

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.50 to 56 & 455/Bang/2018
Assessment Years : 2008-09 to 2014-15 & 2013-14 respectively

ACIT Central Circle-2(3) Bangalore	<b>Vs.</b>	M/s. Venkatesha Education Society No.19, Hutchins Road Cross Ashoka Road St. Thomas Town Bangalore 560 084  <b>PAN NO : AAATV1990J</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Sumer Singh Meena, D.R.
<b>Respondent by</b>	:	Shri Vijay Mehta, A.R.

Date of Hearing	:	03.02.2022
Date of Pronouncement	:	30.03.2022

**ORDER**

**PER BENCH:**

These are all the appeals filed by the revenue challenging the orders passed by Ld. CIT(A)-11, Bengaluru in the hands of the assessee herein and they relate to the assessment years 2008-09 to 2014-15. All these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The revenue is challenging the decision of Ld. CIT(A) in deleting the additions made by the A.O. in these years and also in holding

that the assessee is eligible for exemption u/s 11 of the Income-tax Act, 1961 [‘the Act’ for short].

3. The facts relating to the case are stated in brief. The assessee M/s. Venkatesha Education Society is a Charitable Trust formed with the objective of establishing Medical colleges, Engineering colleges, Dental colleges, Teacher Training Institutions, etc. in the State of Karnataka. The assessee Trust is registered as a Charitable Trust u/s 12A of the Income Tax Act, 1961. (in short “the Act”). The assessee society is registered as “Tamil Linguistic Minority Trust” for the benefit of Tamil speaking students by the State of Karnataka. The assessee society runs a Medical college (MVJ Medical college), and an Engineering college (MVJ Engineering college), a Nursing college, a college of Education, etc.

4. The revenue carried out search and seizure operations u/s 132 of the Act in the hands of the assessee on 19.9.2013. The revenue officials covered the offices of the Trust, Medical college, Engineering college and residences of trustees and managerial persons related with the trust during the course of search operations. During the course of search, the search officials unearthed incriminating documents and also seized cash from the residence of one of the trustees named Shri M J Balachander. They also recorded statements from key persons. Based on the documents, the A.O. took the view that the assessee trust is collecting capitation money in the form of cash from the students seeking admission in its institutions, especially in medical college and engineering college run by the assessee. The A.O primarily relied on the following incriminating documents to arrive at the above said conclusion:-

<b>Sl.No.</b>	<b>Seized document No.</b>	<b>Description</b>
1	A/MVJMCRH/1, Pg.99 and 100	Notings about amounts in lakhs received and due from students of MBBS course.
2	A/MJM/02, Pg.2,3,4,5,6	Details of amounts received from PG medical course students, in cash and cheque for the academic year 2013-14
3	A-2/VES/01, Pg.25	Details of capitation fee paid by a student seeking admission in MBBS course
4	A/MVJMCRH/1, Pg.94	Cash payment voucher of Rs.1,00,000/- for paying commission to agents.
5	A-1/MVJMCRH/03, Pg.16	Sheet found which mentions collection of Rs.30 lakhs (Rs.10 lakhs still due) from Miss. M.S. Dawngzuali via one Sumos Mathews.

5. The AO confronted these documents with the assessee. Though the assessee offered explanations, yet the AO was not convinced with them. Accordingly, the A.O. came to the conclusion that the assessee has collected capitation fee from the students admitted in the medical college. Even though, the incriminating documents pertained to a particular year and/or related to certain students only, yet, based on those documents, the AO took the view that the assessee would have collected capitation fee from all the students and also in all the years under consideration. Accordingly, the AO estimated the amount of capitation fee per student in each of the years and extrapolated the same to all the students in all the years under consideration, viz., financial years relevant to the assessment years 2008-09 to 2014-15.

6. In support of his decision to extrapolate the amounts to other years and to all students, the AO took support of the decision rendered by Hon'ble Supreme Court in the case of CIT vs. H.M. Esufali H.M. Abdulali (1973)(90 ITR 271) and also the decision

rendered by Hon'ble Delhi High Court in the case of CIT vs. Chetan Das Lachman Das (2012)(25 taxmann.com 227)(Delhi).

7. The A.O. estimated the capitation fee that would have been collected in every year for admission into MBBS and PG courses separately. The AO assessed the amounts so estimated by him in the respective years. The workings made by the A.O. are extracted below:-

(A) From MBBS Students:-

A.Y.	No.of students (through KRLMPCA & NRI quota)	Average amount of capitation per student (Ref. A- 2/VES/01, Pg.25)	Total capitation collected
08-09	75	Rs.18,00,000/-	Rs.13,50,00,000/-
09-10	75	Rs.18,00,000/-	Rs.13,50,00,000/-
10-11	73	Rs.18,00,000/-	Rs.13,14,00,000/-
11-12	71	Rs.18,00,000/-	Rs.12,78,00,000/-
12-13	108	Rs.18,00,000/-	Rs.19,44,00,000/-
13-14	73	Rs.18,00,000/-	Rs.13,14,00,000/-
14-15	96	Rs.30,00,000/- (as per A-1/MVJMCRH/03, Pg.16)	Rs.28,80,00,000/-

(B) From PG Students:-

A.Y.	No.of students (through KRLMPCA & NRI quota)	Average amount of capitation per student (Ref. A/MJM/02, Pg.2,3,4,5,6)(About Rs.45,00,000/-)	Total capitation collected
08-09	Nil	--	---
09-10	25	Rs.45,00,000/-	Rs.11,25,00,000/-
10-11	35	Rs.45,00,000/-	Rs.15,75,00,000/-
11-12	36	Rs.45,00,000/-	Rs.16,20,00,000/-
12-13	40	Rs.45,00,000/-	Rs.18,00,00,000/-
13-14	38	Rs.45,00,000/-	Rs.17,10,00,000/-
14-15	46	Rs.45,00,000/-	Rs.20,70,00,000/-

8. The AO has also made following observations in support of his view to estimate capitation fees:-

(a) The assessee was subjected to search earlier on 16.09.2008 and at that time also, it was noticed that the assessee was charging "Extra Tuition Fees" from students and it was not accounted in books of accounts. Accordingly, addition was made towards unaccounted fee receipts in AY 2008-09 and 2009-10. Taking support of the same, the AO held that the assessee is in the habit of collecting extra fees from students and not accounting the same in books.

(b) During the course of search conducted at the residence of one of the trustees named Sh. M.J. Balachander (Head of Governing Council of MVJ Engineering College), cash of Rs.75,32,600/- was found. Shri Balachander explained that the above said cash balance consists of (a) excess fee collected from students provisionally, since it may be required to be refunded depending upon the decision of One man committee, (b) his cash balance and (c) his wife's cash balance. He submitted that the excess fee was collected @ Rs.1.00 lakh per student for additional services provided to them. During post search investigations, Shri Balachandar offered Rs.28,57,318/-, out of seized cash, to tax in his return of income filed for AY 2014-15. It was submitted that the balance amount of Rs.46,75,282/- consists of cash balance available with him, his wife, M/s MVJ Hostel (a partnership firm) and M/s Rajalakshmi Jayaraman Enterprises (a commercial concern). The AO did not accept the said explanations and took the view that the cash balance represents extra fees charged by the assessee from students seeking admission. Accordingly he took the view that the above said amount

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represents undisclosed income of the assessee and accordingly assessed the entire amount of Rs.75,32,600/- in the hands of assessee in assessment year 2014-15. (The Ld A.R submitted that the above said amount was assessed in the hands of Shri M J Balachander also).

9. The AO also took the view that the assessee has violated the provisions of sec.13(1)(c) of the Act on account of following reasons:-

(a) He took the view that the trustees have diverted the capitation fee collected to their personal benefit without accounting the same in the books of assessee.

(b) He noticed that the assessee has given interest free loans to Smt Dharani Mohan who works as Chief Administrative Officer of the medical college. The AO held that the Smt Dharani Mohan qualifies to be called as “manager” within the meaning of sec.13(3) of the Act.

In view of the foregoing, the AO took the view that the assessee has violated the provisions of sec.13(1)(c) of the Act. The relevant discussions made by the AO are extracted below:-

*“Further the moot point here is not only are the above amounts are unaccounted in the books of accounts but also they have not been utilized for the objects of the trust, i.e., for charitable activities. Thus, it is implied that the above mentioned amounts have been utilized for the benefit of the persons referred to u/s 13(3) of the Income tax Act. This fact is proved by the fact that*

- *Sh. Balachandar (Trustee) was not able to explain the cash found at his premises during search and attributed it to the excess fees collected from students.*

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- *Personal benefit derived by trustees/Secretary from trust is also apparent from seized document no.A/MJM/02, Pg. 2,3,4,5,6 wherein details of capitation fee collection in cash were found in the form of pen notings at the residence of ShM.J.Mohan (Secretary of Venkatesha Education Society).*
- *Sh. Mohan has also not satisfactorily explained the nature of Commission receipts offered to tax in some years.*
- *The interest free loans that have been advanced to Smt. Dharani Mohan who works as the Chief Administrative Officer of the medical college is another instance of personal benefit been derived by individuals by diverting the income of the trust. She qualifies to be called a ‘manager’ of the trust under section 13(3) of the Act. Evidence reveals that the trust has lent money to Smt. Dharani. The amount of money that has been advanced is Rs.35 lakhs and the same has been done without any security/interest. An unsecured interest free loan squarely falls within the definition of benefits prescribed u/s 13(1)(c) of the Act. There is direct application of section 13(1)(c) of the Act as far as non-application of the unaccounted capitation fee collected and as far as personal benefits derived by Sh. Balachandar, Sh. M.J.Mohan and Smt. Dharani Mohan from the trust.”*

10. In view of the above, the AO examined the eligibility of the assessee to claim exemption u/s 11 of the Act. He expressed the view that the assessee shall be entitled to exemption, if

- (a) it satisfies all the necessary conditions of not violating any of the provisions specifically mentioned in sec.13 of the Act.
- (b) it does not contravene any provisions of law of land.
- (c) the activity of the assessee was carried on with intention of doing good to common public.

(d) there are no irregularities in books of accounts.

The AO expressed the view that the assessee has violated all the above said conditions. In support of this view the AO has observed as under:-

- The AO observed that the assessee society was formed for the benefit of Tamil Speaking Students, but this principal condition has been violated by admitting students from other communities in large numbers. This fact has also noticed by a fact-finding one-man committee named P. Venkataramiah constituted by Government of Karnataka.
- The AO noticed that the assessee has furnished incorrect details on number of teachers/faculties to MCI.

Accordingly, the AO took the view that the assessee is not entitled to exemption u/s 11 of the Act. In support of his decision, the AO took support of the judgement of Hon'ble Apex Court in the case of P A Inamdar and the decision rendered by Hyderabad bench of ITAT in the case of Vodithala Education Society vs. ADIT (Exemptions) (20 SOT 353)(Hyd). Finally, the AO summarized various reasons as under:-

- *“the assessee is habitually collecting huge capitation fees in cash from the students seeking admission in the educational institutions of the Trust which makes the activities of the Trust non-charitable.*
- *The assessee does not account this capitation fees collected in the books of account.*
- *The capitation fees collected have not been used for the objects of the Trust.*

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- *Incriminating documents have been seized from the offices of the Trust and from the residence of the Secretary of the Trust. These documents belong to the assessee and its contents are true by the virtue of section 132(4A).*
- *Trustees like Sh. Balachandar (cash seized from his residence which remains unexplained) and the Secretary Sh. M.J. Mohan (sized document A/MJM/02, Pg. 2,3,4,5,6, seized from his residence, shows collection of capitation amount in cash from P.G. medical students) are persons referred to u/s 13(3) who have derived direct and indirect benefit from the income (both accounted and unaccounted) generated out of the Trust and thus it is a case of application of the section 13(1)(c) to deny the claim of assessee of exemption u/s 11(1) of the Income Tax Act, 1961. (Reliance is placed on the judgement of the ITAT, Mumbai in the case of Vidyavardhini Vs. ACIT, Cent. Circle-2, Thane, 20 taxmann.com 81, wherein it was held that if the donations collected are not accounted in the books of the trust and have been used by the Trustees and the Secretary, then the provisions of section 13(1)(c) are applicable.*

*The same principle was upheld in the following cases:-*

- *DDIT (Exemptions) v Chaitanya Memorial Education Society, ITAT Hyderabad, 30 ITR (T)120*
- *Travancore Education Society Vs. CIT, 58 taxmann.com 40, ITAT, Cochin*
- *Sree Anjaneya Medical Trust V CIT, Kozhikoke, 49 taxmann.com 426, ITAT Cochin*
- *Further, the assessee trust is also not run according to the objectives of the trust which is to provide professional education to Tamil speaking linguistic minority of Karnataka. This is apparent from the findings of the Venkataramaiah committee which states that the trust institutions have admitted non-Tamil speaking community students in large numbers. The Trust has defrauded the MCI norms also which has been discussed already.”*

Accordingly, the AO treated the assessee as an “Association of Persons” for tax computation purposes, rejecting the claim of exemption u/s 11(1) of the Act.

11. Since the AO held that the assessee is not eligible for exemption u/s 11 of the Act, he did not grant exemption u/s 11(1)(d) on the Corpus donations/grants received by the assessee, the details of which are tabulated below. Accordingly he included these items in the total income of the respective years :-

Assessment Year	Nature of receipt	Amount
2008-09	Corpus Donations	38,04,550
2009-10	Corpus Donations	43,96,000
2010-11	Corpus Donations	15,38,000
2011-12	NIL	NIL
2012-13	Grants received	20,79,163
2013-14	Grants received	29,95,963
2014-15	Grants received	15,55,035

As stated earlier, the AO assessed in AY 2014-15 the cash of Rs.75,32,600/- found at the resident of Shri Balachander at the time of search.

12. Aggrieved by the orders passed by the AO, the assessee filed appeals before Ld CIT(A) for all the years under consideration. The Ld CIT(A) deleted all the additions made by the AO in all the years and accordingly allowed the appeals of the assessee. Aggrieved, the revenue has filed these appeals before the Tribunal.

13. The revenue has raised identical grounds in all the years under consideration. In assessment year 2014-15, the revenue has raised on more ground challenging the deletion the addition of cash seized

from residence of Shri Balachander amounting to Rs.75,32,600/-.

The grounds raised by the revenue are extracted below:-

(A) Common grounds in all the years:-

- *Whether the CIT(A) was right in holding that the decision of the Hon'ble Supreme Court in the case of Easuf Ali (90 ITR 271 SC) do not apply to the facts of the case.*
- *Whether the CIT(A) was right in placing reliance on the decision in the case of Common Cause and Other V/s Union of India and others in WP (Civil) No.505 of 2015 which are applicable to 3<sup>rd</sup> parties and not to materials found in one's own case.*
- *Whether the CIT(A) was right in not considering the decisions in the cases of Vidyavardhini Vs. ACIT and Modern Dental College and Research Centre Vs. State of Madhya Pradesh.*
- *Whether the CIT(A) was right in not considering the principle laid down in the case of Sumati Dayal Vs. CIT in 1995 AIR 2109.*
- *In the facts and circumstances of the case, whether the CIT(A) was right in striking down the denial of exemption u/s 11(1) of the I.T. Act."*

(B) As stated earlier, the revenue has raised following ground also in Assessment Year 2014-15 over and above the grounds stated above:-

*Whether the CIT(A) was right in deleting the addition of cash seized amounting to Rs.75,32,600/- in the absence of any substantiation by the assessee.*

14. We notice that the grounds raised by the revenue are general in nature. However, from the arguments advanced by both the counsel, we notice that following issues are being agitated by the revenue:-

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- ***Relief granted in respect of addition relating to capitation fee received from MBBS students in all the years under consideration.***
- ***Relief granted in respect of addition relating to capitation fee received from PG students from AY 2009-10 to 2014-15.***
- ***Relief granted in respect of addition made in AY 2014-15 relating to cash seized.***
- ***Relief granted in respect of denial of exemption u/s 11 of the Act resulting in granting of exemption to corpus donations/grants.***

15.0 The Ld A.R submitted that the AO has mentioned five documents as incriminating in paragraph 2.3 of the assessment order. However, the AO has relied upon only three documents to make the additions. He submitted that all the documents are dumb documents and hence no credence could be attached to them. He further submitted that none of the documents prove that the assessee has collected capitation fee from the students. He submitted that the AO has drawn conclusions only on surmises and conjectures. The Ld A.R raised specific contentions with regard to each of the five documents and they are summarized below. The seized document number is given in bold letters below. The description of the same as narrated by AO is stated in brackets.

- (i) **Document No. A/MVJMCRH/1, Pg. 99 and 100:-**(It is a paper containing noting of amount received and due from students of MBBS course.)

The Ld A.R submitted that this document contained name of students and certain jottings. He submitted that the AO has relied

upon this document to hold that the assessee has collected capitation fee. However, he has not made any specific addition based on this document. He further submitted that

- The search officials recorded a Statement from Chief Administrative Officer Smt. Dharani, wherein she has stated that she was not aware about these loose papers and how it got located in the room.
- The AO has not conducted any enquiry with any of the students whose name appears in the loose sheet.
- Another important feature of this document is that the most of the dates mentioned in this paper are beyond the date of search and hence it cannot be said that the assessee has collected any capitation fee.
- Hence it is a dumb document and no credence should be given to the same. It does not prove that the assessee has collected any capitation fee.

(ii) **Document No. A/MJM/02, Pg.2,3,4,5,6:-**(Details of amounts received from PG Medical Course students in cash and cheque for academic year 2013-14.)

The Ld A.R submitted that this document contains name and address of post graduate students admitted for Academic year 2013-14 with some handwritten noting. Based on this document, the AO has alleged that the assessee has collected on an average of Rs.45,00,000/- from each of the post graduate students. The Ld A.R submitted that the AO has extrapolated alleged capitation fees of Rs.45.00 lakhs for all students admitted in the years relevant for AY 2009-10 to 2014-15 on the basis of this document. The Ld A.R submitted that

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- The noting made in this document is not self explanatory. Shri M J Mohan has expressed his ignorance (both in the statement taken u/s 132(4) and also during the course of assessment proceedings) about the noting made in the document and categorically stated that the noting are not in his or any of his employees handwriting.
- The revenue has issued notices to each of the student and their statements were recorded. However, the AO has not brought on record the results of such examination, despite a specific request made by the assessee.
- The cheque amounts mentioned in the seized document do not tally with the books of accounts and bank statements. The AO also did not verify the same with books.

The Ld A.R, accordingly, submitted that nothing turned out against the assessee from this document. Accordingly he submitted that this is also a dumb document and no credence should be given to the same. Further, it does not prove that the assessee has collected any capitation fee.

(iii) **Document No.A-2/VES/01, Pg.25:-**(Details of capitation fee paid by a student seeking admission in MBBS Course.)

The ld A.R submitted this document is a letter dated 20-07-2009 issued by a concern named “Next Foundation Consultants (I) P Ltd” and found in the office of the assessee. This letter mentions about admission of a student in MBBS Course for academic year 2009-10 relevant to AY 2010-11. As per this letter, the above said concern has received Rs.18.00 lakhs from Shri Akbar Khan for admitting a student named Sabir Mohammed S/o Diwar Khan. The letter states that the above said amount includes capitation and I year fees with eligibility fee charges. He submitted that this

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document nowhere states that the assessee has received the amount from Akbar Khan for admitting the above said student. He submitted that it is a fraud committed by M/s Next Foundation Consultants (I) P Ltd on the student. Accordingly, the assessee has filed police complaint, issued public notice and also lodged complaint with the Home Minister. He submitted that the assessee has also obtained confirmation letter from concerned student, wherein he has stated that the above said concern has cheated him. He submitted that all these events have taken place in the financial year 2009-10, much prior to the date of search. Even though, the assessee has furnished copies of all these documents, yet the AO chose to ignore them and proceeded to make the additions presuming that the contents of the letter are true. Accordingly, the Ld A.R submitted that the assessing officer could not have placed reliance on this document. Based on this document, the AO has estimated the Capitation fee for all MBBS students at Rs.18,00,000/- per student for the years relevant to AY 2008-09 to 2013-14 by extrapolating the fee to other years and also for all students. (For the year relevant to AY 2014-15, the AO has relied upon some other document, which has been separately addressed).

(iv) **Document No.A/MVJMCRH/1, Pg. 94:-**(Cash payment voucher of Rs.1,00,000/- for paying commission to agents.)The Ld A.R submitted that this voucher is an unsigned document, i.e., it is neither signed by the recipients nor the said payment was authorized by anyone. Further the word “commission” has been inserted between the lines. No specific name is mentioned therein. In the name column, it is only written as “agents”. Hence it will not qualify to be called as a “voucher” at all. Further, the AO has not corroborated the same with the entries made in the books of account. The assessee has also denied having made any such payment.

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Accordingly, the Ld A.R submitted that this voucher could not have been taken support of by the AO.

(v) **A-1/MVJMCRH/03, Pg. 16:-**(Sheet found which mentions collection of Rs.30 lakhs (Rs.10 lakhs still due) from Miss M.S. Dawngzualivia one Sumos Mathews).

The Ld A.R submitted that this letter is found at the medical college about refund of capitation fees of one Ms. M S Dawngzuali. Based on this letter, the AO has estimated the capitation fee for MBBS students for the year relevant to AY 2014-15 at Rs.30,00,000/-.

- This letter is undated and unsigned
- It is not known who has written this letter and to whom it is addressed.
- No inquiry, whatsoever has been caused by the AO/Search officials
- The assessee has produced its bank statement to demonstrate that this payment has not been received by it either from the student or Mr.Sumos Mathew as alleged in the seized paper.

Accordingly, the Ld A.R submitted that this document is also a dumb document and the AO could not have placed reliance on it. The Ld A.R submitted that the AO has estimated capitation fee at Rs.30.00 lakhs per student in AY 2014-15 for MBBS students relying on this document and presumed that all students would have given capitation fee at the same rate in that year.

15.1 The Ld A.R submitted that the AO has taken support of some other facts also to buttress his conclusions that the assessee has collected capitation fees. The Ld A.R submitted that none of those

facts support the case of the AO. In this regard, the Ld A.R advanced following arguments:-

(a) With regard to the reference made by the AO to the finding of previous search, the Ld A.R submitted that the additions made by the AO towards capitation fees in the earlier years on the basis of previous search have since been deleted by the Tribunal. Referring to the order dated 21.12.2012 passed by the Tribunal for the earlier years in the hands of Shri M J Balachander & the assessee herein, the Ld A.R said that the Tribunal has given a specific finding that the assessee herein has not collected any capitation fee in paragraphs 31 to 37 of the order passed by the Tribunal.

(b) With regard to the view of the AO that Smt. Dharani Mohan falls under the category of “manager” within the meaning of sec.13(3) and hence interest free loan given to her results in violation of sec.13(1)(c) of the Act, the Ld A.R submitted that Smt Dharani Mohan is an employee in the medical college and she has been working there for the past six years. He submitted that the interest free housing loan was given to her in the normal course of carrying on of activities of the assessee. He submitted that the loan has been repaid by Smt Dharani Mohan subsequently by way of deductions from her salary. He submitted that the expression “trustee of trust” and “manager of the institution” would refer to the persons entrusted with the income and assets of the trust or institution, as the case may be, in order to implement the objects of trust. Accordingly the Ld A.R submitted that the AO was not legally correct in holding that Smt. Dharani Mohan shall fall under the category of “manager” within the meaning of sec.13(3)(cc) of the Act. Without prejudice to the above, the Ld A.R submitted that even if there is violation u/s 13(1)(c) as alleged by AO, then the amount which is subject matter of violation alone can be brought to tax. In support of this proposition, the Ld A.R placed his

reliance on the decision rendered by Hon'ble jurisdictional Karnataka High Court in the case of Fr. Mullers Charitable Institutions (363 ITR 230)(Kar) and also on sec. 164(2) of the Act. He further submitted that the SLP filed in Supreme Court challenging the order passed by the Hon'ble Karnataka High Court in the above said case has been dismissed by Hon'ble Supreme Court and the same is reported in 51 taxmann.com 378.

(c) With regard to the observation of the AO that the assessee has not admitted sufficient number of Tamil linguistic minority students, even though is recognized as a linguistic minority institution, the Ld A.R submitted that the object clause of the assessee trust is to establish educational institutions for the benefit of Tamil speaking students and in addition to others. Hence the object of the assessee is imparting education to all. Hence the observations made by AO in this connection are liable to be ignored.

(d) With regard to the observation of the AO that the assessee has furnished incorrect details of teachers/faculties to Medical Council of India, the Ld A.R submitted that this issue has nothing to do with the issue relating to Capitation fee or charitable activities of the assessee. Further, it was mere allegation and no action has been taken and no adverse order has been passed by the concerned authorities in this regard. Accordingly, the Ld A.R submitted that the AO was not justified in placing reliance on these allegations.

(e) With regard to the cash of Rs.75.32 lakhs found in the residence of Shri M J Balachander, who is a member of Governing Council, the Ld A.R submitted that the AO has assumed that the above said cash was part of capitation fee and accordingly has taken support of the same for making additions towards collection of capitation fee. The Ld A.R submitted that Shri Balachander has given complete explanation for the cash found from his possession.

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He further submitted that his explanation has been accepted by Ld CIT(A) in the order passed by him on 17.10.2017 in the hands of Shri M J Balachander. He further submitted that the appeal filed by the revenue before the Tribunal challenging the order so passed by Ld CIT(A) in the hands of Shri M J Balachander has since been dismissed by the Tribunal on account of low tax effect. The Ld A.R further submitted that the search officials did not unearth assets commensurate with the huge addition of about Rs.200 crores made by the AO. He submitted that he has already argued that other documents relied upon by the AO were dumb documents and no credence could be given to them. Accordingly, he submitted that the AO was not justified in drawing inference drawn by AO that the cash represents part of capitation fee and hence the same is liable to be rejected.

16. The Ld D.R contended that the additions have been made in the assessment order on the basis of incriminating materials found during the course of search. The Ld D.R invited our attention to the copy of letter dated 15<sup>th</sup> September, 2012 written by Shri M J Balachander (one of the trustees) to Shri M J Mohan (another trustee), which is placed at pages 29 to 32 of the paper book filed by Department. In this letter, Shri M J Balachander refers to a name of Shri Umesh Babu Patel, who has been appointed as Chairman of the Governing Council of the assessee. Shri Balachander alleges that Shri Umesh babu patel is an agent, who refers students to professional colleges for a fee. It is further stated that he admitted a student in the engineering college run by the assessee and which was later cancelled. Further, the very same letter was critical about Smt. Dharani Mohan stating that she is commanding in the affairs of medical college. The Ld D.R submitted that this letter between trustees proves that the assessee is admitting students by collecting capitation fees. He further submitted that the assessing officer has

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scanned all the incriminating documents in the assessment order itself. One of the documents is the copy of cash voucher evidencing payment of commission to an agent. The Ld D.R further submitted that the search officials have unearthed a document containing name and address of PG students for the academic year 2013-14 from the residence of Shri M J Mohan. Against each of the student, certain noting has been made in Pen. The noting contains amount and its division into "A/c" and "C". The AO has interpreted "A/C" as Cheque payment and "C" as cash payment. Further the same list was found in a computer seized from the medical college (but without noting in Pen). These documents prove that the assessee has been collecting capitation fee from the students. The Ld D.R also relied upon the decision rendered in the case of Surinder Kumar (340 ITR 173).

17. In the rejoinder, the Ld A.R submitted that he has already advanced his arguments on each of the documents. Further he submitted that the search officials have taken sworn statement on the date of search from Smt. Dharani Mohan, Chief Administrative Officer of medical college. The copy of the same is placed at pages 10 to 13 of paper book. In the sworn statement, she has pleaded ignorance of the documents. Further, she did not state anywhere that the assessee was collecting capitation fee. The Ld A.R reiterated that these documents are dumb documents. He submitted that the AO did not take any steps to prove the contents of those documents by making further enquiries or by corroborating them with the books of accounts except in case of capitation fee alleged to have been collected from PG Students. However, he did not confront the results of the enquiry with the assessee, even though a specific request was made in this regard by the assessee. Further, the AO did not discuss anything in the assessment order about the results of said enquiry. Hence the possible inference could be that his enquiry has revealed that the assessee has not collected any capitation fee from the

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students. With regard to the cash voucher for alleged payment of Rs.1.00 lakhs as commission, the Ld A.R submitted that the said document cannot be called as voucher, as none has signed it and further the word “commission” has been inserted therein to make it incriminating. Since these documents do not support the case of the AO that the assessee has collected capitation fee, the decision rendered in the case of Surinder Kumar (supra), relied upon by Ld D.R, is not applicable to the facts of the present case.

18.0 We heard rival contentions and perused the record. The first issue relates to the addition relating to capitation fee collected from MBBS Students. The assessing officer has relied on following three documents in order to come to the conclusion that the assessee has collected capitation fee from all the students in all the years under consideration.

(a) Letter written by Next Foundation Consultants (I) Pvt Ltd  
**(Document No.A-2/VES/01, Pg.25).**

(b) Cash payment Voucher for payment of Commission of One lakh rupees to Agents **(Document No. A/MVJMCRH/1, Pg.94)**

(c) A letter written about admission of one student Miss Dawngzualli through an agent Sumos Mathews and her compulsion to discontinue her studies due to health problems  
**(Document No. A-1/MVJMCRH/03, Pg.16)**

We noticed earlier that the AO has estimated capitation fee at Rs.18.00 lakhs per student in AY 2008-09 to 2013-14 on the basis of document mentioned in serial (a) above. The AO has estimated the capitation fee at Rs.30.00 lakhs on the basis of document mentioned in serial (c) above.

18.1 The first document (No.A-2/VES/01, Pg.25) is a letter dated 20-07-2009 issued by a concern named "Next Foundation Consultants (I) P Ltd. It states that a student named Mr. Sabir Mohamed, s/o Dilawar Khan has been provisionally booked seat for Ist year MBBS for session 2009-10 in MVJ & research centre for Medical Sciences. It further states that the above said concern has received Rs.18.00 lakhs from his guardian Akbar Khan which includes capitation and 1st year fees with eligibility fees charges. It also states that, if by 30<sup>th</sup> July college provides the admission slip, then they will send it to the student to his postal address along with KRLM University eligibility letter. Most importantly, this letter also states as under:-

**"No clues for 1<sup>st</sup> Year"** This letter will be given back, the candidate report to the classes.

A perusal of the contents of the letter would show that a concern named M/s Next Foundation Consultants (I) P Ltd has collected Rs.18.00 lakhs from a student for getting admission into MBBS course in MVJ & research centre for Medical Sciences. It also makes it clear that there are no clues for I year, meaning thereby the above said concern is also not sure of admission. Nowhere it is stated in the letter that the above said amount of Rs.18.00 lakhs (which amount stated to includes capitation fee, Ist year fees and eligibility charges) was handed over to the assessee. Accordingly, we are unable to understand as to how the AO could come to the conclusion that the assessee has collected the above said amount of Rs.18.00 lakhs. On the contrary, the assessee has taken following steps in connection with this letter:-

- It has filed complaints with the Police/ Home minister including filing of FIR against the above said entity for making false promise of admission into their college.

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- The assessee has given public notice in the newspaper warning the public.
- The assessee has also obtained a confirmation letter from the concerned student, who has stated that Next Foundation Consultants (I) P Ltd has cheated him.

The Ld A.R submitted that all these documents were furnished before the AO. However, the AO did not examine them or conducted any enquiry. He has brushed aside all these evidences by stating that M/s Next Foundation Consultants (I) P Ltd has changed its address. One more important point is that all these events have happened in the financial year 2009-10, much prior to the date of search of 19-09-2013. Hence it cannot be said that these documents are fabricated one. Accordingly, considering various steps taken by the assessee, we hold it to be a dumb document and hence no credence could be given to the letter dated 20-07-2009 issued by M/s Next Foundation Consultants (I) P Ltd. We noticed earlier that the AO has placed reliance on this document in order to make addition towards capitation fee in the financial years relevant to the AY 2008-09 to 2013-14. In view of the foregoing discussions, we are of the view that the AO was not justified in placing reliance on this document in order to come to the conclusion that the assessee has collected capitation fee of Rs.18.00 lakhs from all students for admission into MBBS Course during the financial years relevant to the assessment year 2008-09 to 2013-14.

18.2 Now we shall examine the document (A-1/MVJMCRH/03, Pg.16) relied on by the AO. This document is a letter. It is an unsigned one and does not contain the details of either recipient or sender. The A.O. has scanned copy of this document at page 13 of the order. This document reads as under:

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*“MsM.S.Dawngzuali, D/o Dr.Zrithiarrisanga of Aizawl, Mizoramgot admission in 1<sup>st</sup>MBBS in M.V.J.Medical College, Hoskote in the month of October, 2012. She got admission by paying donation/ capitation fee of approximately Rs.30 Lakhs by means of account transfer to the M.V.J.Medical College (the payment was made to the account of one Mr.Sumos Mathew who acted as an admission agent and from whom the money was in turn reported to be transferred to the MVJ Medical College). The total donation amount to be paid was reported to Rs40Lakhs and hence Rs. 10 lakhs is a balance amount to be paid to make full payment.*

*In addition to Rs.30 lakhs already paid for donation /capitation fee, Rs.4.2 lakhs was paid to the Medical College for obtaining Medical Council of India Registration etc. In addition to the above Rs.1.7 lakh was paid to the College for Hostel fee and Mess charges by her.*

*The student started attending her classes after obtaining admission and unfortunately she had to undergo surgical operation to remove a lump from her breast and she was not keeping well for some time and due to mental depression because of various health and other problems she consulted her parents and local guardians and left the Hostel by vacating her room with the knowledge of the Hostel Warden. She left behind her personal belongings including a laptop computer and books etc in her Hostel and these are supposed to be kept safe by the Hostel authorities. She and her parents had taken a decision that she will not continue her studies due to her health and other problems and also that she had only attended classes for about one month before her medical problems.*

**Things to do is -**

- 1 To get the money back which she had deposited as a donation /capitation fee for studying MBBS in this Medical College or atleast a part of the amount since it is a big amount which her parents can hardly afford to arrange.*

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*2.To collect her personal belongings including laptop Computer etc. left behind in her Hostel.”*

18.3 A perusal of the above document would show that the admission has happened in October, 2012, which relates to the assessment year 2013-14. However, the A.O. has made an addition on the basis of this document in assessment year 2014-15. This document further states that the payment of “approximately” Rs.30 lakhs was made to one Mr. Sumos Mathew, who has acted as an admission agent. Thus, exact amount has not been mentioned in this letter. It further states that the above said money was reported to be transferred to MVJ Medical college, meaning thereby, the writer of this letter is not sure whether the approximate amount of Rs.30 lakhs was transferred to the assessee’s account or not. We also earlier noticed that this letter is undated and unsigned. It does not contain the name of the sender or receiver. Before the A.O., the assessee has produced the bank statement in order to demonstrate that it has not received any payment either from the student or from Mr. Sumos Mathew. Thus, we are of the view that this document does not have any credence in the absence of any other corroborative material to support the contents mentioned in the document. The A.O. has also not examined either the student or Mr. Sumos Mathew to find out the veracity of the contents of this document. The A.O. has not conducted any other enquiry in this regard. On the contrary, the assessee has furnished the bank statement to demonstrate that it has not received any payment as mentioned in this document. When the writer of this document itself is not aware whether the approximate amount of Rs.30.00 lakhs paid to Mr. Sumos Mathew was transferred to the assessee or not, how the AO could entertain the belief that the assessee has received the above cited amount. Under these set of facts, we are of the view that this document should

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be considered as a dumb document and hence no credence should be given to the same. Accordingly, we are of the view that the A.O. was not justified in placing reliance on this document in order to come to the conclusion that the assessee has collected capitation fee of Rs.30 lakhs from all students for admission into MBBS course during the financial year relevant to the assessment year 2014-15.

18.4 The next document (No. A/MVJMCRH/1 page 94) is a copy of cash payment voucher dated 22.8.2013. The said voucher is scanned below:-

(17)

<b>VJ MEDICAL COLLEGE &amp; RESEARCH HOSPITAL</b> 30th Mile, Kolathur Post, Kolar Highway, Hoskote, Bangalore - 562 114.		VR. No. <input type="text"/>
<b>CASH PAYMENT VOUCHER</b>		DATE <u>22/08/13</u>
Paid to <u>Agents</u>		
being Cash Paid towards <u>Jitka g Jitka moji Jini Adm</u> <u>commission</u>		
Received Rupees <u>One lakh Only</u>		<b>Rs. 1,00,000</b>
Account Head <input type="text"/>		
Accounts Officer	Authorised by	Receiver's Signature
	Director / Dean	

Based on the above said voucher, the A.O. has concluded that the assessee has paid commission to agents for bringing students who are willing to pay capitation fee. A perusal of the above document would show that it is not signed by any persons, viz., receiver, Accounts officer and authorizing officer. It does not have voucher number. It also does not contain the "name" of the recipient. It is only mentioned as "Agents". Further, the word "commission" has been inserted in between in the narration. Hence, it is an incomplete document and it cannot be called as a "Payment voucher" at all, i.e.,

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it does not evidence payment of Rs.1.00 lakh mentioned therein. The assessee also submitted that it has not made any such payment. We notice that the A.O. also did not conduct any enquiry with regard to this voucher nor did he examine the books of accounts in order to find out whether any such kind of payment was made. In the absence of such enquiry, we are of the view that the A.O. could not have placed his reliance on this document without bringing any other corroborative material to support the same. Accordingly, we are of the view that this document cannot be called a proper voucher and hence the AO should not have placed reliance on this document.

18.5 We notice that the AO has placed reliance on the provisions of sec.132(4A) of the Act in order to come to the conclusion that the contents of these documents are true. The provisions of sec.132(4A) as well as sec.292C places a presumption that the documents belong to the person under whose control or possession it was there and further presumption that the contents of the said document are true. However, it is a well settled proposition that the presumption prescribed in sec.132(4A)/292C is a rebuttable presumption, since the expression used in this section is “may be presumed”. Let us examine as to whether the assessee has rebutted the presumption or not. On the basis of explanations furnished by the assessee with regard to these documents, we have also rendered our decision. With regard to the first and second document discussed above, we have noticed that the contents of the same do not indicate that the capitation fee mentioned therein was given to the assessee. The third document is an inchoate one and cannot be called as a voucher at all. Accordingly, in our view, the assessee has effectively rebutted the presumption prescribed in sec.132(4A)/292C of the Act and accordingly there is no scope for presuming that the assessee has received capitation fee. We noticed earlier that the assessing officer has not corroborated these materials with any other credible

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evidence. In this regard, we may refer to the decision rendered by Mumbai bench of Tribunal in the case of ACIT vs. Layers Exports P Ltd (2017) (53 ITR (Trib) 416), wherein it was held that no addition could simply be made on the basis of uncorroborated noting made in the loose papers found during the course of search.

18.6 We noticed earlier that the AO has also scanned the document (A/MVJMCRH/1, Pg 99 and 100) in the assessment order and it contains two pages of noting or scribbling. We notice that the AO did not specifically rely upon this document for making additions. The search officials have confronted this document with Shri M J Mohan and Smt. Dharani Mohan and both of them has expressed ignorance of the same. Further, most of the dates mentioned in the document are dates subsequent to the date of search. The Ld CIT(A) has observed as under in respect of this document:-

*“As evident from the said seized material, there is no mention or linking of the Appellant Society and is also established to be not written by any of the competent persons/employees of the Appellant Society. The presumption of the replies being evasive by the Secretary/CAO is also not correct and according to them, the said seized material is not belonging to the Appellant society in as much as the said stand is taken by them right from the first day of search.*

*On a careful scrutiny of the said seized material, there is no mentioning of the name of the Appellant Society/College and further there are no signatures found in both the pages of the seized materials. Another interesting aspect to be noticed on the close reading of the said seized material is that the most of the dates mentioned in these two pages fall beyond the date of search, namely, 19.09.2013. Therefore, there is absolutely no nexus between the said seized material and the presumption of receipt of capitation fee, thereby vitiating the reliance of the said seized material to make the addition.”*

Thus we notice that the Ld CIT(A) has also come to the conclusion that these documents are not reliable. In addition to the same, the Ld CIT(A) has also captured the contentions of the assessee with regard to the reliability of the documents as well as the validity of extrapolation exercise carried on by the assessee as under:-

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*“With a view to fortify the plea for rejecting the reliance on the seized material, the Appellant Society brought to my notice the recent decision of the Supreme Court in the case of Common Cause and Others V/s Union of India and Others in WP (Civil) No. 505 of 2015 rendered on 11.01.2017. According to the Supreme Court, the loose sheets of seized material not in the form of books of accounts cannot be relied upon as admissible evidence to make the presumption against the Appellant Society. Based on the ratio laid down/law declared by the Apex Court, the ARs argued before me that the loose sheets in the present case should be ignored as irrelevant and accordingly pleaded for deleting the addition of capitation fee received based on the estimate made by the Assessing officer.”*

Hence these documents also do not support the presumption entertained by the AO. Further, as noticed earlier, the AO has not corroborated the same with any other material. Hence, the AO cannot take support of this document.

18.7 We noticed that the AO had extrapolated the capitation fee for all the students and for all the years under consideration. In this regard, he has placed reliance on the decision on the following decisions:-

(a) Commissioner of Sales tax vs. H M Esufali H M Abudlali (1973)(90 ITR 271)(SC)

(b) CIT-VII vs. Chetan Das Lachman Das (2012)(25 taxmann.com 227)(Delhi)

(b) B Kishore Kumar vs. DCIT (52 taxmann.com 449)(Madras)

(c) Gopal Lal Bhadrakavs.DCIT (2012)(27 taxmann.com 167)(AP)

18.8 We have noticed earlier that the seized documents relied upon by the AO do not support the case of the AO that the assessee has been collecting Capitation Fee from all students for admission into MBBS Course. The Secretary and other staffs have categorically denied collection of capitation fee. Accordingly, when there is no evidence to show that the assessee has collected capitation fee in any

of the year, then the question of extrapolation also does not arise. Accordingly, the above cited case laws do not apply to the facts of the present case.

18.9 The foregoing discussions on all the three documents relied upon the AO as well as the two pages scribbling paper would show that these documents do not establish that the assessee has collected capitation fee from the students for admitting into MBBS Course. Accordingly, we are of the view that the AO was not justified in entertaining view, on the basis of uncorroborated and unreliable dumb documents, that the assessee has collected capitation fee from MBBS students. Accordingly, he was not justified in extrapolating it to all the students in all the years under consideration. Accordingly, we are of the view that the Ld CIT(A) was justified in deleting the addition of capitation fee alleged to have been collected from MBBS students in all the years under consideration.

19. The next issue relates to the addition of capitation fee collected from PG Students. The assessing officer has relied on Document No. A/MJM/02 – Pages 2 to 6 in order to come to the conclusion that the assessee has collected capitation fee from all the students in all the years under consideration. The AO has scanned this document at pages 6 to 10 of the assessment order. This document contains name and address of the students and the course to which they are admitted for the academic year 2013-14 in PG courses. This is a printed document found from the residence of the Secretary Shri M J Mohan. Against each of the student, some numbers were found noted in pen. For example, one number “20” is written against a student. Adjacent to this number 20, it is written as 10C and 10 A/c. The amount so mentioned against each of the students ranged from 10 to 1.50 Cr. The source of this document was traced to the iMac Desktop computer seized from the office of Medical College. We

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noticed earlier that the AO has interpreted “C” as cash and “A/c” as cheque payments. The AO took the view that amounts mentioned therein in “C” represent capitation fees. The AO estimated average amount of capitation fee collected at Rs.45.00 lakhs per student and accordingly applied the same to all the students in all the years under consideration.

19.1 We noticed earlier that the Secretary has stated that the noting made in pen are not either in his hand writing or in the handwriting of any of employees. We notice that the Ld CIT(A) has extracted following question and answers from the Sworn statement given by the Secretary:-

**(I)** Answer to Question No.8 of the sworn statement dated 21.10.2013:-

“These are not my handwriting and I have not received any money. There is no mention of money being paid.”

Q.No.9 :- Why is the same is found in your premise?

Ans.: I do not remember

Q.No.10 : Why this reply should not be treated as evasive in nature of refusal to answer the question and hence making you liable for prosecution as per 11<sup>th</sup> provision of the Act?

Ans:- I did not refuse to answer. I made my statement clear with regard to the questions asked.

**(II)** Statement recorded during search assessment proceedings on 14.10.2015:

Answer to Question No.6:

“subsequent to search during recording of my statement this document was shown to me by the Investigating officer stating

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that in the absence of me during the search these documents were found and I replied that I have no idea where these pieces of paper come from and I once again reiterate these documents does not belong to me and my institution and these are not in my hand writing and my employees and as such we have not collected any capitation from any student in list.”

The Ld CIT(A) further observed as under:-

“It is also incidentally submitted by the ARs that the very same pages were seized from the college premises marked as MVJMCRH/08 pg. 77 to 81, where the *hand writing/pen noting insertions are not available/visible* while demonstrating/fortifying the doubt raised by the Secretary/Chairman of the Institution on the correctness of the very same pages seized from his residence.

19.2 Thus, we notice that the Ld CIT(A) has also appreciated the doubt raised by the Secretary of the institution about the noting made in pen. We notice that there are not corroborative material available to fortify the inference drawn by the tax authorities with regard to the noting found in the document seized from the residence. The corroborative material was necessary in view of the fact that

(i) the source document found in the computer did not have such kind of noting and

(ii) The Ld A.R submitted that none of the cheque amounts (amounts stated as “A/c” in the seized document) tally with the amount actually received by the assessee from the students as per the bank statements and books of accounts.

(iii) The ignorance of the noting expressed by the Secretary and also his statement that the same was not his handwriting or any of the staffs' handwriting.

The AO could have made this addition on the basis of presumption prescribed u/s 132(4A) and sec.292C with regard to the noting found in the seized document. In our view, the presumption prescribed in the above provisions of the Act by legal fiction has been effectively rebutted by the assessee on the basis of actual amount received from the students and also entries made in the books of account. The entries may be presumed to be correct, if the cheque amounts mentioned in the seized document tallied with the actual receipts. It is not the case here, which the assessing officer is also aware of. Accordingly, we are of the view that the noting made in the above said list lacks credence.

19.3 We may derive support for our view from one more fact submitted before us, i.e., it was submitted that the investigation wing had issued summons to some or all the students in the list and also recorded the statements from them. However, the result of the said enquiry was not conveyed to the assessee in spite of specific request made by the assessee in this regard. The AO has also not discussed anything in the assessment order about the enquiry conducted and the results thereof. Accordingly, there is merit in the contentions of Ld A.R that the very fact that the tax authorities are reluctant to reveal the result of their enquiry conducted with the concerned students would lead to reach to the natural conclusion that *nothing adverse against the assessee could be stumbled upon by the tax authorities on the basis of those enquiries*. Under these set of facts, we are of the view that no credence could be given to this piece of document and accordingly, the AO was not justified in placing reliance on this paper in order to estimate the capitation fee alleged

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to have been collected from all the PG students in all the years under consideration. Accordingly, we confirm the orders passed by Ld CIT(A) in deleting the addition relating to Capitation fee for PG students in all the years under consideration.

20. The next issue relates to the relief granted in respect of addition of cash seized by the search officials, which was added in AY 2014-15. We noticed earlier that the search officials found cash balance of Rs.75,32,600/- in the residence of Shri M J Balachander and the AO assessed the same in the hands of the assessee herein treating the same as part of capitation fee receipts. The explanations given by Shri Balachander was rejected by the AO. Before Ld CIT(A) that the assessee contended that the AO was not justified in treating the cash found during the course of search as part of capitation fee disregarding the explanations given by the assessee. It was contended that the cash balance was found in the premises of Shri Balachander and it should have been considered in his hands only and not in the case of the assessee. The assessee also relied upon the decision rendered by Hon'ble Madras High Court in the case of CIT vs. Balaji Educational & Charitable Public Trust in T.C (A) Nos. 1052 to 1058 of 2014 dated 24.3.2015.

20.1 The Ld CIT(A) was convinced with the contentions of the assessee and accordingly deleted the disallowance with the following observations:-

“The contentions of the ARs are carefully considered and it is an admitted fact that the cash seizure is effected from the residence of Mr M J Balachander and no other material in the seized records implicating the assessee society for the source of the said seized cash. Further, I find that the explanation offered by Mr M J Balachander with regard to the source of the cash is also crucial for me to take a decision in the present appeal. On the combined consideration of the above factors, the addition of the cash

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seized is wrongly made in the hands of the Appellant Society and the addition deserves to be deleted for lack of direct evidence. Accordingly I delete the addition of Rs.75,32,600/- from the computation of taxable total income pertaining to the Assessment year 2014-15 and order accordingly.”

20.2 It is the contention of Ld A.R that Shri Balachander has given complete explanation for the cash found from his possession. It appears that the AO had made addition in the hands of Shri M J Balachander also. However, the explanation furnished by the assessee has been accepted by Ld CIT(A) in the order passed by him on 17.10.2017 in the hands of Shri M J Balachander and accordingly deleted the addition. He further submitted that the appeal filed by the revenue before the Tribunal challenging the order so passed by Ld CIT(A) in the hands of Shri M J Balachander has since been dismissed by the Tribunal on account of low tax effect.

20.3 There is no dispute with regard to the fact that the above cited cash balance of Rs.75.32 lakhs was found in the residence of Shri Balachander. The Ld CIT(A) has given a categorical finding that the revenue did not unearth any material linking the above said cash with the assessee society, meaning thereby, the AO has brought to tax the above said amount in the hands of the assessee only on surmises and conjectures drawing inference that the same represent part of capitation fee. However, in the preceding paragraphs, we have held that the documents seized by the revenue did not reveal collection of any capitation fee from the students. Hence, the inference drawn by AO that the above said cash is part of capitation fee collection would fail on this count also. Accordingly, we are of the view that the Ld CIT(A) was justified in holding that the AO has wrongly made the addition in the hands of the assessee society. Accordingly, we confirm the order passed by Ld CIT(A) on this issue.

21.0 The next issue relates to the decision of Ld CIT(A) in granting exemption u/s 11 of the Act. We noticed earlier that the AO has rejected the claim of exemption u/s 11 of the Act for the following reasons:-

(a) The assessee has collected Capitation fees from students and did not account for the same in the books of account. The trustees have derived personal benefit by taking the same.

(b) The cash balance found at the premises of Shri Balachander (Trustee) could be attributed to the excess fees collected from students. He has not explained nature of commission receipts offered by him in some years.

(c) In the earlier search conducted in the hands of the assessee, evidence of excess fess collected were found.

(d) The assessee has given interest free loan to Smt. Dharani Mohan, who works as Chief Administrative Officer of the Medical College. She qualifies to be called as a 'manager' u/s 13(3) of the Act. It is another instance of personal benefit derived by individuals by diverting the income of the trust.

(e) The assessee has contravened the provisions of other laws of land.

(f) The assessee has furnished incorrect details to Medical Council of India.

21.1 (a) In the earlier paragraphs, we have upheld the view of Ld CIT(A) that the evidences relied upon by the AO do not lead to the conclusion that the assessee has collected capitation fees. Hence the question of diversion of funds of the assessee society by the trustees does not arise. Hence the reasoning given by the AO in clause (a) above would fail.

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(b) We also upheld the view of Ld CIT(A) that the cash found at the residence of Shri Balachander cannot be taken as part of capitation fee. In view, hence the reasoning given by AO in clause (b) would fail.

(c) Regarding previous search, the Ld A.R has submitted that the Tribunal has given specific finding that the assessee herein has not collected any Excess fee, in its common order dated 21.12.2012 passed in the hands of the assessee & Shri M J Balachander ( Assessee - in ITA Nos. 100 to 106/Bang/2012 and CO Nos. 50 to 51/Bang/2012. M J Balachander in ITA Nos. 90 to 94/Bang/2012 and ITA Nos. 95 to 99/Bang/2012 relating to assessment years 2003-04 to 2009-10). In paragraph 37 of the above said order, the Tribunal has observed as under:-

“37. It can thus be seen that none of the seized documents suggest that the monies were collected by MJB on the authority and consent of the Society. On the other hand, the circumstances clearly point out that MJB was collecting ETF on his own without any authority or consent of the Society. In this regard, we also find that the assertion made by MJB in the course of assessment proceedings has simply been denied (by the AO) without any further probe or investigation. We are therefore of the view that the conclusions of the CIT(Appeals) that ETF was collected by Balachander on his own and that the Society has nothing to do with ETF collections is correct and does not call for interference.”

In view of the above said finding of the Tribunal in respect of earlier search, the reasoning given by AO in clause (c) above would also fail.

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(d) The AO has taken the view that Smt Dharani Mohan, Chief Administrative Officer of Medical college qualifies to be called as “manager” within the meaning of sec.13(3) of the Act. The Ld A.R submitted that Smt Dharani Mohan is an employee in the medical college and she has been working there for the past six years. He submitted that the interest free housing loan was given to her in the normal course of carrying on of activities of the assessee and it was repaid by her subsequently by way of deduction from her salary. He also contended that the expression “trustee of trust” and “manager of the institution” would refer to the persons entrusted with income and assets of trust or institution, as the case may be, in order to implement the objects of trust. A careful perusal of the provisions of sec.13(3) of the Act would show that it lists out persons, who have actual control over assets and income of the property held under the trust. Hence the transactions between them and the trust/institution have been viewed adversely by the Income tax Act. We notice that Smt Dharani Mohan is only an employee and she does not have control over the assets and income of the property held under the trust. Further, the loan was given to her in the normal course of activity of the assessee society and it was returned by her by way of deduction from her salary payment. Accordingly, we agree with the contentions of Ld A.R that Smt. Dharani Mohan cannot be considered as “manager” as contemplated in sec.13(3) of the Act. Hence the reasoning given by AO in clause (d) above would also fail.

(e) The next reasoning given by AO is that the assessee has contravened the provisions of other laws of land. In this regard, the AO has observed that the assessee, being Tamil linguistic minority institution, has mostly admitted non-tamil students. The Ld A.R rightly pointed out that the object clause of the assessee is to impart education in general. Accordingly, there is no violation of the objects of the trust for which registration u/s 12A of the Act was granted to

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the assessee. Accordingly, we are of the view that this reasoning would not lead to denying of claim of exemption u/s 11 of the Act. In any case, the registration granted u/s 12A was intact during the year under consideration.

(f) The next reasoning given by the AO is that the assessee has furnished incorrect details to Medical Council of India. The Ld A.R submitted that it was only allegation made, but no action was taken by the concerned authority. We also notice that though the AO has raised this issue, yet he did not probe this matter further or bring any material on record to show that this allegation has reached logical conclusion. Even otherwise, the AO has not shown as to how this issue will affect the claim of exemption u/s 11 of the Act.

21.2 The Ld CIT(A) has observed that the AO is vested with the power given u/s 13(8) of the Act to deny exemption u/s 11 of the Act. Sec.13(8) of the Act talks about the violation of the first proviso to clause (15) of sec. 2 of the Act, which is not the case here. In any case, we notice that the AO has also not invoked the provisions of sec.13(8) of the Act. The only provision invoked by the AO is sec.13(1)(c) of the Act, which relates to the diversion of income of the trust or institution directly or indirectly for the benefit of any person referred to in sec.13(3) of the Act. In the earlier paragraphs, we have held that there is no evidence of diversion of income in violation of sec.13(1)(c) of the Act. Yet another reason for rejection of exemption u/s 11 could be the cancellation of registration u/s 12AA of the Act. In the instant case, the Ld A.R submitted that the registration granted to the assessee u/s 12A remains intact. Under these set of facts, we find no reason to deny exemption u/s 11 of the Act to the assessee. Accordingly, we confirm the order passed by Ld CIT(A) on this issue also.

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21.3 Since the AO has rejected the claim of exemption u/s 11 of the Act, he has assessed the Corpus donation received by the assessee in the years relevant to AY 2008-09 to 2010-11 and also grants received in the years relevant to AY 2012-13 to 2014-15. In the earlier paragraphs, we have upheld the view of the Ld CIT(A) that the assessee cannot be denied exemption u/s 11 of the Act. Hence the AO cannot deny exemption u/s 11 to the assessee. Accordingly, the corpus donations and grants received by the assessee in the respective years are eligible for exemption u/s 11(1)(d) of the Act. Accordingly, we direct the AO to delete the addition made by the AO in the above said years on this issue.

22. Accordingly, we confirm the orders of Ld CIT(A) passed in all the years under consideration, i.e., AY 2008-09 to 2014-15. Accordingly, all these appeals of the revenue are dismissed.

**(II) ITA 455/B/18**

23. The revenue has filed this appeal challenging the order dated 07-12-2017 passed by Ld CIT(A) cancelling the penalty levied by the AO u/s 271AAB of the Act for assessment year 2013-14.

24. The assessing officer levied penalty of Rs.9.07 crores u/s 271AAB(1)(c) of the Act on the undisclosed capitulation fee of Rs.30.24 crores. The provisions of sec.271AAB relevant for AY 2013-14 reads as under:-

*'271AAB. Penalty where search has been initiated.—(1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—*

*(a) a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such assessee—*

*(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;*

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*(ii) substantiates the manner in which the undisclosed income was derived; and*

*(iii) on or before the specified date—*

*(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and*

*(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;*

*(b) a sum computed at the rate of twenty per cent of the undisclosed income of the specified previous year, if such assessee—*

*(i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and*

*(ii) on or before the specified date—*

*(A) declares such income in the return of income furnished for the specified previous year; and*

*(B) pays the tax, together with interest, if any, in respect of the undisclosed income;*

*(c) a sum which shall not be less than thirty per cent but which shall not exceed ninety per cent of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).*

As stated earlier, the AO levied penalty of Rs.9,07,20,000/- u/s 271AAB(c) of the Act on the amount of Capitation fee of Rs.30.24 crores added by the AO in AY 2013-14.

25. We earlier noticed that the Ld CIT(A) had deleted the additions relating to collection of capitation fee. Accordingly, the Ld CIT(A) held that there is no undisclosed income, which is liable for penalty u/s 271AAB of the Act. Accordingly, he deleted the penalty.

26. We heard the parties on this issue. In the preceding paragraphs, we have upheld the view of Ld CIT(A) that there are no material to indicate that the assessee has collected any capitation fee and accordingly confirmed his order in deleting the addition made on account of capitation fee. In the absence of addition of any undisclosed income by way of capitation fee, penalty u/s 271AAB is not leviable. Accordingly, we confirm the order of Ld CIT(A) in deleting the penalty in AY 2013-14 levied u/s 271AAB of the Act in the hands of the assessee.

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27. In the result all the appeals of revenue, viz., ITA 50 to 56/B/2018 and appeal no.455/B/18 are dismissed.

Order pronounced in the open court on 30<sup>th</sup> Mar, 2022

**Sd/-**  
**(George George K.)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 30<sup>th</sup> Mar, 2022.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.