NEUTRAL CITATION
2026:GUJHC:54707-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 15686 of 2025

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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SHETH SHREE KARSHANDAS HALU DHARAMSHALA JAMNAGAR
Versus
COMMISSIONER OF INCOME-TAX (EXEMPTION) & ANR.

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Appearance:
MR DHINAL A SHAH(12077) for the Petitioner(s) No. 1
MR AMAN MIR(10881) for the Respondent(s) No. 1,2

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

Date : 25/08/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Since a short issue is involved, the matter is taken up for final hearing.

2. **RULE** returnable forthwith. Learned Senior Standing Counsel Mr.Aman Mir waives service of notice of rule on behalf of the respondent-authorities.

3. By way of present writ petition, the petitioner which is a Dharamshala ('Trust') is assailing the impugned order dated 19.11.2020 passed by respondent no.1 under Section 264 of the Income Tax Act, 1961 (for short 'the Act') relating to the Assessment Year 2012-13, wherein the claim of the petitioner for deduction under Section 11(1A) of the Act was rejected.

FACTS OF THE CASE

4. The petitioner is a public charitable trust registered under the provisions of Gujarat Public Trust Act, 1950 and also registered under Section 12A of the Act with effect from 01.04.2007. The petitioner has asserted that it has consistently maintained its registration under Section 12A of the Act and has been granted a fresh registration certificate under Section 12A of the amended Act by the Principal Commissioner of Income Tax (PCIT) on 07.06.2021, reaffirming the petitioner's recognition as a charitable trust under the Act. The petitioner is regularly assessed to income tax in India under the provisions of the Act.

5. The petitioner was the owner of immovable property situated at "Sheth Shri Karshan Halu Dharamshala", P.N Marg, Opp. Amber Cinema, Jamnagar. The property was being utilized for the charitable purposes in line with the objects of the trust. The trustees of the petitioner-Trust, in their meeting resolved to sell the aforesaid property in the interest of the Trust. Thereafter, the petitioner-Trust obtained sanction of Joint Charity Commissioner, Rajkot in terms of Section 36(1)(a) of the Gujarat Public Trust Act, 1950 vide order dated 29.11.2007 bearing no. 2970/2007, for the sale of property subject to certain conditions regarding utilization of sale proceeds.

5.1 Pursuant to the aforesaid approval, the petitioner-Trust sold the immovable property to M/S K.P. Infrastructure for a total consideration of Rs.4,87,50,000/- under a registered Sale Deed dated 11.07.2011.

5.2 Thereafter, in compliance with the conditions imposed by the Joint Charity Commissioner vide its sanction order dated 29.11.2007, the entire sale proceeds were invested in Fixed Deposit Receipt with Canara Bank, Jamnagar, for a period of two years. The said investment was made from the consideration received from the sale proceeds, thereby falling within the scope of Section 11(1A) of the Act, as contained in the instruction No. 883 dated 24.09.1975 issued by the Central Board of Direct Taxes (CBDT).

5.3 The petitioner for the Assessment Year 2012-13, filed its return of income manually on 31.03.2014 under Section 139 of the Act, declaring its total income at Rs.3,44,92,970/-. It is the case of the petitioner that at the time of filing the return, through inadvertence, while computing the total income, the petitioner's consultant failed to claim exemption under Section 11(1A) of the Act, in respect of the reinvestment of capital gains from the fixed deposit. The petitioner, however, disclosed the entire capital gains and duly paid tax on such income. Hence, the petitioner is claiming the exemption of capital gains to the extent of such investment.

5.4 It is the case of the petitioner that due to omission on the part of auditor, the excess taxable capital gain of Rs.3,98,97,350/- was shown and an excess tax of Rs.1,00,27,298/- was paid by the petitioner-Trust. Further, since the deduction for the Fixed Deposit Receipt (FDR) investment under Section 11(1A) of the Act was not claimed, the petitioner in its return claimed deduction of 15% of income under Section 11(1A) of the Act on the total income, including the capital gains from sale of the property. The return of income was processed under Section 143(1) of the Act by the respondent no.2 and raised a demand of Rs.19,44,180/-. However, the intimation under Section 143(1)(a) of the Act, was never served upon the petitioner. Thereafter, the petitioner became aware about the said demand and logged into the Department's e-filing portal. Immediately, the petitioner addressed a letter dated 21.01.2016 to the Income Tax Officer, Ward 2(2), Jamnagar, requesting issuance of a duplicate copy of intimation.

5.5 Being aggrieved, the petitioner filed a revision application under Section 264 of the Act before respondent no.1 on 31.03.2016. The application remained pending for adjudication for years despite repeated reminders dated 04.01.2019 and 17.07.2019. During the pendency of the application, the petitioner received multiple Show Cause notices. Thereafter, the petitioner filed a Special Civil Application No. 17491 of 2019, before this Court. By order dated 28.09.2020, the Coordinate Bench of this Court directed Respondent No.1 to decide the pending revision application within two months of receipt of the certified copy of the order, after granting due opportunity of hearing to the petitioner. In compliance of the aforesaid order, the petitioner though supplied requisite details and supporting documents vide letter dated 12.10.2020, the respondent no.1 vide impugned order dated 19.11.2020, rejected the revision application. Hence, the present writ petition.

<u>SUBMISSIONS ON BEHALF OF THE PETITIONER</u>

6. Learned advocate Mr. Dhinal Shah appearing for the petitioner-Trust has submitted that the respondent no.1 has

traveled beyond the scope of revisional jurisdiction under Section 264 of the Act. It is submitted that respondent no.1 cannot question the delay in receipt of sale consideration which was after the approval of the joint commissioner and the non compliance with the conditions imposed under Section 36(1)(a) of the Gujarat Public Trust Act, 1950 and consequently denying the deduction under section 11(1A) of the Act. It is submitted that the delay has occurred since third party had challenged the order dated 29.11.2007 passed by the Joint Charity Commissioner before the Tribunal and ultimately the tribunal dismissed the said proceedings on 29.04.2011. It is submitted that respondent no.1 cannot travel beyond the orders passed by the Charitable Commissioner and doubt the sale proceeds which were invested in FDR as per the order passed by the Joint Commissioner on 23.09.2019 expressly sanctioning the utilization of funds for the charitable objects specified in revised trust deeds. It is submitted that the petitioner trust had continued to pursue its charitable object as enshrined in its duties revised and registered trust deed dated 01.02.2019 under the provisions of Gujarat Public Trust Act, 1950. Thus, it is submitted that the respondent no.1 had incorrectly doubted the charitable activities which goes contrary to the orders passed by the Joint Charity Commissioner which is the statutory authority under the Bombay Public Trust Act.

6.1 Furthermore, it is contended that the continuation of registration under Section 12A of the Act, vide fresh certificate dated 07.06.2021, further reinforces the department recognition of the petitioner's charitable status, the petitioner has consistently filed its income returns disclosed all particulars, and applied its resources solely for charitable purposes. Accordingly, the allegation of absence of charitable activities is unfounded and are irrelevant under Section 11(1A) of the Act and cannot justify denial of exemption or retention of excess tax.

6.2 In support of his submissions, learned advocate Mr. Shah has placed reliance on the decision rendered by this Court in the case of Chandrakant J. Patel vs. V.N Srivastava, [2012] 20 taxmann.com 513 (Guj.), in the case of C. Parikh & Co. vs. Commissioner of Income Tax, [1980]4 Taxman 224 (Guj.). Finally, the decision of Bombay High Court in the case of Swaminarayan Mandir Trust vs. Commisssioner of Income Tax (Exemptions), Mumbai & Ors, [2026] 182 taxmann.com 209 (Bom.). Thus, it is urged that the impugned order may be quashed and set aside and the application filed by the petitioner under the provision of Section 264 of the Act may be directed to be allowed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

7. Opposing the present writ petition and the foregoing submissions, learned Senior Standing Counsel, Mr. Aman Mir appearing for the respondent while referring to the contents of the affidavit-in-reply filed by the respondents on 11.02.2026 has submitted that the return of income filed by the petitioner was processed under Section 143(1) of the Act on 02.06.2015 and accordingly, the demand notice of Rs.19,44,180/- was issued to the assessee after disallowing the 15% i.e. sum of Rs.60,92,832/- (i.e minus 15% of Rs.4,06,18,878/-) accumulation claimed. It is submitted that after passing of the aforesaid order, the petitioner assessee filed a revision

application under the provision of Section 264 of the Act on 31.03.2016 which is precisely not entertained by the respondent no.1. It is submitted that the petitioner has violated the conditions of the order dated 29.11.2007 passed by the Joint Commissioner while belatedly selling the land of the petitioner-Trust and thereafter depositing the sale consideration in FDR much later after a gap of more than 3 years with Canara Bank, Jamnagar. It is submitted that there was no proof of the registration sale deed upto 29.05.2008 and the petitioner-Trust has failed to receive total sale consideration upto 29.03.2008, whereas the actual sale deed was made on 11.07.2011 well beyond the date of sale directed by the Joint Charity Commissioner, Rajkot.

7.1 It is further submitted that the intention of the legislation is that the charitable institutions undertake charitable activity in the form of relief to the poor, education, medical relief, advancement of any other object of general public utility as stipulated under the revised Trust deed and since the petitioner-Trust was not carrying any such activities would not be entitled for exemption from tax. Thus, it is urged that the judgments on which reliance is placed by the learned advocate for the petitioner would not apply to the facts of the present case.

ANALYSIS & OPINION

8. We have heard the learned advocates appearing for the respective parties and have perused the materials placed on record.

9. The aforesaid facts about filing of the application under the provision of Section 264 of the Act before the respondent no.1 on

30.03.2006 is not in dispute. It is also not disputed that the petitioner inadvertently offered the capital gains of the sale of the land and the excess tax had been paid, though was entitled to deduction under Section 11(1A) of the Act. It is also not disputed that the petitioner-Trust has deposited the sale proceeds as directed vide institution no. 883 dated 24.09.1975 and invested the amount for two years in the FDR with Canara Bank. As per the said instruction, which has been issued by the CBDT, the investment of the capital asset being the property held under Trust, in a fixed deposit with a bank for a period of six months or above would be regarded as utilization of the net consideration for acquisition of 'another capital asset' within the meaning of Section 11(1A) of the Act.

10. Keeping in mind the foregoing undisputed facts, we may examine the sale proceeds of the land in question. The petitioner-Trust has obtained sanction from the Joint Commissioner Rajkot in terms of Section 36(1A) of the Gujarat Public Trust Act, 1950 vide order dated 29.11.2007 for sale of the property, subject to certain conditions regarding utilization of the said proceeds. Accordingly, the petitioner-Trust sold the immovable property to one M./s K.P Infrastructure for a total consideration of Rs. 4,87,50,000/- under a registered sale deed dated 11.07.2011. The consideration was received through account payee cheques and was duly deposited in the petitioner Trust's account with Canara Bank, Jamnagar. Thereafter, in compliance of the conditions imposed by the Joint Charity Commissioner vide its sanction order dated 29.11.2007 the entire sale proceeds were invested in FDR with Canara Bank, Jamnagar for a period of two years. The petitioner while its

return for A.Y 2012-13 declaring total income of Rs.3,44,92,970/-, inadvertently did not claim exemption under Section 11(1A) of the Act, in respect of the reinvestment of the capital gains in the FDR, as previously mentioned, the petitioner is entitled to such exemption under instruction no. 883 dated 24.09.1975.

11. Due to omission on the part of the auditor the excess tax to the tune of Rs. 3,98,97,350/- was shown and excess tax of Rs.1,00,27,295/- was paid by the petitioner-Trust. After the assessment was done the respondent no.2 raised a demand of Rs.19,44,180/- which was intimated under Section 143(1) of the Act and the petitioner at that moment for the first time became aware that the said demand from the department's e-filing portal and immediately the petitioner addressed a letter dated 26.01.2016 to the Income Tax Officer, Ward 2(2), Jamnagar, requesting issuance of a duplicate copy of the intimation. Thereafter, the petitioner filed a revision application under Section 264 of the Act before respondent no.1 on 31.03.2016, requesting to pass the order and allow the deduction under Section 11(1A) of the Act. Ultimately, pursuant to the order passed by this Court being Special Civil Application No. 17491 of 2019, the respondent no.1, the impugned order dated 19.11.2020 rejecting the revision application.

12. We may at this stage refer to the decisions rendered by this Court in the case of **Chandrakant J. Patel (supra)** for reiterating the exercise of powers under the provision of Section 264 of the Act by the Commissioner, the relevant paragraph nos. 14,15 and 16 reads thus :-

"14. The facts noted hereinabove show that it is an undisputed position that the income in the nature of interest earned on the FCNR deposits held by a person "not ordinarily resident in India" are exempt under Section10(15)(iv)(fa) of the Act. In the present case, when the petitioner filed return for the assessment year 1996-97 he had included the interest on FCNR deposits of Rs. 5.35.547 as assessable income. The assessment was, accordingly, framed by the Assessing Officer, including the said interest income as the income petitioner. When the petitioner noticed his aforesaid mistake, the petitioner made a revision application under section 264 of the Act before the Commissioner. The Commissioner, as is apparent from a plain reading of the impugned order, has turned down the application mainly on the ground that it cannot be the petitioner's case that he was not aware of the exemption under section 10(15)(iv)(fa) of the Act, despite which, he had disclosed the income. According to the Commissioner, the fact that the petitioner had disclosed the said income to be income chargeable to tax, clearly proved that he was not entitled to the benefit of section 10(15) (iv)(fa) of the Act in relation to the said deposits. On the merits of the case, all that is observed by the Commissioner is that the matter was got examined by the Assessing Officer, who had given the actual days of the petitioner's stay in India, which also negatives the claim of the petitioner without any discussion as to what were the number of actual days of the petitioner's stay in India, on account of which the petitioner's claim was required to be negatived. It is not stated in the impugned order that the details submitted by the petitioner in the revision application are incorrect, nor has the Commissioner considered the period of stay of the petitioner in India in respect of the preceding assessment years as well as the subsequent assessment years. The main refrain of the Commissioner seems to be that the petitioner himself having filed the return showing the said income to be the assessable income, the petitioner was not entitled to the benefit of exemption under section 10(15)(iv) (fa) of the Act.

15. This court in the case of S.R. Koshti (supra) has held that the income-tax authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. Under the circumstances, if the petitioner had made a mistake while filing the return, it was for the Assessing Officer to assist the petitioner by pointing out the said mistake to him and ensuring that he was taxed only in respect of the income which was chargeable to tax. However, that having not been done, once the petitioner had approached the Commissioner under section 264 of the Act, the

Commissioner was required to apply his mind to the facts of the case as to whether the petitioner was entitled to the relief prayed for in the application under section 264 of the Act. The Commissioner was not justified in dismissing the said application merely on the ground that it was the petitioner who had shown the said income to be his income for the year under consideration.

16. This court in the case of Ramdev Exports (supra) has held that it is open to the revisional authority to look into the deductions which might be claimed by the assessee for the first time. It is further held that even if the return as submitted by the assessee is accepted by the Assessing Officer and if thereafter the assessee comes to know about some mistake committed, where either he was eligible for more deduction or had paid more tax, he can approach the revisional authority, and in such an event, it is open to the revisional authority to exercise its jurisdiction under section 264 of the Act. Similarly, in the case of C. Parikh & Co. (supra), this court has held that there is no restriction on the Commissioner's revisional powers to give relief to the assessee in a case where the assessee detects mistakes on account of which he was over-assessed, after the assessment was completed. In the light of the principles laid down in the aforesaid decisions, it is apparent that the Commissioner has abdicated his duties in not considering the application of the petitioner on the merits on the ground that the petitioner had himself shown the said income as taxable income in the return filed by him."

13. The Coordinate Bench has also referred the decision in the case of **C. Parikh & Co. (supra)** has reiterated that there is no restriction on the Commissioner of revisional power to give relief to the assessee in the case where the assessee detects mistakes on account of which he is over assessed after the assessment was completed. It is also held that the commissioner while examining the application under Section 264 of the Act is required to apply his mind to the facts of the case, as to whether the assessee is entitled to the reliefs as prayed for in the application.

14. In the instant case, the Joint Commissioner while rejecting the application and passing an order under Section 264 of the

Act has questioned the action of the petitioner-Trust in violating the conditions of the order dated 29.11.2007. The Commissioner has also doubted the action of the petitioner-Trust in not following the conditions and at the same time ignored the order dated 23.09.2019 granting approval to the order dated 29.11.2007 and the Revised Trust Deed with conditions that the Trust shall comply with its objects which the petitioner has asserted that it has been following the objects of the Trust. The petitioner, thereafter had filed returns of income for A.Y.2022-23 to 2024-25, which shows that the income is used for charitable purposes. The Commissioner while passing the impugned order has also questioned that the petitioner is not carrying out any objects of the Trust as required under the provisions of the Public Trust Act and is not undertaking charitable activities in the nature of relief to the poor, education and medical relief etc. The petitioner -Trust was holding valid registration under Section 12A of the Act since the year 2007 during the relevant assessment year. In the reply, filed by the Respondent, it is contended that since there has been non-compliance of Section 36(1)(a) of the Gujarat Public Trust Act, 1950, the petitioner-Trust is not entitled to claim exemption. The impugned order passed by the respondent no.1 is silent on this aspect. In our opinion, the only facet which is required to be considered is whether the petitioner is entitled to exemption under Section 11(1A) of the Act read with Instruction No.883 since it had invested the sale proceeds in the FDR with scheduled Bank beyond the period of six months. The provision of Section 11(1A) of the Act are standalone provision, and cannot be interjected with the provision of 36(1)(a) of the Gujarat Public Trust Act, 1950 for denying capital gains exemption.

15. At this stage we may also refer to decision of the Bombay High Court in the case of **Swaminarayan Mandir Trust (Supra)** wherein the assessment order was passed under section 143(1) of the Act and an application under Section 264 of the Act was preferred since the assessee therein due to inadvertence the income was disclosed incorrectly, though the tax liability and refund were correctly reflected in acknowledgement. While dealing with this similar submissions, the Bombay High Court has held thus : -

> *"19. Considering the above, we are of the view that the provisions of Section 264 would cover within its ambit even a scenario where the assessee commits any error/mistake in the return of income.*
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> *20. Thirdly, as regards the decision of the Hon'ble Apex Court in the case of Goetze (India) Ltd. (supra), relied upon by Mr.Chatterjee, we find that this Court in the case of Bahar Infocons (P) Ltd. (supra) has already dealt with the said argument of the revenue (in the context of Section 264 itself) and has held as under:-*
>
>> *"17. Now coming to the decision as cited by Mr Mohanty, we are not persuaded to accept that the decision in Goetze (India) Ltd. (supra) in the facts of the present case would at all be applicable. Such decision is not in the context of the revisionary powers as conferred under the provisions of section 264 of the Income Tax Act, but in the context of deduction claimed by the assessee by a letter, after the return was filed, without filing of a revised return."*
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> *21. Further, this Court in the case of Hapag Lloyd India Pvt. Ltd. (supra) held as under:-*
>
>> *"13. Mr. Thakkar was justified in placing reliance on a Division Bench Judgment of this Court in the case of Geekay Security Services (P) Ltd. v. Deputy Commissioner of Income Tax, Circle 3(1)(2) 1 wherein the Division Bench considered an identical question as to whether the revisional authority was justified in rejecting the revision application solely on the ground that the applicant had not claimed the benefit in the original return. After adverting to the previous pronouncements of various High Courts, this concurred with the view that Section 264 does not limit the power to correct errors committed by the sub-ordinate authorities and could even be exercised where errors are*

> *committed by the assessee and there is nothing in Section 264 which places any restriction on the Commissioner's revisional power to give relief to the assessee in a case where assessee detects mistakes after the assessment is completed.*
> *14. The aforesaid pronouncement is on all four with the facts of the case at hand."*

> *22. Considering the above, we are of the considered opinion that the decision of the Apex Court in Goetze (India) Ltd. (supra) is wholly inapposite to the case at hand"*

16. In the instant case, the petitioner has acted *bona fide* and had fully disclosed the entire capital gains with supporting documents, and has duly paid the tax on the income. The petitioner paid the excess tax of Rs.1,00,27,295/- by showing the capital gain of Rs.3,98,87,350/-.However, the petitioner did not claim deduction for the FDR under Section 11(1A) of the Act, but claimed the deduction of 15% of income under Section 11(1) of the Act on the total income which included the capital gains from the sale of the property. Section 11(1) of the Income Tax Act provides general tax exemption for income derived from property held for charitable or religious purposes, requiring 85% of total income to be applied to those purposes, whereas Section 11(1A) deals specifically with the computation of capital gains when a trust transfers a capital asset and reinvests the net consideration into a new capital asset. This fact is not disputed by the respondent no.1. The petitioner has not suppressed any material and has filed the return of income which was processed. The petitioner has never been issued any notice/intimation under Section 143(1)(a) of the Act for A.Y 2012-13, and the revision application was filed when the petitioner became aware of the demand reflected in the portal, and it immediately addressed a communication dated 21.01.2016 requesting to issue a duplicate intimation, which was never furnished. In

these circumstances, the respondent no.1 ought to have exercised his revisionary power judiciously and fairly under Section 264 of the Act. Thus, in our considered opinion, the impugned order dated 19.11.2020 passed by the respondent no.1 is required to be quashed and set aside. The same is hereby quashed and set aside. Accordingly, we find merits in the application filed by the petitioner under the provision of Section 264 of the Act. The petitioner is entitled to exemption under Section 11(1A) of the Act and accordingly, the excess tax of Rs.1,00,27,295/- for the Assessment Year 2012-13 shall be paid together with applicable interest as specified under the provision of Section 244A of the Act. Necessary orders, as directed by this Court, shall be passed within a period of four weeks from the date of receipt of copy of this order.

17. With the aforesaid observations, the present writ petition ***succeeds***. Rule is made absolute.

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

sd/-
(VAIBHAVI D. NANAVATI,J)

Radhika / 14