



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-03-2026

CORAM

**THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE SHAMIM AHMED**

TCA.Nos.111, 112 & 113 of 2015

TCA No.111 of 2015

Commissioner Of Income Tax,
Central Circle,
Salem.

... Appellant/Appellant

Vs.

M/s Saveetha Institute of Medical,
Technical Sciences,
333, Brough Road,
Erode 638 001.
PAN: AAFTS 8045 L

... Respondent/Respondent

Prayer:

Appeal has been filed under Section 260A of the Income Tax Act, 1961,
against the order of the Income Tax Appellate Tribunal 'B' Bench Chennai,
dated 18.07.2011 in ITA No.204/MDS/2011.

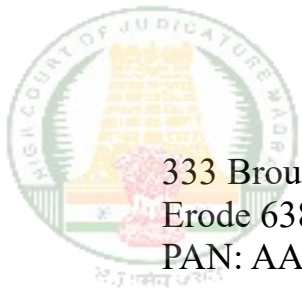
TCA No.112 of 2015

Commissioner of Income Tax,
Central Circle,
Salem.

... Appellant/Appellant

Vs.

M/s Saveetha Medical & Education
Trust,



333 Brough Road,
Erode 638 001.
PAN: AAAAS 7555 D

... Respondent/Respondent

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Prayer:

Appeal has been filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 18.07.2011 in ITA No.205/MDS/2011.

TCA No.113 of 2015:

Commissioner of Income Tax,
Central Circle,
Salem.

... Appellant/Respondent

Vs.

M/s Saveetha Medical & Educational
Trust,
333, Brough Road,
Erode 638 001.
PAN: AAAAS 7555 D

... Respondent/Appellant

Prayer:

Appeal has been filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 18.07.2011 in ITA No.100/MDS/2011.

For Appellant:
in all cases

Mr.J.Narayanasamy,
Standing Counsel

For Respondent:
in all cases

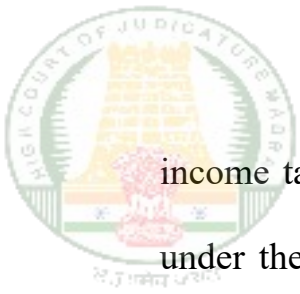
Mr.A.S.Sriraman



COMMON JUDGMENT

These three Tax Appeals are filed by the Department, being aggrieved by the order passed by the Income Tax Appellate Tribunal, confirming the order passed by the Commissioner of Income Tax(Appeals), Central Circle, Salem.

2. It is the case of search conducted in an Education Institution under Section 132(4) of the Income Tax Act, 1961. On receipt of the information that huge cash was collected as capitation fees for admission to the college, a search of the college premises, where Dental College is established, yielded Rs.3,69,950/- and Rs.20,00,000/- was recovered from the premises, where the Engineering College runs. The residence of the Managing Trustees led to the seizure of 5036 grams of gold jewellery. A statement of one Dr.B.Muthukumaran was recorded, who has allegedly confessed that they used to collect Rs.1,00,000/- as capitation fees. Admission of students in the Engineering College under the Management quota and Government quota were examined and a statement was recorded under Section 132(4) of the Income Tax Act, 1961. The Department has proceeded further and drawn a presumption that the assessee failed to disclose the income and also diverted the income for the personal use, instead of using it for the purpose of the trust, which runs the college. Section 11 of the Income Tax Act, 1961, exempts trusts from the



income tax on their income. Whereas the Managing Trustees of the institution under the guise of donation to the trust has collected donation and personally benefited by diverting the income, which formed the sum and substance of the assessment.

3. In the course of the enquiry before the first Appellate Authority, the statement of Dr.B.Muthukumaan, was retracted and the search was conducted based on the information that huge money was collected as capitation fees, has not been substantiated by the material collected during the course of search. The Appellate Authority has found that no statements were recorded from the students during the course of search regarding capitation fees and even during the assessment proceedings, none of the students were examined to corroborate the sworn statement of Dr.B.Muthukumaran. Further, the material, namely, 56 slips containing details of the students admitted under the Management quota and the Government quota for various courses, contained no allegation of collecting of capitation fees or donations, whatsoever. Therefore, for want of corroboration and co-relation between the alleged seizure of money and jewels and the allegation that the trustees were collecting huge capitation fees, was found to be false and there is no proof for the said allegation



4. Merely on suspicion, the premises were searched and though no substantial material was collected, on presumption, tax has been assessed by the Department under the following heads:-

“Income returned :Rs. Nil

ADD:

1.Capitation fees collected from the students
as discussed above :Rs.1,27,00,000

2.Unaccounted cash as discussed above :Rs. 3,69,950

3.Excess income as per Income and Expenditure
Account as per proviso to S.164(1) as discussed
above :Rs.5,26,21,407

Assessed Income :Rs.6,56,91,357

Total Income :Rs.6,56,91,357

Tax :Rs.1,97,07,408

Add:Surcharge @ 10% :Rs. 19,70,741

Total :Rs.2,16,78,149

Add:E.C.@ 3% :Rs. 6,50,345

Tax payable :Rs.2,23,28,494

Add:interest u/s 234A :Rs. 26,79,408

Interest u/s 234B :Rs. 46,88,984

Total Demand payable :Rs.2,96,96,866

Issue Demand Notice and challan accordingly
Penalty proceedings u/s 271AAA is initiated separately.



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This order is passed with the prior approval of the Additional Commissioner of Income-Tax, Central Range, Coimbatore as required u/s 153D of the I.T.Act 1961, vide C.No.CR 16(12)/CBE/dated 31.12.2009.”

5. Therefore, the first Appellate Authority had reversed the order made by the Assistant Commissioner of Income Tax as per the above said breakup. The further Appeals to the Tribunal also ended in confirmation of the order passed by the first Appellate Authority. Hence, the present appeals were filed for the aforesaid prayer.

6. The learned Standing Counsel appearing for the Department strenuously argued that both the first Appellate Authority as well as Tribunal failed to appreciate the scope and ambit of Sections 132(4) and 132(4A) of the Income Tax Act, 1961, which give statutory presumption, in favour of the Revenue and the burden is on the assessee to prove that there is no evasion of tax or violation of income tax provisions. The further submission is that as per the definition under Section 212(A) of the the Income Tax Act, 1961 defines, books of account, includes day book, cash book, accounts books and other books. Therefore, the slips 56 in number were recovered during the search process being books of account maintained in the regular course of administering the college/trust. Sections 132(4) and 132(4A) of the Income Tax



Act, 1961, squarely apply to draw the statutory presumption. Having failed to apply the statutory presumption, both the first Appellate Authority as well as the Tribunal grossly erred.

7. We gave anxious consideration in the above submissions. The presumption under Sections 132 (4) and Section 132(4A) of the Income Tax Act, 1961 reads as below:-

“132(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this subsection may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

132(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—
(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
(ii) that the contents of such books of account and other documents are true; and
(iii) that the signature and every other part of such books of account and other documents which purport to be in the



handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.”

8. The statutory presumption as found in the above Sections is not a conclusive presumption, but a rebuttable presumption. Even to draw the presumption, at the first instance, the Department is bound to place material facts to lay a foundation for drawing such presumption. In this case, the material placed, even after the enquiry before the first Appellate Authority as well the Tribunal are the slips containing details of seats of the students, which according to the learned counsel, fall within the meaning of books of account. The other piece of evidence is the statement of one Dr.B.Muthukumaran, who is the Managing Trustee and who at the time of search of the premises, had given a statement that the management used to collect Rs.1,00,000/- as capitation fees from the students joining under the Management quota.

9. “Books of account” as defined under Section 2(12A) of the Income Tax Act, 1961 is an inclusive definition. It includes day books and other account books maintained in the regular course of administration. Whereas, the exhibits relied upon by the Department have nothing to do with the accounts. It is only



information about the students and the category under which they got admitted.

They do not fall within the definition of books of accounts.

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10. Secondly, to draw the statutory presumption, a sworn statement of one of the Managing Trustees, who remains uncorroborated, will not lead to a presumption that the assessee has collected a sum of Rs.1,27,00,000/- from the students who joined under the Management quota for Engineering. As pointed out by the first Appellate Authority, the Department ought to have examined the students admitted to the college or produced other corroborative material to support the statement of Dr.B.Muthukumaran. Without corroboration, the statement on oath, which has subsequently been retracted and contradicted by the other Managing Trustees, will not form the foundation for drawing such presumption. The further contention of the learned counsel is that the money collected as capitation fees is not utilised for the purpose of trust and thus, there is a subsequent violation.

11. We are of the view that the second contention of the learned counsel regarding non-utilisation of the funds for the trust will not arise in the case in hand, since the collection of funds for the purpose of the trust has not been proved by the Department even by the preponderance of probabilities.



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12. We find, in these appeals, the following Substantial Questions of Law as framed by the Court as below:-

1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is eligible for exemption under Section 11 of the Income Tax Act, without noting that the assessee society has used part of the income for the personal benefit of the trustee as per Section 13(3)(c) of the Income Tax Act? and

2. Whether on the facts and circumstances of the case, the Tribunal was right in deleting the unaccounted cash found during the course of search when the assessee was unable to explain the source of income?

13. We find that the Substantial Questions of Law and the arguments placed by the learned counsel before us are entirely different. It is understandable that the learned counsel found that the questions framed are either Questions of Law or Substantial Questions of Law. Therefore, he has raised, during the course of arguments, a pertinent question regarding presumption in these cases under Sections 132(4) and 132(4A) of the Income



Tax Act, 1961. We have answered that the material placed by the Department is not sufficient to draw the statutory presumption under Sections 132(4) and 132(4A) of the Income Tax Act, 1961. So far as the Substantial Questions of Law framed are concerned, we find that they have been formulated under the presumption that there was collection of capitation fees from the students. When the very foundation for the case itself remains unproved, the question whether the trust is entitled to exemption under Section 11 of the Income Tax Act, 1961, does not arise. For the sake of repetition, we are enforced that the Department at the first instance, should have established collection of capitation fees by the trust. Merely on the statutory presumption, without corroboration, the collection of capitation fee as found in the assessment order, remains unproved and unsustainable. Hence, the order of the first Appellate Authority as well as the Tribunal need to be upheld.

14. Accordingly, **these Tax Case Appeals stand dismissed.** No order as to costs.

(G.JAYACHANDRAN J.)

(SHAMIM AHMED J.)

02-03-2026

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Page Nos.11/13



Neutral Citation:Yes/No
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T.C.A.Nos.111, 112 & 113 of 2



Dr.G.JAYACHANDRAN, J.

and

SHAMIM AHMED, J.

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T.C.A.Nos.111, 112 & 113 of 2015



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T.C.A.Nos.111, 112 & 113 of 2



02-03-2026