IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JM
AND
SHRI PRASHANT MAHARISHI, AM

ITA Nos. 1876, 1877 to 1880, 1869/Mum/2021
(Assessment Years 2012–13, 2014–15 to 2017–18 & 2018–19)

The Deputy Commissioner of Income Tax Central Circle 1(4) 9th Floor, 902, Pratishtha Bhavan, Old CGO Bldg, (Annexe), M.K. Road, Mumbai-400 020	Vs.	Podar Education Trusts, Bengaluru 103/1, Basavanapura, Off Bannerghatta Road, Karnataka Bengaluru–560083
(Appellant)		**(Respondent)**

PAN No. AAATP9120G

ITA Nos. 1815,1816,1864,1865 & 1890/Mum/2021
(Assessment Years 2014–15 to 2015-16 to 2018–19)

The Deputy Commissioner of Income Tax Central Circle 1(4) 9th Floor, 902, Pratishtha Bhavan, Old CGO Bldg, (Annexe), M.K. Road, Mumbai-400 020	Vs.	Podar Education and Sports Trusts, Bengaluru 103/1, Basavanapura, Off Bannerghatta Road, Karnataka Bengaluru–560083
(Appellant)		**(Respondent)**

PAN No. AAATP9243N

Assessee by	:	Ms. Nishita Mandalaywala, AR
Revenue by	:	Shri Nimesh Yadav, CIT DR

Date of hearing: 10.08.2022
Date of pronouncement : 28.09.2022

ORDER

PER BENCH

01. This is the bunch of 11 appeals filed by the Deputy Commissioner of income tax, central circle – 1 (4), Mumbai (the learned AO) in case of 2 charitable trusts by the name of Podar Education Trust and Podar Education & Sports Trust on identical issues. All these appeals are heard together as it involves common issues emanating from a common search having common evidences and statement of various persons. The arguments of both the parties are also similar and therefore, all these appeals are disposed of by this common order.

Podar Education Trust

02. These are five appeals for A.Ys. 2012-13 to 2018-19 filed by the Dy. Commissioner of Income-tax, Circle 1(4), Mumbai in case of Podar Education Trust, Bangalore against the order of Commissioner of Income-tax (Appeals) [in short the learned CIT (A)]. All these appeals are having common facts, identical orders, and similar appellate orders. Both the parties argued them together and therefore, the same are disposed of by this common order.

03. We first take up the appeal of the ld AO in case of Podar Education and Sports Trust for **AY 2012-13** , and apply our decision for other years as facts and circumstances are similar except the done trust and amount of donation.

04. The learned Assessing Officer has filed appeal against the order passed by the CIT (A)-47, Mumbai

dated 11th August, 2021 for A.Y. 2012-13 in ITA No. 1876/Mum/2021, wherein the appeal filed by the assessee against the assessment order dated 29th December, 2019 passed under Section 143(3) read with section 153A of the Income-tax Act, 1961 (the Act) passed by the learned Dy. Commissioner of Income-tax, Central Circle-1(4), Mumbai (the learned Assessing Officer) was partly allowed.

05. Ld AO has raised following grounds of appeal:-

06. Brief fact of the case shows that assessee is a charitable trust registered under Section 12AA (1) (b) (i) of The Income-tax Act, 1961 (the Act) from 3 January 2006 as per registration granted by the Director of Income tax (Exemption), Bangalore.

07. During the year, assessee has earned income from educational activities as well as interest income. Assessee filed return of income under Section 139 of the Act on 21 September 2021 at ₹Nil. The assessment was completed under Section 143(3) of the Act as per order dated 27 March 2014 at ₹ nil.

08. Subsequently, search under Section 132 of the Act was carried out in case of Podar Group on 9 January 2018, where the case of the assessee was also covered. Consequent to that, search notice under Section 153A of the Act was issued on 16th August,

2018, in response to which assessee filed return of income on 11th September, 2019 at ₹ nil.

09. During the course of search, the income tax department found that there are three trust belonging to Podar Group i.e. (i) Anandilal and Ganesh Podar society (ii) Podar Education Trust & (iii) Podar Education & Sports Trust. These trusts gave allegedly bogus donation to other trusts, the other trusts returned back cash to Podar Group, and the cash was introduced into various companies with the help of entry providers.

010. During the course of search, the Income Tax Department obtained various evidences as well as recorded the statements of several persons. The connected survey was also carried out under Section 133A of the Act on different persons, who was working with the group. Once, such statement was recorded of Mr. Kiritkumar suba, under Section 131 of the Act on 11th January, 2018 and on 12th January, 2018, he explained the modus operandi of the Podar Group. His communication chats on mobile message were also confirmed. He admitted that the cash was unaccounted cash, generated out of the donation were brought back into the companies. A further statement under Section 131 of the Act was recorded of Mr. N.K. Sodhani, who was also confirmed the transactions with relate to Anandilal Ganesh and Podar society donations. During the course of search, messages in the form of digital

evidences were also found from the mobile of one Mr. Navin Nishar, wherein the cash trail through messages was found. Statement of Mr. Navin Nishar, were also recorded from whose mobile messages were found. Statements of Mr. Dhirubhai Thakkar being person associated with Dhara Angadia Services, Ahmadabad, were also recorded under Section 131 of the Act. Similar statement of Mr. Sureshbhai Thakkar was also recorded. On 11 January 2018, statement of one Mr. Shirish Shah, alleged entry operator was recorded under Section 131 of the Act, wherein information with respect to various share capital introduced in the companies was also found. Based on this, statement of Jayesh Zanani, who is manager in Podar group was also recorded, who confirmed the same.

011. Based on this, the assessee's trust was asked the details with respect to donation made as per letter dated 26 September 2019. Assessee furnished such detail. Subsequently, notice under Section 133(6) of the Act were issued to the various trust to whom donations were made by the assessee for verification of genuineness. A show cause notice dated 12th December, 2019, was issued to the assessee to show why the donation given by the assessee trust should not be treated as bogus as same was not given for the object of the trust for the relevant assessment years during the A.Ys. 2012-13 to 2018-19, assessee replied on 23 December 2019. Meanwhile, the reply

to notice under Section 133(6) of the Act was also received from Donee trust. The learned Assessing Officer further asked the bank statement of the Donee trust from F.Y. 2011-12 to 2017-18. As the bank accounts of Donee trust were not received by the learned Assessing Officer, he held that the genuineness of the transaction is not proved. Thereafter, he discussed various other transactions, which are not relevant to these appeals.

012. Meanwhile, assessee submitted that Mr. Kiritkumar suba, Mr. Navin Nishar, Mr. N.K. Sodhani & Mr. Jayesh Zanani, all have retracted their statements and they have also filed the affidavit to this effect. The learned Assessing Officer rejected retraction of statement as well as the affidavit of the parties and held that the information as per statement originally given is correct. In appellate proceedings also, in some of the cases in cross-examinations of all these persons, affirmed their retraction and the affidavit denying the allegations. The learned Assessing Officer held that retractions as well as the affidavit filed by those persons are not reliable and hence, could not be treated as evidence. The learned Assessing Officer referred to several judicial precedents for this proposition. He further noted that Mr. Shirish Shah, Mr. Sureshbhai Thakkar, Mr. Dhirubhai Thakkar have neither contradicted their statements and nor retracted them.

013. The learned Assessing Officer further noted that assessee is claiming exemption under Section 10(23C) (vi) of the Act and as per the third proviso, the assessee is required to apply the income wholly and exclusively for the objects for which it is formed. The learned Assessing Officer noted that assessee's trust has not applied the same in accordance with the provisions of the law.

014. In the end, ld AO held that assessee has donated ₹1 crores to Ramrao Adik Education Society having PAN No. AAATR3978A, which is bogus in nature and therefore, exemption, is not available to the assessee on the above sum.

015. The learned Assessing Officer further found that assessee made a provision of gratuity of ₹1,76,72,365/-. The learned Assessing Officer questioned and held that the above provision is not in the nature of utilization of the donation and is merely a 'provision' and further, section 11 and 12 of the Act, do not provide for such deduction. Therefore, he held that it is not applied for education purposes.

016. Accordingly, he found that assessee has total income of ₹31,19,82,582/- out of which ₹29,38,72,711/- are utilized for the purpose of object of the trust. The utilization included the provision for gratuity of ₹1,76,72,365/-. Accordingly, ld AO computed application of income for educational purposes of Rs.

₹27,62,00,346/- [Rs 29,38,72,711- Rs 1,76,72,365] which resulted into excess of income over expenditure of ₹3,57,82,234/-. On this sum, the learned Assessing Officer allowed the exemption under Section 10(23C) (via) of the Act and computed the total income at ₹nil.

017. Ld AO held that a sum of ₹1 crore donated to Ramrao Adik Education Society is bogus and denied exemption as allegedly not applied for educational purposes.

018. Accordingly, the assessment order under Section 153A read with section 143 of the Act, was passed on 29th December, 2019, at total taxable income at ₹ 1 crore and also denying deduction as application of income of provision for gratuity of Rs 1,76,73,365/-.

019. Assessee aggrieved with the assessment order preferred the appeal before the learned CIT (A). Assessee challenged the assessment order stating that

i. No incriminating material found during the course of search.

ii. Assessment order is bad in law as it was framed without providing copy of seized material in electronic form to the assessee.

iii. Despite retraction of the statement, reliance was made by the learned

Assessing Officer on those statements for making addition without giving an opportunity of cross-examination.

iv. Assessee further challenged the addition of ₹1 crore on which exemption under Section 10(23C) of the Act, is not granted for the reason that there is no evidence available to hold that the donation to the above trust is bogus. The assessee also stated that assessee has submitted copy of certificate issued under Section 80G of the Act and 12A of the Donee trust, receipt issued, bank statement of the assessee's trust, reply under Section 133(6) of the Act, received by the learned Assessing Officer and in absence of any other material proving otherwise, the learned Assessing Officer could not have made the disallowance.

v. The learned CIT (A) was also shown his own order for A.Y. 2011-12 dated 18 June 2019, where identical addition made was deleted.

vi. On the issue of Gratuity provision of Rs 17672365/- Assessee stated that it is made on actuarial basis for employees of the trust and is not a mere provision but an ascertained liability.

020. The learned CIT (A)

i. Dismissed all contention of the assessee with respect to challenge to the order on technical ground. He held that the statement of the various persons is an incriminating material.

ii. His predecessor for A.Y. 2011-12, after obtaining the remand report of the learned Assessing Officer deleted the addition. He extensively quoted the order of his predecessor. He noted that the facts are identical, therefore, he deleted the addition of ₹ 1 crore.

iii. With respect to the disallowance of gratuity, he deleted the addition / disallowance based on the decision of co-ordinate Bench in assessee's own case for A.Y. 2014-15 dated 3 August 2021.

021. Accordingly, he passed an appellate order on 11 August 2021 by which the assessee is aggrieved. The Revenue has filed the appeal.

022. The learned CIT Departmental Representative vehemently supported the order of the learned Assessing Officer. He submitted that during the course of search, evidences in form of statement of various persons show the complete *modus operandi* adopted by the Group. The statements are of the persons who were involved in the day-to-day affairs

of the assessee company. There are certain text messages also available, which are produced at page no. 15 of the assessment order. This all shows that assessee is a party from which donations are given to other trust and cash is received back by the Podar Group, which is converted into the share capital in the group companies. Merely because, these statements are retracted by those persons, the learned CIT (A) should not have been deleted the addition. It was further stated that when the donation is given to a particular trust, all the evidences of the donation remains only a paper formality, which does not have any credibility. Therefore, the addition deleted by the learned CIT (A) is on irrelevant consideration. Therefore, he submitted that ground no. 1 to 5 of the appeal of the learned Assessing Officer deserves to be allowed. On Ground no. 6, he relied on the order of the learned Assessing Officer.

023. The learned Authorized Representative referred to the Paper Book containing to 252 pages and supported the order of the learned CIT (A). It was submitted that

i. Undoubtedly, originally same statements were given by some outside persons during the course of search. No employee of assessee made any statement. All these statements were retracted later on. In the cross examination given by the learned Assessing

Officer, all of them have confirmed their retracted statement. Therefore, there is no evidence available with the learned Assessing Officer to hold that assessee has given a donation to the party and received back cash.

ii. Ld AO has erred in relying upon the statements of the persons, which have been subsequently retracted by them post search.

iii. statements recorded u/s 131 of the Act have no evidentiary value and relied upon the judgment of the Hon'ble Supreme Court in the case of CIT vs. Khader Khan Sons (2013) 352 ITR 480 and relied upon other judicial pronouncements.

iv. During the process of cross examination in the course of the remand proceedings, the above persons stood by their retractions

v. that material found of messages of Shri Navin Nishar cannot be applied against the assessee.

vi. digital evidence retrieved from the premise of Jayesh Zanani was not provided to the assessee and opportunity of cross-examination of Jayesh Zanani was not provided to the assessee, which is a violation of principles of natural justice. The AR relied upon various decisions of various High Courts and the Apex Court.

vii. Ld AO conducted further enquiries u/s 133(6) of the Act with the alleged donee trusts for examining the issue of siphoning of funds by the Trusts of Podar Group through other Trusts and it was observed that in response to the notices issued u/s 133(6) of the Act, the AO had received replies from all the donee trusts and the AO had not been able to find any shortcomings on the documentation submitted by them.

viii. Ld AO had failed to bring on record that the Exemption Certificates of any of the donee trusts had been cancelled, because of the allegation of the siphoning of the hands by them. Thus, there is no adverse finding by the AO on the issue of alleged siphoning of the funds by the Appellant through the donee trusts.

ix. Assessee has submitted, complete details of the donation given to Ramrao Adik Education Society, which is also engaged in education activities, at page no. 15 to 17 of the Paper Book. It is submitted that independent enquiry under Section 133(6) of the Act, made by the Assessing Officer was replied by the Donee party. After that there is no enquiry made by the learned Assessing Officer with respect to the Donee trust that whether any cash is returned back to any of these persons stated by the learned Assessing Officer. Therefore, there is no evidence against the assessee that assessee has contravened any of the provisions of Section 10(23C) of the Act.

x. The learned Authorized Representative vehemently referred to the order of the learned CIT (A) in case of Anandilal and Ganesh Podar society for A.Y. 2011-12. It is submitted that all these reasoning given by the learned CIT (A) in that particular case squarely applies in case of the assessee.

xi. It is for the learned Assessing Officer to show that donations given by it have come back to the assessee. There is no such evidence available with the learned Assessing Officer or collected in any independent inquiry.

xii. financial statement of the assessee's trust shows that it has given a donation of ₹1,25,00,000/- towards education purposes as submitted in administrative expenses schedule 7 of the annual accounts. Assessee trust has shown fees income of ₹30.81 crores and has excess of ₹5,20,00,000/- for this year and none of the examination by the learned Assessing Officer proves that assessee is engaged in any activity other than educational activity.

xiii. Object of the trust which are duly incorporated in the assessment order passed under Section 143(3) of the Act on 27th March, 2014, at paragraph no. 6 to show that the trust is engaged in perusal of educational activities and further, the trust to which the donation is given is also engaged in educational activities. The page no. 15 of the Paper Book was also shown that the Donee trust is an education society eligible for deduction under Section 80G of the Act. In view of this, the denial under Section 10(23C) of the Act is unwarranted.

xiv. The learned Authorized Representative further relied on the order of the learned CIT (A) in assessee's own case for A.Y. 2011-12, wherein the learned CIT (A) has deleted the identical addition. He also referred to that decision of the learned CIT (A) to support his argument. He submitted that though in that case the Revenue has not preferred any appeal to the higher forum. Therefore, that is final as accepted by the learned Assessing Officer.

024. In a rejoinder, the learned CIT (A) submitted that the impugned order of learned CIT (A) for A.Y. 2011-12 in case of the assessee is not challenged, perhaps because of the reason of low tax effect involved therein, and therefore, whatever is stated therein cannot be held to be against the learned Assessing Officer as same was not challenged before the co-ordinate Bench.

025. The learned Authorized Representative submitted that on the merits in this year also it is not

challenged though disallowance is made only on the basis of statement of the parties recorded under Section 131 of the Act, subsequently retracted.

026. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact shows that assessee is a charitable trust engaged in educational activities, registered under Section 12AA of the Act and claiming exemption under Section 10(23C) of the Act. Annual accounts shows that for the year that it has earned school fee of ₹30.81 Crores and has also spend ₹25.49 crores for the educational activities resulting into net surplus of ₹5.13 crores. Similarly, for the earlier year, fees income was ₹20.85 crores resulting into the net surplus of ₹4.70 crores. It is undisputed fact that assessee is carrying on educational activities which are entitled to exemption under Section 10(23C) of the Act.

027. On 9 January 2018, there was a search on Podar Group and statements of several persons were recorded under Section 131 of the Act. In substance, all of them stated that funds have been diverted from the trust by further donation to other trust. Other trust in turn return cash to the Podar Group and then, such cash are converted into share capital or loan etc. in the group companies. Therefore, based on this, the learned Assessing Officer took a view that assessee has donated a sum of ₹1 crores to Ramrao Adik Education Society by cheque no.

188152 dated 28th June, 2011 of IDBI bank is a bogus donation. Therefore, on this sum, the learned Assessing Officer denied the exemption under Section 10(23C) of the Act. Specific show cause notice was issued which was replied by the assessee. In reply, the assessee categorically submitted that the reliance placed by the learned Assessing Officer on the statement of Mr. Kiritkumar Suba, Mr. Navin Nishar and Mr. N.K. Sodhani under Section 131 of the Act and Mr. Jayesh Zanani under Section 132(4) of the Act is unwarranted. Assessee submitted that these are the chartered accountants namely Mr. Navin Nishar, Mr. N.K. Sodhani , Mr. Kirit Dharshibhai Suba is the Auditor of Podar Group and Mr. Jayesh Zanani is the Manager Accounts. Further, the statement of entry operator Mr. Shirish Shah was recorded and Mr. Dhirubhai Thakkar and Mr. Sureshbhai Thakkar of Dhara Angadia Services, Ahmadabad were recorded. Based on these statements, learned Assessing Officer has concluded that the donation of the assessee to Ramrao Adik Education Society is bogus. Assessee submitted that all these persons have retracted their statement by filing an affidavit on various dates. The assessee also sought an opportunity to cross-examine, wherein the cross-examination of these persons have confirmed their retracted statement. Thus, there is no evidence, which can be relied upon by the learned Assessing Officer on such retracted statement. The assessee also submitted that donation is made to

Ramrao Adik Education Society. This trust is also registered under Section 12AA of the Act and has been granted recognition under Section 80G(5) of the Act. The donation receipt is produced along with the confirmation of receipt of donation. The donation is given by account payee cheque, this is also substantiated by the bank statement of IDBI bank. Enquiries under Section 133(6) of the Act were made which has been replied by that trust. Therefore, addition is not required to be made. The learned Assessing Officer rejected all these contentions and denied exemption under Section 10(23C) of the Act of the donation given by the assessee. The fact shows that in the assessment order the excess of income over expenditure of ₹3,57,00,000/- was considered as allowable deduction under Section 10(23C) (via) of the Act. In fact, undisputedly, the assessee is engaged in educational activities is not denied. Therefore, only grievance is denial of exemption under Section 10(23C) of the Act with respect to donation of ₹ 1 crore and not considering the gratuity provision as application of income for educational purposes. No doubt, on identical facts and circumstances the addition made by the learned Assessing Officer for A.Y. 2011-12 wherein, donation of ₹50 lacs was an issue, deleted by the learned CIT (A). May be that order of the learned CIT (A) have not been challenged by the Revenue before higher forum because of low tax effect. However, that fact does not go either against the assessee or in favour of the assessee. However, the arguments and findings of the learned CIT (A) have been relied upon by the learned CIT (A) in this year to delete the addition. To state the fact that for A.Y. 2011-12, has also given donation of ₹50 lacs to Ramrao Adik Education Society. The finding of the learned CIT (A) in A.Y. 2011-12 has been extensively reproduced by the learned CIT (A) in this year. In A.Y. 2011-12, the learned CIT (A) relied on the plethora of judicial precedents along with the facts to delete the addition. In A.Y. 2011-12, the learned CIT (A) in assessee's own case followed the decision of learned CIT (A) in case of another trust Anandilal and Ganesh Podar society for A.Y. 2011-12 vide Para 12 of his order. The fact clearly shows that only evidence available with the learned Assessing Officer are statements of several persons recorded under Section 131 of the Act which were subsequently retracted and in cross examination such retraction was confirmed.

028. We examine those statements.

i. Statement of Mr. Kiritkumar suba, CA, was recorded on 11 January 2018, which has been reproduced on page no. 6 of assessment order. Mr. Kiritkumar suba is a counsel wherein in question no. 14, he has stated that trust and societies of the Podar group donate amounts to various other trusts, such trust returned the cash. Further, Mr. Kiritkumar suba, Mr. N.K.

Sodhani identifies to whom the donation is to be made and they earn commission. Cash is received by this person Mr. Kiritkumar suba and Mr. N.K. Sodhani and then, it was informed to Mr. Navin Nishar, who is also chartered accountant and the cash is collected from kantilal and it is delivered to person assigned by Mr. Navin Nishar. He further stated that Mr. Nishar makes the further arrangement. He submitted that he and Mr. Sodhani have done this for commission. He thereafter submitted that amount is then introduced as a share capital in various companies.

ii. The statement of Mr. Shri N.K. Sodhani was also recorded on 12 January 2018, he also gave a similar statement.

iii. The mobile phone of Mr. Navin Nishar was also seized where, one SMS exchange was found where there was an exchange of message along with Angadia.

iv. Statement of Mr.Navin Nishar was also recorded on 11 January 2018, wherein, he also confirmed his association with Mr. Kiritkumar suba and Mr. N.K. Sodhani and he stated that he work for commission basis. He also confirmed that there is an SMS message between two Angadias and stated that same messages relates to Podar Group

v. statement of Angadia was also recorded at Ahmadabad under Section 131 of the Act who also confirmed that Mr. Navin Nishar and Mr. Kiritkumar Suba were the persons on behalf of whom they used to transfer money.

vi. Statement of Mr. Shirish Shah, who is alleged to be an entry operator, stated that in four companies he was to introduce share capital of Podar group.

vii. During search proceedings, statement of Mr. Jayesh Zanani was recorded under Section 132(4) of the Act wherein the details of the companies were provided. However, with respect to the modus operandi, in response to question no. 36, he submitted that he has come know this modus operandi through Mr. Kiritkumar suba,

029. Therefore, the learned Assessing Officer reached the conclusion that statement of Mr. Jayesh Zanani has admitted that unaccounted money was generated in podar Group and same was rooted through sham companies.

030. The notice under Section 133(6) of the Act was issued to the done trust i.e. Ramrao Adik Education Trust. Ultimately, reply was received from trust along with the evidence.

031. Further, it was contended before the learned Assessing Officer that all these persons Mr. Kiritkumar suba, Mr. Navin Nishar, Mr. N.K. Sodhani all are outside chartered accountants and them explaining the modus operandi of Podar group. Further, Mr. Jayesh Zanani, who was manager accounts in some group company, stated that he has come to know this modus operandi from Mr. Kiritkumar suba. It is to be noted that Mr. Kiritkumar suba retracted his statement on 3 April 2018. Mr. Navin Nishar retracted his statement on 4 June 2018 and Mr. Sodhani retracted his statement on 30 August 2018, Mr. Jayesh Zanani also retracted his statement on 2 April 2018. It is to be noted that at the time of issuance of notice under Section 153A of the Act i.e. of 16 August 2018 all those persons who originally gave statement were mostly retracted. Subsequently, during the course of assessment proceedings, these persons were cross-examined, who confirmed the retraction of the statement. Therefore, now these statements do not have any evidentiary value.

032. Even otherwise, in none of the statement recorded by the learned Assessing Officer reproduced shows that there is any evidence with respect to the donation by assessee being bogus i.e. the donation of ₹1 crores made by the assessee to Ramrao Adik Education Society or any cash payment given by that trust to any of the Angadias.

033. learned Assessing Officer relied heavily on the statements of the chartered accounts, who held that donation given by the assessee has been applied for non-education purposes. In the statement of either Mr. Kiritkumar suba, Mr. Sodhani or Mr. Navin, no reference of any donation by assessee to Ramrao Adik Education Society was found. Therefore, these statements do not give any evidence against the assessee with respect to above donation.

034. The statement of Mr. Jayesh Zanani clearly states that the modus operandi has come to his knowledge only through this person i.e. Mr. Kiritkumar suba. When the original source of information is proved not reliable, naturally statement of Mr. Jayesh Zanani also cannot be held to be useful to Revenue.

035. There is no reason that original statement under Section 131 of the Act, are to be kept at higher reliable pedestal than the retraction of the same by those persons and further, the retraction confirmed by them before the learned Assessing Officer in cross examination. Therefore, donation given by assessee trust needs to be proved bogus independent of these statement or its retractions.

036. Donation was made of ₹ 1 crore to Mr. Ramrao Adik Education Society by cheque no. 188152 of IDBI bank on 28th June, 2011 is supported by the certificate of recognition under Section 80G of the Act issued on 16th August, 2010 by the Director

general of Exemption, Mumbai. It is supported by receipt and confirmation along with bank statements, which clearly show that the cheque is issued and cleared in favour of the above trust.

037. This trust was also questioned under Section 133(6) of the Act, which has been replied to the learned Assessing Officer. Further, the learned Assessing Officer did not make any further enquiry from above done trust; therefore, there is no evidence available with the Assessing Officer that Ramrao Adik Education Society has in turn returned cash back to the Podar group.

038. The learned Assessing Officer neither examined the trustees of Donee trust nor the Donor assessee trust to ask for the purpose of such donation. It would have been only the trustees of Ramrao Adik Education Society to explain whether they have returned the donation amount in cash. There is no such effort made by the learned Assessing Officer.

039. Further, there is no enquiry in the activity of Ramrao Adik Education Society that in fact whether they are engaged in such activities or not. There is no evidence that Ramrao Adik Education Society is not carrying on educational activities but accepting the donation and returning the cash to the Donors.

040. The learned Departmental Representative did not show us any evidence that society which is allegedly

returning the cash back to the assessee has at all been examined with respect to such activities.

041. Further, the statement of Angadia relied upon by the learned Assessing Officer also did not show any money collected from above done trust and given to assessee. In view of this, we held that there is no evidence available with the learned Assessing Officer to hold that donation made by the assessee to Ramrao Adik Education Society is not for educational purpose.

042. According to the provision of Section 10(23C)(vi) of the Act, any University or any Educational Institutions solely existing for education purposes and not for purposes of profit will have its whole of the income exempt. The proviso to section 10(23C) of the Act provides that if an educational institute applies its income on other than objects of trust or for the purpose of profit, it may lose exemption. Admittedly Ramrao Adik Education Society is also an educational institute, therefore, donation to that society cannot be said to be utilized by assessee for non-educational purposes. This fact has not been denied by the learned Assessing Officer at any time. Thus , It is not the case of the assessee that ₹1 crores given as a donation by the assessee is utilization of the fund for non-educational purposes.

043. Even otherwise, the disallowance under Section 10(23C) of the Act, made by the learned Assessing

Officer is pursuant to search dated 9 January 2018. The impugned assessment year before us is 2012-13. Only evidence based on which the ld AO held that Rs 1 Cr of Donation is not eligible for exemption u/s 10 (23C) of The Act are the statements of those persons. For this year, original assessment is already completed under Section 143(3) of the Act on 27 March 2014 therefore, it clearly shows that impugned assessment is a concluded assessment at the time of search. Such retracted statement also cannot be said to be incriminating material found during the course of search, which can be used to enhance the income of assessee u/s 153A of the Act. Thus , there is no incriminating material existing pursuant to search, which could have disturbed the concluded assessment in case of the assessee. Therefore, even on this ground, the exemption under Section 10(23C) of the Act, cannot be denied to the assessee. Accordingly, ground nos. 1 to 5 of the appeal of the learned Assessing Officer is dismissed and order of the learned CIT (A) is confirmed.

044. Ground no. 6 of the appeal is with respect to the gratuity and leave encashment provision of ₹1,76,72,365/-. The fact shows that the learned Assessing Officer merely compared the expenses of 2 years and held that provision of ₹1,76,72,365/- on account of gratuity and leave encashment is not application of income of the trust for the purpose of education. The learned CIT (A) deleted the same

following the decision of co-ordinate Bench in assessee's own case for A.Y. 2014-15 dated 3 August 2021. Even otherwise, we find that assessee runs educational institute and makes provision for gratuity and leave encashment of the staff on actuarial basis, which is ascertained liability, and not merely a provision. Merely because it is stated to be a provision, it is not disallowable. Even otherwise, the issue is squarely covered in favour of the assessee by the decision of co-ordinate Bench in assessee's own case for A.Y. 2014-15. In the result, ground no. 6 of the appeal of the learned Assessing Officer is dismissed.

045. In the result, the appeal of the learned Assessing Officer for AY 2012-13 is dismissed.

046. For following Assessment years donations are given to following entities :-

Ay 2014-15

Sr No	Name of The Trust	PAN	Donation [In Rs]
1	Dr D Y patil International Academy	AATD9542N	50,00,000
2	Shantidevi Charitable	AAGTS2305G	3,50,00,000/-

	Trust		

Ay 2015-16

SR No	Name of The Trust	PAN	Donation [In Rs]
1	Varunarjun Trust	AABTV5968K	1,00,00,000
2	Ujjain Charitable Trust Hospital & Research Centre	AAATU0192K	1,50,00,000
3	Nathiya Charitable Trust	AABTN8918A	25,00,000

For AY 2016-17

Sr No	Name of The Trust	PAN	Donation in Rs
1	Khsetropasana Trust	AAATK5385L	15,00,000
2	Prabodh Foundation	AACAP3230A	1,00,00,000
3	Surajmal Memorial	AACTS5981Q	25,00,000

	education society		
4	Varunarjun Trust	AABTV5968K	1,00,00,000
5	Heritage Foundation	AAATH5375B	1,00,00,000
6	Shantidevi Murlidhar Education Trust	AAMAS5018H	1,00,00,000

AY 2017-18

Sr no	Name of The Trust	PAN	Donation [In Rs]
1	Surajmal memorial Education society	AACTS5981Q	1,00,00,000
2	VSPM Academy of Higher Education	AAATV0836H	2,00,00,000

047. For all the above assessment years, identical facts and circumstances exists, both the parties have raised identical arguments.

048. We have carefully considered the rival contentions and also per use the orders of the lower authorities. The learned assessing officer has made identically worded assessment orders wherein deduction is

denied u/s 10 (23C) of the act to the assessee to the extent of donations made. The learned CIT – A has also passed in identically worded appellate order rejecting the denial of benefit of Section 10 (23C) of the act with respect to the above donations. As the facts are identical in all these years with respect to above donations as facts in the case for assessment year 2012 – 13, wherein we have given our reasons upholding the order of the learned CIT – A, same applies mutatis mutandis for Ay 2014 – 15 to 2017 – 18. Accordingly, we direct the learned assessing officer to grant benefit of Section 10 (23C) of the act to the assessee trust on the above donation.

049. Accordingly ground number 1 – 5 in ITA number 1880/M/2021 for assessment year 2017 – 18, ground number 1 – 5 for assessment year 2016-17 in ITA number 1879/M/2021, ground number 1 – 5 in ITA number 1878/M/2021 for assessment year 2015 – 16 and ground number 1 – 5 in ITA number 1877/M/2021 for assessment year 2014-15 by the learned assessing officer for all these assessment years are dismissed.

050. This leaves us with the solitary ground of appeal being ground number 6 in all these appeals for assessment year 2014 – 15 to 2017 – 18 and solitary ground of appeal in ITA number 1869/M/2021 for assessment year 2018 – 19 with respect to the denial of deduction on the provision of gratuity and leave encashment for all these assessment years

from assessment year 2014 – 15 to 2018-19 . These grounds are identical to ground number 6 of the appeal for assessment year 2012 – 13. While deciding identical ground in assessment year 2012 – 13 wherein we followed the decision of the coordinate bench and allowed the deduction of leave encashment and gratuity, therefore, for identical reasons we also dismiss ground number 6 of the appeal of the learned AO for assessment year 2014 – 15 to 2018-19.

051. In view of above all the 6 appeals filed by the learned assessing officer in case of Podar Education Trust for assessment year 2012 – 13, 2014 – 15 to 2018-19 are dismissed.

PODAR EDUCATION AND SPORTS TRUST

052. These are 5 appeals with respect to the above trust filed by the Deputy Commissioner of income tax, central circle – 1 (4), Mumbai (the learned assessing officer/AO) for assessment year 2014 – 15 to 2018 – 19.

053. First we take up, assessment year 2014 – 15 wherein the learned assessing officer has raised following grounds of appeal:-

i. on the facts and in the circumstances of the case and in law, the learned CIT (A) order in deleting the disallowance of bogus donation of ₹ 5 crores u/s 10 (23C) of the income tax act, 1961 which was made in the course of assessment u/s 143 (3) read with Section 153A as the assessee trust contravened the provisions of Section 11 and 12 and thereby rendering itself as in eligible for exemption u/s 10 (23C) of the income tax act 1961

ii. on the facts and in the circumstances of the case and in law, the learned CIT (A) erred in placing reliance on the order u/s 143 (3) read with Section 147 of the income tax act, 1961 in the case of Ms Anandilal and Ganesh Podar society for assessment year 2011 – 12 without appreciating that instant order u/s 143 (3) read with Section 153A of the income tax act 1961 relies on the additional facts and evidences gathered during search/survey on Podar group, post such enquiries and block assessment proceedings which were not considered during reassessment proceedings for assessment year 2011 – 12

iii. on the facts and in the circumstances of the case and in law, the learned CIT (A) erred in placing extensive reliance on the retraction affidavits of Shri Kiritkumar Suba, Shri Navin Nishar and Shri Naresh SOdhani without appreciating that the retraction affidavits were not reliable and had no evidentiary value

iv. on the facts and in the circumstances of the case and in law, the learned CIT (A) erred in not appreciating that the statement recorded u/s 131 had evidentiary value and contents thereof were to be presumed true

v. on the facts and in the circumstances of the case and in law, the learned CIT (A) order in not appreciating that the modus operandi of tax evasion adopted by Podar group revealed in the course of search/survey stood substantiated by the confirming statements of various key persons and evidences found in the course of search/survey proceedings in case of Podar group

vi. on the facts and in the circumstances of the case and in law, the learned CIT (A) erred in deleting the disallowance of ₹ 5,506,109/– on account of provision for gratuity and leave encashment, without appreciating the fact that such provision was merely in the nature of enhanced provision of employees for posterity benefits in such a deduction and all utilization/set apart is allowable only on actual basis as per Section 11 and 12 of the income tax act 1961

054. both the parties submitted that grounds of appeal in case of all other 4 appeals are identically worded, the order of the learned assessing officer are also on

identical basis and the order of the learned CIT – A is also identically worded, except the amount of donation as well as the amount of gratuity and leave encashment provisions.

055. It was submitted that ground number 1 – 5 of the appeal for all these years are related to the donation made by assessee to various trust, and ground number 6 is with respect to the provision of the gratuity and leave encashment.

056. It was further stated that all these grounds of appeal in case of this assessee trust are also identical to grounds in case of Podar Education Trust .

057. Both the parties also stated that their arguments are also the same as were advanced in case of Podar Education Trust.

058. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that in all these appeals ground number 1 – 5 is with respect to alleged bogus donation and ground number 6 is with respect to the provision of leave encashment and gratuity and on both these issues the learned assessing officer has disallowed exemption claimed by the assessee u/s 10 (23C) of the act. On appeal before the learned CIT – A, exemption was allowed to the assessee with respect to the alleged bogus donation holding that there is no evidence available with the learned assessing officer that the donation made by the assessee to

those trust are bogus and further the exemption is allowable on provision for leave encashment and gratuity following the decision of the coordinate bench in case of Podar Education Trust. We have dealt extensively all these issues in deciding the appeal of Podar education trust for assessment year 2012 – 13. As there is no change in the facts and circumstances of the case, following that decision, we hold that the exemption denied to the assessee u/s 10 (23C) of the act on donation to various trust as well as on provision of leave encashment and gratuity is not correct. Therefore, we confirm the order of the learned CIT – A for all these years and dismiss the appeal of the learned assessing officer.

059. Accordingly, appeal is filed by the learned assessing officer for assessment year 2014 – 15 to assessment year 2018 – 19 in case of Podar Education and Sports trusts are dismissed.

060. Accordingly, all 11 appeals filed by the learned assessing officer are dismissed.

Order pronounced in the open court on 28.09.2022.

Sd/-	Sd/-
(AMIT SHUKLA)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.09.2022

Sudip Sarkar, Sr.PS/dragon

Copy of the Order forwarded to :

1. The Appellant

2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai