

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C', BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.1914 (Bang) 2016
(Assessment year : 2011 – 12)**

M/s. Children's Education Society,
40, 1st Phase, JP Nagar,
Bangalore
PAN. AAATC1553A

Appellant

Vs

The ACIT (E), Circle – 1,
Bangalore

Respondent

&

**ITA No.2164 & 2165 (Bang) 2016
(Assessment years : 2007 – 08 & 2011 – 12)**

The ACIT (E), Circle – 1,
Bangalore

Appellant

Vs

M/s. Children's Education Society,
40, 1st Phase, JP Nagar,
Bangalore
PAN. AAATC1553A

Respondent

**Assessee by : Shri V. Srinivasan, Advocate
Revenue by : Shri Pradeep Kumar, CIT DR
Date of hearing : 16 – 07 – 2019
Date of pronouncement : 28– 08 – 2019**

ORDER

PER A. K. GARODIA, A.M.:

Out of these appeals, two appeals are filed by the revenue and one appeal is filed by the assessee and these are directed against two separate orders of learned CIT (A) – 14, LTU, Bangalore both dated 20.09.2016 for A. Y. 2007 – 08 & 2011 – 12. All these three appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the revenue for A. Y. 2007 – 08 in ITA No. 2164/Bang/2016 are as under: -

“Exemption u/s 11

The learned CIT(A) erred in fact and in law in directing the A.O to consider the claim of the assessee u/s 11 of the Act when the matter has not reached finality as the Department has filed further appeal before the Hon'ble Karnataka High Court in the assessee's case for A.Y 2006-07.

Disallowance of Building fund and Infrastructure Development Fund:

The learned CIT(A) erred in fact and in law in directing the A.O to delete the addition made in respect of the building fund and infrastructure development fund.

Unexplained Investments:

The learned CIT(A) erred in fact and in law in holding that Sec.69 cannot be invoked on the investments made by the assessee.”

3. Similarly, the grounds raised by the revenue for A. Y. 2011 – 12 in ITA No. 2165/Bang/2016 are as under: -

“Disallowance of Building fund and Infrastructure Development Fund:

The learned CIT(A) erred in fact and in law in directing the A.O to delete the addition made in respect of the building fund and infrastructure development fund.”

4. Similarly, the grounds raised by the assessee for A. Y. 2011 – 12 in ITA No. 1914/Bang/2016 are as under: -

“1. The order of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in upholding the denial of exemption u/s 11 of the Act under the facts and in the circumstances of the appellant's case.

2.1 The learned CIT[A] is not justified in holding that the appellant has collected capitation fee for admission of students which shows that the appellant has profit motive and thereby disentitled the exemption u/s 11 of the Act under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] ought to have appreciated that the conclusion that the appellant has received capitation fees based on statement obtained from various persons by the learned A O were not put to the appellant for rebuttal and no reliance could have been placed on the

said statement untested in the cross examination under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] ought to have appreciated that the appellant is a Priva linguistic minority educational institution without receiving any grant/assistance from State and any assumed fixation of fees by the State Government is in violation of the Constitution in the first instance as held by the majority judgement in the case of T.M.A. PAI FOUNDATION Et OTHERS V. State of Karnataka Et Others and consequently, the invocation of Karnataka Educational Institution Prohibition of Capitation Fee Act, 1984 is misconceived and at any rate it applies only to Medical and Engineering disciplines and the appellant is running educational institutions of various non-engineering and medical disciplines and in view of the fact the surplus received is reasonable and having regard to the extent of corpus at the beginning of the year, as against 10 to 15% which is held to be reasonable by the Hon'ble Karnataka High Court in the case of VISVESVARAYA TECHNOLOGICAL UNIVERSITY V. ACIT reported in 100 DTR 89, in the context of section 10[23C][iiiab] of the Act, which indicates that the educational activity is not tainted with commercial activity as alleged by the learned A.O. and at any rate notwithstanding even in extreme case, if it is to be assumed that the contributions received are in violation of the Act, they are only in respect of some institutions and since such revenue is applied for educational purposes, there is no provision to ignore the fact of application of income and deny exemption u/s.11 and u/s.10[23C][iiiad] of the Act, under the facts and in the circumstances of the case.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s.234-A and 234-B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled especially, there was no obligation to file an estimate and pay advance-tax and therefore, the interest charged u/s.234B of the Act requires to be cancelled.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

5. Learned DR of the revenue filed written submissions for both years and the same are reproduced herein below: -

a) For A. Y. 2007 – 08

“May it please Your Honours

In the present case filed by the department, the Grounds of Appeal as raised by the revenue has been broadly categorised into the following headings:

Exemption u/s 11

(1) The Ld.CIT(A) erred in facts and in law in directing the A.O. to consider the claim of the assessee u/s 11 of the Act when the matter has not reached finality as the Department has filed further appeal before the Hon'ble KTK High Court in the assessee's case for A.Y: 2006-07.

Disallowance of Building fund and Infrastructure Development Fund.

(2) The Ld.CIT(A) erred in facts and in law in directing the A.O. to delete the addition made in respect of the building fund and infrastructure development fund.

Unexplained Investments.

(3) The Ld.CIT(A) erred in facts and in law in holding that sec.69 cannot be invoked on the investments made by the assessee.

Reliance is placed on the assessment order of the A.O. wherein he brought out the reasons for denial of Exemption u/s 11, Disallowance of Building fund and Infrastructure Development Fund and addition on account of Unexplained Investments.

1.1 The A.O. in his assessment order at para 3 has stated that in the assessee/appellant's own case for A.Y: 1999-2000 to 2002-2003 and 2004-05 to 2006-07 had upheld that the objects of the assessee-society were nothing but charitable as defined under the Income-tax Act and that the assessee-society does not exist for profit motive in as much as the surplus generated by its various institutions had been used for the development of existing institutions and new institutions. The order of the Hon'ble ITAT on the issue of granting registration u/s 12A of the Act has been further contested u/s 260A of the Act by the Revenue before the Hon'ble High Court of Karnataka. The Ld.CIT(A) however, relying the order of the Hon'ble ITAT in the assessee's own case for A.Y:2008-09 and A.Y:2009-10 has remanded the matter back to the file of the A.O. observing that the appellant was entitled to exemption u/s 11 of the Act and the A.O. has allowed exemption u/s 11 for above years. In view of above, the Ld.CIT(A) has directed the A.O. to consider the claim of the assessee u/s 11 of the Act. However, since the department has filed further appeal before the Hon'ble High Court and the matter has not reached finality, I agree with the decision of the A.O. in denial of exemption u/s 11 and the same may be upheld.

2. Disallowance Building fund and Infrastructure Development Fund.

The Ld.CIT(A) deleted the addition made on account of above following the decision of his predecessor for A.Ys: 2008-09 and 2009-10 respectfully following the order of the Hon'ble ITAT(Bang) in ITA Nos.140 & 141/Bang/2010 dated 20.5.2010. However, the A.O.has stated in his assessment order that the action of the A.O.on denial of the same for A.Y:2006-07, has been confirmed by the Ld.CIT(A). For the year under consideration the assessee before claiming exemption u/s 11 has added the building fund and infrastructure development fund to the surplus amount and has arrived at the net surplus fund for application. The findings of the Revenue on this issue for earlier years holds good for this year also as confirmed by the Ld.CIT(A) for A.Y:2006-07. I agree with the findings of the A.O. and the same may be confirmed.

Unexplained Investments.

During the course of survey, the agreement to sell dated 17/4/2006 was impounded and according to it, the actual consideration is Rs.7.05 crs as against the registered consideration of Rs.1 Cr as per the original registered sale deed dated 8/6/2006 impounded. The difference in consideration paid in cash is Rs.6.05 crs. As far as the payment of Rs.1 Cr paid on 15/03/2006 as advance, the society in its accounts for the year ended 31/03/2006 has accounted for such payment under advances in the balance sheet filed. In view of this the balance consideration of Rs.6.05 Crs is considered as unexplained investment and added to the total income of the assessee u/s 69 of the IT Act. However, the Ld.CIT(A) deleted the addition made since the assessee has reflected the investment made in the Balance Sheet. I agree with the findings of the A.O. and the order of the Ld.CIT(A) on this may be dismissed and order of the A.O.upheld.

Conclusion

In view of the submissions made above, examination of submissions made by the revenue the order of the Ld.CIT(A), Bangalore is erroneous and bad in law as far as the revenue grounds are concerned .

Prayer

In the wake of the above submissions, it is humbly prayed to dismiss the order of the Ld.CIT(A) and any other order as may please your honours.

Respectfully submitted.”

b) For A. Y. 2011 – 12

“May it please Your Honours

In the present case filed by the assessee, the Grounds of Appeal as raised by the assessee has been broadly categorised into the following headings:

(1) The Ld.CIT(A) erred in facts and in law in denying exemption u/s 11 of the Act to the assessee/appellant by holding that the assessee/appellant has collected capitation fee for admission of students which shows that the appellant has profit motive and thereby the denial.

(2) Charging of interest u/s 234A and 234B of the Act deserves to be cancelled, as there was no obligation to pay advance tax.

Reliance is placed on the assessment order of the A.O. wherein he brought out the reasons for exemption u/s 11 as well as exemption u/s 10(23C)(iiiad) of the Act, 1961.

The A.O. has stated in his assessment order that the assessee has received donations and capitation fee from parents of students under the guise of voluntary contributions/corpus donations or under the heading of 'Building fund' or 'infrastructure development fund' which is opposed to the public policy. Therefore the assessee trust has violated the provisions of the "Karnataka Educational Institutions Prohibition of Capitation Fee Act, 1984". Reliance is placed on the Hon'ble Supreme Court decision in the case of Ms. Mohini Hain vs State of Karnataka (1992) 2 SCC 666 wherein the Hon'ble Supreme Court has held that the capitation fee were nothing but price for selling education and such "teaching shops" were contrary to the constitutional scheme and abhorrent to our Indian culture. The A.O. has explained with individual student donation/capitation fee elaborately in his assessment order. In the case of the assessee, purpose of running the educational institutions is over-shadowed by profit-making motives of the Society. It is worth mentioning that the assessee is making huge surplus every year. It was held by the Hon'ble Uttarakhand High Court in the case of Queen's Education Society, as reported in 177 Taxman 326, that if systematic profits are being earned, then the purpose may not be held as charitable and exemption u/s 11 may not be permissible. The Ld.CIT(A) discussed the case and following the case laws in the decision of the jurisdictional Hon'ble ITAT in the case of Kammavari Sangha in ITA No.206 & 207/Bang/2014 dated 17.06.2016, held that the assessee/appellant is not eligible for exemption u/s 11. I agree with the findings of the A.O. and Ld.CIT(A) on the above and the same may be confirmed.

Charging of interest u/s 234A and 234B are mandatory on the income determined and it is automatic and consequential to income determined and is as per specific provisions of the Act and the same may be retained.

Conclusion

In view of the submissions made above, examination of submissions made by the revenue the order of the Ld.CIT(A), Bangalore is erroneous and bad in law as far as the revenue grounds are concerned .

Prayer

In the wake of the above submissions, it is humbly prayed to dismiss the order of the Ld.CIT(A) and any other order as may please your honours.

Respectfully submitted.”

6. Learned AR of the assessee submitted that one common issue involved in both these appeals of the revenue is regarding the addition made by the AO in both years in respect of the building and infrastructure fund which is deleted by CIT (A) in both years. He submitted a copy of the tribunal order in assessee's own case for A. Ys. 2008 – 09 & 2009 – 10 in ITA Nos. 1439 & 1554/Bang/2012 dated 30.05.2014 and drawn our attention to Para 18 & 19 of this tribunal order and pointed out that in those two years, the tribunal has followed the judgment of Hon'ble Karnataka High Court rendered in assessee's own case for A. Y. 1999 – 2000 & 2000 – 2001 as reported in 358 ITR 373 and it was noted that as per Para 28 of that judgment, Hon'ble Karnataka High Court remanded this issue to the AO for fresh consideration and respectfully following the same, in those two years also, the tribunal restored this matter back to the file of AO for fresh consideration. He submitted that in the present two years also, this issue may be restored to AO for fresh decision with similar direction.

7. Thereafter, he submitted that there is no other issue in the appeal of the revenue for A. Y. 2011 – 12 but in A. Y. 2007 – 08, there are two more issues raised by the revenue. He pointed out that as per Ground No. 1 in A. Y. 2007 – 08, the grievance of the revenue is this that CIT (A) is not justified in directing the AO to consider the claim of the assessee u/s 11 as per order of the tribunal in A. Ys. 2008 – 09 & 2009 – 10. He also submitted that in A. Y. 2011 – 12, the issue about allowability of exemption u/s 11 was decided by CIT (A) against the assessee and therefore, in that year, this issue about allowability of exemption u/s 11 is raised by the assessee in its appeal for A. Y. 2011 – 12. He submitted that this is the only

objection of the revenue in its appeal that the department has not accepted the tribunal order and appeal is pending before Hon'ble Karnataka High Court. He submitted that this cannot be a basis to deny this benefit to the assessee. He also submitted that in para 24 of the same tribunal order in assessee's own case for A. Ys. 2008 – 09 & 2009 – 10 (Supra), the tribunal has restored back this issue regarding exemption u/s 11 to the file of AO. He also submitted that in A. Y. 2011 – 2, it is held by the AO in Para 11.3 of the assessment order that the amount received by the assessee in the form of donation is nothing but capitation fees. He pointed out that in Para 12 of the assessment order, the AO has referred to Karnataka Educational Institutions (Prohibition of Capitation Fees) Act, 1984 and in Para 12.3, the AO jumped to the conclusion that the assessee is collecting capitation fees and hence, violated the provisions of the Karnataka Educational Institutions (Prohibition of Capitation Fees) Act, 1984 and mainly on that basis, rejected the claim of the assessee in that year for exemption u/s 11 and learned CIT (A) had confirmed the same and therefore, the assessee is in appeal in this year on this aspect. He submitted a copy of the tribunal order rendered in the case of Rashtreeya Sikshan Samithi Trust vs. Addl. CIT in ITA No. 1732/bang/2017 dated 20.03.2018 (Reported in TS – 7561-ITAT-2018(Bangalore)-O). Reliance was placed on this tribunal order. It was pointed out that in that case also, the allegation was that the assessee has received capitation fees in violation of Karnataka Educational Institutions (Prohibition of Capitation Fees) Act, 1984 and the tribunal took note of the affidavit of the assessee stating that no proceedings were initiated against the assessee for any violation of Karnataka Educational Institutions (Prohibition of Capitation Fees) Act, 1984 or Karnataka Educational Institutions (Regulation of Admissions and Fixation of Fees Special Provisions) Act, 2011 and the tribunal in that case observed that since, the contents of this affidavit were neither contradicted by the DR of the revenue in that case orally nor by filing a counter affidavit, the tribunal in that case drawn an inference that there is no violation of any of these two Acts. He submitted that in the present case also, no proceedings were initiated against the assessee for any violation of Karnataka Educational Institutions (Prohibition of Capitation Fees) Act, 1984 or Karnataka Educational Institutions (Regulation of Admissions and Fixation of Fees Special Provisions) Act, 2011 and after the hearing is over, the present

assessee will also file affidavit in this regard and subsequently, learned AR of the assessee filed an affidavit of Mr. S. N. V. L. Narshimha Raju, President of the Assessee Society dated 26.07.2019 and it is stated in this affidavit that no proceedings were initiated against the assessee for any violation of Karnataka Educational Institutions (Prohibition of Capitation Fees) Act, 1984 or Karnataka Educational Institutions (Regulation of Admissions and Fixation of Fees Special Provisions) Act, 2011. He submitted that copy of this affidavit will be given to the learned DR of the revenue and he may file a counter affidavit within a reasonable time to contend that the contents of this affidavit of the assessee are not correct. We would like to observe here that till date; no counter affidavit is filed by the DR of the revenue. He also submitted that against the refusal to grant registration u/s 12A, two appeals were filed by the assessee before the tribunal and both were decided in favour of the assessee in ITA No. 915/Bang/2006 dated 26.09.2007 and in ITA No. 1145/Bang/2007 dated 11.07.2008. He filed copy of both these tribunal orders. He also submitted that on 12.08.2014, learned DIT (E) has granted registration u/s 12A w.e.f. A. Y. 2006 – 07 and he submitted a copy of the same. He also submitted against both these tribunal orders, appeals were filed by the revenue before Hon'ble Karnataka High Court and both were dismissed by Hon'ble Karnataka High by way of a combined order dated 22.09.2014 in ITA No. 1003 and 1128 of 2008 and he submitted a copy of this judgment. He submitted that in view of this judgment of Hon'ble Karnataka High Court and also in view of this fact that no difference in facts could be pointed out by the revenue in the present years and in view of this additional fact brought on record that no proceedings were initiated against the assessee for any violation of Karnataka Educational Institutions (Prohibition of Capitation Fees) Act, 1984 or Karnataka Educational Institutions (Regulation of Admissions and Fixation of Fees Special Provisions) Act, 2011, the order of CIT (A) on this issue should be confirmed in A. Y. 2007 – 08 his order in A. Y. 2011 – 12 should be set aside on this aspect i.e. allowability of exemption u/s 11.

8. Regarding Ground No. 3 in the appeal of the revenue for A. Y. 2007 – 08 in respect of addition made by the AO for alleged unexplained investment deleted by CIT (A), he submitted that as per the original assessment order dated 31.12.2009, addition on this account was made of Rs. 665,67,200/- but as per the order dated

02.06.2010 passed u/s 154 copy available on pages 28 to 30 of the paper book, this addition was reduced by Rs. 2 Crores. He submitted that this addition was made by the AO on this basis that as per the agreement to sell dated 17.04.2006 impounded, the actual consideration is Rs. 705,67,200/- as against the registered consideration of Rs. 1 crore and in this manner, the AO made addition of Rs. 665,67,200/- later reduced by Rs. 2 Crores as per order u/s 154. He submitted that this order u/s 154 is available on pages 28 to 30 of the paper book and in Para 2 of this order, the AO has reproduced the contents of the assessee's application u/s 154 as per which it is stated by the assessee the amount of Rs. 2 Crores is paid by two Cheques of Rs. 1 crore each and this was also submitted that after the survey on 29.08.2006, the assessee filed a letter dated 30.09.2006 to the AO explaining that the entire amount was paid out of the funds of the society and a ledger account was enclosed with the letter. He submitted that the ledger account and copy of voucher is available on pages 16 to 18 of the paper book and it includes two cheque payments of Rs. 1 crore each and the balance amount is paid by cash. He submitted that the AO accepted two cheque payments but did not accept cash payments as explained. At this juncture, the bench wanted to see the Balance Sheet. He submitted that he will file the same after the hearing is over and he filed the same, there is investment of Rs. 716,47,470/- in the present year in Land at Sy. No. 6/9 & 6/11 (45 Guntas). He submitted that since, entire amount is accounted for, there is no unexplained investment. Thereafter, he submitted that in the appeal of the issue, the issue raised on merit is in respect of denial of the assessee's claim for exemption u/s 10 (23C) (iiiad) and also u/s 11. He submitted that a ground is raised by the assessee about chargeability of interest but this is consequential.

9. We have considered the rival submissions. We find that in A. Y. 2011 – 12, the assessee has raised ground in respect of exemption u/s 10 (23C) (iiiad) as well as u/s 11 but we find that as per Para No. 5.2 of his order for A. Y. 2011 – 12, learned CIT (A) has allowed the claim for exemption u/s 10 (23C) (iiiad) and there is no ground raised by the revenue in its appeal against this decision of CIT (A) on this issue and hence, the issue about exemption u/s 10 923C) (iiiad) has attained finality and no adjudication is called for.

10. Now, we determine about the allowability of the assessee's claim for exemption u/s 11 in both years. In A. Y. 2007 – 08, this claim was rejected by the AO only on this basis that registration u/s 12A has not been granted to the assessee as stated by the AO on page 14 of the assessment order. We have seen that after the tribunal orders, DIT € has already granted registration u/s 12A on 12.08.2014 w.e.f. A. Y. 2006 – 07. This is the ground raised by the revenue that the matter has not reached finality as the department has filed further appeal before Hon'ble Karnataka High Court in assessee/s own case for A. Y. 2006 – 07. We find no merit in this contention because no this is not the case of the revenue that operation of this tribunal order has been stayed by Hon'ble Karnataka High Court and therefore, the tribunal order has to be followed by all lower authorities and the coordinate bench of the tribunal is also bound by this tribunal order. Moreover, as per its combined judgment dated 22.09.2014 in ITA Nos. 1003 & 1128 of 2008, Hon'ble Karnataka High Court had dismissed both the appeals filed by the revenue against two tribunal orders in ITA No. 915/Bang/2006 dated 26.09.2007 and ITA No. 1145/Bang/2007 dated 11.07.2008. Hence, this issue is decided against the revenue because in this year i.e. A. Y. 2007 – 08, there is no other objection of the AO in respect of allowability of exemption u/s 11.

In A. Y. 2011 – 12, the objection of the AO and CIT (A) is this that the assessee has violated the provisions of Karnataka Educational Institutions (Prohibition of Capitation Fees) Act, 1984 and this objection is on this basis that the acceptance of donation is nothing but capitation fees. In this regard, learned AR of the assessee had placed reliance on the tribunal order rendered in the case of Rashtreeya Sikshan Samithi Trust vs. Addl. CIT (Supra) and had filed an affidavit of Mr. S. N. V. L. Narshimha Raju, President of the Assessee Society dated 26.07.2019 and it is stated in this affidavit that no proceedings were initiated against the assessee for any violation of Karnataka Educational Institutions (Prohibition of Capitation Fees) Act, 1984 or Karnataka Educational Institutions (Regulation of Admissions and Fixation of Fees Special Provisions) Act, 2011. He had also pointed out that in Para 18 of this tribunal order, the tribunal on the basis of affidavit of Honorary Secretary of that assessee reproduced in Para 17 of that tribunal order drawn an inference that there is no violation of this act which provided for prohibition of capitation fees or charging

of fees other than the method provided under the Act. For ready reference, we reproduce Para 17 & 18 of this tribunal order. These are as under: -

“17. On the last date of hearing, the bench has directed the assessee to file an affidavit as to whether the assessee was held liable for violating the provisions of Kamataka Educational Institutions (prohibition of capital fees) Act, 1984, or any provisions were initiated under the Kamataka Professional Educational Institutions (Regulation of Admission and Fixation of Fee (Special Provisions) Act, 2011. In pursuance to the direction, Secretary of. the assessee had filed an affidavit on 21.03.2018 to the following effect:

AFFIDAVIT

I, A.V.S.Murthy. Son of late Shri A.Venkatarmrurn Setty, aged about 66 years, residing at "Shreves", No.I 05, Bull Temple Road, Bengaluru-560019, do solemnly affirm and state on oath:

1. That I am the Honorary Secretary of Rashtreeya Sikshana Samithi Trust. The Appellate in ITA No. 1732/Bang/2017 before the Income Tax Appellate Tribunal, Bengaluru;

2. That ram, in my capacity as the Hon. Secretary of the Appellant, conversant with the facts of the of case and able to depose to the facts stated herein;

3. That no proceedings have been initiated against the Appellant for any violation of the provisions of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (Karnataka Act No. 37 of 1984): and

4. That no proceedings have been initiated against the Appellant for any violation of the provisions o; ,he Karnataka Professional Educational Institutions (Regulation of Adrnission and Fixation of free (Special Provisions) Act, 2011 (Karnataka Act 'No. 23 of 201 1).

VERIFICATION

1. A. V. S. Murthy, the above-named deponent, do. hereby verify that the contents of paragraphs Ito 4 above are true to the best of my knowledge and information.

18. The contents of this affidavit were neither contradicted by the Ld DR orally nor by filling the counter affidavit. Hence, it can be presumed that neither arty proceedings were initiated against the assessee for violating the Karnataka Educational Institutions (prohibition of capital fees) Act. 1984, or any provisions were initiated under the Karnataka Professional Educational Institutions (Regulation of Admission and Fixation of Fee (Special Provisions) Act, 2011. Thus the inference can be drawn by the bench that there is

no violation of this Acts which provided for prohibition of capitation fees or charging the fees other than the method provided under the Act. Under the provisions of these two Acts, it is the duty of the respective authorities to examine the fees charged by the assessee from the students and come to the conclusion whether the assessee has charged capitation fees in the garb of donation / voluntary contribution or not . If the authority which has been saddled with the' responsibility of verifying the admission and fees charged and further to take action, against any institution / college or university who had charged any fees over and above the fees prescribed by the consensual agreement I rules, the said authority namely Government of Karnataka has not come to the conclusion that any violation has been committed by the assessee before us, therefore it is not within the realm of the Revenue to conclude that the assessee had charged the capitation fees within the meaning of Karnataka Educational Institutions (prohibition of capital fees) Act, 1984, or the Karnataka Professional Educational Institutions (Regulation of Admission and Fixation of Fee (Special Provisions) Act, 2011. The AO in para 5.14 has held that the assessee has violated the law laid down by the Karnataka Educational Institutions (prohibition of capital fees) Act. 1984, or any provisions were initiated under the Karnataka Professional Educational Institutions (Regulation of Admission and Fixation of Fee (Special Provisions) Act, 2011. In our humble understanding of the law, it is for the expert agency (designated agency) to decide this issue which has been given the authority to examine and come to the conclusion that whether there is any violation of Karnataka Educational Institutions (prohibition of capital fees) Act, 1984 or not. If the designated agency which is required to examine, scrutinise the record and then initiate the action for violation of the Karnataka Educational Institutions (prohibition of capital fees) Act. 1984 than it is not permissible for the AO to usurp the power of the designated agency and decided the issue of Capitation fees, without there being any authority, power and expertise. If AO is having doubt about the charater of income than he should have referred the matter to designated agency with a request to initiate action under Karnataka Educational Institutions (prohibition of capital fees) Act, 1984. There is clear-cut demarcation and separation of power among various authorities created under various Acts and Rules. No authority can be permitted to transgress its limit as circumscribed by the ACT, this is necessary for meaning working of institutions within the four corners of the Act. If it is not done (authorities do not discharge their functions within its scope of work and limits) , then a chaotic situation will arise, then various authorities will start interfering in the working of other authorities. For this purpose, we may rely upon the various decision of Hon'ble Apex Court, wherein the Hon'ble Apex Court has held that the decision arrived at by the specialised agency dealing with a subject matter shall be binding on all other agencies.”

11. We also reproduce the affidavit of Mr. S. N. V. L. Narshimha Raju, President of the present Assessee Society dated 26.07.2019. This is as under: -

"I, S.N.V.L. NARASIMHA RAJU, aged about 50 years, son of late Sri S Narasaraju, residing at No. 49, 9th Cross, 1st Phase, J P Nagar, BENGALURU - 560 78, do solemnly affirm and state on oath:-

1. That I am the Honorary President of M/s. CHILDREN'S EDUCATION SOCIETY, the appellant in ITA NO.1914/Bang/2016 before the Income-tax Appellate Tribunal, Bengaluru.

2. That, I am, in my capacity as the Hon. President of the appellant, conversant with the facts of the ca and able to depose to the facts stated herein.

3. That no proceedings have been initiated against the Appellant for any violation of the provisions of the Karnataka Educational Institutions [Prohibition of Capitation Fee] Act, 1984 [Karnataka Act No.37 of 1984]; and

4. That no proceedings have been initiated against the appellant for any violation of the provisions of the Karnataka Professional Educational Institutions (Regulation of Admission and Fixation of free (Special Provisions) Act, 2011 (Karnataka Act No.23 of 2011).

VERIFICATION

I, S N V L NARASIMHA RAJU, the above named deponent, do hereby verify that the contents of paragraphs 1 to 4 above are true to the best of my knowledge and information.

Dated this the 26th day of JULY, 2019; at BENGALURU."

12. We find that the affidavit filed by the president of the present assessee as reproduced above is on the same line as per the affidavit of Honorary Secretary of that assessee reproduced in Para 17 of that tribunal order as reproduced above and therefore, this tribunal order has to be followed in the present case because, learned DR of the revenue has not filed any counter affidavit till date and hence, respectfully following this tribunal order, we also draw an inference that there is no violation of this act which provided for prohibition of capitation fees or charging of fees other than the method provided under the said Act. In view of this, the objection of the AO and his allegation that the donation received by the assessee is capitation fees does not survive and since, there is no other objection, we hold that the assessee is eligible for exemption u/s 11. This matter has to go back to the file of the AO to quantify the amount of exemption allowable because in the present order of the AO, the same was not quantified because at that point of time, the AO alleged that the assessee has received capitation fees and therefore, not eligible for exemption u/s

13. We direct the AO to quantify and allow exemption u/s 11 as per law after providing adequate opportunity of being heard to the assessee.

14. Now, we decide the common issue raised by the revenue in both years regarding the addition made by the AO in both years in respect of the building and infrastructure fund which is deleted by CIT (A) in both years. In this regard, learned AR of the assessee had submitted a copy of the tribunal order in assessee's own case for A. Ys. 2008 – 09 & 2009 – 10 in ITA Nos. 1439 & 1554/Bang/2012 dated 30.05.2014 and drawn our attention to Para 18 & 19 of this tribunal order and pointed out that in those two years, the tribunal has followed the judgment of Hon'ble Karnataka High Court rendered in assessee's own case for A. Y. 1999 – 2000 & 2000 – 2001 as reported in 358 ITR 373 and it was noted that as per Para 28 of that judgment, Hon'ble Karnataka High Court remanded this issue to the AO for fresh consideration and respectfully following the same, in those two years also, the tribunal restored this matter back to the file of AO for fresh consideration. Respectfully following this tribunal order and in turn respectfully following the judgment of Hon'ble Karnataka High Court rendered in assessee's own case for A. Y. 1999 – 2000 & 2000 – 2001, we in the present two years also, restore this issue to AO for fresh decision with similar direction.

15. We find that there is no other issue in the appeal of the revenue for A. Y. 2011 – 12 but in A. Y. 2007 – 08, there is one more issue raised by the revenue. This issue is raised by the revenue as per Ground No. 3 in respect of addition made by the AO for alleged unexplained investment deleted by CIT (A). We find that that as per the original assessment order dated 31.12.2009, addition on this account was made of Rs. 665,67,200/- but as per the order dated 02.06.2010 passed u/s 154 copy available on pages 28 to 30 of the paper book, this addition was reduced by Rs. 2 Crores. We also find that this addition was made by the AO on this basis that as per the agreement to sell dated 17.04.2006 impounded, the actual consideration is Rs. 705,67,200/- as against the registered consideration of Rs. 1 crore and in this manner, the AO made addition of Rs. 665,67,200/- later reduced by Rs. 2 Crores as per order u/s 154 because it was shown that out of this payment of Rs. 665,67,200/-, Rs. 2 Crores was paid by way of two cheques. Although, this was the submission that entire payment is accounted for and hence, no addition is justified but the AO allowed relief u/s 154 to the extent of Rs 2 crores being two payments made by cheque and no relief was allowed u/s 154 in respect of cash payments. Before us, the learned AR of the assessee has produced the balance Sheet of the assessee also as on 31.03.2007 and in the same, investment in Land at Sy. No. 6/9 and 6/11 (45 Guntas) is shown at Rs. 716,71,470/- and as per copy of ledger account available on pages 16 & 17 of the paper book, initial cash payment was made of Rs. 1 Crore in march 2006 and in F. Y. 2006 – 07 two payments totaling Rs. 2 Crores were made by cheques and an amount of Rs. 405,67,200/- was made by cash on various dates. The AO has accepted the cash payment of Rs. 1 Crore paid

in F. Y. 2005 – 06 in the assessment order itself and made addition of the balance amount of Rs. 605,67,200/- and later in the order u/s 154, he accepted the cheque payments. As per Note 5 attached to the said Balance Sheet as on 31.03.2007 showing break up of cash and bank balances, there was cash in hand of Rs. 468,53,019.09 as on 31.03.2007 even after this cash payment of Rs. 405,67,200/- and hence, cash availability cannot be doubted. Entire cash payment and cheque payment for this land is shown in the balance sheet as investment in fixed assets. In view of these entire facts, it cannot be said that there is any unexplained investment in this land in question and therefore, we find no reason to interfere in the order of CIT (A) on this issue also.

16. There is one more issue in the appeal of the assessee about interest and since, this issue is consequential, we hold that no adjudication is called for on this issue.

17. In the result, the appeal of the assessee is allowed in the terms indicated above and the appeal of the revenue for A. Y. 2007 – 08 is partly allowed for statistical purposes and the appeal of the revenue for A. Y. 2011 – 12 is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 28th August, 2019.
/MS/

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.