

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE**  
**(Through Virtual Court)**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
 AND  
 SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA Nos.571 to 577/PUN/2016**  
**निर्धारण वर्ष / Assessment Years : 2005-06 to 2011-12**

DCIT, Cen. Cir. – 2(2),  
 Pune

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Shikshana Prasarak Mandali  
 Sharada Sabhagruha,  
 S.P. College Campus,  
 Pune – 411030

PAN : AABTS7821G

.....प्रत्यर्थी / Respondent

Revenue by : Shri Deepak Garg, CIT-DR  
 Assessee by : Shri Dharmesh Shah, AR

सुनवाई की तारीख / Date of Hearing : 15-04-2021  
 घोषणा की तारीख / Date of Pronouncement : 24-06-2021

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

All these seven appeals by the Revenue against the common order 06-01-2016 passed by the Commissioner of Income Tax (Appeals)-12, Pune [‘CIT(A)'] for assessment years 2005-06 to 2011-12.

2. We find that the issues raised in all the appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to hear all the appeals collectively and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal in ITA No. 571/PUN/2016 for the A.Y. 2005-06 as a lead case.

4. The Revenue raised as many as four grounds of appeal amongst which the only effective issue emanates for our consideration is as to whether the CIT(A) justified in deleting the addition in respect of taxation of capitation fee alleged to have been received in cash by the assessee for admission of students in L N Welingkar Institute of Management under management quota.

5. The brief facts relating to the issue are that the assessee is a public charitable trust registered under the Bombay Charitable Trust Act and is running 61 educational institutions. The assessee runs reputed educational institutions one amongst them is L N Welingkar Institute of Management Development and Research. A search was conducted on 20-11-2010 in the case of Dr. Uday Salunkhe, Director of L N Welingkar Institute of Management Development and Research. During search certain documents/loose papers belonging to assessee were seized. After recording satisfaction, the AO issued notice to the assessee u/s. 153C of the Act for entire block years for A.Ys. 2005-06 to 2011-12. This case was transferred to Pune in terms of the order passed by the Hon'ble High Court of Bombay. In response to the above said notice u/s. 153C of the Act the assessee filed return of income declaring a total income of Rs. Nil. Notice

u/s. 143(2) of the Act was issued. The AO on the basis of evidences collected during the search operation and statements recorded u/s. 132(4) of the Act by holding that the assessee charged capitation fee for all the seven years involving A.Ys. 2005-06 to 2011-12 by quantifying the same at Rs.20 lakhs per seat and added said amount to the total income of the assessee. The AO, thereby, determined the total income at Rs.4,54,00,481/- for A.Y. 2005-06. The CIT(A), in first appeal, deleted the addition made by the AO.

6. Having aggrieved by the order of CIT(A), the Revenue is before us.

7. Supporting the grounds, regarding the statements recorded u/s. 132(4) of the Act, the ld. DR, Shri Deepak Garg submits that during the search operation on Shri Uday Salunkhe, Director of Welingkar a document was seized from the drawer of Shri Samir Karkhanis (Head Marketing and key official of Welingkar) at his resident. In the statement recorded u/s. 132(4) of the Act, he explained that contents of the document contain the names of the students and amount of capitation fee received from them. His role as an interface with prospective students and their parents is clear from replies to Q's 6, 8, 9, 19 and 20 of the statement recorded u/s. 132(4) at page 37 to 42 of paper book filed by the assessee. His role in negotiating the cash donations with prospective students is evident replies to Q's 19 and 20 of the statement recorded u/s. 132(4) at page 37 to 42 of paper book filed by the assessee. He explained the complete modus operandi of admission process under management quota seats including the discretion of Institute's management and number of management quota seats replies to Q's 7, 16 to 22 of the statement recorded u/s. 132(4) at page 37 to 42 of paper book filed by the assessee.

He also admitted that the seized paper contains the names of the students and amount of capitation fee received from them replies to Q's 19 and 20 of the statement recorded u/s. 132(4) at page 37 to 42 of paper book filed by the assessee. He further admitted that in addition to the year of search, such cash donations were accepted in past 6 years vide replies to Q's 22 and 23 of statement recorded u/s. 132(4) at page 37 to 42 of paper book filed by the assessee. He also explained about the role of Ms. Kalpana Hans and Mr. Kanu Doshi (other officials of Welinkar) in negotiating the capitation fee.

8. Further, he submits that on the date of search, the statement of Ms. Kalpana Hans was also recorded u/s. 132(4) of the Act wherein she admitted her role in negotiation of capitation fee vide replies to Q's 4 to 9 of the statement recorded u/s. 132(4) at page 9 to 12 of paper book filed by the assessee. In addition, she also stated that Shri Pandurang Pawaskar, Shri Kanu Doshi are also involved in the process. She further confirmed that cash was being collected by office peons namely Shri Prakash Bekhare and Shri Ravi Sumbhe. Shri Pandurang Pawaskar also confirmed the statement of Ms. Kalpana Hans on the same day.

9. Likewise, he submits that, on the date of search, the statement of one Mr. Kanu Doshi was also recorded u/s. 132(4) of the Act wherein he confirmed his role in the admission process vide replies to Q's 6 and 17 of the statement recorded u/s. 132(4) at page 63 to 75 of the paper book filed by the assessee. He explained the complete admission process in the assessee's flow chart in reply to Q's 13 and 14 of the statement. He admitted that certain students who did not clear the cut-off marks in written test were also called for Interview and Group discussion and these

students paid cash donations vide reply to Q's 14 of the statement at page 70 of the paper book filed by the assessee. In his replies to Q's 15 to 24 of the statement, he explained the amount of cash donation and complete process of negotiation of capitation fee. Similarly, statement of Shri Prakash Bekhare and Shri Ravi Sumbhe were also recorded u/s. 132(4) of the Act wherein they admitted their roles in cash collection at pages 111 and 129 in the paper book filed by the assessee.

10. The ld. AR, Shri Dharmesh Shah, in reply, submits that the statements of said persons are not reliable and cannot be used against the assessee. It is submitted that these persons have later retracted the said statements on the very next day. Further, the affidavit of Retraction was filed within 25 days of the date of recording of the statement and within 1 day of allowing Kalpana Hans, manager-faculty compliance by the DDI (Inv.) to read through the said statements of all persons. Since the Assessing Officer was not satisfied with the said retraction, the said persons were cross examined during the course of assessment proceedings in the case of Dr. Uday Salunkhe, (the person searched) to verify the correctness of their affidavits. Even during cross-examination, these persons confirmed the averments made by them in their retraction affidavits.

11. Having heard both on this aspect, we note that the contention of the ld. DR is that the statement of Samir kharkanis recorded u/s. 132(4) of the Act in respect of seized document from his residence, Shri Samir Karkhanis explained his role with the prospective students and their parents regarding negotiations for cash donations, modus operandi, receipt of capitation fee not only for this A.Y. and also for passed 6 years. Further,

he admitted the roles of Ms. Kalpana Hans and Mr. Anu Doshi in negotiating the capitation fee which was confirmed by the Kalpana Hans, Anu Doshi, Prakash Bekhare and Ravindra Sumbe. The ld. AR vehemently contended that the statements of above said persons are not reliable and cannot be used against the assessee for the reason that the said statements were very next day i.e. 21-11-2010 were retracted and to that effect they all filed retraction affidavits before the DDIT on 16-12-2010. We note that the AO having been not satisfied with the said retraction affidavits cross-examined above said persons for examination the correctness of the averments made in such retraction affidavits. We find letters requesting to furnish copies of seized material, other related documents, retraction affidavits etc. page Nos. 9 to 168 of the paper book 1 filed by the assessee.

12. On perusal of the proceedings in respect of Ms. Kalpana Hans at page No. 9, in reply to Q. No. 2 she stated that her portfolio is to take care of compliance of statutory and regulatory bodies and meeting all the deadlines given by the Government bodies in the statement recorded u/s. 132(4) of the Act. In the retraction affidavit at page No. 21 of the paper book she stated that she was literally shocked to read contents made in the statement recorded u/s. 132(4) of the Act, further, she expressed her shock to read statements of Dr. Uday Salunkhe, Mr. Kanu Doshi, Mr. Samir Karkhanis, Mr. Prakash Bekhare and Ravindra Sumbe. In her retraction affidavit in para No. 12 she clearly stated that she has been unnecessarily implicated in the issues where she nowhere concerned either personally or in carrying out her duties in official capacity. Further, she stated she felt deeply pained, hurt, harassed, embarrassed and above all cheated by the officers of the entire search party by typing totally wrong,

false to their own knowledge and contradictory. It clearly establishes the arguments of Id. DR in stating that the role of Kalpana Hans in negotiating the capitation fee with students and their parents in relation to the answer given by her in reply to Q. No. 2 where in our opinion she is no way concerned with the admission process however her portfolio to take care of compliance of statutory, regulatory bodies and meeting all the deadlines given by the Government bodies. Therefore, her statement in the retraction affidavit in para No. 12 that she has been unnecessarily implicated in the issues where she has nowhere concerned either personally or in carrying her duties in the official capacity is believed to be true. Further, the AO cross-examined Ms. Kalpana Hans in order to verify the correctness of her averments made in the retraction affidavit. Her cross-examination by the AO are at pages from 25 to 35 of the paper book No. 1. We note that the AO put up 65 questions to her amongst which the reply to Q. No. 7 she stated that she was not aware anything about the figure of 25 lakhs per seat per course per year. In reply to Q. No. 8 she stated the statement recorded by the search party u/s. 132(4) of the Act is wrong and in reply to Q. No. 14 she said that the search party did not give her a chance to read the statement as she was arthritic patient under tremendous pressure both physically and mentally signed the said statement on coercion. In reply to Q. No. 22 she said that on 15-12-2010 she was given a chance to read her statement at Scindia House in the office of DCIT and immediately she filed retraction affidavit on 16-12-2010. Therefore, it clearly shows that on the date of recording statement no chance was given to Ms. Kalpana Hans and she could read her statement only on 15-12-2010. In view of the same, the allegation of not giving a chance by the search party to the persons who have been examined u/s. 132(4) of the Act is consistent with the averments made in the retraction affidavit and also supports the

view that statement recorded behind the back of such persons, as such statements recorded u/sec 132(4) of the Act attains no significance, hence, are invalid. We find proceedings of Samir Karkhanis, Kanu Doshi, Pandurang Shankar, Prakash Bekhre and Ravindra Sumbhe from pages 37 to 145 of the paper book 1. We note that all these persons followed the same procedure be that of Ms. Kalpana Hans that requesting the DCIT to furnish the statement recorded u/s. 132(4) of the Act on 21-11-2010, a letter enclosing retraction affidavit, retraction affidavit and cross-examination. We note that the contents in all the letters of the said persons are one of the same and also incidentally the questions put them by the DCIT in their cross-examination are also similar. Therefore, discussion by us in respect of their retraction affidavit and cross-examination leads to repetitive, thus, the findings given by us in respect of Ms. Kalpana Hans is applicable to all these persons also.

13. Further, the ld. DR lead his submission as to why retraction of statements recorded u/s. 132(4) of the Act is not valid. It was submitted that the statement recorded u/s. 132(4) of the Act is of great evidentiary value and it is a well settled legal position that the same can be relied upon for making additions during assessment. Only exceptions to such admission where the statement are retracted (i) when the statement is recorded under coercion, threat, duress, undue influence, etc. Or (ii) when the facts recorded in the statement are incorrect. He argued that it is also a well settled legal position that mere bald retraction is not valid and the retraction should be backed by supporting documentary evidences. For example, where there are allegations of threat, coercion, etc. same has to be proved by the person. Also, where the person wants to retract the facts earlier stated and want to substitute the same with new

facts, same should be backed by supporting evidences. He placed reliance on the cases of Bhagirath Aggrawal Vs. CIT, 31 taxmann.com 274 (Delhi HC), Hotel Kiran Vs. ACIT, 82 ITD 453 (Pune Trib.) and CIT Vs. M S Aggarwal, 93 taxmann.com 247 (Delhi HC). He submits that all statements u/s. 132(4) of the Act were recorded on the date of the search i.e. on 20.11.2010 and all these persons simultaneously filed letters on 21.11.2010 stating that they are not aware of the contents of their statements and they have apprehensions that their statements might not have been recorded correctly. He argued that by that time the copies of their statements were not available to them and as per their letter, they were unaware about the contents of their statements. What prompted all of them to have 'simultaneous apprehension' at the same time that their statements were not correctly recorded, have not been explained by anyone. Also, one can see that the language of most of these letters filed on 21.11.2010, is same. In fact at some places, the letters are simply copy-paste of each other. It is also a strange coincidence that all these letters were filed on same day. All of them have stated that they came to know about the contents of their 132(4) statements only in the evening of 15.12.2010 through Ms. Kalpana Hans who was summoned by the Income Tax department in the afternoon of 15.12.2010. It is also important to mention that they stated that the retraction affidavit was drafted by themselves as per their statement, they did not discuss about the retraction statement with each other. In one night, all of them decided to file retraction statement on very next day and strangely all of them bought stamp papers from the same vendor, landed with the same notary in the whole of Mumbai and also had drafted the retraction statement in same language. Very strangely, the stamp papers were procured by all of them from a vendor located in Bandra (East) and chose a Notary far located

in Esplanade Court, although all of them are residing in different parts of Mumbai. Also, it is not clear as to how all of them procured stamp papers during the night from the same vendor and these facts clearly indicate major contradictions in their retractions/statements recorded during cross examination.

14. He contends that when confronted in cross examination, Ms. Kalpana Hans (Q's No. 33 and 34 page 30 of paper book) stated that besides herself and Shri Pawaskar no one else was there at the Notary on 16.12.2010. Shri Kanu Doshi (Q's 32 page 92 of paper book) stated that besides him, Ms. Kalpana Hans and Samir were there although Kalpana Hans denies it. When Samir was asked, he says that he has no idea as to who else besides him was there. Mr. Pawaskar says Mr. Kanu Doshi and Kalpana Hans were there. This clearly shows major contradictions in their statements during cross examination. It may also be noted that in reply to Q's 35 page 107, Mr. Pawaskar says that they were at notary at 3.00 PM while Mr. Kanu Doshi says that they were at Notary at 12.00 PM. This also shows the contradictions in their statements during cross examination. He vehemently argued that initially they took the stand that they filed retraction affidavit by themselves but when confronted and further probed during the cross examination, they came up with the fact that Mr. Gautam Parekh Chartered Accountant of Welingkar Institute arranged for their retraction affidavit. They also admitted that all the witnesses who signed the retraction affidavits were employees of Welingkar Institute. They also came up with the fact that the stamp papers were arranged by one Mr. Rajesh Bhuvad which clearly suggests that the Retraction Affidavits were filed at the instance of Welingkar Institute. Initially they maintained that they did not discuss about filing of retraction affidavit with anyone.

15. Shri Deepak Garg referred to the aspect of absence of coercion, threat, etc. during recording of statement u/s. 132(4) of the Act there was no allegation of any threat, coercion, pressure, etc. neither in the letter filed by these six persons on 21.11.2010 nor in the Affidavits filed on 16.12.2010. In the Affidavits filed on 16.12.2010, Mr. Samir Karkhanis has stated that the tax officials were very nice to talk to. Similar statement was made by Shri Kanu Doshi in the Affidavits filed on 16.12.2010. Neither any complaint regarding pressure or threat given by tax officials during recording of statement u/s. 132(4) was filed with any supervisory authority. None of these persons could file any evidence which could suggest that the statements u/s. 132(4) of the Act were recorded under threat or pressure, when they were confronted with this during cross examination, they could not substantiate that any threat or pressure was put on them. It is also important to mention that these persons were examined at three different locations at the same time and it is impossible to visualise that all of them were put under threat by different teams at the same time. The statement of Ms. Kalpana Hans and Mr. Pawaskar was recorded simultaneously and their submissions/replies are contained in one single statement. It is not possible to put pressure on two persons at the same time. It is important to mention that the witnesses who signed on the statements u/s. 132(4) of the Act were also examined by the AO and these witnesses denied the existence of any coercion/undue pressure during recording of statement in the course of search. He submits in force that there was no coercion, threat, undue pressure, etc. during recording of statement u/s. 132(4) of the Act during the course of search.

16. The ld. AR, Shri Shah submits that the aforesaid retraction was made by all the persons explaining the fact that the answers were written

in the statement recorded at the time of search on the whims and fancies of the officers and that they were never allowed to view and read what was being written at the time of recording of the statement. They also confirmed in their affidavit that what was written was contrary to answers given by them. We submit that such a statement cannot be considered to be voluntary and reliable. It was also explained by the assessee that there were several flaws and contradictions in the statements of above persons recorded by the officers at the time of search. The detailed explanation on such flaws and contradictions are filed at Page 314-329 of PB No. 2. Further, according to him, that these persons never had any authority to indulge in collection of fees, much less capitation fees. The hierarchy of the institutions and its personnel and their scope of duties are explained in the organizational chart enclosed at Page 169-174 of PB No. 1, which proves that the persons, whose statements are referred as the primary evidence to make addition on account of capitation fees, could not have been aware of the alleged receipt of capitation fees by the assessee trust. Even on this count, their admission in the statements is not reliable and correct. He submits that the statements of Trustees and Chairman were also recorded during the search and even statement of Dr. Uday Salunkhe was recorded at the time of search, none of these payers have confirmed or admitted the receipt of any capitation fees in assessee trust. The judiciary has time and again held that the statements which are later retracted cannot be relied for the purpose of making any addition in absence of any independent evidence found as a result of search and placed reliance upon the *Instruction F.No.286/2/2003-IT (Inv. II), dated 10.03.2003, CBDT letter F. No. 286/98/2013-IT (Inv. II), dated 18.12.2014, CIT Vs. K. Bhuvanendran and Ors [303 ITR 235 (Mad.)], Aishwarya K. Rai Vs. DCIT [104 ITD 166 (Mum) (TM), PushpaVihar Vs. ACIT [48 TT] 389 (Mum)], Jyotichand*

*Bhaichand Saraf & Sons (P) Ltd Vs. DCIT [139 ITD 10 (Pune)], CIT Vs. Uttamchand Jain [320 ITR 554 (Bom.)].* He argued that the statement of the persons recorded by the search officers cannot be relied against the assessee.

17. Having heard both as to why retraction of statements recorded u/s. 132(4) of the Act is not valid, the contention of ld. DR is that the statement recorded u/s. 132(4) of the Act is of great evidentiary value and same can be relied upon for making additions during assessment, only exception to when the statement recorded under coercion, threat, duress, undue influence etc. and the facts recorded under statement are incorrect. According to ld. AR we note that the statement u/s. 132(4) of the Act were recorded on the whims and fancies of the such officers and they were not allowed to view and read what was being written at the time of recording statement. In the retraction affidavits with the cross-examination, as we already discussed in the aforementioned paragraph, regarding Ms. Kalpana Hans, we note that all the said persons explained the fact that there were surrounded by few officers out of which one of them was typing the questions based on the series of questions raised by another officers. The answers verbally given were typed by one officer who also took instructions from more than one officer and all of them signed such statements without reading the same as they were very tensed and frightened as they were surrounded and questioned by many officers. It is also pertinent to mention that all of them requested the DCIT to furnish the statement recorded u/s. 132(4) of the Act on the very next day of recording i.e. 21-11-2010 and only Ms. Kalpana Hans could see her statement on 15-12-2010 the day prior to filing of retraction affidavit. In all the retraction affidavits all of them confirmed that the search officers recorded contrary to the

answer given by them, therefore, in our opinion such statements are not voluntarily and cannot be considered reliable evidence as they were stated to have been signed under pressure. In this regard we may have to prefer the judgment of the Jurisdictional High Court of Bombay in the case of Uttam Chand Jain Vs. CIT reported in 320 ITR 554 (BOM.), wherein the facts of the said case are that the assessee therein claimed to have been sold the jewellery declared under the VDIS to a proprietary concern. The Income Tax authority conducted a survey at the business premises of said proprietary concern. A confession was made by the said proprietary concern stating it was not doing actual business of trading and manufacturing of diamonds and the transactions reflected in its books of accounts were merely accommodation entries given to various VDIS declarants. Basing on such statement the assessment of assessee was reopened. During the course of reassessment proceedings the said proprietary concern made a statement on oath confirming the purchase of diamonds from the assessee retracting the earlier confession made, in spite of which the AO made addition, the Tribunal deleted the said addition. The Hon'ble High Court of Bombay taking support from the decision of Hon'ble Supreme Court in the case of Vinod Solanki reported in (2008) 16 scale 31 held the retraction confession can be relied upon only if there is independent and cogent evidence to corroborate the statement.

18. In the present case, there was no independent cogent evidence corroborating the statements of Ms. Kalpana Hans, Samir Karkhanis, Shri Kanu Doshi, Shri Pandurang Pawaskar, Shri Prakash Bekhare and Shri Ravi Sumbhe brought on record by the AO even after cross-examination of said persons. When there is no evidence doubting the correctness of the averments made in retraction affidavit, in the absence of any such evidence

indicating the statements recorded u/s. 132(4) of the Act are true leads to the averments made in the retraction affidavit by all the above said persons are true. Therefore, in our opinion the ratio of Hon'ble High Court of Bombay in the case of Uttam Chand Jain (supra) is applicable to the facts and circumstances of the present case.

19. Further, Shri Deepak Garg referred to statement of Mr. Samir Karkhanis in Retraction Affidavit are not backed by any supporting evidence. In his retraction, Shri Samir Karkhanis stated that the seized document contains the names of the students but the figures mentioned in the paper refers to the number of placements brochures and does not represents the amount of capitation fee. The same story was repeated by him in the cross examination before the assessing officer and even after retraction, Shri Samir Karkhanis admitted that the paper was written by him and it contains the names of the students of the institute. He also admitted that figures mentioned against each name are readable and belong to corresponding student only. What he retracted is that the figure mentioned against each student is not of capitation fee but of placement brochures. Besides this, he has admitted all other contents of the paper. He submits that when confronted about his new theory of 'placement brochures' during the cross- examination, he admitted that he is not in-charge of distribution of placement brochures. He also stated that no record of students to whom brochures were given was maintained by the institute and denied of maintaining any data regarding the distribution of placement brochures. He also could not satisfactory explain as to why he was maintaining the data of placement brochures given to each student and could not give any specific reply as to why brochures in odd figures i.e. 22 brochures were given to any student. No documentary or supporting

evidence was filed in support of his claim that the figures actually refers to number of placement brochures. Neither any evidence was filed to support his claim that the said students were from the placement unit or contacted companies inviting them to the Institute for placement. There was not a whisper about 'placement brochures' in his statement u/s. 132(4) of the Act recorded during the search. No evidence in support of his 'placement brochure theory' was filed during the remand proceedings as concluded by the assessing officer and referred to point (b) at page 25 of the order of CIT(A). It is also important to note that one student Mr. Malav Mehta was studying in Bangalore campus at page 21 of order of Ld. CIT(A). His name was appearing in the seized paper. There is no explanation as to why a student came to Mumbai campus and met Mr. Samir Karkhanis who is not an incharge of placement brochures and took brochures from him and argued that the 'placement brochure theory' is an afterthought and self-concocted story without any supporting evidence. He contends if one reads his whole statement recorded u/s. 132(4) of the Act, it can be noted that the contents of the seized paper were described by him and he is the one who explained that the figures represent the amount of capitation fee. Also, it can be seen that all the questions and replies are interconnected to each other i.e. one flowing after another and the reply to each question was quite descriptive. It is also important to note that the statement u/s. 132(4) is a six-page statement and each page is signed by Shri Samir Karkhanis as well as witnesses. It can't be imagined that a well-qualified person (MBA) will not come to know about the contents of the statement. Also, it is quite impossible that such a well qualified person will sign such a descriptive statement without reading or coming to know the contents of the statements.

20. The ld. AR submits that in the assessment order, the Assessing Officer has relied on seized page and it is submitted that during the course of search action, the officers had found some torn pieces of paper from the residence of Mr. Samir Karkhanis, employee of assessee and these pieces had been pasted on a paper in a dis-joint manner. The said coloured page filed before this Tribunal at page 175 proves that several torn pieces of paper were pasted in a very haphazard and disjoint manner such that the pasted pieces did not correlate with each other. The figures written on a piece of paper did not correlate with the names of the students written on another piece of paper dis-jointly pasted. As a result, no information could be discernible from the said page. Also other pieces pasted on the page did not convey any information. Some of the notings like "check more" suggest that these notings are not related to any capitation fees. Such a page only amounts to a dumb document which cannot be relied upon to come to any conclusion, much less, a definite conclusion that the figures written on the said page were figures of capitation fees accepted from the students. In this regard, reliance is placed on the decisions wherein it has been held that no addition can be made on the basis of a dumb document in the cases of S. P. Goyal Vs. DCIT [269 ITR 59 (Mum.)(AT)] [Page 481-505 of PB No. 3] (Refer Page 503 - from last para on the page) and CIT Vs. Maulikkumar K. Shah [307 ITR 137 (Guj.)] [Page 506-511 of PB No. 3] (Refer Page 508-511, Para 3 and 4).

21. The Assessing Officer has also relied upon the statements of various persons recorded at the time of search wherein the persons such as Kalpana Hans, Manager- Faculty (IT) Department, Samir Karkhanis, Head-Marketing and Business Development, Kanu Doshi, Head- Finance, Pandurang Pawaskar, Manager- Administrations, Prakash Bhekre, Peon

and Ravindra Sumbhe, Peon had stated and allegedly accepted that the said torn piece of paper reflected the notings of capitation fees received from the students. The ld. AR argued that the statements by such persons are not reliable and cannot be used against the assessee.

22. Having heard both on the aspect of retraction of Samir Karkhanis on seized document, the ld. DR contended that the Samir Karkhanis admitted the contents of seized document at page No. 175 were written by him but however in the retraction he said the figures mentioned therein represents placement brochures, is a new theory and afterthought. In reply the ld. AR contended that the search party found some torn pieces of paper from the residence of Samir Karkhanis and the said piece of paper had been pasted on a paper in a dis-joint manner and no information could be discernible from the said paper which is a dump document cannot be relied upon to come to any conclusion. Further, on perusal of the seized document which is placed at page No. 175 as rightly pointed out by the ld. AR that some torn pieces of paper were pasted in another paper in haphazard and dis-joint manner. The names and figures therein does not correlate with each other and nothing is discernible what could be the notings relating thereto. On top of the said document some figures are mentioned against some short code and nothing brought on record by the Revenue what does the said figures relates to and short code name to whom it represents, except stating that the figures represents capitation fee and since the said documents found with the Samir Karkhanis relates to assessee. Further, some names are mentioned wherein we note that after the Sl. Nos. 1, 2 and 3, the Sl. Nos. 4, 5 and 6 are missing. The figures mentioned against such names are different in some papers raising a doubt to whom the said figures refers to. Likewise, another set of names are there in the bottom of

torn piece consisting of four names wherein only two sets of figures are mentioned against such names. So, therefore, the said seized papers in our opinion did not convey any information suggesting that the notings of figures are related to any capitation fee and it cannot be relied upon.

23. Since, we held the retraction statements are valid in the aforementioned paragraphs, it is the duty of the Revenue to bring on any corroborative material evidence on record to prove that the assessee accepted capitation fee from the students and onus is on the Revenue to prove with corroborate evidence that the entries in the said seized document actually represents the capitation fee. There was no supporting evidence to hold that the figures represents in hard cash towards the capitation fee at Rs.20 lakhs per student. When the assessee claims the said figures are a mere entries of placement brochures and then the Revenue has to show some circumstantial evidence to support that those entries really represent cash of Rs.20 lakhs for each student and admittedly there was no such evidence found by the Revenue in the search in the form of actual cash. Thus, the mere entries found in the haphazard manner in the torn piece of paper are not sufficient to prove that the assessee has indulged in accepting capitation fee as the notings on such torn seized documents does not indicate the actual transaction. Therefore, the charge made by the AO is merely based on suspicion and surmises and there is no material whatsoever to support the conclusion of the AO. We take support from the order of Mumbai Benches ITAT in the case of S.P. Goyal reported in 269 ITR 59 which held the Revenue cannot reject the explanation offered by the assessee when there is no circumstantial evidence in the form of actual cash or extra cash supporting the mere entries found on a loose sheet. The decision of Hon'ble High Court of

Gujarat in the case of Maulikkumar K. Shah reported in 307 ITR 137 (Guj.) which held the addition made cannot be sustained on mere presumptions and assumptions without any corroborative evidence supporting the notings on the piece of paper indicating the actual transaction.

24. Shri Garg, further, canvassed that as to why the findings given by Id. CIT(A) should not be accepted. The Id. CIT(A) was incorrect to find that all these employees were not directly involved in the admission process and it is an incorrect finding because all six of them in their statements recorded u/s. 132(4) of the Act admitted their roles in admission process including negotiation, finalisation as well as collection of capitation fee. These statements were recorded sequentially as and when role of each one of them discovered during the search. All of them confirmed the statements of each other and there is no inconsistency in their admissions.

25. The Id. AR, Shri Shah submits that in any case, we further rely upon the letters received from All India Council for Technical Education (AICTE), Department of Technical Education, Maharashtra State (DTE) and Mumbai University wherein they have confirmed that the admission process has been conducted by the assessee as per the rules laid down by AICTE and DTE and that no complaints have been received by them regarding any irregularities. The Assessing Officer has not doubted or rebutted the said evidence filed by the assessee. The Ld.AR, further referred to the letter dated 26.06.2013 of the Assessing Officer of the person searched, i.e. DCIT, Central Circle 12, Mumbai addressed to AICTE (the Regulatory Body set up by Government) stating therein the facts relating to the present case and also complaining that the assessee was involved in accepting the capitation fees from students against law. In the said complaint the

assessee has referred to the statements of employees. The necessary enquiries were conducted by the said regulatory body by appointing a 3 member complaint committee comprising of Retired Bombay High Court judge, Vice chancellor and other senior government official. The report was then submitted by the said Complaint committee and was put up before One man justice Committee of justice (Retd.) P. C. Jain who confirmed that no irregularities are found in the admission process and that the complaint regarding collection of the capitation fees by the assessee trust is dropped. This is crucial evidence in support of the assessee as, upon complaint made by the Assessing Officer and upon consideration of all direct and consequential evidences presented by Assessing Officer, the Government regulatory body has concluded that there was no evidence of collection of capitation fees by the assessee. Even the enquiries conducted by the Government regulatory body failed to find any irregularities in the admission process and did not find the complaint of acceptance of capitation fees by the assessee trust to be valid. The assessee also submits that inspite of the massive search action, the Assessing Officer has not found any cash equivalent to the amount of capitation fees determined by him in the case of assessee.

26. The ld. AR submits that further, even the Assessing Officer has not been able to bring any evidence on record to prove that students have filed any complaint stating that they have paid capitation fees. The assessee relies upon the statement of the Assessing Officer recorded at the Police station at Pune in connection with a complaint against the said Assessing Officer. In the said statement, it has been accepted by him that he has verified all the seized documents as well as the Appraisal report of the Investigation wing and he has not found anything objectionable. He has

also accepted that he has checked / enquired with the students who have taken admission in Welingkar Institute during assessment and that they all have confirmed that they have not paid any capitation fees at the time of admission and argued vehemently even the Assessing Officer's enquiries reveal that no capitation fees have been admitted by any of the students.

27. After hearing both, regarding statement of employees and complaints thereon to Government regulatory authorities, we note that the basing on the statements of employees together with the seized torn piece document the DCIT, Central Circle lodged a complaint to AICTE stating that the assessee was involved in accepting the capitation fee which is at page No. 180 of the paper book. In pursuance of such complaint the AICTE issued show caused notice to the assessee and in response to which the assessee submitted reply along with supporting documents. The AICTE put up the said case before the standing complaint committee consisting of Justice P.S. Patankar, Professor Manik Rao Solunke and Professor K. Tirumaran. After detailed discussion, the three members committee by referring to a letter dated 07-02-2013 issued by the western regional office of AICTE held that "there was anything wrong in the admissions and absolutely no evidence or any document suggesting that the assessee was charging capitation fees or donations". The AICTE again put up the said report of three members committee before the One Man Justice P.C. Jain, committee for vetting/final opinion. The One Man Justice committee fully agreed with the report of three members committee. The relevant portion of page No. 188 is reproduced below for ready reference.

*"7. The above report of the Standing Complaint Committee was put up before the One Man Justice (Retd.) P.C. Jain Committee of the AICTE on 19.12.2014 for vetting/final opinion which had initially recommended for issue of Show Cause Notice in the above case. The opinion dated 19.12.2014 of Justice (Retd.) P.C. Jain is mentioned below :-*

*“In my last opinion dated 30.10.2014, I advised to issue a Show Cause Notice to the Institute. Accordingly, the notice was issued and the whole matter was considered by the Standing Complaint Committee on 05.12.2014 and detailed report was given consisting in 22 paras.*

*I have carefully gone through the report. Each finding/conclusion has been supported by relevant documents as Annexures.*

*I fully concern with the report and the same be complied with.”*

8. *The above observations/recommendation of the Standing Complaint Committee dated 05.12.2014 and the Justice (Retd.) P.C. Jain Committee dated 19.12.2014 have been considered by the Council. Keeping in view the facts mentioned herein above, the Council has decided to drop the complaint against Welingkar Institute of Management Development and Research, Mumbai, regarding collection of capitation fees, donations etc.*

9. *This has approval of the Competent Authority dated 22.12.2014 at page No. 26/N, on F. No. 431-27-54/B-II/BOS (M) 94.”*

28. On perusal of the finding of the Hon'ble One Man Justice committee clearly establishes that there was no evidence suggesting that the assessee charged capitation fee and consequent thereto the AICTE dropped the complaint against the assessee. Therefore, the arguments made by the Id. DR are rejected.

29. The Id. AR regarding exploration for earlier assessment years submits that the said addition also could not be held valid since the Assessing Officer does not have jurisdiction to make the addition in the hands of the assessee without any incriminating material found as a result of search. As evident from the assessment order, the only evidence in possession of the Assessing Officer was the torn document that the said evidence cannot be considered as incriminating and used against the assessee as the said seized page is not only a dumb document, but also the contents of the said seized page do not reveal any notings of receipt of capitation fees by the assessee. The addition made by the Assessing

Officer cannot be said to be on the basis of any incriminating evidence found as a result of search. The case records were received by the Assessing Officer of the assessee on 19.03.2013 in terms of proviso to s.153C of the Act all the assessments for A.Y. 2005-06 to A.Y. 2011-12 were unabated assessments. As per the settled legal principles, the assessments in case of unabated years have to be on the basis of incriminating evidence found as a result of search and that addition can be made only if any incriminating evidence is found in respect of each and every assessment year involved.

30. In reply the ld. DR submits that in this connection, it may be submitted that Ms Kalpana Hans (reply to O. No. 8 and 9 of her 132(4) statement as well as Shri Samir Karkhanis statement have categorically admitted that capitation fee was charged in earlier 6 years as well. The quantification of capitation fee for preceding six years was also made on the basis of admission of Ms Kalpana Hans in the statement recorded u/s. 132(4) itself. Similar admissions were made by other employees as well. This clearly establishes that during the course of search proceedings, unaccounted transactions were found in earlier years as well. While completing the assessment u/s. 153C of the Act, the Assessing Officer was well within his rights to make additions in earlier assessment years as well. In view of the material found and statements recorded u/s 132(4) of the Act wherein similar transactions were admitted for earlier years also, the assessing officer is correct in making additions for earlier years as well.

31. What follows above discussion is that the statements given by the Kalpana Hans, Samir Karkhanis, Kanu Doshi, Pandurang Shankar, Prakash Bekhre and Ravindra Sumbhe u/s. 132(4) of the Act has no

evidentiary value as the said statements were validly retracted subsequently. Then the only piece of evidence forming the part of the basis for making the impugned addition is a torn loose sheet found during the course of search proceedings in the case of Shri Uday Sakunkhe which is placed at page No. 175 of the paper book. No doubt a loose sheet is document within the meaning of section 292C of the Act but the question is whether the contents of said document indicates anything to say that taxable event had taken place. It appears that on perusal of the said loose document, it does not contain any date and does not indicate whether the amounts were received by the said persons or amount were paid to the said persons, whose names find place in the loose sheet. Since, the statements of Kalpana Hans, Samir Karkhanis, Kanu Doshi, Pandurang Shankar, Prakash Bekhre and Ravindra Sumbhe u/s. 132(4) of the Act were held to be of no evidentiary value for the reasons stated supra, the loose sheet also have no evidentiary value even otherwise is a settled position of law that mere statement u/s. 132(4) of the Act without any corroborative evidence cannot form the basis for making any addition in the assessment.

32. In this regard, it is pertinent to note that the affidavit dated 07-05-2012 deposited by Shri Ajay Chandra, Addl. Director of Income Tax (Inv.), Mumbai in connection with the proceedings in WP 5866/2011 before the Hon'ble High Court of Bombay wherein he clearly stated that no incriminating document relating directly to assessee has been seized during the course of search proceedings but only document seized was an architect plan for building of assessee vide para No. 3. Therefore, it clearly shows no incriminating document seized relating to assessee and we find no mention of the torn piece document seized relating to assessee.

33. It is also important to note at page No. 192 of the paper book wherein the true English translation of statement recorded by Vishrambag Police Station, Pune is filed, the said investigation note which was recorded on 25-06-2014 of the AO by the Vishrambag Police, Pune wherein he clearly stated that he has checked/enquired with various students who have taken admission in Welingkar Institute during the assessment and all of them have confirmed that they have not paid any capitation fee at the time of admission which clearly establishes the charge of AO and as supported by the Id. DR is incorrect and supports the plea of Id. AR suggests that no student paid capitation fee to the assessee, in the absence of which the allegation that the assessee accepted capitation fee is based on mere suspicion and assumptions.

34. Thus, we find that there is no incriminating evidence found as a result of search action indicating undisclosed income. Therefore, we are of the considered opinion that the AO had failed to bring on record any material suggesting the receipt of capitation fee and there is no basis to infer that the assessee had been receiving capitation fee during any previous year relevant to the assessment years under consideration. In the absence of any incriminating material suggesting the undisclosed income, the question of extrapolation of addition in the previous year or subsequent year does not arise. Therefore, We do not find any reason to interfere with the orders of CIT(A) accordingly, it is justified. Thus, grounds raised by the revenue fails, hence, are dismissed.

35. The assessee raised an application under Rule 27 of the ITAT Rules questioning the validity of assessment order in question in the above appeal.

36. The ld. AR submits that the assessee has filed an application in Rule 27 of the Appellate Tribunal Rules challenging the validity of the assessment order for AY. 2005-06 to A.Y. 2011-12. He submits that all the assessments for A.Y. 2005-06 to AY. 2011-12 were unabated assessments and the notice u/s. 153C of the Act can be issued only if, in respect of the unabated assessments, any incriminating evidence was found as a result of search. The said torn piece evidence cannot be considered as incriminating as the said document is not only a dumb document, but also the contents of the said page do not reveal any notings of receipt of capitation fees by the assessee. The assessment in the present years cannot be made by the Assessing Officer by issue of notice u/s. 153C of the Act. He placed reliance on the Writ petition filed by the then Vice President of the assessee Trust in Shri Bal Jagannath Maharaj Pandit Vs. Addl. Director of Income-tax Investigation Unit IV, Mumbai in WP No. 5866 of 2011 before the Hon'ble Bombay High Court challenging the findings of the search action. He submits that in the said proceedings which were initiated pursuant to the search action conducted on 20.11.2010, the Additional Commissioner of Income-tax (Inv.) who was in charge of the investigation proceedings, vide his affidavit dated 7th May, 2012, filed before the Hon'ble Bombay High Court, confirmed that no incriminating document relating directly to the assessee Trust was found during the search. This also supports the contentions of the assessee that no incriminating evidence was found as a result of search and the Assessing Officer does not have jurisdiction to issue notice u/s. 153C of the Act and also pass assessment order for various years covered in appeal before Your Honour.

37. The ld. DR submits that the assessee has raised that no incriminating evidence was found during the search proceedings. The Ld. AR also took a plea that even if the seized document is considered an evidence, in that case also the said paper is for AY 2011-12 and no additions could be made for earlier assessment years. In this connection, it is submitted that the Rule 27 of ITAT Rules reads as under:

*"The respondent, though he may not have appealed may support the order appealed against on any of the grounds decided against him"(emphasis supplied)".*

38. The ld. DR submits that no ground challenging the validity of proceedings u/s. 153C of the Act was admittedly raised for any assessment year before the Ld. CIT(A) and the Ld. CIT(A) has not decided any ground against the assessee. The grounds now raised under Rule 27 are not covered by the Rule 27. It is an established law that Rule 27 would not extend to permit the respondent to expand the scope of an appeal and assail the decision on issues, which are not subject matter of the appeal. It is also an established law that a party who has not appealed, cannot be permitted to raise a ground which will work adversely to the appellant. In the case of Shri Uday Sakunkhe wherein the assessee trust filed letter stating that addition on account of capitation fee, if any, should be made in the hands of the trust and not in the hands of the trustees or director of Welingkar. Same stand was maintained by the trust before the Ld, CIT(A) of Shri Uday Salunkhe and another letter was filed before him. The trust also stated that it will not raise any technical ground in its proceedings. Considering these letters from the trust and the grounds of appeal of the trust filed before Ld CIT(A) in trust's case, it was held that no addition in the hands of Shri Salunkhe can be made and additions were deleted without discussing the issue on merits. The Hon'ble ITAT while

disposing the appeals in the case of Shri Uday Salunkhe also confirmed the same. (Para No. 4.4.2 to 4.4.7 of the order of Hon'ble ITAT placed at page 2 to 12 of the paper book filed by the department). In view of above, the assessee trust should not be permitted to raise any technical stage. He vehemently argued that the assessee cannot be permitted to raise such grounds under Rule 27.

39. After hearing both the parties we note that no ground questioning the validity of proceedings u/s. 153C of the Act raised for any of the assessments and no decision rendered by the CIT(A) on such validity of assessment. It is an established principle that Rule 27 would not extend to permit respondent-assessee scope of an appeal to question the decision on such issues which are not subject matter of the appeal. It is also decided that the assessee who has not appealed cannot be permitted to raise a ground which will adversely work against the appellant-revenue. Therefore, the application filed by the assessee under Rule 27 of the Rules fails and accordingly, dismissed.

40. In the result, the appeal of Revenue in ITA No.571/PUN/2016 is dismissed.

**ITA Nos. 572 to 577/PUN/2016, (A.Ys. 2006-07 to 2011-12)**

41. Both the sides are unanimous in stating that the grounds of appeal raised in ITA Nos. 572 to 577/PUN/2016 for AY's 06-07 to 11-12 are identical to the grounds raised in ITA No. 571/PUN/2016. Thus, in view of the fact that the issues in the appeals are identical and are arising from same set of facts the findings given by us while adjudicating the appeal in ITA No.571/PUN/2016 would *mutatis mutandis* apply to the appeals in ITA

Nos.572 to 577/PUN/2016, as well. Accordingly, the appeals of Revenue in ITA Nos. 572 to 577/PUN/2016 are dismissed.

42. To sum up, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 24<sup>th</sup> June, 2021.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24<sup>th</sup> June, 2021

RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune
4. The Pr. CIT, Central, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune