escapement of income chargeable to tax in any case, even if the findings of the Assessing Officer in the impugned order is taken as it is to the extent of income chargeable to tax to the tune of Rs.3,01,56,352/- is required to be allowed.

13. We may at this stage, incorporate the comparative assessment of the income of the petitioner, which is not disputed by the respondents, and also incorporated in the impugned assessment order by the Assessing Officer, which is as under:

Particulars	As per "Assessee"	Revised Computation is proposed disallowance is considered as per SCN
A) Gross receipts	Rs.33,16,43,048	Rs.33,16,43,048
B) Utilization	Rs.31,84,16,553	Rs.31,84,16,553
C) Escapement	NIL	Rs.3,01,56,352
D) Utilization (B-C)	Rs.31,84,16,553	Rs.28,82,60,201
E) "%" of utilization	96.01%	**86.92%**

14. We may at this stage, refer to the provision of section 10(23C)(vi) of the Act, which reads as under:

> ***" 10. Incomes not include in total income.***
>
> *In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—*

*(23C) any income received by any person on be*half of—

"(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the [Principal Commissioner or Commissioner]; or … … …

xxxx

Provided also that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via)—(a)applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income shall in no case exceed five years… … … "

15. Thus, the combined reading of proviso to Section 10(23C)(vi) of the Act, permits the 15% limit of the maximum amount of income an approved educational institution can save or accumulate for future use without losing its tax exemption, provided the remaining 85% is spent on education during that year. It is not denied by the respondent that the petitioner-Trust is covered under these provisions. In the present case, as per the percentage of utilization of income declared income by the petitioner 96.01%, which above the threshold limit of the 85%, whereas as per the respondent it is 86.92%. Thus, in either

case, the threshold limit gets maintained , and hence the petitioner trust would still be eligible to claim exemption under section 10(23C)(vi) of the Act read with third Proviso (a). This facts were substantiated by the petitioner-Trust along with the particulars of income in its reply, which is also incorporated by the Assessing Officer. However, in the final conclusion drawn, there is not a whisper on the comparative utilization, which is quintessential feature for the exemption under 10(23C)(vi) of the Act. Thus, when the Revenue, has not expressly denied the aforesaid fact to the extent of utilization of the amount for charitable purpose, which is more than 85% in either case i.e. calculated by the petitioner-Trust or by the respondent, the reopening of assessment calls for interference by this Court, the re-opening of the assessment needs to be set aside.

16. We may at this stage, also deal with the aggregate amount of Rs.3,01,56,352/-, which is ordered to be disallowed by the Assessing Officer. The said amount comprises of the gratuity amount to the tune of Rs.75,49,997/- in addition to staff welfare expenses of Rs.21,31,962/-, fee waiver/scholarship of

Rs.58,07,622/-, and sponsorship expenses of Rs.1,04,66,771/- relating to J.G. University. The fee waiver petitioner-Trust, in order to substantiate the aforesaid income along with the remuneration of Rs.42,00,000/- paid to Mr.Chandran, who is the trustee, had produced the documentary evidence in the scrutiny assessment, which comprised of legal opinion of consultant, board resolution passed in 2016, Form 16 of Mr.Chandran, list of institutions, assessment order dated 10.12.2019 along with the quotation received from LIC for taking gratuity policy for its employees, who have completed 05 (five) years on 31.03.2017, detailed explanation about the school and activities carried out by the school towards staff welfare and its expenses incurred on food provided to the teachers, details of documentary evidence showing the allowability of expenses towards catering, such expenses such as copy of catering contract, breakup of expenses and payment, Form 16A *vis-a-vis* canteen contract, and bills of catering contractor. For waiver of fees, the petitioner-Trust had submitted that the amount of Rs.58,07,622/- is not with respect to staff welfare expenses, but scholarship fees and concession amount.

17. For sponsorship expenses of Rs.1,04,66,771/-, the documents such as proposal for setting up J.G. University, letter of intent by Government of Gujarat, permission by the Government of Gujarat were furnished with an explanation that J.G. Trust is sponsoring body of J.G. University. Pursuant to the proposal by the petitioner-Trust for establishing J.G. University, the Government of Gujarat had issued a letter of intent stating that such proposal was being considered for permission to establish State Private University in the name of J.G. University. It was further explained by the petitioner-Trust that all employees and professionals are required to be engaged by the petitioner-Trust in the capacity of sponsoring body of the proposed university and such expenses are to be paid till the approval of the university by the Government. These explanations are also brushed aside and not considered by the Assessing Officer. The petitioner in the scrutiny assessment has called upon to furnish details of transactions with trustee, and eventually the Assessing Officer passed the assessment order dated 10.12.2019 under section 143(3) of the Act.

18. We may at this stage refer to the provision of section 152(1) of the Act.

> *"**Other provisions***
>
> *152. (1) In an assessment, reassessment or recomputation made under section 147, the tax shall be chargeable at the rate or rates at which it would have been charged had the income not escaped assessment.*
>
> *(2) Where an assessment is reopened under section 147, the assessee may, if he has not impugned any part of the original assessment order for that year either under section 246 to 248 or section 264, claim that the proceedings under section 147 be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made :*
>
> ***Provided** that in so doing he shall not be entitled to reopen matters concluded by an order under section 154, 155, 260, 262 or 263.*
>
> *xxx xxx xxx"*

19. Section 152(1) of the Act mentions about the assessment, reassessment or re-computation made under section 147 of the Act. The provisions of sub-section (2) of section 152 of the Act enables the assessee to claim dropping of the proceedings under section 147, if he establishes that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for, even if the income alleged to have escaped assessment, had been taken into account or the assessment or computation had been properly made. The petitioner-Trust through the documentary evidence has

successfully demonstrated that even if the amounts in dispute are excluded from the amount applied for the purpose of the petitioner-Trust, then also there will be no impact on taxable income. We have already previously dealt with the issue of exemption as provided in the provisions of section 10(23C)(vi) of the Act.

20. It is interesting to note that ultimately, even after filing of the writ petition and the averments made in the writ petition were known to the Assessing Officer, without application of mind to the averments made in the writ petition and despite the interim order, the assessing officer passed the assessment order dated 06.03.2026. Thus, on an overall analysis of the matter and the manner in which the assessment order has been framed, we are inclined to quash and set aside the same.

21. In light of the foregoing analysis and observations, the writ petition succeeds. The impugned notice and the impugned order dated 08.04.2024 and the assessment order dated 06.03.2026 are hereby quashed and set aside. Rule made absolute.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI,J)

NVMEWADA/26