

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.1778/M/2015  
&  
ITA No.2612/M/2016  
Assessment Year: 2011-12**

M/s. Saraswathi Vidya Bhavan, Shivaji Talao, Tank Road, Bhandup, Mumbai - 400 078 <b>PAN: AAATS0085M</b>	Vs.	DDIT (E)-1(2), Piramal Chambers, Lalbaug, Parel, Mumbai - 400012
(Appellant) (Respondent)		

**Present for:**

Assessee by : Shri Anil Thakrar, A.R.  
Revenue by : Shri R. Manjunatha Swamy, D.R.

Date of Hearing :09.07.2019  
Date of Pronouncement :31.07.2019

**ORDER**

**Per G. Manjunatha, Accountant Member:**

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Exemptions)-12, Mumbai dated 30.12.2014, passed under section 12AA(3) of the Income Tax Act, 1961, withdrawing registration granted under section 12A of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

**"1. NATURAL JUSTICE:**

1.1 The Learned Commissioner of Income - tax (Exemption), Mumbai ["Ld. CIT (E)"], erred in passing the appellate order without giving sufficient, proper and adequate opportunity of being heard to the Appellant.

1.2 It is submitted that in the facts and the circumstances of the case, and in law, the appellate order be held as bad in law as the same is passed in breach of the principles of natural justice.

**WITHOUT PREJUDICE TO THE ABOVE**

2.1 The Ld. CIT (E) erred in cancelling the registration of the Appellant trust by invoking the provisions of section 12AA (3) of the Income - tax Act, 1961.

2.2 While doing so, the Ld. CIT (E) erred in:

- (i) Basing his action only on surmises, suspicion and conjecture;
- (ii) Taking into account irrelevant and extraneous considerations; and
- (iii) Ignoring relevant material and considerations as submitted by the Appellant.

2.3 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.

3.1 Without prejudice to the above, assuming - but not admitting - that the registration of the Appellant trust was liable to be cancelled u/s. 12AA (3) of the Act, the Ld. CIT(E) erred in cancelling the same with effect from 1986-1987.

4. The Appellant craves leave to add to, alter, delete or modify all or any of the above grounds at the time of hearing.”

2. The brief facts of the case are that the assessee is an educational institution established as a public charitable trust in the year 1985 with main objects of imparting education. The assessee is running an educational institution and offering various courses in the name of Saraswathi Vidya Bhavan. The assessee trust is registered under section 12A of the Income Tax Act, 1961. The Ld. CIT(E) issued a show cause notice under section 12AA(3) of the Income Tax Act, 1961 on the basis of proposal received from Assessing Officer, as per which the activities of the trust is not carried out in accordance with objects, therefore, the Ld. CIT(E) issued a show cause notice and called upon the assessee to explain as to why registration granted under section 12A of the Income Tax Act, 1961 shall not be cancelled. In response, the assessee has filed a written submission vide its letter dated 02.09.2014 and explained that

there is no violation referred to in any of the provisions of section 11 and 13 of the IT Act, and mere acceptance of donation in form of building fund from the students cannot be considered as acceptance of capitation fee, as defined under the provisions of Prohibition of Capitation Fee Act (Government of Maharashtra), 1987. The assessee has also filed elaborate written submissions on the objects of the trust and its activities and argued that its objects are charitable in nature, because it is imparting education by establishing schools and colleges and also its activities are carried out in accordance with its objects. The assessee further submitted that there is no dispute with regard to the fact that it has accepted donations from students for developing school infrastructure and such donations are not in the nature of capitation fee as per the provisions of Prohibition of Capitation Fee Act (Government of Maharashtra), 1987 and also such donations are very small in nature. The assessee further submitted that the donations are collected from the students/parents are voluntary and there is no compulsion to pay donations in connection with admission. Further, the amount of donations collected, including fees is within the limit prescribed by the State Government for the courses offered by the trust therefore, merely for the reason that fees has been structured in such a way that part of the amount is building fund, the same cannot be brought within the ambit of Prohibition of Capitation Fee Act (Government of Maharashtra), 1987. The assessee also filed various details to prove that amount collected in form of building fund has been used for the objects of the trust. In this regard, it has relied upon various judicial precedents including the decision of ITAT, Mumbai in

the case of South Indian Educational Society vs. CIT-Central in ITA No.3288/M/2013.

3. The Ld. CIT(E) after considering relevant submissions of the assessee and also by relied upon the decision cited by the assessee in the case of South Indian Educational Society vs. CIT (supra) held that the assessee has accepted donations from students, thereby, violated Prohibition of Capitation Fee Act (Government of Maharashtra), 1987 and hence, the activities of the trust cannot be considered as in accordance with its objects. The Ld. CIT(E) further observed that it has accepted donations from students for admission, but reiterated its arguments that donations taken from students do not come within the provisions of Prohibition of Capitation Fee Act (Government of Maharashtra), 1987 without explaining how such donations are not hit by provisions of said Act. The Ld. CIT(E) has also distinguished the case laws relied upon by the assessee, more particularly, in the case of South Indian Educational Society vs. CIT (supra) to argue that although the Tribunal has held that when objects are in charitable in nature and its activities are carried out in accordance with its objects, merely for the reason of acceptance of donations from the students, the registration granted under section 12A cannot be cancelled as long as donations are applied for objects of the Trust. But, facts remain that provisions of section 12AA(3) of the IT Act, empowers the Ld. CIT(E) to cancel registration, if the Trust violates any of the provisions of the IT Act, or provisions of Prohibition of Capitation Fee Act (Government of Maharashtra), 1987. Therefore, he opined that merely for the reason that the trust objects are charitable in nature, it cannot be held that its activities are

carried out in accordance with its objects, even though it has violated Prohibition of Capitation Fee Act (Government of Maharashtra), 1987 accordingly, cancelled registration granted under section 12A of the IT Act, 1961.

4. Aggrieved by the Ld. CIT(E) order, the assessee is in appeal before us. The Ld. A.R, for the assessee submitted that the Ld. CIT(E) was erred in cancellation of registration granted under section 12A of the IT Act, 1961 by invoking provisions of section 12AA(3) of the IT Act, without appreciating the fact that there is no condition precedent for invoking powers under section 12AA(3) of the Act. The Ld. A.R. further submitted that in order to invoke provisions of section 12AA(3), the Ld. CIT(E) should satisfy himself that objects of the trust are not charitable in nature and activities are not carried out in accordance with objects of the trust. In this case, on perusal of entire order of the Ld. CIT(E), it is very clear that the Ld. CIT(E) has cancelled registration for the sole reason of acceptance of donations on the ground that the said donations are in the nature of capitation fee, in violation of Prohibition of Capitation Fee Act (Government of Maharashtra), 1987 without appreciating the fact that the assessee is entitled to collect donations, if such donations along with fees collected from students is within the prescribed limit fixed by the competent authority. The Ld. A.R. further submitted that it is not the case of the Ld. CIT(E) that the objects are not charitable in nature and its activities are not carried out in accordance with objects. The only allegation of the Ld. CIT(E) for cancellation of registration is that collection of donations being 'building fund' from parents of students. The assessee never disputed the fact that it has collected donations

but, such donations are within the prescribed limit fixed by the competent authority and also donations have been utilised for the purpose of objects of the trust. The Ld. A.R. referring to provisions of the Maharashtra Educational Institution, Prohibition of Capitation Fee Act (Government of Maharashtra), 1987 and rules, submitted that there is no bar in the IT Act, for receiving voluntary contributions for the purpose of development at trust, but if the institution/trust collects capitation fee in pursuance of admission of a student in school/colleges, then it violates the Prohibition of Capitation Fee Act (Government of Maharashtra), 1987. In this case, the assessee has demonstrated with evidences that it has collected small amount of building fund ranging from Rs.1000 to Rs.15000 for the purpose of development of infrastructure being buildings and such donations are voluntarily given by parents without any compulsion for admission to courses conducted by the trust. If you go through the list of donations which is available in paper books, in many cases the donations are meager amount ranging from Rs.1000 to Rs.2000. The assessee has accounted those donations in its books of accounts and also applied for the purpose for which such donations have been collected. Therefore, it is incorrect on the part of the Ld. CIT(E) to cancel registration only for the reason of collection of donations without bringing on record any evidences to prove that the assessee has violated any of provisions of section 11 & 13 of the Act. In this regard, he relied upon various judicial precedents, including the decision of ITAT, Mumbai in the case of South Indian Educational Society vs. CIT-Central in ITA No.3288/M/2013.

5. The Ld. D.R., on the other hand, strongly supporting order of the Ld. CIT(E) submitted that it is a clear case of violation of provisions of Prohibition of Capitation Fee Act (Government of Maharashtra), 1987 which is evident from the fact brought out by the Ld. CIT(E) in its order that the assessee never disputed acceptance of donations from parents in pursuance of admission to school/colleges. Therefore, the Ld. CIT(E) was very much within his rights to cancel registration granted under section 12A of the IT Act, 1961 by invoking powers under section 12AA(3) of the Act, 1961 and his order should be upheld.

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The Ld. CIT(E) has cancelled registration granted under section 12A of the IT Act, 1961 by using his powers conferred under section 12AA(3) of the IT Act, 1961. The sole reason given by the Ld. CIT(E) for cancellation of registration is that the assessee has collected 'Building fund' from parents/students, thereby, violated provisions of Prohibition of Capitation Fee Act (Government of Maharashtra), 1987. Except this, there is no iota of any evidence in the order of the Ld. CIT(E) that either the assessee has violated any of provisions of section 11 & 13 of IT Act, 1961 or objects of the trust are not charitable in nature and also its activities are not carried out in accordance with its objects. In order to invoke provisions of section 12AA(3), the Ld. CIT(E) shall make a clear case of violations of any of the provisions of section 11 & 13 and also the activities of the trust are not genuine. In this case, the Ld. CIT(E) never disputed the fact that the objects of the trust are charitable in nature. Once an institution/trust came within the phrase "existence slowly for

education purpose and not for profit” no other conditions like application of income were required to be complied with. If you go through the order of the Ld. CIT(E), it is very clear that the sole reason given by Ld. CIT(E) for cancellation of registration is collection of donations in violations of Prohibition of Capitation Fee Act (Government of Maharashtra), 1987. Whether collection of donations from the parents/students amounts to violation of Prohibition of Capitation Fee Act (Government of Maharashtra), 1987 or not has to be examined in light of quantum of donations collected by the assessee and also applications of such donations for the objects of the trust. In this case, on perusal of details filed by the assessee, we find that the assessee has collected donations from parents/students ranging from Rs.1000 to Rs.15000 and in total the sum of such donations collected for the year under consideration is at Rs.70,60,700/-. In most of the cases, the donations collected from parents/students are ranging from Rs.1000 to Rs.2000/-. The assessee filed necessary evidences to prove that the donations collected are accounted in the books of accounts and also same has been applied for objects of the trust. The assessee has also filed evidences to prove that the amount of fee collected from students including donations being ‘Building Fund’ is within the prescribed limit fixed by the competent authority for collection of fees for particular courses. All these facts are not disputed by Ld. CIT(E). The Ld. CIT(E) is only on the point of violation of Prohibition of Capitation Fee Act (Government of Maharashtra), 1987. We have gone through provisions of the Maharashtra Educational Institution, Prohibition of Capitation Fee Act (Government of Maharashtra), 1987 and rules and regulation.

As per section 5 of the Principle Act, any trust or institution is authorised to collect voluntary donations from any benevolent persons for the purpose of development of trust/institution, but such donations shall not be collected in pursuance of admission to a course in a college/schools run by the trust or institution. In this case, on perusal of details available on record, it is abundantly clear that the donations collected from the parents/students in the form of building funds is voluntary and such funds have been applied for the purpose of development of buildings and other infrastructures. It is also not in dispute that the donations including fees collected from students is not in excess of prescribed fees fixed by the state government. Therefore, we are of the considered view that the Ld. CIT(E) erred in cancelling registration granted under section 12A by invoking his powers under section 12AA(3) of the IT Act, 1961 only for the reason of receipt of donations from students/parents without appreciating the fact that such donations are voluntary and also within the limit prescribed limit fixed by the competent authority.

7. Coming to the case laws relied upon by the Ld. A.R. for the assessee. The Ld. A.R. relied upon the decision of ITAT, Mumbai in the case of South Indian Educational Society vs. CIT-Central in ITA No.3288/M/2013. We find that the co-ordinate bench of the Tribunal has considered an identical issue in light of collection of capitation fee from students and held that once the objects of the trust are charitable in nature and its activities are carried out in accordance with objects of the trust, merely for the reason of collection of donations, registration granted under section 12A of the IT Act, 1961 cannot be cancelled. We further

noted that ITAT, Pune Bench in the case of Maharashtra Academy of Engineering and Educational Research vs. CIT (2010) 133 TTJ 706 held that if the CIT had an information of some wrongful means of earning fees in the form of a donation or the information tells about excessive charging of fees; then the CIT in his rights can pass on the information to the concerned authority, but when there is no misutilisation of funds and it continue to carry on, its activities, then the CIT has no jurisdiction to cancel registration under section 12AA(3) of the IT Act, 1961. The Hon'ble Karnataka High Court, in the case of CIT vs. Islamic Academy of Higher Education (2013) 229 taxmann.com held that where assessee trust was fulfilling its main object of imparting education, registration of trust should not be cancelled on the basis of trustees misappropriating trust funds. The Hon'ble Karnataka High Court in the case of CIT vs. Garden City Education Trust 28 DTR 139 (Kar.) held that where there is no dispute in respect of the objects of the trust, that of imparting of education and also when there is no dispute regarding the fact that the trust is actually imparting education and not carrying on any other activities, the trust is eligible for getting registration under section 12A, as a charitable institution and the question regarding application of funds and allowability of benefit of exemption under section 11 & 12 are matters which are to be examined by the Assessing Officer at the time of assessment and not by registering authority.

8. Coming to the case laws relied upon by the Ld. D.R. The Ld. D.R. relied upon the decision of Hon'ble Bombay High Court in the case of Sinhgad Technical Education Society vs. CIT (Central) 249 CTR 45. We find that the issue before the Hon'ble

Bombay High Court was that after amendment to section 12AA of the IT Act, 1961, whether Commissioner was empowered to cancel registration of a trust which has been obtained at any time under section 12A of the Act. No doubt, after amendment to section 12AA(3) the Commissioner is empowered to cancel the registration of a trust under section 12AA(3), but such cancellation should be only when the activities of the trust are not carried out in accordance with its objects. The Ld. D.R. further relied upon the decision of Hon'ble Karnataka High Court in the case of Navodaya Education Trust vs. UOI (2018) 90 taxmann.com 148 (Karnataka). We find that the Hon'ble Karnataka High Court after considering the fact that the trust is collecting huge capitation fee for getting admission students for pursuing medical education and also such donations have been misused by the trustees for the personal purpose came to the conclusion that once the trust is collecting huge amount of capitation fee from students for admission to medical colleges, withdrawal of exemption under section 10(23C)(b) did not require any interference.

9. In this case, on perusal of facts available on record, we find that the Ld. DIT(E) in his order except stating that the trust is collecting donations being 'Building Fund' from students/parents has not made any observations with regard to activities of the trust, if any, as referred to in section 11 or 13 of the IT Act, 1961. Unless, the Ld. DIT(E) brings on record any evidences to prove that the objects of the trust are not charitable in nature and its activities are not carried out in accordance with objects, then merely for the reason of collection of donations from students, that too when such donations are

within the limit at prescribed fees fixed by the competent authority, registration granted under section 12A cannot be cancelled by invoking his powers under section 12AA(3) of the IT Act, 1961. Hence, we set aside the order of the Ld. DIT(E) and restored registration granted under section 12A of the IT Act, 1961.

**ITA No.2612/M/2016**

10. The issue involved in this appeal is consequential and follow up action of the AO, consequent to cancellation of registration granted under section 12A of the IT Act, by the Ld. CIT(E) under section 12AA(3) of the Act. The AO assessed surplus for the year under the head income from business or profession for the reason that exemption granted under section 12A has been withdrawn for the impugned assessment order for the reason stated in the order of the Ld. CIT(E) as per which the assessee has violated provisions of Prohibition of Capitation Fee Act (Government of Maharashtra), 1987 by collecting building fund from parents/students in connection with admission in schools/colleges run by the trust. Except this, no other reasons have been brought on record to deny the benefit of exemption claimed under section 11 of the Income Tax Act, 1961. We find that the Tribunal has restored registration granted under section 12A to the assessee from the date of registration for the detailed reasons recorded in its order in ITA No.1778/M/2015. Therefore, once registration granted under section 12A is available to the assessee from the date of registration including for the impugned assessment year, then the AO was incorrect in denying the exemption under section 11 of the Income Tax Act, 1961. Therefore, we direct the AO to

allow the benefit of exemption claimed under section 11, in respect of income derived from property held under trust subject to other provisions of the IT Act, which is applicable to the assessee. Hence, we set aside the issue to the file of the AO and direct him to assess the income of the assessee under the provisions of section 11 of the Income Tax Act, 1961.

11. In the result, the appeal filed by the assessee is allowed.

12. As a result, both the appeals of the assessee are allowed.

**Order pronounced in the open court on 31.07.2019.**

**Sd/-  
(Pawan Singh)  
JUDICIAL MEMBER**

**Sd/-  
(G. Manjunatha)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 31.07.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.