

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

ITA No. 749/Hyd/2019
Assessment Year: 2012-13

Chukka Dharmaraj,
Adilabad.

vs. Income-tax Officer,
Ward – 1, Hyderabad.

PAN – AEIPC 3770 P

Appellant

Respondent

Assessee by: Shri K.C. Devdas
Revenue by: Smt. K.J. Divya

Date of hearing: 28/11/2019
Date of pronouncement: 23/01/2020

ORDER

PER P. MADHAVI DEVI, J.M.:

This is an appeal filed by the assessee against the order of CIT(A) – 1, Hyderabad dated 18/02/2019 for AY 2012-13.

2. Brief facts of the case are that there was a search and seizure operation u/s 132 of the IT Act in the case of M/s Arihant Educational Society, which is running a medical college in the name and style of Chalimeda Ananda Rao Institute of Medical Sciences, Bommakal Village, Karimnagar District. During the course of search, certain material was seized from the premises of M/s Arihant Educational Society and from the seized material it was noticed that the parents of the respective students have paid donation/capitation fee in

addition to the regular fee of their Wards. It was found that Sri Chukka Dharmaraj, the assessee herein, has paid Rs. 27,50,000/- to Arihant Educational Society as prescribed by the Government and an additional amount of Rs. 15,00,000/- as capitation fee for the purpose of admission of his daughter Chukka Manogna. Since the material seized from the search related to the assessee, a notice u/s 153C was issued to the assessee for the AYs 2008-09 to 2014-15 asking for certain specific information.

2.1 In response to the notice u/s 153C, assessee filed his return of income for the relevant AY 2012-13 on 03/07/2012 admitting an income of Rs. 2,28,540/- after claiming deduction of Rs. 1 lakh under Chapter VI-A of the Act. The assessee also furnished details as called for. It was explained that the assessee's main source of income is from medical retail business, X-ray & diagnostics. He admitted to have paid tuition fees to Arihant Educational Society. He had explained that he has paid the entire fees of Rs. 27,50,000/-, but denied of having paid any capitation fees much less of Rs. 15 lakhs. AO, however, relied upon the seized material wherein it has been recorded that the assessee has paid total of Rs. 42,50,000 to the society. Since the assessee has explained the source only to the extent of Rs. 27,50,000/-, the AO

treated the balance of Rs. 15 lakhs as unexplained and brought it to tax u/s 68 of the Act.

3. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the order of AO and the assessee is in second appeal before the Tribunal.

4. The Id. counsel for the assessee reiterated the submissions made before the authorities below, while Id. DR relied upon the orders of revenue authorities.

4.1 On a query, Id. counsel for the assessee also submitted that M/s Arihant Educational Society has gone to Settlement Commission and has offered certain portion of capitation fee to tax. However, he submitted that the assessee has not paid nor there was any evidence found that the assessee has paid capitation fees to the society. He has also drawn our attention to the specific finding of the CIT(A) that assessee has paid a sum of Rs. 27,50,000/- and the balance of Rs. 15 lakhs is yet to be paid. In such circumstances, he prayed for deletion of the addition made by the AO and confirmed by the CIT(A).

5. Having regard to the rival contentions and material on record, we find that the AO made the addition of Rs. 15 lakhs based on the material found during the course of search

relating to the assessee in the possession of Arihant Educational Society. Assessee has explained that he has paid only Rs. 27,50,000/- and the balance of Rs. 15 lakhs was not paid towards capitation fees. The CIT(A) has recorded that the balance of Rs. 15 lakhs is yet to be paid. If the said amount has not paid, the same cannot be treated as unexplained expenditure. Be that as it may, since no evidence is found that the assessee has paid the capitation fees to the society, we are of the view that the addition cannot be sustained. Therefore, we direct the AO to delete the addition of Rs. 15 lakhs made on account of capitation fees.

6. In the result, appeal of the assessee is allowed.

Pronounced in the open court on 23rd January, 2020

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, dated 23rd January, 2020.

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Copy forwarded to:

1. *Chukka Dharmaraj, C/o M/s Sekhar & co., 133/4, RP Road, Secunderabad – 500 003.*
2. *ITO, Ward – 1, Hyderabad.*
3. *CIT(A) - 1, Hyderabad.*
4. *Pr. CIT – 1, Hyderabad.*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*