

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.3.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND

THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).Nos.1052 to 1058 of 2014

The Commissioner of Income Tax
Central III
108, M.G.Road
Chennai – 600 034.

.. Appellant

Vs.

Balaji Educational & Charitable Public Trust
No.3A, 3rd Street, Jai Durga Complex
New No.60, 1st Avenue, Ashok Nagar
Chennai – 600 083.

.. Respondent

PRAYER: Appeals under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal, "A' Bench, Chennai, dated 5.4.2011 made in I.T.A.Nos.1476 to 1482/Mds/2010 for the assessment years 2002-2003 to 2008-2009 respectively.

For Appellant : Mr.T.R.Senthilkumar
Standing Counsel

For Respondent : Mr.S.Sridhar

J U D G M E N T
(Delivered by *R.SUDHAKAR, J.*)

These appeals are filed by the Revenue under Section 260A of the Income Tax Act, 1961 challenging the order of the Income Tax Appellate Tribunal, "A' Bench, Chennai, dated 5.4.2011 made in I.T.A.Nos.1476 to 1482/Mds/2010 for the assessment years 2002-2003 to 2008-2009 respectively, raising the following questions of law:

- (i) Whether on the facts and in the circumstances of the case, the Tribunal was right in not considering that the capitation fee received by the assessee trust is a revenue receipt liable for taxation under the Income Tax Act, 1961?
- (ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in not considering that the trust was receiving capitation fee for admission of students under management quota, as it would clearly prove that it was not doing any charitable activities as per Section 2(15) of the Act?
- (iii) Whether on the facts and in the

(3)

circumstances of the case, the Tribunal was right in deleting the addition of capitation fees received from students who were admitted in the management quota?

(iv) Whether on the facts and in the circumstances of the case, the Tribunal was right in not following the jurisdictional High Court judgment in the case of *P.S.Govindasamy Naidu & Sons v. ACIT*, 324 ITR 44?

2.1. The facts in a nutshell are as under: The respondent/ assessee is a trust registered under Section 12AA of the Income Tax Act, 1961 (for brevity, "*the Act*"). The trust is running various educational institutions, namely, (i) Bharathiyar College of Engineering Technology, Karaikal; (ii) Mahatma Gandhi Medical College, Pondy; (iii) Indira Gandhi Institute of Dental Science, Pondy; (iv) Kasturba Gandhi Nursing College, Pondy; (v) Sri Venkateswara College of Education, Pondy; (vi) Rajiv Gandhi College of Engineering and Technologies and others, for conducting various professional courses such as Engineering, MBA, Nursing and other Para-Medical courses, etc.

(4)

2.2. A search and survey operation under Sections 132/133A of the Act was conducted at various premises of the educational institutions and also at the residence of the Chairman of the Trust on 13.8.2007. The department proceeded on the premise that huge amounts of capitation fee is collected for admission to professional courses conducted by various educational institutions run by the assessee/trust.

2.3. Thereafter, notice under Section 153A of the Act dated 4.9.2008 was issued to the assessee. In response, on 6.10.2008, the assessee filed returns admitting "*NIL*" income for all the assessment years. Pursuant to the same, notice under Section 143(2) of the Act was issued on 9.7.2009 in respect of all the assessment years, followed by issuance of notice under Section 142(1) of the Act on 6.11.2009, annexing a detailed questionnaire regarding the case.

2.4. At this juncture, for better clarity on the manner in which the department proceeded in the matter, we take up the annexure to one such notice issued under Section 142(1) of the

Act, wherein after referring to the statement of the Chairman of the Trust, in query (viii), the Assistant Commissioner of Income Tax records that in the return of income filed by the assessee certain amount has been admitted as donation collected, whereas on the basis of the statement of the Chairman and the inference drawn by the Assessing Officer, a higher amount should be shown as donation. A specific query has been posed in query (x) as follows:

“(x) In your audited accounts filed with the return of income you have shown Voluntary Contribution of Rs.13,18,24,217/- as compared to Rs.2,40,00,000/- in the FY 2005-06. You are caused to furnish evidence for the amount of Voluntary Contribution and also furnish list of persons from whom Voluntary Contribution have been received.”

2.5. In response to the notices under Section 142(1) of the Act, the assessee submitted reply on 9.12.2009 stating that the allegation of receiving capitation fee from students is baseless and solely based on the statement recorded from the Chairman of the Trust, which he had retracted later. It was pointed out

that voluntary contributions were received only from philanthropists; family friends; corporate bodies; patients and relatives of patients treated in the hospital; parents and relatives of students. It was also stated that there is no evidence to come to the conclusion that such contributions received are involuntary. Along with the reply, the assessee also enclosed the details sought for by the Assessing Officer.

2.6. Based on these materials, the Assessing Officer came to the conclusion that the educational institutions run by the Trust collected huge amount of capitation fee under the guise of donation while admitting students under the management quota to various professional courses and no receipts were given for the capitation fee collected and it is also not disclosed in the income tax returns for taxation purposes.

2.7. To buttress the above said stand of the department, the statement recorded from the Chairman of the Trust at the time of search is relied upon, more particularly, the reply given to Question No.8. The said statement of the Chairman contains two

components – one is in relation to the fees charged for the courses and other relates to donation. In the said statement, it is averred that they charge regular fees for government quota students and it is not denied that there were donations taken in respect of NRI quota. It was clarified by stating that they did not get donations from all the students or their relatives. It was also stated that in respect of Kasturba Gandhi Nursing College, no donations are taken. In reply to Question No.9, the Chairman of the assessee-Trust states that around Rs.10 Crores was received as donations by Mahatma Gandhi Medical College and around 2 to 3 Crores for Engineering College.

2.8. On this basis, the Assessing Officer came to the conclusion that these donations are nothing but capitation fee. Taking note of the number of students admitted under the management quota in various colleges and by making computation on the basis of an estimate, for which he falls back on the statement of the Chairman, the Assessing Officer determined receipt of a higher amount as capitation fee, in the guise of donation, as against the admitted figure of donation as

claimed by the assessee in respect of each assessment year.

2.9. To arrive at such conclusion, the Assessing Officer relied upon two other relevant factors, which are admitted and not in dispute, which we find have been uniformly applied in all these cases. For instance, the relevant portion of the Assessment Order passed for the assessment year 2002-2003 is extracted hereunder:

"5.3. The loose sheets 5 to 22 in LS Sl.No.3 of ANN/SO/B&D/LS seized during the search and referred to in the questionnaire issued to the assessee, contain the list of the students along with the details of amount received, repaid and total paid and balance. The following amounts are appearing in the above seized document:

I Batch -	Received	-	Rs.378.25 Lacs
	Refund	-	<u>Rs.283.45 Lacs</u>
	Balance		<u>Rs. 94.80 Lacs</u>
II Batch -	Received	-	Rs.206 Lacs
	Refund	-	<u>Rs.35 Lacs</u>
	Balance	-	<u>Rs.171 Lacs</u>

Shri Rajagopalan, in his statement dated 12.11.2007 has stated that the above amount was refund of fees to students who have not joined the institution during the year 2005-06. From this, it

is ascertained that the donation collected from the students have been returned to them since they have not joined the institution, which further confirms the fact that the assessee have been collecting capitation fees in the name of donation, but not accounting the same in its books of accounts.

5.4. It is further seen that during the search conducted at the residence of Shri Rajagopalan, Chairman, who was at the helm of affairs of the Trust, huge cash amounting to more than Rs.44 lakhs was found from his bed room, which he said, belonged to the Trust. In reply to question no.5, it was stated by Shri M.K.Rajagopalan that the cash book of the Trust was not maintained on day to day basis and that the aforesaid cash, found at his residence during the search, was not recorded in the books of account. In view of these facts, there is no doubt that the Trust did not fulfill the conditions laid down in Clause (iv) of section 80G(5) of the Act."

2.10. The Assessing Officer, after considering the response of the Chairman of the assessee-trust retracting his earlier statement, rejected the explanation given by assessee stating

that retraction is belated; and that the assessee failed to submit the list of students admitted under management quota. It is also observed that the assessee was asked to submit the list of persons making voluntary contributions and this was tallied to verify the assessee's claim that the donations were not related to admissions under management quota. Thereafter, the Assessing Officer held that voluntary contributions were related to admissions of students and rejected the assessee's contention. Thus, the Assessing Officer worked out the income of the trust by multiplying the amount of donation with the number of students admitted under management quota in various courses. The total amount of donation calculated was treated as the income of the trust not being exempt as per Section 13 read with Section 11 of the Act for all the assessment years.

2.11. The Assessing Officer further held that the assessee is not carrying on charitable activities for the purpose of Section 13 read with Section 11 of the Act. In fine, the Assessing Officer concluded as follows:

“9. In view of the discussions made above and the decisions relied upon, I hold that the assessee earned income under the head voluntary contributions in the books of the assessee are not actually voluntary and that these are only selling of seats in exchange of capitation fees. The amount of capitation fee thus collected by the assessee is treated as undisclosed capitation fees being not exempt as per section 13 r.w.s. 11 of the I.T.Act.”

2.12. Similar orders have been passed for all the assessment years by the Assessing Officer. These facts are not disputed by the learned counsel for the appellant department.

3.1. The assessee, aggrieved by such assessment, pursued the matter before the Commissioner of Income Tax (Appeals), *inter alia*, contending that the finding with regard to violation of Section 13 read with Section 11 of the Act is perverse and not based on materials and the rejection of the return filed on the basis of voluntary contributions is not tenable, as the so-called amount of donation, alleged to be involuntary, determined by the Assessing Officer is based on hypothetical formula and not based

on any materials available on record. That the finding is perverse in law as the ingredients of Section 13 is not attracted to the facts of the present case.

3.2. It was the contention of the assessee that in respect of the assessment years 2002-2003 and 2003-2004, the Chief Commissioner of Income Tax-VI, Chennai, having jurisdiction over the case, has notified in terms of Section 10(23C)(vi) of the Act that there is no applicability of Section 11 or 13 in those years and, therefore, there is no applicability of Sections 11 or 13 in those years as the income of the trust is exempted under Section 10(23C)(vi) of the Act. The relevant portion of the said observation reads as follows:

“For two asst. years i.e., 02-03 and 03-04 as CCIT-VI, Chennai having jurisdiction over the case has notified this u/s.10(23C)(vi), there is no applicability of section 11 or 13 in those two years. The income of the trust is exempt u/s.10(23C)(vi) for those two years.”

Insofar as these two assessment years is concerned, the Commissioner of Income Tax (Appeals) rendered a finding that the Assessing Officer has failed to establish a case of breach of

Section 10(23C)(vi) of the Act and, therefore, the respondent/Trust will be entitled to the benefit of exemption contained therein.

3.3. With regard to the finding of the Assessing Officer that the amount stated in the loose sheets 5 to 22 seized during the search is donation received and returned to the students and this donation is capitation fee which is unaccounted, it is the specific case of the assessee that the amount reflected in the loose sheets is relatable to refund of fees to students who have not joined the institution during the year 2005-2006. The stand of the assessee is that it has returned the fees because of non admission of those students during that year in view of the restraint imposed by the Government of Puducherry to the effect that all the seats of medical college will go to the Government quota and no admission can be made under to the management quota and, therefore, the assessee had no other option except to refund the fees collected. However, the Assessing Officer misdirected himself to state that the amount, which was later returned, was received as donation from the students and the

same is unaccounted. This factual mistake was agitated before the Commissioner of Income Tax (Appeals) and accepted by the said authority. The relevant portion of the said order reads as under:

"The content of this seized document as mentioned by the AO shows that some amount was received and part of it is refunded and balance of the amount is mentioned in the seized document. These papers were confronted to Sri MKR, Managing Trustee of the Trust who had stated that the contents of the paper is the fee collected from the students which was refunded to the students as the admissions were denied to those students and all these entries are recorded in the books of accounts. The reason for the same was explained that for financial year 06-07 the Govt. of Pondicherry took a decision that all the seats of medical college will go to the Govt. quota and no admission will be left to the management quota. Therefore, the trust has to refund the fees collected from the students as they could not give admission to those students. There is no further enquiry contrary to the statement of Sri MKR done either by the Investigation wing or by the AO. However, AO has mentioned that the above figure is the

donation received and returned to the students and this donation is capitation fee and the same is unaccounted. To arrive at this conclusion, the AO has not mentioned any reason in the asst. order. In the light of specific statement of Sri MKR on this paper and without disproving the same it was not logical on the part of the AO to draw the adverse inference about the contents of the seized document. In view of the above, it would be improper to accept the findings of the learned AO that the amount represents involuntary donations received from the students at the time of admission. Therefore, in my view the only seized material referred by the AO in the entire asst. order does not prove the receipt of capitation fee by the appellant institution for taking admission of the students in the management quota. Hence receipt of capitation fee is not proved by any seized document mentioned in the asst. order."

(emphasis supplied)

3.4. The next issue is relating to seizure of cash of Rs.44 Lakhs from the residence of the Chairman. It is the specific case of the assessee that the said amount was not recorded in the books of account, but the Chairman had offered this amount as

income in his own hands and paid tax thereon. It was pleaded that the said amount is not relatable to the affairs of the trust nor is the amount relatable to receipt for or on behalf of the Trust. The finding of the Commissioner of Income (Appeals), in this regard, is as follows:

"2. Cash of Rs.44 lakhs found and seized at the residence of Sri M.K.Rajagopalan, Managing Trustee of the appellant trust: There is no doubt that the cash of Rs.44 lakhs was found and seized from the bed room of Sri M.K.Rajagopalan during the search operation of on 13/14.8.07. During the statement on 13.8.07, Sri M.K.R has stated that the cash belongs to the trust. However, subsequently on 31.8.07, statement of M.K.R. was recorded by the ADIT and offered Rs.2 crores as additional income and has specifically mentioned that this disclosure of unaccounted income is on account of various assets. His statement has been reproduced in this order earlier. Further employee of the appellant trust Sri Bhaskar on the date of search has stated that he has not sent any cash to the residence of Sri M.K.R. In continuation of his above statement, he has filed a return of income declaring undisclosed income of Rs.3 crores. The

AO has accepted this disclosure and has even mentioned in the asst. order that this unaccounted income of Rs.3 crores includes the cash found at his residence. Therefore, the AO has given the finding in the asst. order of Sri MKR in individual capacity that the said cash belongs to Sri MKR and therefore the same cannot belong to the trust also. When the copy of sworn statement recorded on 13.8.07 was given to Sri MKR he has retracted the said statement that the cash belongs to the trust. He has produced the medical certificate in support of 50% hearing disability. Furtherance to the statement of disclosure of unaccounted income, Sri MKR, having turnover of more than Rs.30 crores in his petrol pump business has declared unaccounted income of Rs.3 crores, the AO has accepted the disclosure in the asst. order and has specifically mentioned in asst. order that this unaccounted income is towards the cash found and seized at his residence and other unaccounted asset and expenditure. In view of the above finding, it is difficult to accept that this unaccounted cash belongs to the appellant trust and the same forms part of capitation fee received by the appellant trust. Hence cash found at the residence of Sri MKR also does not support the receipt of capitation fee by the appellant trust."

(emphasis supplied)

3.5. *De hors* the above two relevant issues, the other issue that was decided by the Commissioner of Income Tax (Appeals) is whether donations received by the Trust would partake the character of capitation fee or involuntary donation. To refute the plea of the department that donations are not voluntary, the assessee relied upon the order passed by the Commissioner of Income Tax, Puducherry, having jurisdiction over the assessee at that time, who passed an order under Section 264 of the Act for the assessment years 1998-1999 to 2001-2002, where a finding has been given that the donation received from students or the parents are not compulsory in nature and, therefore, the same is not capitation fee. To buttress this argument, it was pointed out that there was no material in the form of statement from any one of the donors – students or parents or any such person to the effect that donations received by the trust from whatever source was not voluntary and that it will partake the character of capitation fee. The assessee also relied upon a response dated 14.7.2014 received from the Public Information Officer for a

query raised under the Right to Information Act, wherein it is stated that *"There is no any complaint received from any student/parent regarding capitation fee charged by the above institutions so far."*

3.6. On the above said issue, the Commissioner of Income Tax (Appeals) observed that there is no investigation done either by the Investigation Wing or the Assessing Officer to prove that donations were not voluntary and they partake the character of capitation fee. He, therefore, held that the presumption drawn by the Assessing Officer that all management quota admissions are subject to capitation fee is based on no material.

3.7. The Commissioner of Income Tax (Appeals) also accepted the plea of the assessee that there was no benefit derived by the trustees or any member of the Trust. The source of income to the charitable institution is of no relevance. What is relevant is the application of income for providing exemption under Section 11 of the Act. It is for the department to prove that there is mis-utilization of the income of the trust as stated in

Section 13 of the Act. He, therefore, holds that denying exemption under Section 11 of the Act without there being a case made out for violation of Section 13 of the Act is totally incorrect. He further held that receipt of donation at uniform rate for admission in management quota is not supported by any material evidence. He, therefore, allowed the appeals of the assessee.

4.1. The department pursued the matter before the Tribunal. The case of the department was summarized by the Tribunal in paragraph (28) as under:

"28. That the only ground pointed out by the Assessing Officer to refuse exemption is that the assessee has violated the provisions of law contained in sec. 13. Section 13 contains different sub-sections and clauses to address different situations of violation. Therefore, it is necessary to cite the specific sub section and clause to allege that the assessee has violated the law stated in sec. 13. In the present case, the Assessing Officer has not referred to any such sub-Section or clause of sec.13. He has made a bald reference to section 13 and proceeded to deny the benefits of exemption available to the assessee u/s 11."

(emphasis supplied)

4.2. The Tribunal held that the Revenue had made a belated attempt to allege violation of Section 13(1)(d) of the Act. In fact, the issue was clarified in paragraph (29) of the order of the Tribunal, which reads as under:

"29. It is only now that the learned Commissioner appearing for *the Revenue makes a belated attempt to bring the case of alleged violation u/s. 13(1)(d) stating that the seizure of cash of Rs.44 lakhs from the residence of the Chairman of the assessee trust is an appropriation of funds of the trust for his personal benefits. But such an allegation is not justified as the said amount has already been included in the income offered by the Chairman of the assessee trust for taxation.*"

(emphasis supplied)

4.3. The Tribunal rejected the case of the Assessing Officer that what is exempted from taxation under Sections 11 and 12 of the Act is voluntary contribution and not contribution granted against allotment of seats. It further held that the finding of the Assessing Officer that capitation fee collected by the trust should

be treated as undisclosed is erroneous.

4.4. We shall now consider the issue as to how the Tribunal has considered the facts, as has been addressed by the Original Authority and the Commissioner of Income Tax (Appeals). The Tribunal, as in the case of the Commissioner of Income Tax (Appeals), relied upon the order passed under Section 264 of the Act by the jurisdictional Commissioner for the assessment years 1998-1999 to 2001-2002, to come to the conclusion that the donations received from students or the parents are voluntary in nature. Similar allegations made by the Revenue have been considered and rejected, as admission of students is done as per the procedure prescribed by the Director of Health and Family Welfare Services, Government of Puducherry. For clarity, we set out paragraph (33) of the order passed by the Tribunal:

“33.1. The first such conclusion is that there is no basis for the Assessing Officer to allege that the activities carried on by the assessee trust are not genuine. The assessing authority himself has noted down the names of about eight prominent educational institutions carried on by the assessee trust on the face of the assessment order. The

same is reproduced in para 2 of this order. These institutions included medical and engineering colleges. The paper book filed before us contains copies of relevant documents and certificates in pages 326 to 360, issued by appropriate authorities, which prove that the assessee is carrying on its educational activities by running a number of institutions within the domain of central and state laws. The letter of Dy. Director of Public Health, Govt. of Puducherry, at page 326 of the paper book permits the assessee's medical college to utilize the facilities of the Govt. hospitals for the clinical practice of medical students. Page 327 is a copy of the letter issued by the Puducherry Health Secretariat regarding the constitution of Permanent Admission Committee under the Chairmanship of Hon'ble Justice A.Ramamurthy (Retd.,) Madras High Court. A copy of the procedure on admission of medical students issued by the Director of Health and Family Welfare Services, Govt. of Puducherry, is available in page 331. Page 332 contains a copy of the letter from Directorate of Higher & Technical Education. A copy of the recognition report issued by Medical Council of India is placed in pages 330 to 337. Accreditation Status conferred by All India Council for Technical Education is available at pages 338 and 339 and so

also in pages 340 and 341. A copy of the order of Govt. of India in the Ministry of Human Resource Development is available in pages 342 and 343 granting the status of "deemed-to-be-university" u/s 3 of the UGC Act 1956. Pages 344 to 360 contain copies of various Memorandum of Association entered into between the medical college run by the assessee trust and various public sector undertaking including BSNL to provide for in-house medical facilities to the employees of those public sector enterprises. All these materials go to prove that the assessee trust is running a number of educational institutions recognized by law and by the public and its charitable activities by way of education are bonafide. The allegation of the Revenue has no force."

(emphasis supplied)

4.5. The plea of the revenue that no regular books of account are maintained by the assessee trust has been rejected by the Tribunal after referring to the order passed under Section 264 of the Act for the assessment years 1998-1999 to 2001-2002, in the following manner:

"33.2. Another allegation made out by the Revenue is that the assessee trust is not maintaining regular

books of accounts. This is without any basis. The Commissioner, Pondicherry in his order passed u/s 264 for the assessment years 1998-99 to 2001-02 has examined a similar allegation made out by the Revenue that the assessee was not maintaining proper books of account. After detailed examination of the materials and evidences placed before him, the CIT came to the conclusion that the assessee was maintaining regular books of accounts in its ordinary course of activities. As far as the impugned assessment years are concerned, there again the Assessing Officer has not brought any adverse materials on record to substantiate the allegation that the assessee is not maintaining proper accounts. It is a fact to be borne in mind that the assessee has been claiming exemption of its income from taxation on the ground of educational activities since long in the past. Earlier it was enjoying the said benefit u/s. 10(22) and 10(23C)(vi) and thereafter u/s 11 and 13. The assessee is registered u/s 12AA of the Income Tax Act 1961. The assessee is filing regular returns before the assessing authority. The assessing authority himself has stated in his order that he has examined the returns of income in the light of the books of accounts, financial statements and balance sheets of the assessee trust. Even in the

course of search operations, the assessing authority has no case that proper accounts were not maintained by the assessee trust except the allegation regarding the nature of certain seized documents relating to the refund of fees made to the students, who were not given admission in the colleges of the assessee trust. We do not find any reason to endorse the above allegation made out by the Revenue, which is without any basis."

(emphasis supplied)

4.6. Thereafter, the Tribunal proceeded to go into the core issue of violation of the provision of Section 13(1)(d) of the Act, which prompted the Assessing Officer to deny the benefit of Section 11 of the Act to the assessee. The Tribunal, as in the case of Commissioner of Income Tax (Appeals), was inclined to discard the two findings rendered by the Assessing Officer based on: (i) loose sheets relating to return of fees; and (ii) seizure of cash from the residence of the Chairman. The relevant portion of the finding of the Tribunal in this regard is as under:

"33.3. The next grievance of the Revenue is that the assessee trust has violated the provision of sec. 13(1)(d), which enabled the Assessing Officer

to deny the benefits of sec. 11 to the assessee. The basis of such a findings is that a sum of Rs.44 lakhs was found and seized in the course of search from the residence of the Chairman of the assessee trust. In spite of repetition, we have to state that the said sum of Rs.44 lakhs has been explained as 'income' of the Chairman of the assessee trust and the said amount has been offered for taxation in the return of income filed by the Chairman in the regular course. Apart from that, the most interesting aspect is that there is no case that a sum of Rs.44 lakhs was applied by the Chairman for any of his personal requirements. The only complaint is that the said sum was found in his possession at his residence. There is nothing unnatural in the Chairman of the assessee trust keeping the money in his custody, even if it is belonged to the assessee trust. Money cannot be kept in the educational institutions run by the assessee trust or in the Trust Office. Either the money has to be kept in a bank or in the safe custody of responsible persons. The Chairman of the assessee trust is a responsible person. The money was found in his custody. Even if that amount belonged to the assessee trust, think for a while, it is not possible to hold that the Chairman has utilized that much amount of money for his

personal benefit. Keeping the money belonging to the assessee trust is essentially different from spending the money belonging to the assessee trust. The assessing authority has equated safe keeping of money to spending of the money.

33.4. The basis of allegation of the Assessing Officer regarding accepting capitation fee is that certain entries found in the seized materials relating to the refund of amounts collected from certain students, who were not ultimately admitted in the colleges run by the trust. The assessee has explained that during that particular financial year all the medical seats were taken over by the Govt. of Pondicherry and no seats were available in the hands of the assessee trust for allotment under management quota. It was in that contingency, the amounts collected earlier from the students had to be refunded. These details have been brought out in the accounts maintained by the assessee trust. If the Assessing Officer had any strong intuition about capitation fee on the basis of this solitary opinion, the Assessing Officer should have conducted proper enquiries before coming to a conclusion against the assessee trust. The assessing authority has not conducted any such enquiries either with the students or with the

parents of the students or with any other person interested in the activities carried on by the assessee trust.”

(emphasis supplied)

4.7. The question, as has been posed by the Tribunal, is whether the contributions or donations are voluntary or involuntary and what is the effect of such donation. The Tribunal was of the view that there is no concept of involuntary contributions and went on to hold that voluntary contributions should be treated as income under Section 12 of the Act and that corpus donations to be treated as capital receipt under Section 11(1)(d) of the Act and corpus donations are not generally in the nature of income. It further held that voluntary contributions are taxable only if not applied for charitable purposes. The emphasis is on, not applying the same for charitable purposes.

4.8. Whether contribution is voluntary or involuntary and its implication in relation to these provisions was considered by the Tribunal in the following manner:

“35. To proceed further, we have to examine the

scheme of law of charities provided under the Income-tax Act, 1961. There is no concept of involuntary contributions in that scheme. The only distinction recognized by law is the voluntary contributions to be treated as income under section 12 and the corpus donations to be treated as capital receipt under section 11(1)(d). The corpus donations are not generally in the nature of income. The voluntary contributions are taxable only if not applied for charitable purposes. In the present case, the assessee-trust itself has treated the contributions as voluntary contributions in the nature of income. The assessee claims exemption under section 11 not on the basis of the nature of contributions but for the reason that the contributions were applied for charitable purposes. When the assessee-trust itself has treated the contributions as voluntary contribution in the nature of income, which is the best situation that the Revenue would always welcome, what is the relevance of arguing whether the contributions were voluntary or not?

36. Even if the contributions are treated as not voluntary what could be the legal consequence of that finding? Whether the Revenue will treat such

involuntary contributions as capital and give exemption from taxation? No, it will not. The Revenue will still find such involuntary contribution as income liable for taxation. If so, what is the real distinction between voluntary contribution and involuntary contribution as far as the taxation of charities is concerned? In both cases, it will be brought for taxation if the assessee has not utilised the contributions for charitable purposes.

37. The expression "voluntary contributions" is used in the Act instead of "contributions" to highlight the principle of non-compulsion in matters of participating in charitable activities and to underline the gratuitous nature of donations and charitable activities. There is no compulsion in making contributions to charities. If the expression was "contributions" there could be a naunce of compulsion like contribution to provident fund and the like.

38. Therefore, we find that whether it is treated as voluntary or involuntary, the only course of action available before law is to see whether such contributions have been treated by the assessee as the income and also applied for charitable

purposes."

(emphasis supplied)

This reasoning of the Tribunal, we are inclined to accept.

4.9. The finding of the Tribunal is that the department has not established a case that the assessee had in this case not utilized the donations or income for charitable purpose. The clear finding of the Tribunal is that if the assessee had not utilized the amount for charitable purpose, it would automatically become taxable and the assessee would not be entitled to exemption. But, on the contrary, without there being a finding of violation of Section 13 of the Act, an inference is drawn on an alleged receipt of donation and consequently, the allegation is made that there is a violation of Section 13(1)(d) of the Act. A hypothetical finding is given that because capitation fee is charged, it is not an income in terms of Section 11 of the Act and, therefore, there is a violation of Section 13(1)(d) of the Act. The Tribunal held that such a reasoning cannot be accepted because if the donations are offered for income and if the department wants to disprove the nature of income on the basis of material, as has been pointed

out by the Commissioner of Income Tax (Appeals), it should be borne out by records based on investigation, which the Assessing Officer failed to do, except falling back on a statement which is not supported by materials.

4.10. On the activities of the trust, the Tribunal has given a finding that the activities of the assessee trust are genuine educational activities entitled to be treated as charitable activities and there is no evidence on record to show that the assessee has accepted capitation fee for allotment of seats. The Tribunal relied on the decisions of various courts to show that the activities of the trust alone are relevant for the purpose of allowing the benefit of exemption under Sections 11 and 12 of the Act. In fine, the Tribunal held as follows:

“44. The above judicial pronouncement makes it clear that the litmus test of charitable institution is the test of application of the funds and not the colour of donations received by the institution.

45. In the facts and circumstances we find that these appeals filed by the Revenue are liable to be

dismissed. The cross-objections filed by the assessee-trust become infructuous and, therefore, to be dismissed.”

4.11. Aggrieved by the said order, the revenue has filed these appeals.

5. We have heard Mr.T.R.Senthilkumar, learned Standing Counsel for the revenue and Mr.S.Sridhar, learned counsel for the assessee and perused the orders passed by the Tribunal and the authorities below.

6. Before advertng to the merits of the case, it is apposite to refer to Sections 11, 12 and 13 of the Income Tax Act:

“Section 11. Income from property held for charitable or religious purposes.-

(1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income--

(a) ***income derived from property held under***

trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India ; and where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent. of the income from such property;

(c) income derived from property held under trust--

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to

which such income is applied to such purposes outside India ;

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income.

(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

Explanation. - For the purposes of clauses (a) and (b),--

(1) in computing the fifteen per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;

(2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of eighty-five percent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount-

(i) for the reason that the whole or any part of the income has not been received during

that year, or

(ii) for any other reason,

then--

(a) in the case referred to in sub-clause (i),
so much of the income applied to such
purposes in India during the previous year in
which the income is received or during the
previous year immediately following as does
not exceed the said amount ; and

(b) in the case referred to in sub-clause (ii),
so much of the income applied to such
purposes in India during the previous year
immediately following the previous year in
which the income was derived as does not
exceed the said amount,

may, at the option of the person in receipt of the
income such option to be exercised in writing
before the expiry of the time allowed under sub-
section (1) of section 139, for furnishing the return
of income, be deemed to be income applied to such
purposes, during the previous year, in which the
income was derived ; and the income so deemed to
have been applied shall not be taken into account
in calculating the amount of income applied to such
purposes, in the case referred to in sub-clause (i),
during the previous year in which the income is

received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately following the previous year in which the income was derived.

.....

Section 12. Income of trusts or institutions from contributions.-

(1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.

(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-

section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.

For the purposes of this sub-section, the expression "value" shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13.

(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of section 80G 4in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on 4or before the 31st day of

March, 52001, shall be deemed to be the income of the previous year and shall accordingly be charged to tax.

Section.13. Section 11 not to apply in certain cases.-

(1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof-

(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public ;

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste ;

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof-

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income

enures, or

(ii) if any part of such income or any property of the trust or institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (3) :

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution :

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the

benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of June, 1970 ;

(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year-

(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983 ; or

(iii) any shares in a company (not being a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act) are held by the trust or institution after the 30th day of November, 1983 :

Provided that nothing in this clause shall apply in relation to-

(i) any assets held by the trust or institution where

such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973;

(ia) any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March, 1983;

(iia) any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1993, whichever is later;

(iii) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984, or any subsequent assessment year :

Explanation. - Where the trust or institution has any other income in addition to profits and gains of business, the provisions of clause (iii) of this

proviso shall not apply unless the trust or institution maintains separate books of account in respect of such business.

Explanation. - For the purposes of sub-clause (ii) of clause (c), in determining whether any part of the income or any property of any trust or institution is during the previous year used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by section 7 [other than sub-clause (ii) of clause (a) thereof] of the Finance Act, 1972.

.....

(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), but without prejudice to the provisions contained in sub-section (2) of section 12, in the case of a charitable or religious trust running an educational institution or a medical institution or a hospital, ***the exemption under section 11 or section 12 shall not be denied in relation to any income, other than the income referred to in sub-section (2) of section 12, by reason only that such trust has provided educational or medical facilities to***

persons referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3)."

....

(emphasis supplied)

Questions of Law (i) and (ii)

7.1. To answer these questions of law raised by the revenue, let us analyze activities carried on by the assessee trust.

7.2. The assessee/Trust is running about eight educational institutions. The Tribunal, based on the various documents filed by the assessee, (i.e.), the permission by the Deputy Director of Public Health, Government of Puducherry to utilize the facilities of the Government Hospitals; the constitution of Permanent Admission Committee under the Chairmanship of Hon'ble Justice A.Ramamurthy (Retd.), etc., rendered a categorical finding on fact that the assessee is running a number of educational institutions recognized by law and its charitable activities by way of

education are bona fide. The department has not produced any evidence to rebut the said finding rendered by the Tribunal. Therefore, we do not find any reason to upset the said finding.

7.3. It is the plea of the Department that the assessee trust is not maintaining regular books of accounts. A similar allegation raised by the department was refuted even for the assessment years 1998-1999 to 2001-2002 by the Commissioner, Pondicherry in the order passed under Section 264 of the Act, by stating that the assessee was maintaining regular books of accounts in its ordinary course of activities. The Assessing Officer, in his order, has stated that he had examined the returns of income in the light of the books of accounts, financial statements and balance sheets of the assessee trust. It is not the case of the Assessing Officer that the books of accounts were not maintained properly. All that the Assessing Officer states is that there are certain seized documents relating to refund of fees made to the students, who were not given admission in the colleges of the assessee trust and therefore, there is an element of suspicion in the affairs of the assessee trust.

7.4. On this plea, it is the specific case of the assessee that during a particular financial year all the medical seats were taken over by the Government of Puducherry and no seats were available in the hands of the assessee trust for allotment under management quota and, therefore, the amounts collected earlier from the students had to be refunded. It is also not in dispute that these details have been brought out in the accounts maintained by assessee trust. The department has not controverted this finding of fact. It establishes the assessee's case of bona fide refund. Nothing material turns on this fact to hold against the assessee.

7.5. As rightly held by the Tribunal, if the Assessing Officer had any doubt about the receipt of capitation fee or the explanation given, he should have conducted enquiry either with the students or with their parents or with any other person interested in the activities carried on by the assessee trust. But, without doing so, the Assessing Officer estimated the collection of contributions on the basis of the number of seats

available under management quota multiplied by the amount of contribution attributable to individual seats. Any determination for purpose of tax cannot be based on hypothetical facts or conjectures or surmises. The inference drawn by the Original Authority is based on probability.

7.6. With regard to the seizure of cash of over Rs.44 Lakhs from the residence of the Chairman of the Assessee Trust, it is not in dispute that the said sum has been assessed in the hands of the Chairman for the assessment year 2008-2009 and the same was received from the petrol pump business, the turnover of which is more than Rs.30 Crores. Moreover, the Assessing Officer has accepted the disclosure of the seized cash as the income of the individual and, therefore, in our considered opinion, it cannot be said that assessee trust had accepted contributions by way of capitation fee. The said issue cannot be used both ways. The assessment of the undisclosed income at the hand of the individual ends the issue there. It has no relevance to the affairs of the Trust and there is no meterial to hold so.

7.7. In our considered opinion, based on the loose sheets and cash seized, which have been held as irrelevant to the present issue, it cannot be held that for all the assessment years the assessee received capitation fee for admission of students in the management quota. This is a perverse inference. Without conducting any enquiry in this regard to make allegation is unsustainable. The information obtained from the Public Information Officer to a query raised under the Right to Information Act to the effect that "*There is no any complaint received from any student/parent regarding capitation fee charged by the above institutions so far*" also tilts the balance in favour of the assessee. It disproves the department's allegation of involuntary collection of amounts. That apart, the order passed under Section 264 of the Act for the assessment years 1998-1999 to 2001-2002 clearly states that the donation received from students or the parents is not compulsory in nature and, therefore, the same is not capitation fee. There is no material to controvert this fact which is to the knowledge of the department. No endeavour is made to sustain the allegation of

involuntary donation. In any event, as rightly held by the Tribunal, it is not relevant in the present case as the allegation is violation of Section 13 r/w Section 11 of the Act.

7.8. We find that factually the Commissioner of Income Tax (Appeals) and the Tribunal have come to the conclusion that the donations received do not partake the character of capitation fee. There is no element of involuntary nature of donation. A specific finding is given that no investigation has been done to show that any parent or student has complained about the nature of donation. The department has failed to dispel the finding of fact.

7.9. In any event, the learned Standing Counsel for the department pleads that since the assessee had not submitted the list of students, the Assessing Officer had to make an estimate adopting his own methodology. This we cannot accept for the simple reason that the show cause notice proceeds on the basis that the assessee has to submit the list of donors alone. A reply was submitted by the assessee and in paragraph 6(iii), the Assessing Officer states that all the statements tallied. However,

the assessing officer comes to a different conclusion that contribution is not voluntary, and it is relatable to admission of students. We find this finding of the Assessing Officer, as has been rightly held by the Commissioner of Income Tax (Appeals) and the Tribunal, is not supported by documents, but on the basis of Assessing Officer's inference. It cannot be now stated that something was not furnished, nevertheless, he tallied all the materials and came to the conclusion as stated above. If the Assessing Officer has tallied the figures then the assessee's case of actual contribution to Trust has to be accepted. It has been shown in the return of income. A bald statement in paragraph (7) of the assessment order that the assessee is not carrying on charitable activities for the purpose of Section 13 read with Section 11 of the Act appears to be the mainstay of the department's case.

7.10. In effect, it is clear that the authority has confused himself with the admission of students in management quota with the carrying on activities of the trust. The distinction is obvious that if the department wanted to make out a case of violation of

Section 13 of the Act by the trust, it cannot be based on the perception of the Assessing Officer that donations to the trust are not voluntary. We hasten to add that there is no material to support the plea that the donations are not voluntary.

7.11. Having invoked Section 13, the mainstay of the case of the department should be based on the activities of the trust to plead that the same are not in consonance with Section 13 of the Act and, therefore, exemption under Section 11 of the Act should be denied, which we find is abysmally silent in the show cause notice and the assessment order.

7.12. We do not find any reason to come to a different conclusion on facts, as has been addressed by the Commissioner of Income Tax (Appeals) as well as the Tribunal on these two issues relating to seizure of cash and loose sheets. Apparently, there is no dispute on that fact. All that the department is trying to show is that there is something improper in the manner in which the donations are handled. Both these factors clearly establish that the allegations have nothing to do with the trust

and its activities in relation to the charitable objects.

7.13. There appears to be no second opinion on this finding because the scope of Sections 11, 12 and 13, as we find is in relation to application of income and the utilization thereon for charitable purpose, as defined under Section 2(15) of the Act, which reads as under:

“Section 2(15) 'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.”

There is not even an iota of material to come to a conclusion to a different conclusion than what has been held by the CIT (Appeals) and the Tribunal.

7.15. We find that the department has not made out a case of collection of capitation fee under the guise of donation and it has not established a case of involuntary nature of donations. Therefore, the questions of law (i) and (ii) are answered against the revenue and in favour of the assessee.

Question of Law (iii)

8.1. On the third question of law, Mr.T.R.Senthilkumar, learned Standing Counsel relied upon the letter dated 9.12.2009, which is the reply filed by the assessee, in which it is stated that the details will be provided later. We find that query in Question No.(x) is not in relation to admission of students or capitation fee. In any event, we find from the assessment order itself that records were tallied and verified. Therefore, whatever income was offered by the assessee as contributions will be entitled to exemption under Section 11 of the Act.

8.2. The true intent of Sections 11, 12 and 13 of the Act is utilization of funds for charitable purpose and the same has been highlighted by the Supreme Court in a recent decision in *Queen's Education Society v. Commissioner of Income Tax, CDJ 2015 SC 215*. The Supreme Court held that the assessing authority must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down

and if the activities of the institution are found not to be genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. The relevant portion of the said decision reads as under:

“19. It is clear, therefore, that the Uttarakhand High Court has erred by quoting a non-existent passage from an applicable judgment, namely, Aditanar and quoting a portion of a property tax judgment which expressly stated that rulings arising out of the Income Tax Act would not be applicable. Quite apart from this, it also went on to further quote from a portion of the said property tax judgment which was rendered in the context of whether an educational society is supported wholly or in part by voluntary contributions, something which is completely foreign to Section 10(23C) (iiiad). The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall foul of Section 10(23C) is to ignore the language of the Section and to ignore the tests laid down in the Surat Art Silk Cloth case, Aditanar case and the American Hotel and Lodging case. *It is clear that when a surplus is ploughed back for educational*

purposes, the educational institution exists solely for educational purposes and not for purposes of profit. In fact, in *S.RM.M.CT.M Tiruppani Trust v. Commissioner of Income Tax*, (1998) 2 SCC 584, this Court in the context of benefit claimed under Section 11 of the Act held:

'9. In the present case, the assessee is not claiming any benefit under Section 11(2) as it cannot; because in respect of this assessment year, the assessee has not complied with the conditions laid down in Section 11(2). The assessee, however, is entitled to claim the benefit of Section 11(1)(a). In the present case, the assessee has applied Rs. 8 lakhs for charitable purposes in India by purchasing a building which is to be utilised as a hospital. This income, therefore, is entitled to an exemption under Section 11(1). In addition, under Section 11(1)(a), the assessee can accumulate 25% of its total income pertaining to the relevant assessment year and claim exemption in respect thereof. Section 11(1)(a) does not require investment of this limited accumulation in government securities. The balance income of Rs. 1,64,210.03

constitutes less than 25% of the income for Assessment Year 1970-71. Therefore, the assessee is entitled to accumulate this income and claim exemption from income tax under Section 11(1)(a).'

We set aside the judgment of the Uttarakhand High Court dated 24th September, 2007. The reasoning of the ITAT (set aside by the High Court) is more in consonance with the law laid down by this Court, and we approve its decision."

24. The view of the Punjab and Haryana High Court has been followed by the Delhi High Court in *St. Lawrence Educational Society (Regd.) v. Commissioner of Income Tax*, (2011) 53 DTR (Del) 130. Also in *Tolani Education Society v. Deputy Director of Income Tax (Exemption)*, (2013) 351 ITR 184, the Bombay High Court has expressed a view in line with the Punjab and Haryana High Court view, following the judgments of this Court in the *Surat Art Silk Manufacturers Association Case* and *Aditanar Educational Institution case* as follows:

'.....The fact that the Petitioner has a surplus of income over expenditure for the three years in question, cannot by any stretch of logical reasoning lead to the

conclusion that the Petitioner does not exist solely for educational purposes or, as that Chief Commissioner held that the Petitioner exists for profit. The test to be applied is as to whether the predominant nature of the activity is educational. In the present case, the sole and dominant nature of the activity is education and the Petitioner exists solely for the purposes of imparting education. An incidental surplus which is generated, and which has resulted in additions to the fixed assets is utilized as the balance-sheet would indicate towards upgrading the facilities of the college including for the purchase of library books and the improvement of infrastructure. With the advancement of technology, no college or institution can afford to remain stagnant. The Income-tax Act 1961 does not condition the grant of an exemption under Section 10(23C) on the requirement that a college must maintain the status-quo, as it were, in regard to its knowledge based infrastructure. Nor for that matter is an educational institution prohibited from upgrading its infrastructure on educational facilities save on the pain of losing the

benefit of the exemption under Section 10(23C). Imposing such a condition which is not contained in the statute would lead to a perversion of the basic purpose for which such exemptions have been granted to educational institutions. Knowledge in contemporary times is technology driven. Educational institutions have to modernise, upgrade and respond to the changing ethos of education.

Education has to be responsive to a rapidly evolving society. The provisions of Section 10(23C) cannot be interpreted regressively to deny exemptions. So long as the institution exists solely for educational purposes and not for profit, the test is met.'

25. We approve the judgments of the Punjab and Haryana, Delhi and Bombay High Courts. Since we have set aside the judgment of the Uttarakhand High Court and since the Chief CIT's orders cancelling exemption which were set aside by the Punjab and Haryana High Court were passed almost solely upon the law declared by the Uttarakhand High Court, it is clear that these orders cannot stand. Consequently, Revenue's appeals from the Punjab and Haryana High Court's

judgment dated 29.1.2010 and the judgments following it are dismissed. We reiterate that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, Surat Art Silk Cloth, Aditanar, and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit. In addition, we hasten to add that the 13th proviso to Section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in Section 10(23C) read with Section 11 of the Income Tax Act."

(emphasis supplied)

8.3. It only emphasizes that the department is empowered to take action in cases where an institution does not apply the income to further the cause of the trust.

8.4. That apart, for the assessment years 2002-2003 and 2003-2004 as Chief Commissioner of Income Tax-VI, Chennai, having jurisdiction over the case has notified this under Section 10(23C)(vi) of the Act that there is no applicability of section 11 or 13 in those two years. The department has not produced any evidence of breach of Section 10(23C)(vi) of the Act and, therefore, the respondent/Trust will be entitled to the benefit of exemption contained therein.

8.5. In the present case, we find that the department had proceeded on a wrong premise without any basic materials to establish a case of violation of Section 13 of the Act. Therefore, in our considered opinion, the Tribunal was right in deleting the addition. The third question of law is answered against the

revenue and in favour of the assessee.

Question of Law (iv)

9. Apropos the fourth question of law, we find that the case of *P.S.Govindasamy Naidu & Sons v. ACIT, 324 ITR 44*, relied on by the learned Standing Counsel for the revenue, is distinguishable on facts. In the said decision, it has been clearly held that the examination of parents and students of the college found that amounts paid were not corpus donation, but capitation fee. Therefore, the reasoning given in the said decision does not apply to the facts of the present case, as the Assessing Officer has not chosen to conduct any enquiry from any student or parent with regard to the donations. Accordingly, the fourth question of law is answered against the revenue and in favour of the assessee.

Additional Question of Law:

10.1. In addition to the questions of law raised by the

department, we feel it apt to consider the following question:

“Whether the department has established a case of violation of Section 13(1)(d) of the Act as against the respondent/assessee?”

The learned counsel for either side were heard on this issue.

10.2. The very basis of the plea of the Revenue regarding violation of Section 13(1)(d) of the Act is that a sum of Rs.44 Lakhs was found and seized in the course of the search from the residence of the Chairman of the assessee Trust. With regard to the said seizure, the Assessing Officer has accepted the disclosure of the seized cash as the income of the individual and, therefore, in our considered opinion, it cannot be said that assessee trust has violated the provisions of Section 13(1)(d) of the Act. In any event, from the show cause notice and the order of the Assessing Officer, we find that none of the ingredients of Section 13 is attracted to the facts of the present case.

10.3. In such view of the matter, the additional question of law is also answered against the Revenue and in favour of the

assessee.

For the foregoing reasons, these appeals are dismissed. No costs.

(R.S.J.) (R.K.J.)
24.3.2015

Index : Yes
Internet : Yes

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To:

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "A", Chennai.
2. The Commissioner of Income Tax (Appeals) - II
Chennai.
3. The Assistant Commissioner of Income Tax
Central Circle III(4), Chennai – 34.

(66)

R.SUDHAKAR,J.
and
R.KARUPPIAH,J.

(sasi)

T.C.(A).Nos.1052 to 1058 of 2014

24.3.2015