IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA Nos.1096/Bang/2024
Assessment year : 2011-12

Sri Adichunchanagiri Shikshana Trust, Sri Adichunchanagiri Kshetra, Bellur Hobli, Mysore Tumkur Road, Nagamangala Taluk, Mandya. 571 811. **PAN: AAATS 3584P**	Vs.	The Deputy Commissioner of Income, Central Circle 2(4), Bengaluru.
APPELLANT		RESPONDENT

ITA Nos.1207/Bang/2024
Assessment year : 2011-12

The Deputy Commissioner of Income, Central Circle 2(4), Bengaluru.	Vs.	Sri Adichunchanagiri Shikshana Trust, Sri Adichunchanagiri Kshetra, Mandya. 571 811. **PAN: AAATS 3584P**
APPELLANT		RESPONDENT

Assessee by	:	Shri Bharath L, CA
Revenue by	:	Smt. Vidya K., Jt.CIT (DR)(ITAT), Bengaluru.

Date of hearing	:	08.04.2025
Date of Pronouncement	:	22.05.2025

O R D E R

Per Prashant Maharishi, Vice President

1. The cross appeals are filed against the appellate order passed by the CIT(Appeals)-15, Bangalore [ld. CIT(A)] dated 31.03.2024 for assessment year 2011-12 in the case of Sri Adichunchanagiri Shikshana Trust (appellant/assessee) wherein the appeal against the assessment order passed by DCIT, Central Circle 2(4), Bangalore [ld. AO] u/s. 143(3) r.w.s. 153A of the Income-tax Act, 1961 [the Act] was partly allowed.

2. Aggrieved with that the assessee has preferred the appeal ITA Nos. 1096/Bang/2024 raising the following grounds of appeal :-

> "1. The order of the Learned Assessing Officer ('LAO') and the Learned Commissioner of Income Tax (Appeals) ('Ld. CIT(A)') in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.
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> 2. The order of passed by the LAO and the Ld. CIT(A) is also bad in law on account and not in accordance with the provisions of the Act to the extent they are prejudicial to the Appellant.
>
> 3. The LAO's order and the order of the CIT(A), to the extent that the same is prejudicial to the Appellant, is bad in law in that the LAO and CIT(A) have erred in arriving at their respective conclusions in the assessment order based on 'dumb' diaries and 'dumb' seized material.
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> **'Fee not received / fee refunded' of Rs. 7.65,54,000/-**

4. The Ld. CIT(A) has erred in not considering that the amounts pertaining to 'fee not received / fee refunded' has in fact been received by the Appellant, for all but approx. Rs. 56 lakhs. Here, the LAO erred in not considering the supplementary submissions made before him on 28 March 2024.

5. Without prejudice to the above, the LAO erred in holding that the sum of Rs. 5,24,54,000/- (comprised in the sum of Rs. 7,65,54,000/-) constitutes unaccounted receipts under section 69A of the Act, as 'fee not received / fee refunded' as stated in diaries but not accounted in the books of accounts. The CIT(A) erred in confirming this finding of the LAO.

6. The LAO and the CIT(A) erred in not considering that the provisions of section 69A are not satisfied with respect to the sum of Rs. 5,24,54,000/- (comprised in the sum of Rs. 7,65,54,000/-).

In respect of additions of Rs. 76,56,000/- out of the additions made by the LAO amounting to Rs. 1,21,75,000/-

7 The Ld. CIT(A) has erred in not granting relief to the extent of Rs. 76,56,000/- out of the additions made by the LAO amounting to Rs. 1,21,75,000/- on account of alleged unaccounted expenditure by invoking the provisions of section 69C of the Act under the facts and circumstances of the case.

8. Without prejudice to the above ground, the provisions of section 69C of the Act are not applicable to the facts of the case.

a. Without prejudice to the preceding grounds, the Learned CIT(A) has erred in not considering that the amounts which are alleged to be incurred by the Trust are not illegal payments but are payments to ensure that the

Appellant does not suffer loss due to loss of vacant management quota seats.

9. Without prejudice to the preceding grounds, the Ld. CIT(A) and the LAO has erred in not considering that the diaries basis which additions are made does not form part of books of accounts of the Appellant and are dumb documents to initiate additions.

In respect of additions of Rs. 7,74,75,000/-

10. The LAO and the Ld. CIT(A) erred in adding a sum of Rs. 7,74,75,000/- as unaccounted receipts by invoking the provisions of section 69A of the Act under the facts and circumstances of the case.

11. The LAO and the CIT(A) erred in taxing the inflow and out flow which is not permissible in law and ought to have applied the principle of telescoping and granted appropriate relief. The amount of Fee Refund amounting to Rs. 7,65,54,000/- and unexplained expenditure of Rs 1,21,75,000/- requires to be telescoped with alleged unaccounted receipts amounting to Rs. 7,74,75,000/- and the balance alone to be brought to tax if at all the same is exigible to tax under the facts and circumstances of the case.

12. The LAO erred in computing the consequential interest under section 234A, 234B and 234C of the Act.

13. The Appellant craves leave to add, alter, amend, substitute change and delete any of the grounds of appeal.

For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered."

3. The ld. AO in ITA Nos.1207/Bang/2024 has raised the following grounds of appeal:-

"1. Based on the facts and circumstance of the case, whether the Ld. CIT(A) was correct in allowing the additions made by the A.O.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in allowing the addition made on account of unexplained receipts of Rs.94,75,000/ - when the same was not disclosed in the return of income filed under section 139 of the Act.

3. Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in restricting disallowance to the extent of Rs.76,56,000/- made on account of unexplained expenditure of Rs.1,21,75,000/,

4. Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in restricting disallowance to the extent of Rs.5,24,54,000/- made on account of unexplained expenditure of Rs.7,65,54,000/-.

5. Any other grounds which may be urged at the time of hearing."

4. The brief facts of the case show that assessee is a charitable trust registered u/s. 12A of the Act as per Certificate issued dated 17.7.1974 and therefore assessee is availing exemption u/s. 11 of the Act. The assessee is running several educational institutes .

5. On 18.7.2013, search & seizure operation u/s. 132 of the Act was carried out on the assessee trust. Accordingly for the impugned assessment year, a notice u/s. 153A of the Act was issued on 4.12.2014. The assessee responded to by filing return of income on 9.6.2014 showing Nil income. The assessee has gross total income of Rs.63.97 crores and assessee has claimed exemption u/s. 11 of the

Act. Consequently a notice u/s. 143(2) of the act was issued on 2.8.2015 and notice u/s. 142(1) was also issued on 8.9.2015.

6. During the course of search, some evidences were found in the form of diaries and receipt books, details of the candidates for under-graduate and post-graduate course, remittances made to various banks and MoU, etc. from 4 different premises searched. The premises so searched included of one Sri H.B. Shivaram, who is the Manager in the trust and further one Dir. M.E. Mohan. A search & seizure was carried out in the Moth premises of the assessee at Vijayanagar in Bangalore also. This premises was used for admission of medical college and admission process was looked after by Mr. H.B. Shivaram.

7. During the course of search, some diaries were also seized. These diaries were asked to be explained by the assessee. The total of 7 diaries was Rs.18,99,65,000. The assessee stated that all the entries in diaries are contribution and fee receipts from the students towards admission fees and are already entered in the books of account. However, certain entries were found to be with narration of "PP". The Manager was asked to explain that, but it was found that money mentioned under the head was not deposited in the bank account, hence remained unaccounted. The assessee stated that the word "PP" referred to 'Parama Pujya', with reference to late Sri Balagangadhara Swamiji, who passed away in early 2013 and money so collected was handed over to him in cash. Another medical college running under

the same trust by the name 'BGS Global Institute of Medical Sciences' was also covered under the search. This search operation was in the year 2013 and admissions of first academic year were in progress at the time of search & seizure. The seized evidences revealed that Rs.7.60 crores were collected till the date of search, but only Rs.4,02 crores were deposited in the bank account.

8. Based on the above information, the statement of Mr. H B Shivaram, author of the document was recorded on 22.7.2013 and accounting entries under the head "PP" was asked for. During the course of assessment proceedings, the assessee was also asked this question, but assessee claimed that these entries are accounted for, but did not provide the details of bank account. Therefore, after verification of the information, the ld. AO issued a show cause notice to explain why a sum of Rs.7,74,75,000 shall not be included las undisclosed income u/s. 69 of the Act. The assessee submitted that the above amount is spent for charity and donation and for the purposes of the objects of the trust and therefore same is not required to be added. Assessee also questioned how the AO has arrived at the above sum. The ld. AO rejected the contention of the assessee as no proper document and proof was furnished. With respect to the question that how the above sum is arrived at, the ld. AO tabulated the page wise summary of "PP" account at page 8 to 10 of the assessment order giving the details of 85 entries totalling to Rs.7,74,75,000. The AO was also of the view that the funds received by the assessee were used by the trustee for his personal purposes and therefore the

provisions of section 13 are hit. Therefore, the AO denied the benefit of section 11 of the Act to the assessee trust.

9. Second addition in the assessment proceedings was with respect to the fee refund or fee amount not received. It was found that in the various seized documents, there is a reference to fee refund which was not recorded in the books of account. The assessee explained that fee refund amount is the transaction where the names of students are noted in a diary along with amounts of fee received, subject to final approval of admission. As there is no final admission, the amount was not entered into the regular books of account. Prior to regular admission, the parents of the students, if they do not want to get their children admitted to the institute, this fee is refunded to them back. As fee received was also not final, therefore not entered into the account books. Fee refund was also not recorded in the account books. The ld. AO issued a show cause notice to explain a sum of Rs. 7,65,54,000 as fee refund. The assessee explained the sum as per its prior explanation. The ld. AO rejected the same for the reason that assessee has failed to prove its statement that fees was refunded to the student. Not a single confirmation letter was also produced. Accordingly the ld. AO added back the above sum as undisclosed unaccounted income. The AO held that as this amount is undisclosed income of the assessee trust, the assessee is no longer eligible for claim of exemption u/s. 11 of the Act.

10. There is also a third nature of entries found in the seized diaries which are marketing & promotion charges paid to brokers & agents, who help the assessee for soliciting students for admission into schools & colleges. The ld. AO found 8 such entries. During the course of search, the statement of the Principal of BGS Global Institute of Medical Sciences, Dr. M E Mohan (who was also searched) was recorded in which he has categorically stated that the trust is paying some of the brokers to scout for the students. The Secretary of the trust, Sri Prakash Nath Swamy, whose statement was recoded u/s. 132(4) on 18.7.2023 also confirmed the same. Thus, the assessee was given a show cause notice to explain why a sum of Rs.1,21,75,000 should not be treated as undisclosed expenditure u/s. 69C of the Act. In response to the same, the assessee denied to have made any payment to any broker. The ld. AO rejected the contention of the assessee as the diaries have clear details. Accordingly, with respect to this item, total of Rs.1,21,75,000 was added to total income of assessee u/s. 69C of the Act as unexplained expenditure and benefit of section 11 was denied.

11. The fourth item was with respect to unexplained receipt. On the basis of various diaries found, the ld. AO reached at the conclusion that a sum of Rs.94,75,000 is unexplained receipt in the diaries where identity, credit worthiness and genuineness of voluntary contribution is not proved. Therefore show cause notice was issued. The assessee submitted that payments of the above amount is voluntary payment by the students. There is no compulsion for making such payment.

The same is already recorded in the books of account of the assessee trust and therefore no addition should be made. The ld. AO rejected the explanation of the assessee and made addition of Rs.94,75,000 as unexplained receipt.

12. Accordingly assessment order was passed u/s. 143(3) r.w.s. 153A of the Act on 12.1.2016, where all the above 4 items were added to the total income of the assessee. As the assessee was denied benefit of section 11 on the whole of the income, further net surplus of Rs.89,08,92,270 was also added therein resulting into total income of Rs.106,65,71,270. The assessee was denied the benefit of section 11 of the Act.

13. In the first round of appeal before the CIT(A), certain reliefs were given to the Appellant vide order dated 06.07.2018 in Appeal No. 343 to 348 / DCIT CC-2(4)/CIT(A)-11/2015-16. On appeal by the Revenue before ITAT (in ITAs 3007, 3028 to 3033 / Bang / 2018 and COs 147 to 153 / Bang / 2018 dated 22.02.2021), the ITAT held that the then CIT(A) had passed the said order ignoring the binding directions of the DGIT (Inv.) and proceeded to pass orders resulting in serious lapse on his part in administering justice. Thus, ITAT thereafter remanded the matter to the CIT(A) for de novo adjudication without commenting on the merits of the Revenue's appeal.

14. In denova adjudication by the ld. CIT (A), he

a) Confirmed the addition of Rs.7,74,75,000 being the amount collected by the assessee under the head "PP" for the reason that assessee could not fulfil the prima facie requirement of showing that the above sum is included in the total income of the assessee.

b) With respect to the addition of Rs.7,65,54,000 as refund of fees, the ld. CIT(A) however granted benefit of Rs.2,41,00,000 of total addition already made and therefore out of addition of Rs.7,65,54,000 the addition of Rs.5,24,54,000 was confirmed.

c) With respect to third item of unexplained expenditure of Rs.1,21,75,000, he found that a sum of Rs.45,19,000 is not the expenditure but income, therefore he confirmed the addition of Rs.76,56,000 out of the addition made by the AO of Rs.1,21,75,000.

d) With respect to addition of Rs.94,75,000 as unexplained receipt, following the judicial precedents for AY 2005-06 of the coordinate Bench in assessee's own case, he deleted the addition.

Accordingly, the appeal of the assessee was partly allowed. Therefore, both the parties are in appeal before us.

15. The Revenue has impugned two of the three reliefs granted by the CIT(A) against the LAO's action as follows:

i. CIT(A) granted relief for a sum of Rs. 45,19,000 on the basis that this represents income and not expenditure as was demonstrated by the Appellant.

ii. CIT(A) granted relief for a sum of Rs. 241,00,000 on the basis that this represents double counting of the same items and hence double addition.

16. The Revenue has not challenged the reliefs granted by the CIT(A) in respect of the exemption claim by the Appellant as well as a sum of Rs. 94,75,000/- being voluntary donations. The CIT(A) granted this relief considering the ruling of the Hon. Bangalore ITAT in the Appellant's sister concern's case in ITA 1258 and 1259 / Bang / 2008 dated 31.12.2008 and affirmed by the Karnataka High Court in ITA 800 / 2012 dated 07.01.2019.

17. Thus, ld. CIT(A) has passed his order dated 31.03.2024. Appeals impugn the additions by the Ld. Assessing Officer ('LAO') and affirmed/ deleted by the Commissioner of Income-tax (Appeals)-15 ('CIT(A)'). These are as follows:

i. PP receipts – Rs. 774,75,000; [Ground no 10 and 11 of Assessee's Appeal]

ii. Fee refunded / fee not received – Rs. 524,54,000 (CIT(A) granted relief for a sum of Rs. 241,00,000 on the basis that this represents double counting of the same items and hence double addition); Ground no 4 to 6 of Appeal of assessee and Ground no 2 of appeal of ld Ao]

iii. Unaccounted expenditure – Rs. 76,56,000 (CIT(A) granted relief for a sum of Rs. 45,19,000 on the basis that this represents income and not expenditure as was demonstrated by the Appellant). [Ground no 7 to 9 of Assessee's Appeal and Ground no.1 of Appeal of ld AO]

18. Now we first deal with the appeal of the assessee. Ground No 1, 2 , 12 and 13 are as under :-

> "1. The order of the Learned Assessing Officer ('LAO') and the Learned Commissioner of Income Tax (Appeals) ('Ld. CIT(A)') in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.
>
> 2. The order of passed by the LAO and the Ld. CIT(A) is also bad in law on account and not in accordance with the

provisions of the Act to the extent they are prejudicial to the Appellant.

12. The LAO erred in computing the consequential interest under section 234A, 234B and 234C of the Act.

13. The Appellant craves leave to add, alter, amend, substitute change and delete any of the grounds of appeal.

19. No specific arguments were advance d by the ld. AR on those issues, , same are general in nature and further each of the addition confirmed by the ld. CIT (A) is separately contested, these grounds 1,2,12 and 13 are dismissed.

20. Ground No 3 is as under :-

3. The LAO's order and the order of the CIT(A), to the extent that the same is prejudicial to the Appellant, is bad in law in that the Ld. AO and CIT(A) have erred in arriving at their respective conclusions in the assessment order based on 'dumb' diaries and 'dumb' seized material.

21. During the course of search , 35 documents, diaries, note books etic were seized. The ld. AO has used A/SAST/12 to A/ SAST/ 22 [Only 11] documents diaries for making assessment. The diaries show prima facie following facts :-

i. Diaries are handwritten entries.

ii. As per the Ld. AO, these were maintained by Sri H. B. Shivram [Hereinafter referred to as HBS] .

iii. The diaries do not bear the name of the Assessee-Trust or any of its trustees

iv. These contain student-wise details. Some pages contain the address and phone numbers while some do not.

v. These also contain certain amounts purportedly paid by them by cash or DD or cheque with dates.

vi. In many of the pages, the amounts due from the students on various dates is mentioned. Here, in many instances, some of these dues have amounts written against them as received while many instances also do not have such amounts.

vii. Thus, in many instances, no amounts have been stated to be received from these students, per the diary.

viii. Some line items in these diary entries have been marked out as the concerned amounts being remitted to the bank.

ix. The diaries do not state whether the student has agreed to comply with paying the amounts mentioned in the diaries.

x. Wherever amounts have been received, in some instances, the students or their representatives have signed. In some instances, such signatures are not present.

xi. It is unclear if the handwriting in the diaries are that of HBS or some other person or both since the handwritings differ from page to page.

xii. No signature of HBS is available. There is no signature of any person from the Appellant-Trust is also there.

xiii. Some of these pages have mentioned 'PP' and a sum is written against it. There is no signature of any person against this.

xiv. Specific reference is made to A/SAST/18 and page 87 therein (page 83 of the PBC Vol. 1) which lists more than 20 student names and amounts to be 'PP' for UG MBBS 2010-11.

xv. Some of these pages with names, addresses and contact numbers of students are cancelled by striking across the pages on both sides.

xvi. Some of these pages, specifically on the left, also indicate sums being paid towards cancellation to

some persons with a signature and sometimes with a date and sometimes without a date.

xvii. There are many strike-outs and over-writings on many of the diary noting which renders the noting illegible and not understandable.

xviii. In many instances, apart from the numbers, the words are illegible.

xix. There are no narrations in the diary

22. With respect to these 11 documents the findings of the ld. AO are as under:-

1. The nature of evidence in relation to unaccounted receipts was primarily in the form of entries in the diaries found to be in the nature of PP.
2. The money so mentioned did not find its way to the bank and hence remained unaccounted in the trust account.
3. The assessee replied that PP referred to Param Pujya, the title by which he referred to Late Sri BGS who passed away in early 2013.
4. The money that was mentioned under this head was handed over to him in cash and there is no mention of the manner of its utilization.
5. The Assessee's submissions are not supported with proper documents and proof.

6. The Assessee's submissions imply that the income was not utilized for the objectives of the trust but rather it was used for a related party under section 13(3) of the Act.
7. In respect of entries reflected as 'Fee Refunded' or 'Fee not Received', the nature and genuineness of 'Fee Refund' has been verified through telephonic calls on the numbers given in the diaries. It has been found that the numbers of students who are very much associated with the college and still pursuing their courses.
8. The Assessee is unable to demonstrate that fee was refunded or it was not received.
9. The diaries constitute books of accounts.
10. The Assessee had vide later dated 30.09.2013 admitted that there were some discrepancies in the books and had offered some income to taxation.
11. Since there is no proof on the refund of the money, the Assessee's submissions cannot be accepted.
12. On the unexplained expenditure, these relate to marketing and promotion charges recorded in the diaries which have been supposedly paid to brokers / agents.
13. Services of these persons have been used for soliciting students for admissions into the college.
14. The sources are not recorded in the books; this constitutes undisclosed income.

15. There is no explanation also as to why the same has been paid or there is no proof that to has been spent towards the objectives of the trust.

23. The ld CIT (A) has confirmed the addition subject to deletion of duplicate entries based on these diaries.

24. Countering the findings on these documents of the ld. AO and Ld CIT (A) , the ld AR has stated that:-

i. The Ld. AO states that HBS is a manager of the trust and also held various positions in the organization. The basis for this not known. HBS is not even a trustee of the Assessee-Trust.

ii. As stated by HBS, he is an employee of the Sri Adichunchanagiri Institute of Technology, Chikkamagalur, and draws salary from there. Considering this, there is no basis to state that HBS is a manager of the trust or a PA of the Swamiji. This is not at all a formal position and the veracity of HBS' position has not confirmed by the Ld. AO.

iii. At the outset, the Appellant submitted that these diaries were maintained by HBS and the Appellant Trust was not in any way connected with the same.

iv. The Appellant has accounted all its receipts and out-goings. The entries made by HBS in the diary are in anticipation of the amounts to be received and unconnected with the Appellant's book keeping, processes or activities.

v. Whatever amounts are given to the Trust have all been duly accounted for in the Appellant's books.

vi. The Ld. AO has accepted the Appellant's books of accounts; the Ld .AO has also accepted certain entries as belonging to others and has not considered them.

vii. According to the Ld. AO, these diary entries show receipt of fees from students on various dates. These are signed by purportedly by the parents / guardians of the students. However, it does not contain the Appellant's name or signature of any person authorized by the Appellant or the Appellant's seal.

viii. It also does not contain the signature or marking from Late Shri Bal Ganagdahra Swami or any of the trustees.

ix. If the diaries are perused:

a. There are many entries against which there is no signature of any party.

b. There are many entries where there are strike-outs and over-writings rendering it not possible to understand the arrangement.

c. There are quite a few entries which indicate that against the amounts 'due', no amount has been received.

x. For instance, in many instances, in the diaries, the dues collectible from the students are not 'concluded'; no query is asked of HBS on this. The LAO has not considered these

instances at all to doubt the relevance and appropriateness of considering the diaries as basis for additions.

xi. There is no consistent logic in the amounts paid by each student as mentioned in the diaries. The sworn statements of HBS also do not indicate this aspect.

xii. Some of the diaries have attestations by various other persons not even employed by the Assessee, let alone that of HBS.

xiii. Thus, they are mere non-speaking documents containing unsubstantiated jottings having no evidentiary value.

xiv. The above statement was also not confronted to any of the trustees of the Assessee, either during the search, after the search or in the course of the assessment proceeding.

xv. The LAO has obtained sworn statements from:

a. Sri M E Mohan, Principal of BGS Global Institute of Medical Sciences, Kengeri, Bangalore.

b. Sri Sri Prakashnatha Swamiji, BGS Global Institute of Medical Sciences, Kengeri, Bangalore.

xvi. None of the above or even the other trustees of the Assessee-Trust were confronted this statement of HBS.

xvii. The LAO has stated that the searched premises at Vijayanagar, Bangalore was used for admission into the medical college at Nagamangala, Mandya, which was the older college of the Group. It is relevant to note that the search did not result in examination of any persons at the

medical college at Nagamangala, Mandya, for whom purportedly HBS was collecting fees. In fact, only the Vijayanagar and Kengeri premises of the Appellant, out of 500+ institutions of the Assessee-Trust were part of the search.

xviii. Further, no circumstantial evidence in the form of any unaccounted cash, jewellery or investments outside the books of account was found in course of search in the case of assessee.

xix. The Ld. AO has also not enquired from HBS whether the sums referred to therein were handed over to the Appellant or to other persons purportedly acting in the individual capacity but taking the name of the trust.

xx. The Ld. AO erred in not considering that the HBS diaries are his property and not that of the Appellant. The diaries are maintained by him for his convenience and not maintained by the Appellant. The diaries maintained by him are mere jottings which have nothing in relation to the books of accounts of the Appellant. We wish to conclusively clarify that the diaries were seized from the Appellant's premises and not from HBS premises. Our submission stands corrected to this extent.

xxi. The LD. AO has not confirmed if the students or parents or their representatives have been confronted on the above and confirmations obtained.

xxii. The Assessee submits that they are aware of the students / parents / representatives being summoned by the Investigation Wing, but the Assessee was not informed thereof.

xxiii. The LD. AO has not adverted to any such summons or confirmations from the students in the assessment order.

xxiv. The LD. AO has stated that agents have given statements. However, the specific information in this regard is not provided to the Assessee or in the order. The fact that the outcome of this enquiry is conspicuous by its absence in the LD. AO 's order should result in the LD. AO 's action being quashed.

xxv. LD. AO cannot consider the diaries to undertake additions when the genuineness and regularity of the Appellant's books of accounts have not been challenged.

xxvi. The Ld. AO has accepted in totality the Appellant's books of accounts. In such a scenario, the LD. AO cannot rely on diaries to make additions. In this regard, reliance is placed on the rulings of the Assam High Court ('HC') in Tolaram Daga v. CIT (59 ITR 632) and that of the Gauhati HC in Dhansiram Agarwalla v. CIT (217 ITR 4).

xxvii. Without prejudice to the above, 'books of accounts' are defined to include ledgers, day-books, cash books, account-books and other books, whether kept in the written form or in electronic form or in digital form or as print-outs of data

stored in such electronic form or in digital form or in a floppy, disc, tape or any other form of electro-magnetic data storage device. From this, it can be seen diaries mentioning admissions will never constitute books of account. This aspect has not been considered by the LD. AO .

xxviii. Many of the pages in many of the diaries that have formed the basis for the addition have been authored by unknown persons not at all authorized by the Assessee.

xxix. It can also be seen that in his sworn statement (Q 3 in page 766 of the PBC), HBS mentions that any difference in the shortcomings would be reported to tax. The Assessee is not aware as to the authority based on which HBS made these statements.

xxx. For all of the above reasons, the diaries should be considered as notes for reference of and for HBS and cannot form basis of any addition.

25. It was also the submission of the ld AR that all these additions have been made on the basis of various diaries seized during the course of search which are dumb documents. So, no additions could have been made on basis of such documents.

26. The ld AR to support his contentions relied up on plethora of decisions :-

a. Padmashree Dr. D.Y. Patil University v. DCIT (ITA 3264 to 3268 / Mum / 2022 dated 04.01.2024

b. Karnataka HC in DCIT v. Sunil Kumar Sharma (159 taxmann.com 179)

c. Bangalore ITAT in Ananda Social & Education Trust v. ACIT (ITA 2542 to 2548 / Bang / 2017 dated 29.05.2020)

d. Bangalore ITAT in Sri Devaraj Urs Educational Trust for Backward Classes v. ACIT (ITA 500 to 506 / Bang / 2020 dated 16.08.2021

e. Common Cause v. UOI (77 taxmann.com 245)

f. Madras HC in CIT v. Balaji Educational & Charitable Public Trust (56 taxmann.com 182)

g. Hyderabad ITAT in J. B. Education Society v. ACIT (55 taxmann.com 322)

h. Bangalore ITAT in ACIT v. Venkatesha Education Society (ITA 100 to 106 / Bang / 2012 dated 21.12.2012)

i. Bangalore ITAT in Sri Adichunchanagiri Mahasamsthana Math v. Addl. CIT (ITA 1258 to 1259 / Bang / 2008 dated 31 December 2008)

27. As the claim of the assessee is that the addition is made by the ld. AO and confirmed by the ld. CIT (A) is on the basis of dumb documents, we deal with this issue as and when we deal with individual additions made by the revenue authorities , as this ground of appeal is

not an independent issue but is centerstage of all the additions made in this appeal.

28. Ground no 4 to 6 are as under :-

'Fee not received / fee refunded' of Rs. 7.65,54,000/-

4. The Ld. CIT(A) has erred in not considering that the amounts pertaining to 'fee not received / fee refunded' has in fact been received by the Appellant, for all but approx. Rs. 56 lakhs. Here, the LD. AO erred in not considering the supplementary submissions made before him on 28 March 2024.

5. Without prejudice to the above, the LD. AO erred in holding that the sum of Rs. 5,24,54,000/- (comprised in the sum of Rs. 7,65,54,000/-) constitutes unaccounted receipts under section 69A of the Act, as 'fee not received / fee refunded' as stated in diaries but not accounted in the books of accounts. The CIT(A) erred in confirming this finding of the LD. AO .

6. The LD. AO and the CIT(A) erred in not considering that the provisions of section 69A are not satisfied with respect to the sum of Rs. 5,24,54,000/- (comprised in the sum of Rs. 7,65,54,000/-).

29. The ld. AR submits that diaries reflect two aspects:

a. A listing of amounts as are fixed as installments for each student and that the amount that the student should pay. The amount mentioned as due is the amount which is yet to be received on future milestones and predetermined dates as agreed upon with the students and their parents. The diary does not list the amount received.
b. To the extent that no entries are made in the diaries, it implies that as per the diaries the amount has not been received. This implies that to the extent the student again approaches the diary-writer/ author on the payment of the balance fees, the amount is considered as paid and the date of receipt is recorded. If the student does not approach the diary-writer/ author on the payment of the balance fees but pays it directly to the Appellant, there will be no entry in the diary. However, the same will be reflected in the Appellant's books in the subsequent years.

30. It was further submitted that :-

i. Since the owner of the diaries is HBS, it is he who has to explain the entries in the diaries and specifically whether the sums referred to therein were handed over formally to the Appellant. The LD. AO has not enquired on this aspect from HBS.

ii. Further, the LD. AO adopts the approach of accepting HBS statements on amounts purportedly received from students etc. as fees, but discards HBS statements on the amounts where he says the fees are refunded or are not due. Thus, on the same statement of HBS, the LD. AO construes his averments on inflows as incomes but not outflows as refunds.

iii. Without prejudice to the preceding submissions, the Appellant submits that to the extent of certain items considered as 'fee not received', the amounts appear to be collected by unknown persons that are not identifiable by the Appellant. These are amounts that are not in any manner received by the Appellant or expended by the Appellant. Thus, when no amounts have been received by the Appellant, it cannot be stated by the LD. AO that these amounts are Appellant's income. It is only Sri HBS who could have stated the destination of the payments.

iv. In this backdrop, when the Appellant is stating that it has not received any of the money, it cannot be asked to prove the negative. In fact, if the Revenue wishes to rely on the statements of HBS, it should demonstrate as to how the funds were received by the Appellant and not reported by the Appellant. The

Revenue cannot require the Appellant to demonstrate a fact that the Appellant is denying.

v. Without prejudice to the preceding submissions, the Appellant submits that the amounts alleged by the LD. AO to have not been reflected is a very small percentage vis-à-vis Appellant's total receipts. More than 90% of the entries in the diaries find a recording in the books of accounts. Hence, it would be incorrect to state that the Appellant has deliberately suppressed reflecting the balance amounts in its books

vi. The ld AR further referred to the paper book { vol 3} and referred to statements of Shri H B Shivram dated 18/07/2023 , 22/07/2023/7/8/2023 13/09/2023 and 16/09/2023 to support his case. He further stated that shri H b Shivram is neither an employee or trustee of the assessee and his statements were never confronted to the other trustees , so reliance by ld AO on statements of Shri H b Shivarm for making this addition is incorrect.

vii. He further submits that till date assessee enjoys exemption u/s 11 and 12 by virtue of registration already granted u/s 12 A/ 12 AB of The Act.

viii. In view of the above, the Appellant humbly prays that the addition made by the LD. AO on account of "fee refund" and "fee not received" as undisclosed / unaccounted requires to be deleted for the advancement of substantial cause of justice.

ix. It further relied upon the plethora of judicial precedents wherein it has been held that any addition made on the basis of diaries is a bad evidence mainly relying on the decision of the honourable cannot High Court in case of sunil kumar Sharma versus DCIT 146 taxmann.com 553, the division bench decision in case of 159 taxmann.com 179 and further dismissal of special leave petition against the above decision by the honourable Supreme Court in 168 taxmann.com 77 decision of the coordinate bench in case of Shri Devraj Urs educational trust for backward classes versus ACIT ITA number 500 – 506 Bangalore 2020 dated 16/08/2021, decision of the honourable Supreme Court in case of common causes versus Union of India 77 taxmann.com 245, in fact to support the other grounds also including this ground assessee has relied upon 19 judicial precedents which were placed in two volumes of case law compilation.

31. The ld. DR relied up on the findings of the ld. Lower authorities. The learned Department representative specifically referred to the normal learning assessing officer in paragraph number 6 and submitted that the assessee repeatedly stated that the amount has been reflected in the books of account but did not give any evidence to support its claim. He further referred to the submission of the assessee before the assessing officer dated 8/1/2016 and the finding of the learned assessing officer in subsequent paragraphs to show that addition is been made in absence of any proof regarding the refund of the money back to the students was still studying in the College of the assessee and collection of subsequent fee from them when the joint practice to, the claim of the assessee was rejected. Therefore he submitted that the claim of the assessee cannot be accepted that it has never received the amount of ₹ 76,554,000. He further referred to the A that the assessee of the explanation before the learned that CIT – A on this issue. The learned departmental representative further relied upon paragraph number 12.3 of the order of the learned CIT – A wherein the argument of the assessee that the addition is made on the documents and have been seized only in the devices of one Shri HBC from has been rejected. He further stated that the CIT – S confirmed the addition since no incontrovertible evidence to show that the above amount is part of the books of accounts has been shown by the assessee before the learned assessing officer. He therefore submitted that the case infirmity in the order of the learned that lower authorities in making the addition.

32. Ground Nos.7 to 9 relate to the addition confirmation of Rs.70,56,000 by the ld. CIT(A) out of the addition made of Rs.1,21,75,000 of unexplained investment.

33. The brief facts show that from the seized diaries wherefrom the unaccounted receipts in the hands of the assessee are assessed, there are certain marketing & promotion charges also recorded in those diaries which are supposed to be paid to some brokers or agents. When questioned, the assessee denied any such payment to any of the broker. The ld. AO specifically stated that the diaries are having entries of these marketing and advertisement expenses. The ld. AO pointed out 8 such entries which are mentioned at page 24 of the assessment order. During the course of search, a statement was recorded of Dr. M.E. Mohan, Principal of BGS Global Institute of Medical Sciences who in his statement categorically shown format of admission through which the agents are authorised. The Secretary of the trust Sri Prakash Nath Swamy was also shown the above statement and vouchers of admission. He stated that vouchers are prepared by the trust for paying commission to the agents for procuring students. Thus the AO was of the view that the above submissions clearly show that trust colleges are using agents for admission process, but the expenditure paid to the agents are never recorded in the books of account During the assessment proceedings also the assessee refused to have made such payment. When a show cause notice was issued for addition as undisclosed expenditure u/s. 69C of the Act, the assessee once again denied to have made any

payment to any broker. It was further stated that details of advertisement expenditure incurred are already in the books of account. The assessee also stated the statement of Dr. Mohan also does not make any reference to any commission payment and further the statement of Prakash Nath Swamy also do not record of any unexplained expenditure and therefore there is no question of any addition. The ld. AO rejected the contention of the assessee stating that the diaries have clear details of these expenses on various pages. Therefore, after analysing the seized material, he made an addition of Rs.1,21,75,000 of marketing expenditure contained in 3 seized diaries u/s. 69C of the At.

34. On appeal before the ld. CIT(A), the ld. CIT(A) categorically noted that the diaries have verified statement of the office bearer and when the assessee was afforded an opportunity to produce the proof, assessee failed. The diaries contained detailed facts about the agent to whom assessee has made the payment on several occasions. These amounts are not recorded in the books of account. However on verification of those entries, the CIT(A) agreed with the contention of the asse that an amount of expenditure of Rs.45,19,000 is not expenditure, but represents income which has been brought in the books of account as receipt. Thus, after verification, he directed the ld. AO to delete the addition of Rs.45,19,000 out of Rs.1,21,75,000 and thus retained addition of Rs.76,56,000.

35. The assessee being aggrieved with the same vehemently submitted that the above addition of unexplained expenditure has been made by the ld. AO based on the entries in the diary. The diaries do not have evidentiary value. Therefore, the addition is bad in law. He reiterated all the judicial precedents which were raised stating that no addition could have been made in the hands of the assessee in the absence of any corroborative material. It was stated that neither the brokers were asked to verify nor there is another proof of incurring such expenditure. Therefore, the addition deserves to be deleted. Alternatively it was also submitted that the amount of expenditure allegedly unexplained should be telescoped with the unaccounted income of the assessee. For this also, he relied on several judicial precedents.

36. The ld. DR vehemently supported the orders of ld. lower authorities and submitted that when the diaries seized during the course of search shows unexplained expenditure in the form of commission paid by the assessee to the various agents for soliciting students for admission for various colleges, those expenditure are not accounted for in the book of account of the assessee, the addition u/s. 69C is rightly made.

37. Ground Nos. 10 & 11 are with respect to the addition of Rs.7,74,75,000. The ld. AO noted the facts at para 5 of the assessment order that during the course of search & seizure operation at Vijayanagar, some diaries were seized. The searched premises was

being used for the admission into medical college which is being looked after by Shri H.B. Shivaram. He was stated to be the Manager in the trust. Several of the diaries were in the writing of Mr. H.B. Shivaram, which contained the address of the students and the amounts that is paid for admission into the college. The details also contained the amounts fixed, the date on which the sum has been paid, amount further payable at various due dates along with signature. The assessee was asked to explain the contents of these diaries. The ld. AO pointed out that there are entire in the diaries in the nature of "PP". When Mr. Shivaram was asked to show that when this money was deposited in the bank account, it was stated that "PP" referred to Parama Poojya for reference of late Shri Balagangadharanatha Swamiji, who passed away in early 2013. This money was handed over to that Swamiji. The AO on the basis of the above explanation firstly computed the details of Rs.18,99,65,000 of the entries of "PP" account. He also referred to the statement of Mr. Shivaram recorded on 22.7.2013 to corroborate the above findings. During the course of assessment proceedings, the AO asked the assessee to explain the same. The assessee explained that all these entries are accounted for in the books of account. The AO found that out of the above sum, Rs.7,74,75,000 belongs to assessment year in question i.e., AY 2011-12. Thus he gave an opportunity to the assessee that why the above sum of Rs.7,74,75,000 should not be added u/s. 69A of the Act as undisclosed income of the assessee. The assessee reiterated the same explanation that the amounts of fees are

already recorded in the books of account and further the amounts are used for charity and donation and for the purpose of objects of the trust. The ld. AO did not accept the contention of the assessee in absence of any evidence that the above sum of Rs.7,74,75,000 is accounted for in the books of account, considered the same as undisclosed income of the assessee. He further held that it implies that as amount was given to Parama Poojya late Sri Balagangadharanatha Swamiji under the head "PP", same was also not utilised for the objectives of the trust, but is applied directly or indirectly of persons specified u/s. 13(3) of the Act. Therefore, the assessee is also not entitled to benefit of exemption u/s. 11 & 12. Therefore the above amount of addition was made and assessee was also denied the claim of exemption u/s. 11 & 12 of the Act on the whole of the income.

38. When the matter reached before the ld. CIT(A), the assessee submitted that it is an addition made out of the entries in the diary maintained by Mr. H.B. Shivaram, who is not an employee of the assessee and therefore the addition on the basis of such seized diaries could not have been made. Further the applicability of denial of exemption on the income of the trust is also not proper. The ld. CIT(A) confirmed the addition of Rs.7,74,75,000 for the reason that the amounts have been mentioned in the diary maintained by Mr. H.B. Shivaram stating that the above sum of money is handed over to Swamiji. Further the assessee also submitted that the above sum even if received by Swamiji has not been taken for his benefit, but is

utilised for the purpose of or objects of the trust. Thus, there is no benefit received by any of the trustees mentioned in section 13(3) of the Act. The ld. CIT(A) rejected the contention of the assessee stating that it is a prima facie requirement of demonstrating that the above sum are from income & expenditure statement or not and he confirmed the action of the AO.

39. On appeal before us, the assessee challenged the same vide ground No.10 stating the following arguments:-

i. HBS has stated that the amounts referred to in the noting under the head 'PP', money was handed over to Sri Sri BGS for charitable purposes. He has also stated that the trust will offer the undisclosed income for tax for the amounts that have not been remitted to the bank.

ii. The Appellant in the course of the assessment did not offer this income to tax. In its initial submission dated 14.12.2015, the Appellant stated that the money mentioned against the head PP (Param Pujya) in the diaries was spent by HH Sri Sri Sri Balagangadharanatha Swamiji ('Late SSS BGS'). These items of charity and donations have been accounted in the books of account as and when incurred. However, in the absence of full details, it may not be possible to presently identify these items. Vide submission dated 08.01.2016, it subsequently stated that the amounts were spent for charity and donations and for

the purpose of the objects of the trust and hence, there is no question of any addition on this account.

iii. The Appellant stated that as much as this was a shocking allegation, it is to be noted that the Late SSS BGS was a sannyasi. As a sannyasi, He was not supposed to have any worldly assets and he did not have any such assets. Further, upon his Lingaikya in January 2013, it is not anybody's case that He had assets which devolved upon anybody. The Late SSS BGS if He did indeed receive the sums, would have only used the funds for the furtherance of the Appellant's activities.

iv. The Appellant also stated that the Late SSS BGS has not made any personal assets for distribution of his wealth to anyone. He was a towering personality and was recognized by his millions of devotees as a great philosopher, a renowned philanthropist, a visionary educationist, healing medical and health care protagonist and above all a human par excellence. The LAO's presumption that the alleged amounts have been indirectly taken by a man of such stature is to make him turn in his grave for the immaculate contribution that he has made. He had no wealth nor is there any remote evidence that the amounts have been spent by him on his personal needs. In

fact, he was a man of few needs. There is no evidence brought on record by the LAO.

v. There is nothing in the seized diaries to indicate that the amounts have been spent by him or taken by him personally. The word 'benefit' used in section 13(1) is of utmost importance. What 'benefit' a person who has renounced his worldly life can have to any assets? There is neither origination of the amounts in the trust nor the destination of the same either directly or indirectly in favour of the Mahaswami / "Parama Pujya". The allegations that he has benefitted directly or indirectly are far from truth and without any factual foundation. The LAO has not brought anything on record to show that there was any personal benefit for the Mahaswami / "Parama Pujya". The Mahaswami / "Parama Pujya" is not alive to defend this accusation on him by the revenue and to expect that a man of such stature to have taken benefit is arbitrary, capricious and only based on surmise and suspicion and without any back up of any legal or documental evidence in such regard.

vi. It is submitted that the LAO cannot require the Appellant to demonstrate the negative, that is, that the Late SSS BGS applied the sums to the benefit of the Appellant, especially since, he is no more.

vii. Without prejudice, it is also to be noted that HBS himself in his statement has stated that these amounts were used for charity and donation. On the one hand, the LAO relies on HBS statements to conclude that these are receipts, but on the other hand, the LAO did not rely on HBS statements on the outflow.

viii. We also understand that HBS was subjected to assessment proceedings after the search, but none of the sums that are arraigned as belonging to the Appellant have been confronted and considered as his income. Why these sums were not questioned in the hands of HBS is not known to the Appellant, when in fact, it would have been fit and proper to examine this aspect.

ix. appellant submits that LAO has incorrectly considered amounts referred to in the diaries as income. Mere mention of amounts in the diaries will not constitute income unless it is evidenced by existence of cash, money or assets that can be identified to the Appellant or can be stated to be owned by the Appellant. The LAO has not undertaken any exercise to demonstrate that the Appellant has in its possession cash, money or assets representing the amounts mentioned in the diaries. The LAO has also not been able to demonstrate these aspects in the case of HBS,

Sri Shekar Swami, HH BGS or the Appellant itself. Mere mentioning of amounts in a diary does not imply that the same amounts to income. This is especially when the amounts have not been confirmed by any person other than HBS. Hence it is submitted that the additions based on Diaries is incorrect and ought to be quashed.

x. Importantly, it should be noted that the Appellant's claim of exemption has been allowed. Therefore, the Appellant's activities are genuine and it cannot be held that the Appellant indulged in the above activities.

40. The ld. DR vehemently supported the orders of the ld. lower authorities. It was submitted that Shri H.B. Shivaram, who was the Manager of the trust, who was looking after the admission process and who has maintained the diaries has categorically stated that the above sum was collected from students and handed over to "PP" and therefore this is the income of the trust and therefore rightly been added to the income of the assessee. Further when the above sum was paid to "PP" Swamiji, it is for the benefit of that trustee and thus resulted into violation of provisions of section 11 & 12 of the Act. Accordingly the action of the AO was confirmed.

41. In a rejoinder, the ld. AR submitted that the statement of Mr. Shivaram cannot be relied upon, as he is neither the trustee nor the Manager or employee of the assessee trust. In the diaries so maintained by him, he has specifically mentioned the name of

Swamiji. Swamiji Shri Balagangadharanatha Swamiji has already passed away in 2013. Therefore now the statement cannot be confirmed. He further reiterated the fact that additions have been made in the hands of assessee without confronting Mr. Shivaram to the assessee. Even otherwise, it was submitted that based on the seized diaries, no addition could have been made.

42. Combining all the 3 grounds of addition with respect to the addition on account of fee refund of Rs.7,65,54,000 as per ground Nos. 4 to 6 of the appeal as fee refund, the addition of unexplained expenditure of Rs.76,56,000 covered as per ground Nos.7 to 9, it was stated that amount of fee refunded and unexplained expenditure requires to be telescoped with the alleged unaccounted receipts amounting to Rs.7,74,75,000 and the balance sum only can be taxed which was precisely ground No.11 of the appeal memo.

43. We have carefully considered the rival contentions and perused the orders of ld. lower authorities. The facts clearly show that there are 3 kinds of additions which have been made:-

(i) fee refunded,

(ii) unaccounted expenditure, and

(iii) unaccounted fee income of the assessee.

44. Therefore the two items are outgo and one item of fee income is the receipt. All 3 additions are based on the basis of seized diaries. These seized diaries are written by Mr. H.B. Shivaram. Mr. H.B. Shivaram was neither the employee of the assessee nor the trustee. It

is a fact that the ld. AO also confirmed that these seized diaries are maintained by Mr. H.B. Shivaram. The statement of Mr. Shivaram was recorded on 18.7.2013, 22.7.2013, 7.8.2013, 13.9.2013 and on 16.9.2013. Therefore the moot question that arises is whether the above addition can be made on the basis of said loose diaries in the hands of the assessee.

45. Identical question arose in the case of Sri Devaraj Urs Education Trust for Backward Classes v. ACIT, in ITA Nos.500 to 506/Bang/2020 dated 16.8.2021 wherein the coordinate Bench held that since the impugned seized papers are undated does not have acceptable narration, do not bear the signature of assessee or any other party, these documents are in the nature of dumb documents and no addition can be made based on these documents. Coordinate bench dealt with the identical issues of Fees income which was added on the basis of seized documents[diaries] as well as statement of one Mr. Goli Viswanathan which was held not be justified by the coordinate bench holding as under :-

> "181. With regard to seized material A/DDU/1 to 4 (Page no 508 to 864 of paper book), the details of the content of these seized materials are mentioned in above table. The AO verified these seized documents according to him it shows certain receipts of unaccounted fees and payments to trustees and others mentioned therein. These seized material does not bare any signatures of any person. Our observations are that

these seized material consisting of loose sheets and note books and the statement recorded from Mr. Goli Srinivas. The assessee vide letter dated 22.02.2017 and 09.12.2017 asked for cross-examination of Shri Goli Srinivas which was not provided by the authority. The contention of the ld. DR is that Mr. Goli Srinivas being employee of the assessee, it is not necessary to provide such an opportunity to the assessee. The AO has referred to these seized materials in paras 4, 6, 8, 15, 16, 18, 19, 36-40 of his order. According to the AO, A/DUU/01 shows the details of students, amounts collected for admission and duration of payments. However, it does not contain the name of assessee or signature of any person authorised by the assessee. They are mere non-speaking loose sheets containing unsubstantiated jottings having no evidentiary value. First of all to come to the conclusion that these are full proof documents, the department should have given cross-examination of the author of these loose sheets which was not provided. As held by the Hon'ble Delhi High Court in Principal Commissioner of Income-tax v. Best Infrastructure (India) (P.) Ltd., 397 ITR 82 (Del), statement recorded u/s. 132(4) did not by themselves substitute incriminating material and on that basis assumption of jurisdiction u/s. 153A and consequent addition made by AO were not justified. Further it was observed that statement u/s. 132(4) during the course of search action not only has to be

offered to the assessee, but an opportunity to cross-examine has to be given. If it was not provided, it is sufficient to discard such statement which is evident from para 37 of that judgment. Similar view was taken by Lucknow Bench of the Tribunal in the case of M/s Fateh Chand Charitable Trust v. CIT (Exemptions) Lucknow 2016 (4) TMI 1119 - ITAT Lucknow / [2016] 49 ITR (Trib) 276 wherein it was held that even when the assessee disputed the correctness of the statement recorded u/s. 132(4) and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee and held that testimony of witnesses has to be discharged as there was no material with the department on the basis of which it could justify its action. Further in the case of M/s Obulapuram Mining Company Pvt. Ltd. v. DCIT 2016 (7) TMI 1435, the ITAT Bangalore held that in the absence of third party being made available for cross-examination despite repeated requests by the assessee, his statement could not be relied upon detriment to the assessee. This decision was based on the judgment of the Hon'ble Delhi High Court in the case of CIT v. Pradeep Kumar Gupta, 303 ITR 95 (Del).

182. The contention of the ld. DR is that the department relied upon the statement of assessee's own employee, who need not cross-examine its own employee and there is no mistake in not providing opportunity of cross-examination to

the assessee. However, we are not in agreement with the contention of the ld. DR. The right to cross-examine is not dependent upon the assessee's relationship with the witnesses. The right to cross-examine depends upon the fact that statement of the party is used against the assessee. Therefore the mere fact that the statement sought to be relied upon by the AO is that of the employee would not disentitle the assessee to cross-examine. Therefore, the ratio relied upon by the assessee squarely applies and it is the prerogative of assessee whether it wants to cross-examine or not. It was held in the case of Smt. Madhu Gupta v. DCIT 2006 (2) TMI 496 - ITAT MUMBAI / [2006] 8 SOT 691 (MUM.) that even if the assessee was provided a copy of the statement recorded by the revenue on the spur of the moment, that should not be treated as an effective opportunity given to the assessee. In that case the Tribunal relied upon the judgment of the Hon'ble Allahabad High Court in the case of Gargi Din Jwala Prasad v. CIT [1974] 96 ITR 97 (All) wherein it was held that permission to cross-examine witness given, but names of the witnesses and substance of the statement made by them not given is not a proper opportunity and on that ground assessment was vitiated by the principles of natural justice as permission to cross-examine all the witnesses are illusory. Further in the present case, these seized material A/DUU/1 to 4 though did

not contain the name of assessee or signature of any person, they are merely unsubstantiated loose sheets. As held by the Tribunal in the case of ACIT v. Layers Exports P. Ltd [2017] 53 ITR (Trib) 416 (Mumbai), addition cannot be sustained merely on the basis of rough noting made on few loose sheets, unless AO brings on record some independent and corroborative material to prove irrefutably that the said noting revealed unaccounted income or unaccounted investment or unaccounted expenditure of the assessee. The very purpose of search concluded u/s. 132 is to unearth hidden income or property or get hold of books of account or documents which has not been or will not be otherwise produced by the assessee in regular course on issue of summons or notice. In the assessee's case, as stated above, the purported search action did not lead to discovery of any unaccounted money, bullion, jewellery or other valuable article or thing. Further, no books of account revealing any undisclosed transactions of the assessee were found during the course of search. The entire assessment order revolves around scribbling in loose sheets of papers seized from premises of another person in course of search action on such other person. It is a fact that the said rough loose sheets of papers scribbled by some anonymous person and seized in course of search of another person cannot be termed as 'documents' having any evidentiary value within the meaning

of section 132 or section 132A of the Act. Thus, the entire assessment u/s 153A of the Act in case of the assessee rests on shaky and incorrect foundation and thus deserves to be quashed.

183. In view of the aforesaid judgments, since the impugned seized papers are undated, have no acceptable narration and do not bear the signature of the assessee or any other party, they are not in the nature of self-speaking documents having no evidentiary value and cannot be taken as a sole basis for determination of undisclosed income of the assessee. When documents like the present loose sheets of papers are recovered and the Revenue wants to make use of it, the onus rests on the Revenue to collect cogent evidence to corroborate the noting therein. The Revenue has failed to corroborate the noting by bringing some cogent material on record to prove conclusively that the noting in the seized papers reveal the unaccounted capitation fees/receipts of the assessee. Further, no circumstantial evidence in the form of any unaccounted cash, jewellery or investments outside the books of account was found in course of search in the case of assessee. Thus, the impugned addition was made by the AO on grossly inadequate material or rather no sufficient material at all and as such, deserves to be deleted. Hence, we are of the view that an assessment carried out in pursuance of search, no addition can be made simply on the basis of

uncorroborated noting in loose papers found during search because the addition on account of alleged receipts made simply on the basis of uncorroborated noting and scribbling on loose sheets of papers made by some unidentified person and having no evidentiary value, is unsustainable and bad-in-law.

184. The Tribunal in the case of Sri Y. Siddaiah Naidu, Tirupathi vs. Asst. Commissioner Of Income-Tax 2015 (2) TMI 403 - ITAT HYDERABAD held that it is very much clear that from such notings, it cannot be deduced whether they are receipt or payments nor it can be concluded whether they are in relation to any particular transaction as no names have been mentioned. In these circumstances, no addition can be made on the basis of such document.

185. In CIT v. M/S Khosla Ice & General Mills 2013 (1) TMI 451 - Punjab & Haryana High Court, the Hon'ble Court held that assessee rightly contended that the impugned document was a non-speaking document inasmuch as it does not contain any intelligible narration in support of the inference drawn by the Assessing Officer that it reflected sales carried out by the assessee outside the regular books of account. When a dumb document, is to be made the basis to fasten tax liability on the assessee, the burden is on the Revenue to establish with corroborative evidence that the

nature of entries contained therein reflect income and also that such income was in the control of the assessee. Thus, Revenue has to establish, with necessary corroborative evidence, that various entries contained in the seized document reflect sales of rice and broken rice effected by the assessee. Considering the entirety of circumstances, in the absence of any material to support the nature and ownership of the entries found in the seized document, no addition is permissible in the hands of the assessee as undisclosed income by merely arithmetically totalling various figures jotted down on such document.

186. Further the AO relied on the statement of Shri Nagaraj, Secretary wherein the AO mentioned that Mr. Nagaraj was aware of the transactions and confirmed it. The AO has not referred to the following answers of Mr. Nagaraj to Question Nos.8 to 11:- (a) In answer to Q.8 to the statement recorded on 13.8.2015, [page 2164 PB), he has stated that he does not know anything about the entries made in the loose sheets. (b) In answer to Q14 (page 2165 PB), he denied any consideration paid to MCA Inspectors nor any cash paid to donors to enable them claim 80G deduction. (c) In answer to Q.8 (page 2167 PB), in the statement record on 21.9.2015, he did not agree to disclose any amount as undisclosed income of the trust. (d) In answer to Q. 14 (page 2183 PB) of statement recorded on 13.10.2015, he denied payment of

cash to any donor. (e) In answer to Q.22 (pg. 2191 PB), he emphatically denied that any cash was received from student/parent in response to statement of Shri Rangaraju (pg. 2189 & 2190 PB). (f) In answer to Q.24 (pg. 2192 PB), he denied collection of fee in cash.

187. Hence the revenue authorities contention that Mr.Nagaraj has admitted payment of cash and receipt of fees in cash is not based on statement of Mr. Nagaraj.

188. Further from the seized material A/DUU/02 & 03, the AO came to the conclusion that cash been paid to trustees either directly or to a third party for their benefit. The statements of Shri R.L. Jalappa, Shri Rajesh Jagdale and late Shri J.P. Narayan Swamy were recorded, but no questions were put to them whether statement of Mr. Srinivas that cash has been paid to trustees or to a third party on their behalf is correct. The statement of Mr. Jalappa is on record at page 2140 to 2158 of PB. Perusal of the same shows that he was not confronted with the statement of Mr. Srinivas. The observations in para 8 & 9 of the assessment order do not show that Shri Rajesh Jagdale and late Mr. J.P. Narayan Swamy were also not confronted with the statement of Mr. Srinivas. The AO stated that seized material A/DUU/01 revealed that trust has engineered dropout seats and converted the merit quota seats into management quota seats

through services of middlemen like Mr. Abrar. The AO discussed these facts in Page no 78 to 86 of the assessment order it shows that he relied on the statement of Shri G Srinivasa. Shri G Srinivasa has stated that Mr. Syed Abrar, Mr. Shiva Prasad, Mr. Basavaraja, Mr. Amanullah, Mr. Prasad and Mr. Thomas are the commission agents who bring prospective students for admission to NRI quota seats and some other seats. These candidates have to make payments in cash for which no receipts are issued. But the AO has not examined Mr. Abrar or any other alleged middlemen. In the absence of such examination, the statement of Shri Srinivas that middlemen were engaged for seat conversion cannot be relied upon.

189. The seized material A/DUU/03 which is placed on record at PB page no 669 to 775 which shows certain payment entries and it is very strange to believe that the assesse has authorised any person to write it as it does not contain any attestation from the assesse side being not having any name or seal of the assesse.

190. The seized material A/DUU/04 which is placed on record at PB page no 776 to 864 which shows certain payment entries and it is very strange to believe that the assesse has authorised any person to write it as it does not contain any attestation from the assesse side being not having

any name or seal of the assesse. It also shows certain amount taken from PG students. However there is no attestation to this document from the trust side to suggest that it was authorised by the assesse. Being so no credence to be given to this document.

191. The seized material A/DUU/05 to 09 is not relied upon by the AO while framing assessment and making additions, hence no findings are required.

192. The seized materials A/DUU/10 are placed in pages 1420 to 1554 of PB. The AO relied on page 5 placed at page 1549 of PB. According to AO, this amount has been paid to agents for seat conversion. The AO mentioned about this in page 61 of assessment order and there is only reference to page 5 of seized material (placed at 1549 of the paper book) in this order. According to him, it contains details of cash payments made to agents. We have carefully gone through the above seized material. In our humble opinion this seized material does not show any payment which has been made to an agent for seat conversion. Being so, as discussed earlier, these are loose sheets having no signature of any person, cannot be treated as incriminating material without any supportive document and the statements are relied upon by the AO without giving opportunity of cross-examination.

193. The Bangalore Tribunal in the case of Kirloskar Investments & Finance Ltd. v. Assistant Commissioner of Income-tax [1998] 67 ITD 504 (Bang.) held that the provision of the copy of the statement or letters is not sufficient opportunity. Oral evidence of persons concerned with the transaction are important piece of evidence and before it could replace the written evidence, the party against whom such oral evidence is being used must be allowed the opportunity of examining the person because, both the types of evidences need to weighed properly before rejecting one for the other.

194. In view of the above, in our opinion, it cannot be concluded as payments by the assessee towards seat conversion.

195. The seized material A/DUU/11 is placed at pages 1555 to 1635 of PB. According to the ld. DR, it shows unaccounted utilisation of capitation fees for the benefit of trustees. These are unsigned documents and not supported by any corroborative material. Further the beneficiaries are not examined or cross-examined. At this point, it is appropriate to rely on the judgment of the Mumbai Bench in the case of ACIT v. Layers Exports P. Ltd [2017] 53 ITR (Trib) 416 (Mumbai), wherein it was held that no addition could be simply made on the basis of uncorroborated noting in the

loose papers found during the search because addition on account of alleged receipt made simply on the basis of uncorroborated noting and scribbling on loose sheets made by some person have no evidentiary value and is unsustainable and bad in law.

196. The Hon'ble Supreme Court in Common Cause (A Registered Society) v. UOI [2017] 394 ITR 220 (SC) observed with regard to evidentiary value that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hira Lal v. Ram Rakha the High Court, while negativing a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the Court has to enquire was subject to the salient proviso that such entries shall not alone

be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 of Evidence Act so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by the Court. There has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries. In case we do not insist for all these, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible

material on record, lest liberty of an individual be compromised unnecessarily.

197. In view of the above, reliance on Seized material A/DUU/11 for making addition cannot be sustained.

198. The AO has not referred to the seized material Seized material A/DUU/12 and there is no necessity of commenting on it.

199. Regarding seized material A/DUU/13, placed at PB 1698 to 1805 which contains computer typed statements, scribbling's and manual scribbling's and noting's. Most of the entries is a repeat of hard copy of seized material A/DUU/01. Further there are certain letters as follows: (i) PB 1767 – Letter from A Murthy confirming the voluntary payment of Rs.50,000 towards corpus donation by cheque (ii) PB 1768 (duplicate of above) Letter from A Murthy confirming the voluntary payment of Rs.50,000 towards corpus donation by cheque. (iii) PB 1771 – Letter from B Rajashekhar confirming the voluntary payment of Rs.30,000 towards corpus donation by cheque. (iv) PB 1772 (Duplicate of above) Letter from B Rajashekhar confirming the voluntary payment of Rs.30,000 towards corpus donation by cheque. (v) PB 1777 – Letter from K Shantharam confirming the voluntary payment of Rs.30,000 towards corpus donation by cheque. (vi) PB 1779 – Letter from T Venkatsubbaiah

confirming the voluntary payment of Rs.70,000 towards corpus donation by cheque. (vii) PB 1780 (Duplicate of above) Letter from T Venkatsubbaiah confirming the voluntary payment of Rs.70,000 towards corpus donation by cheque. (viii) PB 1784 – Letter from P Kumara Swamy confirming the voluntary payment of Rs.50,000 towards corpus donation by cheque. (ix) PB 1787 – Letter from B S Amarnatha confirming the voluntary payment of Rs.50,000 towards corpus donation by cheque. (x) PB 1790 & 1791 – Letter from Dr.C.L.Gayathridevi confirming the voluntary payment of Rs.50,000 towards corpus donation by cheque. (xi) PB 1793 – Letter from B P Ravi Kumar confirming the voluntary payment of Rs.25,000 towards corpus donation by cheque.

200. In all the above cases the voluntary contribution towards corpus donation has been received by cheque and duly accounted in the books of account of the assesse. There are also some photocopy of bank receipts and cheque receipts other than this which are insignificant papers does not suggest any material evidence.

201. The seized material A/DUU/14 is digital data. According to the AO, it shows unaccounted capital receipts received in cash from Management/NRI quota students utilized for payment to political parties as per instruction of

Mr. G.H. Nagaraj. These digital data are used by the AO without providing any opportunity of cross-examination of Mr. Srinivas. There is no evidence to show that assessee has authorised collection of these payments. These are repeat of hard copy of A/DUU/01. With regard to the digital evidence, the purpose of such electronic record is not known. The manner in which such electronic record is produced and by whom it is produced is not known. The data and time of preparation and search or list of such electronic data is not brought on record. Source of such record and data and time and printing of such record is not known. The assessee's knowledge of the contents therein and the correctness of the contents is not known. The resources used for preparation of such data and the correctness of functioning of the computer is not known. Print-out or copy furnished was taken from which computer is not known. In such circumstances, these digital data cannot be relied upon. The contention of ld. DR is that presumption u/s. 292C shows that it belongs to the assessee and it cannot be denied. However, we are not in a position to appreciate the argument of the ld. DR for the reasons discussed below.

202. Assessment u/s. 153C has been made in the case of the trustees relying upon the very same material. Under such circumstances, the presumption under section 292C gets automatically rebutted. Section 153C(1) states that where the

Assessing Officer of the searched person is satisfied that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A. Therefore, if the material seized belongs to or pertains to or relates to a person other than the searched person, only then section 153C comes into play. Hence, it is axiomatic to state that if the material seized belongs to or pertains to or relates to some other person, it does belong to or pertain to or relate to the searched person. Under such circumstances, one cannot invoke the presumption under section 292C that the material seized belongs to the searched person as the assessing officer by his own action of making assessment under section 153C in the case of trustees relying upon the very same seized material.

203. The Delhi Tribunal in Vijay Kumar Aggarwal v. ACIT 2017 (5) TMI 1354 held that it is clear that the presumption

of facts u/s 292C of the Act is not a mandatory or compulsory presumption but a discretionary presumption. Since, the word used in the said Section is " may be" and not "shall". Secondly, such a presumption is rebuttable presumption and not a conclusive presumption because it is a presumption of fact not a presumption of law. In the present case, the assessee from the very beginning stated that the documents found during the course of search did not belong to him. Therefore, the addition made by the AO is only on the basis of surmises and conjecture without bringing any cogent material on record to substantiate that the assessee was engaged in the business of gold and jewellery and the AO had not brought any material on record to substantiate that the denial of the assessee was false.

204. Unless the burden of proving that the materials and cash belong to the assessee is discharged those materials can neither be seized under section 132 nor relied upon to make assessment under section 153A. Therefore the seizure of such material is illegal. The AO cannot rely upon such material whose seizure is illegal and the hence, assessment is void ab initio. Therefore, addition made on account of such seized material is not sustainable.

205. Seized material A/DUU/15 PB page no 1839 to 2028 a note book containing names, mobile numbers and address

having no attestation of the assessee with regard authenticity that it belong to assessee. This was not discussed in the assessment order being so it is to be treated that it does not relate to the addition made by the AO and requires no adjudication.

206. The AO also relied on seized materials A/DUU/16 placed at Paper book page no 2029 to 2138. We have carefully gone through it, these are blank cheques found at the premises of the assesse during the course of search action. The AO discussed this issue in his order at page number 46 to 50, and drew inference that these are the cheques given by the students as a security for payment of capitation fees. He also relied on the statement of Goli Srinivas. However we found that these are blank cheques without mentioning the name of the assesse. Further, the person who has issued the cheques has not been examined by the AO. Similarly, no cross examination was provided to the assesse. In this circumstances, the inference drawn by the AO have no legs to stand and deserve to be rejected. Other being loose sheets cannot be relied upon since no opportunity to cross examine Mr. Goli Srinivas was provided as discussed earlier.

207. The assessee vide letter dated 22.02.2017 asked for copies of the statements recorded from the students, parents

and donors during the search proceedings and also opportunity to cross-examine the parties. Further copy of statements recorded and cross-examination of the parties was requested by the assessee's letter dated 09.12.2017. Vide assessee's letter dated 22.02.2017, copies of seized / incriminating material relied upon to make the addition was requested. The assessee vide letter dated 29.10.2017 also requested for documents in digital form taken at the time of search u/s. 132.

208. The AO vide letter dated 01.08.2017 furnished copies of seized material A/DUU/01 to A/DUU/17 to the assessee. However, it is crucial to ITA Nos.500 TO 506/Bang/2020 Page 113 of 183 note that the assessee's request for cross-examination of students, parents and donors of capitation fees was not provided by the revenue authorities.

209. The assessee by letter dated 09.12.2017 made submissions that collection of amounts by Shri G.H. Nagaraj, Secretary of the trust were on his own and spent a portion of the amount on the infrastructure and development activities.

210. In our opinion, the statement of Mr. G.H. Nagaraj, who is Secretary of the trust cannot be considered as true and correct. He has changed his versions and proved to be an evasive person as a witness. At one stage, he admitted collection of fees over and above the prescribed fees and not

paid the same back to the institution. There was a letter dated 09.12.2017 wherein the trustee stated that Mr. G.H. Nagaraj collected the amount from students / parents and spent the amount for the activities of the trust. He alone has to explain the collection of fees to the income-tax authority. Therefore, his statements are contradictory in nature. No value could be attached to his statement and his conduct is neutralizing the value as a witness. Further, the AO in para 3.4 the tabulated statement in response to assessee's submission at page 206-207 of his order noted as follows:- "Shri G.H. Nagaraj, has time and again changed his position Therefore that version of his statements which is in line with the material found and seized during the search is only being considered. Also seized material has sheets with tabulations where the word 'cash' has been consistently used. Also, the assessee has not made any submissions to prove that the subsequently admitted receipts of Rs.146 crores were taken through cheques or DDs."

211. The Hon'ble Supreme Court in Andaman Timber Industries v. Commissioner of Central Excise, 281 CTR 241 (SC) held as follows:- "Not allowing the assessee to cross-examine the witness by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of

natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. (para 6) Appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price-list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price-list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. (para 7) If the testimony of these two witnesses is discredited, there was no material with

the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show-Cause Notice. (para 8)"

212. The Delhi Tribunal in the case of Veena Gupta v. ACIT in ITA No.5662/Del/2018 dated 27.11.2018 relying on the above judgment of Hon'ble Supreme Court in the case of Andaman Timber Industries (supra) quashed the assessment order on the reason of not providing cross-examination of witnesses whose statements were recorded.

213. The Hon'ble Supreme Court in the case of Mehta Parikh & Co. v. CIT, 30 ITR 181 held as under:- "In the instant case a mere calculation of the nature indulged in by the ITO or the AAC was not enough, without any further scrutiny, to dislodge the position taken up by the assessee, supported as it was, by the entries in the cash book and the affidavits put in by the assessee before the AAC. The Tribunal also fell into the same error. It could not negative the possibility of the assessee being in possession of a substantial number of these high denomination currency notes. It, however, considered that it was impossible for the assessee to have had 61 such notes in the cash balance in their hands on 12-1-1946, and then it applied a rule of the thumb treating 31 out of such 61 notes as within the bounds of possibility, excluding 30 such notes as not covered by the explanation of the assessee. This

was pure surmise and had no basis in the evidence, which was on the record of the proceedings. Facts proved or admitted may provide to support further conclusions to be deduced from them, which conclusions may themselves be conclusions of fact and such inferences from facts proved or admitted could be matters of law. The court would be entitled to intervene if it appears that the fact finding authority has acted without any evidence or upon a view of the facts, which could not reasonably be entertained or the facts found are such that no person acting judicially and properly instructed as to the relevant law would have come to the determination in question. The High Court treated this finding of the Tribunal as a mere finding of fact and recognised this position in effect but went wrong in applying the true principles of interference with such findings of fact to the present case. Really speaking the Tribunal had not indicated upon what material it held that Rs. 30,000 should be treated as secret profit or profits from undisclosed sources and the order passed by it was bad. The assessee had furnished a reasonable explanation for the possession of the high denomination notes of the face value of Rs. 61,000 and there was no justification for having accepted it in part and discarded it in relation to a sum of Rs. 30,000. The High Court ought to have held that there were no materials to justify the assessment of Rs. 30,000 from out of the sum of

Rs. 61,000, for income-tax and excess profits tax and business profits tax purposes, representing the value of the high denomination notes which were encashed."

214. Further the Hon'ble Supreme Court in the case of CIT v. Odeon Builders (P.) Ltd., 418 ITR 315 (SC) head-note is as follows:- "Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Bogus purchase) - Certain portion of purchases made by assessee was disallowed - Commissioner (Appeals) found that entire disallowance was based on third party information gathered by Investigation Wing of Department, which had not been independently subjected to further verification by Assessing Officer and he had not provided copy of such statements to appellant, thus, denying opportunity of cross examination to appellant, who on other hand, had prima facie discharged initial burden of substantiating purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and fact of payment through cheques, VAT Registration of sellers and their Income-tax Return - He held that purchases made by appellant was acceptable and disallowance was to be deleted - Tribunal dismissed revenue's appeal - High Court affirmed judgments of Commissioner (Appeals) and Tribunal being concurrent factual findings - Whether no substantial question of law

arose from impugned order of Tribunal - Held, yes [Para 4] [In favour of assessee]"

215. The Hon'ble High Court of Karnataka in Kothari Metals v. ITO, 377 ITR 581 (Karn) held as under:- "Held, allowing the appeal, that the non-furnishing the reasons for re-opening an already concluded assessment goes to the very root of the matter. Since such reasons had not been furnished to the appellant, even though a request for them had been made, proceedings for the re-assessment could not have been taken further on this ground alone. Besides this, the statement of some other person which was recorded was the basis of reassessment and the assessee was asked to explain it but the statement was itself not furnished to the assessee. As such, besides non-furnishing of the reasons for re-opening there was also a gross violation of the principles of natural justice. The reassessment was not valid."

216. The Hon'ble Calcutta High Court in the case of CIT v. Eastern Commercial Enterprises, 210 ITR 103 (Cal) held as follows:- "8. We have considered the contesting contentions of the parties. It is true that Shri Shukla has proved to be a shifty person as a witness. At the earlier stages, he claimed all his sales to be genuine but before the Assessing Officer in the case of the assessee, he disowned the sales specifically made to the assessee. This statement can at the worst show

that Shri Shukla is not a trustworthy witness and little value can be attached to what he stated either in his affidavits or in his examination by the Assessing Officer. His conduct neutralises his value as a witness. A man indulging in double-speaking cannot be said by any means a truthful man at any stage and no court can decide on which occasion he was truthful. If Shri Shukla is neutralised as a witness what remains is the accounts, vouchers, challans, bank accounts, etc. But, we would observe here that which way lies the truth in Shri Shukla's depositions, could have been revealed only if he was subjected to a cross-examination by the assessee. As a matter of fact, the right to cross-examine a witness adverse to the assessee is an indispensable right and the opportunity of such cross-examination is one of the corner-stones of natural justice. Here Shri Shukla is the witness of the Department. Therefore, the Department cannot cut short the process of taking oral evidence by merely having the examination-in-chief. It is the necessary requirement of the process of taking evidence that the examination-in-chief is followed by cross-examination and re-examination, if necessary. 9. It is not just a question of form or a question of giving an adverse party its privilege but a necessity of the process of testing the truth of oral evidence of a witness. Without the truth being tested no oral evidence can be admissible evidence and could not form the basis of any

inference against the adverse parties. We have also examined the records and we find that this Shri Shukla was examined by a number of officers. The Assistant Director of Investigation examined him on August 4, 1987, and in reply to question No. 2 in that deposition he confirmed that he was a dealer in lubricating oil since 1977. In reply to question No. 3, he confirmed having been assessed to income-tax. Again, in reply to question No. 4, he explained that he used to purchase lubricating oil from different garages as well as through various brokers. Such lubricating oil was processed by him in his factory for sale. All payments were received by him through account payee cheques. In reply to question No. 5, he stated that he had seven full-time employees whose names are mentioned by him. He also claimed to have maintained books of account like sales books, purchase books, cash books and sale bills. In reply to question No. 18, he, on his own, stated that his big customers were the Reliance Oil Mills and Eastern Commercial Enterprises, the assessee, in the present reference. As for his cash withdrawals, he explained that his business required ready cash for purchase of raw materials which explained his large drawings of cash from the bank. Learned counsel then cited a host of decisions to bring home the point that no evidence or document can be relied upon unless it is shown to the assessee. Kishanchand Chellaram v. CIT. Similarly, the

requirement of cross-examination as the requirement of the rules of natural justice has been underlined by the Bombay High Court in Vasanji Ghela and Co. v. CST [1977] 40 STC 544. It is trite law that cross-examination is the sine qua non of due process of taking evidence and no adverse inference can be drawn against a party unless the party is put on notice of the case made out against him. He must be supplied the contents of all such evidence, both oral and documentary, so that he can prepare to meet the case against him. This necessarily also postulates that he should cross-examine the witness hostile to him. 10. In any case, we have nothing to rely upon to come to a decision this way or the other. The first thing is that which of the statements of Shri Sukla is correct, is anybody's guess. Therefore, it is necessary to delve out the truth from him and for that matter a cross-examination is necessary. Secondly, if the statement of Shri Sukla as a witness against the adverse party, the assessee, is relied upon as truthful, still remains the question of estimation of the profit. The assessee no doubt has given a comparative instance of gross profit rate but it is also necessary for the Department to come to a finding as to the norm of the gross profit on the basis of comparative cases. Therefore, it is the duty of the Assessing Officer to counter the comparative statement cited by the assessee before he can have the option to estimate the gross profit. Again, it is the

comparative instance that alone can be the foundation of such estimate in case the accounts are really found to be unreliable and requiring to be rejected. Therefore, in the interest of justice for both the parties, the assessee and the Revenue, it is necessary for us to direct the Tribunal to remand the case to the Assessing Officer for reconsidering the whole matter in the light of the observations made by us in the foregoing and redo the assessment accordingly. All opportunities should be given to the assessee in order to lead any evidence that the assessee may feel necessary to rebut the case against him. As a result we decline to answer the question."

217. As held by the Hon'ble Calcutta High Court in the above judgment, in the present case, Mr. Nagaraj cannot be considered as a reliable witness. More so, when the assessee was not given any opportunity to cross-examine him. In this regard, we also place reliance on the decision of the Hon'ble Supreme Court in the case of Kishinchand Chellaram v. CIT, 125 ITR 713 (SC) wherein it was held that evidence collected from witness cannot be considered without giving opportunity of cross-examination to the assessee.

218. We have also carefully gone through the statement of Mr. G H Nagraj, Secretary of the assessee trust. It was mainly discussed in Page no 64, 65, 74, 75 and 76 of assessment order. He was asked to explain the seized

materials A/DUU/03 and A/DUU/13 on 13-08-2015. He has confirmed the collection of capitation fees on some occasions. However, on certain occasions when confronted, the statements of some persons who has stated that they have paid the capitation fees in cash, he denied the collection of capitation fees which is evident from the answer to question no. 16 of his statement recorded on 16-10-2015 which is placed on record in PB 2183. He also stated that the payment from the persons which alleged to have been received is only in the form of cheque and they are genuine donations. In answer to question no 22 he has stated that the statement of Shri Rangaraju is absolutely false and all the fees are collected only in cheque. There are contradictions in his statements which cannot be relied upon.

219. The AO also relied on seized material A/DUU/02 to A/DUU/04 to come to conclusion that the assessee has made payment to the trustees. These statements are made by the AO without confronting this seized material to the trustee though they were examined by the authorities concerned. Without confronting the seized material and statement of Shri Srinivas it is not possible to hold that there was unaccounted cash payment to the trustees. Further, Shri. R L Jalappa one of the trustee denied the fact of receiving any money as noted in the seized document. However, the assessing officer made protective additions in hands of Shri.

R L Jalappa in these assessment years after making substantiative assessment in hands of trust. This shows that assessing officer is not sure in whose hands the additions to be made. Being so, we find force in argument of assessing counsel that AO is not justified in holding that there was violation of provisions of section 13(1)(c)(ii) of the IT Act on this count.

220. Further, the AO taken the support of assessee letter dated 09.12.2017 placed at PB 2704 to 2706 wherein assessee stated that a sum of Rs.14,611.94 lakhs has been spent for object of the trust. It is also stated that Shri G H Nagraj, Secretary of the trust collected the unaccounted capitation fees on his own without the knowledge of the trustees or without authorisation of the committee of trustees and also out of it he has spent Rs.14,611.94 lakhs for the purpose of trust activities. It was also reiterated that the committee never authorised Shri G H Nagraj for collection of any fees or spending any amount for trust activities. The assessing officer considered this letter as an acceptance of collection of capitation fees without considering the real meaning of that letter. It cannot be construed as the acceptance of collection of capitation fees by assessee. It was clearly stated that if it is collected, it is unauthorised collection by the Secretary and Shri G H Nagraj has to explain to the Income Tax authorities, even after considering

the expenditure incurred out of it for the purpose of trust activities. In our opinion assessment in search cases has to be framed on the basis of seized material bought on record and not on the basis of confession. The action of assessing officer placing reliance on the letter of assessee dated 09-12-2017 is unjustified.

221. Further, there was an allegation by AO that assessee has received donation in return for giving cash to them and facilitated to the donor to claim deduction u/s 80G and accordingly AO observed that donation is bogus. After examining one donor by name Shri Hanumantharaya whose statement is available on record on PB page no 2181. Shri Nagaraj when confronted him with regard to his statement, he denied the same. Being so, it cannot be held that the assessee received any bogus donation.

222. There was an allegation by AO that assessee made illegal payments into MCI officials. According to ld. DR the seized material marked as A/DUU/02 shows such alleged payment. The Secretary Shri Nagraj deposed before the authorities and recorded his statement on 13-08-2015 placed at PB page no 2165 that the Officials of MCI refused to receive any gifts and there was no any payment of cash to them. There was no examination of recipient such allegation cannot be made without examining the concerned parties and

no adverse inference could be drawn against the assessee on this count. ITA Nos.500 TO 506/Bang/2020 Page 122 of 183

223. Further, there was an allegation that on the basis of seized material marked as A/DUU/13 there was a payment of donation to political parties. As we observed on earlier occasion the noting's in seized material which is obscure being loose sheets cannot be relied upon without any corroboration.

224. Seized material A/DUU/17 copy of which is not provided to the assessee and cross-examination of Mr. Goli Srinivas was not provided to the assessee cannot be relied upon.

225. The assessing officer has stated that summons was sent during the course of assessment proceedings to the parents in order to allow crossexamination by the assessee's representatives. One of the parents appeared and reconfirmed. It is noted that though statements of parents of 5 students were said to have been obtained, only one parent has appeared and reconfirmed the contents of his earlier statement. As the parents of 4 of the students did not appear for cross-examination, their statements cannot be relied upon as the appellant could not cross-examine them. The fact that they did not respond to the summons would show that the credibility of their statements is highly doubtful. When the

appellant has neither been given copy of the statement nor has got the opportunity to cross-examine the person giving statement, such statements cannot be relied upon.

226. With regard to the AO's observations that the responses given by the said parent remained the same during the course of cross examination by assessee and he reiterated that the parents have never been crossexamined by the appellant. Had there was a cross-examination, the DR very well could have produced the copy of the same for our consideration. The DR failed to do so. Hence, it is observed that the assessee was not afforded any opportunity to cross-examine any of the persons including the parents whose statements were relied upon for the purpose of making assessment. Such statements cannot be relied upon. Reliance was placed upon by the AR on various case law is support the case of the assessee.

227. Further, the AO recorded at page 125 of his order that he has sent summons to parents of students out of which only 5 students statements were recorded. Only two persons confirmed the payment of capitation fee. Vide assessee's letter dated 02.12.2017 assessee asked for information about enquiry with the students. No information was provided by the AO to the assessee. In this regard, statement of 2 persons out of 800 cannot be relied upon and it is not appropriate to come to the conclusion that these are full-proof of evidence

which the AO can rely upon. Reliance on this incomplete statement cannot be appreciated as held by the Hon'ble Supreme Court in the case of Kishinchand Chellaram v. CIT, 125 ITR 713 (SC) as follows:- "Held, reversing the decision of the High Court, (i) on the facts, that the two letters dated February 18, 1955 , and March 9, 1957 did not constitute any material evidence which the Tribunal could take into account for the purpose of arriving at the finding that the sum of Rs.1,07,350 was remitted by the assessee from Madras, and if these two letters were eliminated, there was no material evidence at all which could support its finding. The statements of managers in those two letters were based on hearsay, as in the absence of evidence, it could not be taken that he must have been in charge of the Madras office on October 16, 1946, so as to have personal knowledge. The department ought to have called upon the manager to produce the documents and papers on the basis of which he made the statement and confronted the assessee with those documents and papers. It was true that proceedings under the income-tax law were not governed by the strict rules of evidence, and, therefore, it might be said that even without calling the manager of the bank in evidence to prove the letter dated February 18, 1955, it could be taken into account as evidence. But before the income-tax ITA Nos.500 TO 506/Bang/2020 Page 124 of 183 authorities could rely upon

it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to crossexamine the manager of the bank with reference to the statements made by him. Nor was there any explanation regarding what happened when the manager appeared in obedience to the summons referred to in the letter dated March 9, 1957, and what statement he had made."

228. Further, third party statement cannot be relied upon without proper enquiry and providing proper cross-examination to the assessee. In CIT v. P.V. Kalyana Sundaram, 294 ITR 49 (SC), the Hon'ble Supreme Court observed that no reliance could be placed on loose sheets seized during the course of search and third party statements unless provided crossexamination. Collection of capitation fee is governed by Karnataka Institutions (Prohibition of Capitation Fees) Act, 1984 and there was no violation noticed by the State authorities and also Medical Council of India. In such circumstances, it is not possible to conclude on the basis of various loose sheets and jottings found during the search action u/s. 132 that assessee has collected unaccounted capitation fees from management and NRI quota.

229. Further, the Bangalore Bench in the case of Anand Social & Education Trust in ITA Nos. 2542-2548(B)/2017 dated 29.05.2020 by placing reliance on the judgment of Hon'ble Madras High Court in the case of Balaji Educational & Charitable Public Trust, 56 taxmann.com 182 in similar circumstances observed that the AO had not conducted any enquiry with the students or parents or others. The cash seized during the search was accepted as not belonging to the assessee. There was no complaint received from any student or parent regarding capitation fee charged by the institution. In the above case also the AO had estimated the capitation fee received from the students under the management quota for various years. The Hon'ble Madras High Court held it to be a perverse inference. Further the Tribunal observed the AO had only drawn certain inference on surmises and conjectures. He did not conduct any independent enquiry with the related party to find out the truth. He has also not brought any material on record to show that the explanation given by the assessee was not correct. In any case, the assessee was not given opportunity to crossexamine the parties whoever managed the diary. Accordingly the Tribunal deleted the addition by placing reliance on the judgment of Balaji Educational & Charitable Public Trust (supra).

230. In this case also, the addition made by the AO is based on unsubstantiated loose sheets and jottings without proper

cross-examination of the person who has admitted the contents therein. Being so, it cannot be stated as full-proof of material evidence to substantiate the addition. In our opinion seized documents do not support the AO's contention that assessee has received unaccounted capitation fees for admission of the students to the college. It also does not suggest that the assessee has paid commission to agents to bring the students for admission to college. Similarly it does not suggest payment of any amount to the trustees for their self-benefit. Going through the entire facts of the case it creates only a suspicion in the minds of the revenue authorities that the assessee has collected unaccounted capitation fees. However, the suspicion not enough to hold that the assessee has collected unaccounted capitation fees in absence of concrete evidence bought on record by the authorities concerned. The suspicion cannot replace the material evidence brought on record by the authorities. It is also noted that the assessee vide their letter dated 22-02-2017 asked for following information: (i) Number of student/parents to whom summons were issued (ii) How many of such notices were served ? (iii) How many were returned unserved? (iv) The number of students/parents who appeared before the AO (v) How many of them denied the transaction? (vi) How many of them accepted the

transaction? (vii) How many of them stated that they paid the fees in cash at the instance of the Trustee.

231. The AO failed to respond to the assessee's letter. It is admitted fact that in every year 150 MBBS students were admitted to the college in addition to 68 post graduate students. The total number of students in college admitted during the last 7 years was approximately 1526 persons. The ld. AO alleged in the assessment order that assessee has been collecting the capitation fees from around 800 students for admission in various courses. Out of 800, 5 students/parents responded to the AO's letter and out of them 2 persons have given statement. There is no discussion in Assessment order with regard to other 3 persons. In our opinion the statement of 2 cannot be basis for making such huge additions on collection of capitation fees. It cannot be considered as appropriate sample to frame the assessment on the basis of their statement. Further, the assessee requested for cross examination of all the parties whoever have given the statements against the assessee, if any, which was not provided at all. In view of this, such statements cannot be relied upon. The department despite its attempts failed to collect any corroborative information regarding collection of capitation fees, except relying on uncorroborated entries in the loose papers/Excel sheets, wants to frame the assessments in all these assessment years relying upon the same which is

not acceptable. The revenue authorities bound to follow the principle of natural justice and ought to have given proper opportunity of examination and cross examination of the parties concerned whose statements are relied upon to frame the assessment. In our opinion the discovery of documents not only sufficient to conclude the collection of unaccounted capitation fees, cross examination of concerned parties is also important.

232. Further at a cost of repetition, we observe that the revenue authorities recorded statement of only 5 students out of more than 800 students and out of 5 only 2 are confirmed. The two statements recorded cannot be relied upon without confronting the same to the assessee. The statement of these two persons confirming payment of capitation fees is fully uncorroborated and non-production of them for cross-examination cannot be considered as incriminating material so as to sustain the addition. The rough notings in the loose papers are not full-proof evidence without proving the correctness of the same. Nothing was recorded in the orders of lower authorities that assessee has deviated from its objects for which approval u/s. 12A was granted and not applied its funds towards its objects. No evidence was brought out to show that the amount of capitation fees alleged to have been collected resulted in creation of any unaccounted assets by the trust or trustees or by any

interested person. On this count also the addition cannot be sustained.

233. No assets commensurate with the alleged estimated collection of capitation fees by the revenue authorities were found. The unbounded loose sheets having jottings are not speaking either by itself or in the company of others and not corroborated by enquiry, cannot be the basis of any inference that capitation fees was collected not entered in the accounts so as to sustain the addition.

234. Considering the facts of the case, we are of the opinion that the evidence collected by the authority is not sufficient to establish that the stand that the assessee has collected unaccounted capitation fees for admission of students to various courses in the assessee's college. We are aware that entire evidence has to be appreciated in a wholesome manner and even where there is documentary evidence, the same can be overlooked if there are surrounding circumstances to show that the claim of assessee is opposed to normal course of human thinking, conduct and human probability. Even applying this principle to the present case, we have difficulty in rejecting the assessee's plea as opposed to normal course of human conduct. The circumstances surrounding the case are also not enough to reject the assessee's explanation. We have considered all the material on record and also the

statement of the parties as discussed in the earlier paragraphs. We are of the opinion that the department cannot rely on those statements, more so when it was not confronted to the assessee for cross-examination and the same cannot be relied upon. The department failed to collect proper information from any source corroborating payment of capitation fees, except in corroborating entries in the loose sheets. All attempts for corroboration failed. There is nothing to suggest that the trust has deviated from the objects for which registration was granted and not applied the funds for its objects. No evidence was brought on record to show that amount of alleged capitation fees which have been collected was misused by the assessee or by any interested persons. There is no instance of recovery of any assets commensurate with the alleged estimated unaccounted collection of capitation fees as found by the AO. The activities of the trust are genuine. There is no allegation by the lower authorities that activities of the trust are not genuine. Also there was no allegation that the activities of the trust are not carried on in accordance with the objects of the trust. There is no allegation that the assessee is not imparting education and it is an admitted fact that thousands of students are studying in the college and assessee has been carrying on educational activities imparting medical education. It fulfilled the requirement of imparting education which are not doubted or

challenged by the authorities. Being so, exemption u/s. 11 of the Act cannot be denied.

235. Further reference is made to the judgment of the Hon'ble High Court of Karnataka in the case of DIT(E) V. Sri Belimatha Mahasamsthana Socio Cultural and Educational Trust, 336 ITR 694 (Karn). In this case, the assessee a social, cultural and educational trust, running educational institutions and having various professional courses filed its return of income for the AY 2001-02. The AO denied exemption u/s. 11 of the Act holding that the sums collected towards donations from students were contrary to the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984. The AO also disallowed the sum shown as corpus donation as the source of such donations had not been proved by the assessee and, therefore, the said amount was also not allowed as an exemption under section 11(1)(d) of the Act. The CIT(Appeals) confirmed the order of AO. The Tribunal allowed the benefit of exemption u/s. 11. On appeal, it was held that merely because the assessee is an institution which is running professional courses, the AO could not have presumed that the amounts which are received as donation were attributable to the allotment of seats in the relevant assessment year. In the absence of there being any foundation for such a contention that the donation received

during the period was not in violation of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 and the assessee has not acted as opposed to the public policy, exemption u/s. 11 could not have been denied.

236. Further, the Bangalore Bench of the Tribunal in the case of Venkatesha Education Society in ITA Nos.100 to 106/Bang/2012 and M.J. Balachander in ITA Nos.90 to 94/Bang/2012, order dated 21.12.2012 considered the case in similar circumstances where Mr. M.J. Balachander was collecting extra tuition fees without any authority or consent of the society and the conclusion of the CIT(Appeals) was that extra tuition fees was collected by Mr. Balachander on his own and society has nothing to do with extra tuition fees collection. Being so, the Tribunal held that the assessee cannot be faulted and approval cannot be withdrawn so as to deny the benefit of section 11 of the Act. The relevant observations of the Tribunal are as follows:- ““In this regard, the ld. counsel for the assessee brought to our notice that the agreed tuition fee which the Society can collect for admission has also been collected and this is duly reflected in the statement found in the seized documents. It was submitted that the total collections in the form of DD was a sum of Q 1,16,74,975 and the amount stated to have been deposited by the Secretary in the Head Office is only a sum of Q 80,000 on 02.06.2005 and Q 14,33,500 on 19.10.05. It was

submitted that the reference in the seized document might be with regard to the normal tuition fee which the society can collect. It was submitted that the entries in page 54 cannot be conclusive to show that the Secretary was also involved in collecting the ETF. We are of the view that the submissions made on behalf of the assessee in this regard appear to be convincing. In this regard, we also find that Indira Devi, who is stated to have written letter dated 08.12.07, has not been examined by the AO . In those circumstances, it cannot be said that the seized document on which the AO has placed reliance conclusively proves that it was only the Society which received the ETF. On the other hand, the circumstances pointed out by the Society only go to show that it was MJB who was collecting ETF without the knowledge and authority of the Society." • ACIT v. Mamatha Educational Society 2015 (8) TMI 367 - ITAT Hyderabad [Paragraphs 24 and 25] • In CIT v. KLE University [ITA No. 5016 of 2012 C/W 5017 of 2012], the Hon'ble Karnataka High Court held as under:- "11. Our answer to the above point is in the affirmative for the following reasons : (i) that the donations received by the society cannot be construed as capitation fee for the admission of students by the KLE University ; of 183 (ii) that providing hostel to the students/ staff working for the society is incidental to achieve the object of providing education, namely, the object of the

society ; (iii) that the Revenue appears to have not properly appreciated the legal point that though the chairman and a few members of "the society" are the chairman and members of "the KLE University", they are separate legal entities ; (iv) that there is no violation of any of the conditions stipulated under the Income-tax Act, warranting for cancellation of registration of the society ; (v) that the Tribunal on proper appreciation of the grounds urged by the society and the Revenue, has rightly restored the registration."

237. Further the Hyderabad Tribunal in the case of Prathima Educational Society, Hyderabad in ITA No.720/Hyd/2012 vide order dated 08.11.2013 wherein the Accountant Member is a party to the order, held that the evidence collected not speaking with regard to collection of cash of unaccounted capitation fees, cannot be a reason to deny exemption u/s. 11 of the Act. The seized material on which reliance is placed by the revenue authorities is not conclusive evidence to sustain the addition and deny exemption u/s. 11 of the Act.

238. Further the Hyderabad Bench of the Tribunal in the case of ACIT v. B. Srinivasa Rao, 159 TTJ 483 (Hyd) [wherein the AM herein was the author observed as under:- "8. As for the first reason put forth for cancellation of registration, viz., collection of capitation fee, it is submitted that in the course of search, excel sheets were found containing the names of

students, names of parents and the amount. In the course of search and, thereafter, statements of chairman of the assessee trust were recorded on a number of occasions, with reference to the entries in these excel sheets. It was explained that circumstances in which excel sheets were found were not ascertainable. It was contended that uncorroborated notings in the excel sheets should not be acted upon to derive any inference against the society. In support of this contention that the said excel sheets are not reliable, the learned counsel for the assessee put forth the following reasons : (a) The notings in the excel sheets lacked corroboration of the notings although the Department attempted in that direction. (b) In course of search and post-search investigation, in the statements recorded under s. 132(4)/131, chairman of the assessee trust, Sri Srinivasa Rao expressed his inability to explain the circumstances in which those sheets were found from the premises of the assessee-society. (c) Despite repeated questioning on various occasions, the said Srinivasa Rao denied that the assessee-society has collected capitation fee from any student. (d) The computer printout was not recovered/retrieved from any of the computers maintained in the society's office at the time of search, although the same were verified and that too with the recovery tool which is a usual method adopted by the Department at the time of search. (e) In the course of assessment proceedings, the

seized hard disks were operated in the office of the AO with the help of IBM official but there was no impression in the hard disk that the same was typed and prepared in any of the computers belonging to the society. No data conforming to the notings in the excel sheets could be found from the seized computer hard disks. He submitted that the only purpose of scanning the seized hard disk was intended for recovery of the excel sheets so as to corroborate the same, as the assessee has denied to have generated the same. Since it resulted in a futile exercise, it was clearly established that the excel sheets were not prepared by the assessee-society. The assessment order passed by the AO makes no mention of any such recovery. (f) The author of the excel sheets could not be identified. In terms of s. 60 of the Indian Evidence Act, computerised information is within the realm of hearsay evidence and therefore, not relevant at all by itself. In such cases either authority who has fed the information must be identified or he must appear personally and testify before the Court about the source of information. Hence, in the absence of any such corroboration, the evidence remained a hearsay evidence, carrying no evidentiary value, in the absence of any corroboration. (g) At the time of seizure, the excel sheets were not authenticated either by the assessee or by the witnesses or by an authorized officer. This is an unsigned document and as such it loses its evidentiary value for want

of authentication. In support of this proposition reliance is placed on the decision of Ahmedabad Bench of the Tribunal in the case of Sanskruti Township v. Department of IT [IT Appeal No. 1885 (Ahd.) of 2006, dated 23-9-2011] and Hyderabad Bench of the Tribunal in the case of Dy. CIT v. C. Krishna Yadav [2011] 12 taxmann.com 4/46 SOT 250 (Hyd.)(URO). (h) There is evidence in the seized record that the Department has typed some information by making use of assessee's computer and made part of the Panchnama. This fact was pointed out by the chairman of the assessee, Sri B. Srinivasa Rao in the course of his statement recorded on 17th Dec, 2009. This act on the part of the search party raises an eyebrow. (i) The Dy. Director of IT in course of post-search investigation made extensive enquiries to corroborate the notings in the excel sheets. One of the steps taken by him was that he summoned all the parents of the students under s. 131 to take evidence. In course of assessment proceedings, the assessee made requests to supply the copies of these statements. Repeated requests made by the assessee fell in deaf ears and so far these statements have not been provided. On being directed by the AO in course of assessment proceeding, the assessee contacted the office of Director General of IT and reminded on a number of occasions but no information was supplied, despite the fact that this fact was also brought to the notice of Director General of IT. As a

principle, neither the assessee can suppress the best evidence in his possession nor the Department. It is settled principle that whenever the assessee desires, he can have access to all information, whether favourable or adverse to him as laid down in Suraj Mall Mohta & Co. v. A.V. Visvanatha Sastri [1954] 26 ITR 1 (SC), SMC Share Brokers Ltd. v. CIT [2008] 22 SOT 7 (Delhi)(URO), CIT v. Simon Carves Ltd. [1976] 105 ITR 212 (SC). In this case the assessee has every reason to believe that the evidences tendered by the parents, who were Departmental witnesses, were all favourable to assessee and therefore, the Department was apprehensive of providing these statements as the same would go against the Department. The conduct of the Department is not fair as the notings in the Excel sheets formed the basis of addition and subsequent cancellation. Assessee is enclosing herewith some of the summons issued to the parents who appeared to give testimony. (j) Even the AO failed to summon these witnesses in course of assessment proceedings for corroboration when the assessee was consistently denying collection of capitation fees and based his entire conclusion on the report of the Dy. Director of IT which was based on suspicion. This shows total non-application of mind by the adjudicating officer when the informations supplied to him were disputed and not-corroborated by the Dy. Director of IT. His attempt to verify the facts from two witnesses namely

Sri Tirupathi Reddy and Madhav Reddy could not yield any further evidence. (k) It was brought to the notice of authorities that notings in the loose sheet remained uncorroborated till end as the same was not a speaking document and no supporting evidence by way of money receipt and other evidences was found. It was pointed out that the same was a dumb document and therefore not to form the basis of cancellation of registration under s. 12AA. With regard to evidentiary value of notings in the loose sheet, the appellant relies on the following decisions : (a) C. Krishna Yadav (supra); (b) Asstt. CIT v. Satyapal Wassan [2007] 295 ITR (AT) 352 (Jab.) ; (c) Asstt. CIT v. Dr. Kamla Prasad Singh [2010] 3 ITR (Trib) 533 (Pat.) ; (d) CIT v. Khazan Singh & Bros. [2008] 304 ITR 243/[2007] 164 Taxman 30 (Punj. & Har.) ; (e) CIT v. Girish Chaudhary [2008] 296 ITR 619/[2007] 163 Taxman 608 (Delhi) ; (f) Bansal Strips (P.) Ltd. v. Asstt. CIT [2006] 99 ITD 177 (Delhi) ; (g) CIT v. Maulikkumar K. Shah [2008] 307 ITR 137 (Guj.). (l) As regards the presumption under s. 132(4A), it was submitted that a loose sheet is not a book/document so as to raise the presumption. For this proposition, reliance was placed on the decision of Apex Court in the case of CBI v. V.C. Shukla [1998] 3 SCC 410. Further the presumption in this section is not mandatory. This can supplement but cannot supplant evidence. Nothing was found by the

Department to support their suspicion. (m) Therefore, the Excel sheets which are not speaking either by itself or in the company of others, or corroborated by enquiry, cannot be the basis of any inference that capitation fees were collected and not entered in the accounts to cancel registration.

239. Thus, it is seen from the seized material and Excel sheets that these are handwritten loose documents and Excel sheet print-outs taken from the computer and undisclosed income of the assessee is determined on the ITA Nos.500 TO 506/Bang/2020 Page 135 of 183 basis of these documents. There is no direct evidence or conclusive evidence to prove the collection of the capitation fees. The statements of parties of whosoever is relied upon are evasive replies given to the revenue authorities on the basis of which the AO made an estimate of collection of capitation fees. This is only based on conjectures and surmises and only on circumstantial evidence. The AO failed to established the link between the seized material and the capitation fees which resulted in creation of any unaccounted assets in the form of possession of money, bullion, jewellery or other articles or any immovable properties in the name of the trust or the trustees.

240. In our opinion, the unsubstantiated and uncorroborated seized material alone cannot be considered as conclusive evidence to frame these assessments. The words “may be

presumed" in section 132(4) of the Act given an option to the AO concerned to presume these things, but it is rebuttable and it does not give a definite authority and conclusive evidence. The assessee is having every right to rebut the same. The entire case depends upon the rule of evidence. There is no conclusive presumption with regard to unsubstantiated seized material to come to the conclusion that that assessee has collected unaccounted capitation fees. In the present case, the assessee categorically denied collection of capitation fees. If it was collected, it was unauthorized collection by the person who is looking after the admission and that it is why it is unauthorized by the trust. Further, there is no confirmation from the students who get admitted into various courses and even there was statements recorded from two students/parents which were not confronted to the assessee for crossexamination. The revenue authorities cannot draw inference on the basis of suspicion, conjectures and surmises. Suspicion, however strong, cannot take place the material in place of evidence of the AO. The AO should act in a judicial manner, proceed in a judicial spirit and come to the judicial ITA Nos.500 TO 506/Bang/2020 Page 136 of 183 conclusions. The AO is required to act fairly as a reasonable person, not arbitrarily and capriciously. The assessment u/s. 153A of the Act should have been supported by adequate material and it should stand

on its own leg. The AO without examining the students / parents who have paid the capitation fees cannot come to the conclusion that the assessee has received unaccounted capitation fees. The basis for donation is notebook / loose sheet. This notebook or loose sheets found during the course of search is only circumstantial evidence and not full proof evidence to sustain the addition. No addition can be made in the absence of any corroborative material. If it is circumstantial evidence in the form of loose sheets and notebook, it is not sufficient to come to the conclusion that there is conclusive evidence to hold that assessee has collected unaccounted capitation fees. The notes in the diary/loose sheets are required to be supported by corroborative material. Since there was no examination or cross-examination of persons concerned, the entire addition in the hands of the assessee on the basis of uncorroborated writings in the loose papers found during the course of search cannot be sustained. The evidence on record is not sufficient to uphold the stand of revenue that assessee is collecting huge unaccounted capitation fees in the guise of carrying on educational activities.

241. The contention of the ld. DR is that cross-examination of parties whose statements were relied on by the AO to frame the assessment need not be given. On the other hand, if it is required to be given, the issue may be remitted back to

the AO to give such opportunity. For this purpose, he relied on the judgment of the Hon'ble Allahabad High Court in the case of Moti Lal Padampat Udyog Ltd. v. CIT, 293 ITR 565 (All) wherein it was held that : "It was not in dispute that the adverse material which was found by the Income-tax authorities during the course of search in the business ITA Nos.500 TO 506/Bang/2020 Page 137 of 183 premises of 'V' had been confronted to the assessee who was having regular business dealing with the said firm. Some of the entries, recorded in the rough cash book seized during the search operation, tallied with the entries recorded in the regular books of account of the assessee as also that of 'V'. The assessee was issued the copy of the rough cash book as also the statements of partners of 'V'. It had submitted its reply by letters. The explanation furnished by the assessee had been disbelieved. In one letter, the opportunity to crossexamine the partners and the employees of 'V was sought for in the event their statements had not already been recorded with a request that they might be summoned and their statements on oath be recorded in their presence. The said request was made in the event the statements had not already been recorded earlier. As the statements had already been recorded, the opportunity to cross-examine the said persons did not arise. The assessee had ample opportunity to explain the things. [Para 12] In the instant case, the copies of

the rough cash books and the statements of the partners of 'V' which were recorded, had been provided to the assessee and, in fact, the assessee had also submitted its reply. In the letter an opportunity to cross-examine was asked for only in case the statements had not been recorded. As, in the instant case, the assessee had proper opportunity to controvert the material gathered by the assessing authority and used against it, there had been compliance of the principle of natural justice. [Para 14] In view of the above, the Tribunal was fully justified in the view it had taken."

242. In our opinion, this judgment of the Allahabad High Court cannot be applied to the facts of the present case. In that case, the assessee asked for cross-examination of persons was sought for in the event their statements were not recorded, as such the Hon'ble High Court observed that cross-examination of those persons were not required as their statements had already been recorded during the course of search and the assessee had proper opportunity to controvert the gathered material.

243. Further ld. DR relied on the judgment of the Hon'ble Supreme Court in the case of ITO v. M. Pirai Choodi, 334 ITR 262 (SC) wherein the facts are that the department refused to accept the interest income shown ITA Nos.500 TO 506/Bang/2020 Page 138 of 183 by the assessee placing

reliance on a statement alleged to have been obtained from the Village Administrative Officer behind the back of the petitioner, overlooking the material furnished by the assessee to substantiate his agricultural income and without giving opportunity to crossexamine the Village Administrative Officer, violating the principles of natural justice. Therefore, writ petition could not be dismissed on alternative remedy and assessment order could not be quashed. On further appeal by the department, the Honb'le Supreme Court held that that instead of setting aside the assessment order, the High Court should have remitted the matter to the Assessing Officer to grant opportunity of cross-examination of the concerned witnesses. Further the assessee failed to avail of the statutory remedy. The assessee was given to move the CIT(Appeals).

244. Coming to the reliance placed by the ld. DR on the order of the Tribunal in the case of Centurion Investment & International Trading Co. (P.) Ltd. v. ITO, 126 ITD 356 (Del) wherein it was held as follows:- "It was a matter of record that the assessee had not been allowed the cross-examination of the party whose statement had been used against it in making the assessment. The addition was, thus, in violation of principles of natural justice. Not allowing cross examination is a defect which is procedural in nature. It is only a procedural requirement to be complied with before

making the assessment under the Act. Not following the procedural provisions like allowing cross examination will not make an assessment null and void. At most it can be an irregularity liable to be cured and in such a case, the assessment can be set aside to be redone. An addition made does not cease to be an addition merely by reason of want of cross-examination. It will be a proceeding liable to be challenged and corrected. [Para 13] The order of the Assessing Officer though was vitiated by an illegality which supervened, not at the initial stage of the proceedings but during the course of it and, therefore, assessment could neither be annulled, nor the addition could be deleted because of that illegality or irregularity. The matter was ITA Nos.500 TO 506/Bang/2020 Page 139 of 183 required to be set aside to be reprocessed and restart from that stage of illegality/irregularity. [Para 14] Therefore, the order of the Assessing Officer on this issue was to be set aside with a direction to him that the statement of 'S' should be made available to the assessee. The assessee must be allowed cross-examination of the said person and thereafter the matter be decided afresh on the basis of the result of the cross-examination. [Para 22] From the discussion above, it was evident that merely by reason of want of cross-examination, the addition cannot be deleted. It will be an addition liable to be challenged and corrected. An omission

to serve notices or any defect in the service of notices does not efface or erase the liability to pay tax where such liability is created by distinct substantive provisions (charging sections). Any such omission or defect may render the order made irregular depending upon the nature of the provisions not complied with but certainly not void or illegal. At the worst, they are defective proceedings or irregular proceedings liable to be cured. An addition made on the basis of a statement not tested by cross-examination is invalid and it is vitiated, but the invalidity is not, however, of such a nature, which goes to the root of the proceedings. It can be set aside for being re-done de novo. The Commissioner (Appeals) should not have upheld the addition on the basis of such a statement. [Para 24] The omission to allow cross-examination merely prevents the Assessing Officer from making an addition and can be corrected by allowing the cross-examination and the Assessing Officer can be directed to proceed further to examine the matter afresh on the basis of cross-examined statement. The power of setting aside the order of assessment, where it is illegal, is inherent in any Appellate Court. Its order would be perfectly legal order in directing the Assessing Officer to issue notice to the assessee before making an assessment because it was not satisfied regarding the correctness of the assessee's return. The Tribunal/ Commissioner (Appeals) has ample jurisdiction to

give directions to the Assessing Officer to comply with the requirements of law. It has inherent power to set aside illegal order of assessment and direct the Assessing Officer to comply with requirements while making de novo assessment. [Para 25]"

245. In our opinion, the facts of the present case before us are entirely different. In the present case, we have already held that there are various loose sheets, scribblings, jottings and Excel sheets taken from the computer having no signature or authorization from the assessee's side. These are unsubstantiated documents and there is nothing to suggest any undisclosed assets of assessee found during the course of search. More so, it does not show any recovery of the undisclosed assets in the form of landed property, building, investments, money, bullion, jewellery or any kind of movable or immovable assets. In such circumstances, we are of the opinion that the decisions relied on by the ld. DR cannot be applied to the facts of the assessee's case.

246. Further it is to be noted that we have already relied on the Supreme Court judgment in Andaman Timber Industries v. Commissioner of Central Excise, 281 CTR 241 (SC) wherein it was held that opportunity of crossexamination not given leads to nullity and assessment order to be quashed. It is also pertinent to mention herein the decision of Special

Bench of the Tribunal in ACIT v. Vireet Investments (P) Ltd. 165 ITD 27 (Delhi – Trib.) (SB) wherein it was held that when two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted, which is in line with the Supreme Court judgment in the case of CIT v. Vegetable Products, 88 ITR 192 (SC). This is a wellaccepted construction recognized by various courts. Accordingly, we also reject this argument of the ld. DR.

247. Being so, in our opinion the seized material relied by the assessing officer for sustaining addition is not speaking one in itself and also not speaking in conjunction with some other evidence with authorities found during the course of search or post search investigation. Thus, the well settled legal position is that a non-speaking document without any corroborative material, evidence on record and finding that such document ITA Nos.500 TO 506/Bang/2020 Page 141 of 183 has not materialised into transactions giving rise to income of the assessee which had not been disclosed in the regular books of accounts of the assessee has to be disregarded for the purpose of assessment to be framed pursuant to search and seizure action. In these cases, moreover these documents are relied upon by the AO without confronting them for cross examination. In our opinion, these documents cannot bring assessee into tax net by merely

pressing to service the provision of Sec 132(4A) r.w.s Sec 292C of the IT act, which creates deeming fiction on the assessee subject to search wherein it may be presumed that any such document found during the course of search from the possession and control of such document are true. What has to be noted here is that deemed presumption cannot bring such a document in the tax net and the presumption is rebuttable one and the deemed provisions have no help to the department. In our opinion, in these cases addition is made by AO on arbitrary basis relying on the loose papers, containing scribbling, rough and vague noting's in the absence of any corroborative material and these material cannot be considered as transacted into collection of capitation fees by assessee giving rise to income which are not disclosed in the regular books of accounts by assessee. We place reliance on the following judgements in support of our above findings: (i) CIT vs D.K.Gupta 174 Taxman 476 (Delhi) (ii) Ashwini Kumar vs ITO 39 ITD 183 (Delhi) (iii) S.P.Goyal vs DCIT (Mum) (TM) 82 ITD 85 (MUM) (iv) D.A.Patel vs DCIT 72 ITD 340 (Mum) (v) Amarjeet Singh Bakshi (HUF) vs ACIT 86 ITD 13 (Delhi) (TM) (vi) Nagarjuna Construction Co Ltd vs DCIT 23 Taxman.com 239 (vii) CIT vs C.L.Khatri 174 Taxman 652 (viii) T.S.Venkatesan vs ACIT 74 ITD 298 (ix) CIT vs Atam Valves Pvt Ltd 184 Taxman 6 (P&H)

248. Thus, we are agreeing with the contention of ld. AR that placing reliance on the seized material is not proper and all the additions on the basis of the above are deleted in all the assessment years since,: ITA Nos.500 TO 506/Bang/2020 Page 142 of 183 i) no opportunity to cross-examine the persons whose statements have been relied upon is afforded; ii) some of the statements have been recorded under section 131 by the authorized officer subsequent to completion of search; iii) there is no documentary evidence either to support the statements of Sri. Goli V. Srinivas or of the parents of the students; and iv) the seized material are in the form of various loose sheets, scribblings, jottings and Excel sheets taken from the computer having no signature or authorization from the assessee's side. These are unsubstantiated documents and there is nothing to suggest any undisclosed assets of assessee found during the course of search. More so, search action not resulted in recovery of any undisclosed assets in the form of landed property, building, investments, money, bullion, jewellery or any kind of movable or immovable assets.

249. However, on the date of search action on 6.8.2015, the search party found physical cash of Rs.2,67,28,900. This should be compared with the books of account on the day and the balance over and above the book balance should be brought to tax in the assessment year relevant to the financial

year in which the search took place i.e., AY 2016-17. This ground of appeal is allowed in AYs 2010-11 to 2015-16 and partly allowed in AY 2016-17.

250. Ground No.8 is regarding denial of exemption u/s. 11 of the Act in all the years. The AO denied the exemption under sec 11 of the Act for the major reason that the trust has received capitation fee in cash and has been carrying on the activities which are not in accordance with the objects of the trust.

251. The appellant is a trust registered under sec 12A of the Act w.e.f. 14.11.1984. The main object of the trust is to establish educational institutions in all faculties including medical, dental, pharmacy, engineering and electronics and other higher technical institutions in all parts of Karnataka particularly in backward areas like Kolar. For this purpose the trust has established educational institutions.

252. It is submitted that exemption under sec 11 can be denied only under certain specific circumstances. Section 11(1) reads as under:- ITA Nos.500 TO 506/Bang/2020 Page 143 of 183 “11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income— (a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to

which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property; (b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property; (c) income derived from property held under trust— (i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and (ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India: Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income; (d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution."

253. As long as the income derived from the property held for charitable purposes has been spent for the objects of the trust, exemption under section 11 cannot be denied. There is no allegation either in the show ITA Nos.500 TO 506/Bang/2020 Page 144 of 183 cause notice or in the assessment order that any of the transactions accounted in the books of account show that they are not for the objects of the trust. The entire expenditure i.e., both revenue or capital are incurred only for the purpose of objects of the trust. This is not disputed by the AO . It is submitted that the accounts of the appellant have been audited regularly and there has been not even a single instance of violation reported.

254. The AO has alleged that the appellant has received capitation fee in cash and same has not been accounted in the books and that the capitation fee so received has been diverted for the benefit of trustees as well as expended on illegal activities. The AO has relied upon the following material:- • Seized material marked as A/DUU/01 which contains loose sheets serially numbered from 1 to 91 • Seized material marked as A/DUU/13 being folder containing loose sheets serially numbered from 1 to 102 • Seized material marked as A/DUU/14 being digital data retrieved from the system • Seized material marked as A/DUU/04 being note book containing certain receipts and payments serially numbered from 1 to 85 • Seized material marked as

A/DUU/16 being scanned copy of unrealized cheques serially numbered from 1 to 54

255. Apart from the above seized material, the AO has relied upon the statement under section 132(4) of Sri. Goli V. Srinivas recorded on 06.08.2015.

256. In the submissions made in respect of ground number 7. the appellant has established that the seized material is not incriminating in nature. Therefore, it is not conclusive proof for receipt of capitation fee. The appellant reiterates those submissions. Under such circumstances, the AO erred in relying on such material to deny exemption under section ITA Nos.500 TO 506/Bang/2020 Page 145 of 183 11. The AO has concluded that the appellant has received capitation fee merely on the basis of statements and unsigned documents which cannot be relied on as evidence. As far as the statements of Mr. Srinivas and Mr. Nagaraj are concerned, the appellant reiterates that they have not acted at the behest of the trust.

257. The appellant has stated categorically that the said loose sheets / note books referred to above have not been maintained by it. The mandate under section 11(1)(a) is that “income derived from property held under trust” should be applied for charitable purposes. Para 9 of the trust deed states that the property of the trust shall be the initial contributions

and such other properties as may be donated or otherwise acquired by the trust. Therefore, income from such property should be applied for charitable purposes in order to claim benefit of section 11(1)(a). Para 5 of the trust deed states that "The properties, the assets, effects, funds and the like of the trust shall vest upon the Trust, the trustees perpetually and irrevocably for the due fulfilment and effectuation of the object, and the purpose of the SRI DEVARAJ URS EDUCATIONAL TRUST FOR BACKWARD CLASSES / CASTES." All the donations, gifts, etc, shall be taken over possession only in the name of the Trust and the Chairman or the Secretary in his official capacity as a true representations of the Trust and can never be in his personal capacity."

258. Trust has responsibility only vis-à-vis what is received in its name by the Chairman or Secretary in their official capacity. The trust cannot be made accountable for what the trust personnel have received in their personal capacity by abusing their position. The trust cannot be made responsible for such receipts. All consequences on account of such receipts cannot affect the charitable nature of the trust. The violation on the part of the personnel of the trust who have abused their position would ITA Nos.500 TO 506/Bang/2020 Page 146 of 183 be breach of trust. This breach of trust is concerned with internal management of the trust and cannot be made the basis for holding that the trust is not charitable

in nature. It is relevant to note the decision of the Hon'ble Gujarat High Court in the case of K.T. Doctor v. Commissioner of Income-tax [1980] 4 Taxman 208 (Guj.) / [1980] 124 ITR 501 (Guj.) wherein it was held as under: "As regards the alternative argument regarding lifting of the veil, we are afraid, no such exercise is permissible in law so far as trustees are concerned. The concept of lifting the veil is permissible only in the case of a company with a view to find out the real persons behind the corporate body, namely, the company, but in the case of trustees, they are under legal obligation to carry out the objects of the trust and to act in accordance with the deed of trust subject to the overall provisions of the Indian Trusts Act, and if they fail in their duty or if they do carry on certain activity as trustees, they are accountable in their capacity as trustees. Thus, lifting of veil or piercing of the veil is an exercise which is not permissible in the field of the law of trusts. The only conclusion was that there was no trust of the business because there was no obligation to carry on the business. That was the only conclusion which the Tribunal arrived at and when one analyses the order of the Tribunal and finds that its approach is wrong, the conclusion is of no consequence."

259. The above decision has been affirmed by the Hon'ble Supreme Court in CIT v. K T Doctor [1998] 230 ITR 744 (SC).

260. One needs to put a dividing line between what is done by the personnel of the trust in their official capacity and their personal capacity. The trust cannot be held responsible for the acts of the personnel of the trust in their personal capacity. Therefore, the consequences of such acts cannot affect the trust in any manner including its eligibility to claim exemption u/s. 11. When the trust has neither received the alleged capitation fee nor has control on such alleged capitation fee where is the question of it being responsible for the receipt and utilization of the same.

261. In view of the above submissions, it is submitted that the appellant has not diverted any funds for the benefit of trustees and there is no violation of section 13(1)(c)(ii)."

46. The Ld DR could not controvert the findings of This decision and also the reasoning and its applicability to the facts before us.

47. Similar view has been taken by the coordinate Bench in the case of Padmasri Dr. D.Y. Patil University in ITA No.3264/Mum/2012 **[2024] 159 taxmann.com 353 (Mumbai - Trib.)** In both the above cases, the statement of the employees of those trusts were also relied upon along with seized diary and the additions have been

made. In the present case also, the addition has been made on the fee refunded and unaccounted income of fees handed over to Swamiji under the account head "PP" are only based on the statement of Mr. H.B. Shivaram with respect to unexplained expenditure of marketing expenditure.

48. The AO has further relied upon statement of Dr. Mohan and Secretary of the trust. Both these statements does not confirm that any of the expenditure incurred by the assessee is not accounted for. The addition on account of unexplained expenditure is also made on the basis of seized document.

49. In case of Sunil Kumar Sharma [2024] 159 taxmann.com 179 (Karnataka)/[2024] 469 ITR 197 (Karnataka) Honourable High court has decided the first question raised in para no 21 as under :-

> 21. Both the Appellant-Revenue and Respondent-Assessee entered appearance and submitted their arguments extensively. On hearing the learned counsel for both the parties, this Court finds it relevant to examine the following questions that arises for consideration in these writ appeals, which are as under:

(1)		Whether 'Loose Sheets' and 'Diary' have any evidentiary value?
(2)		Whether Centralization is in violation of Section 127 of the Income-tax Act, 1961, is valid?
(3)		Whether the Notice under section 153C of the Income-tax Act, 1961 is

		valid herein?

As regards Question No. 1:

Upon reading the material provided and the order of the learned Single Judge delivered on 12-8-2022, it is evident that the income that has escaped assessment and notices under section 153C of the Income-tax Act, 1961, were solely issued based on loose sheets and documents which are termed as 'diaries' found during the search.

The applicability of section 69A of the Act arises only when the principles laid down under section 68 of the Act are satisfied. section 68 states that there must be books of accounts or any books with credit entry. The said Act reads thus:

"Section 68: Where any sum is found credited in the books of an assessee maintained for any previous years and the assessee offers no explanations about nature and source thereof or the explanation offered by him is not, in the opinion of the assessing officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year."

The language of the Law is vague and subjective, thus making us rely on an Apex court decision in the case of *V.C. Shukla* (*supra*), wherein the relevant portion reads thus:

"Collection of sheet fastened or bound together so as to form material whole. Loose sheets or scraps of paper cannot be termed as books."

In this regard, it is relevant to extract Section 69A of the Act, which reads thus:

"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

The lack of corroborative evidence to show how the loose sheets found at the house of Sri K Rajandran are connected to the Respondents herein, or their occupation, is evident from the panchanama provided by the Assessing Officer.

22. The entire allegation is made out on the basis of loose sheets of documents, which does not come under the ambit and

scope of 'books of entry' or as 'evidence' under the Indian Evidence Act.

23. In view of the aforementioned aspects, we have carefully examined the law declared by the Hon'ble Apex Court with regard to acceptance of diaries/loose sheets by the respondent-Revenue. In the case of *V.C. Shukla* (*supra*), at paragraphs 16 to 18 of the judgment, it is observed thus:

"16. To appreciate the contentions raised before us by the learned counsel for the parties it will be necessary at this stage to refer to the material provisions of the Act. Section 3 declares that a fact a relevant to another when it is connected with the other in any of the ways referred to in the provisions of the Act relating to the relevancy of facts; and those provisions are to be found in Section 6 to 55 appearing in Chapter II. Section 5, with which Chapter II opens, expressly provides that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and the facts declared relevant in the aforesaid section, and of no others. Section 34 of the Act reads as under:- "34. Entries in books of account when relevant - Entries in book of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire but such statements shall not alone be sufficient evidence to charge any person with liability."

17. From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence, still, the statement made therein shall not along be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed.

18. "Book" ordinarily means a collection of sheets of paper or other material, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as 'book' for they can be easily detached and replaced. In dealing with the work 'book' appearing in Section 34 in Mukundram vs. Dayaram [AIR 1914 Nagpur 44], a decision on which both sides have placed

reliance, the Court observed:- " In its ordinary sense it signifies a collection of sheets of paper bound together in a manner which cannot be disturbed or altered except by tearing apart. The binding is of a kind which is not intended to the moveable in the sense of being undone and put together again. A collection of papers in a portfolio, or clip, or strung together on a piece of twine which is intended to be untied at will, would not, in ordinary English, be called a book…I think the term "book" in S. 34 aforesaid may properly' be taken to signify, ordinarily, a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used collectively in one volume. It is easier however to say what is not a book for the purposes of S. 34, and I have no hesitation in holding that unbound sheets of paper in whatever quantity, though filled up with one continuous account, are not a book of account within the purview of S.34."

24. The aforesaid approach is in accordance with good reasoning and we are in full agreement with it. Applying the above tests, it must be held that the two spiral note books (MR 68/91 and 71/91) and the two spiral pads (MR 69/91 and MR 70/91) are "books" within the meaning of Section 34, but not the loose sheets of papers contained in the two files (MR 72/91 and MR 73/91)."

25. The Hon'ble Supreme Court in the case of *Common Cause* (*supra*) at paragraphs 278 to 282 of the judgment, has observed thus:

"278. With respect to the kind of materials which have been placed on record, this Court in V.C. Shukla case has dealt with the matter though at the stage of discharge when investigation had been completed by same is relevant for the purpose of decision of this case also. This court has considered the entries in Jain Hawala Diaries, note books and file containing loose sheets of papers not in the form of "books of accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible under section 34 of the Evidence Act, and that only where the entries are made in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible.

279. It has further been laid down in V.C. Shukla case as to value of entries in the books of account, that such statements shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held that even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

280. This court has further laid down in V.C. Shukla that meaning of account book would be spiral note book/pad but not

loose sheets. The following extract being relevant is quoted herein below: (SCC pp.423-27, paras 14 and 20) "14. In setting aside the order of the trial court, the High Court accepted the contention of the respondents that the documents were not admissible in evidence under section 34 with the following words: "70. ….an account presupposes the existence of two persons such as a seller and a purchaser, creditor and debtor. Admittedly, the alleged diaries in the present case are not records of the entries arising out of a contract. They do not contain the debts and credits. They can at the most be described as a memorandum kept by a person for his own benefit which will enable him to look into the same whenever the need arised to do for his future purpose. Admittedly the said diaries were not being maintained on day-to day basis in the course of business. There is no mention of the dates on which the alleged payment were made. In fact the entries there in are on monthly basis. Even the names of the persons whom the alleged payments were made do not find a mention in full. they have been shown in abreviated form. Only certain 'letters' have been written against their names which are within the knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to." 20. Mr. Sibal, the learned counsel for the Jains, did not dispute that the spiral note books and the small pads are 'books' within the meaning of Section 34. He, however, strongly disputed the admissibility of those books in evidence

under the aforesaid section on the ground that they were neither books of account nor they were regularly kept in the course of business. he submitted that at best it could be said that those books were memoranda kept by a person for his own benefit. According to Mr. Sibal, in business parlance 'account' means a formal statement of money transactions between parties arising out of contractual or fiduciary relationship. Since the books in question did not reflect any such relationship and, on the contrary, only contained entries of monies received from one set of persons and payment thereof to another set of persons it could not be said, by any stretch of imagination that they were books of account, argued Mr. Sibal. He next contended that even if it was assumed for argument's sake that the above books were books of account relating to a business still they would not be admissible under section 34 as they were not regularly kept. It was urged by him that the words 'regularly kept' mean that the entries in the books were contemporaneously made at the time the transactions took place but a cursory glance of the books would show that the entries were made therein long after the purported transactions took place. In support of his contentions he also relied upon the dictionary meanings of the words 'account' and 'regularly kept'.

281. With respect to evidentiary value of regular account book, this Court has laid down in V.C. Shukla, thus: (SCC p.433, para 37) "37. In *Beni* v. *Bisan Dayal* [AIR 1925 Nagpur 445] it was

observed that entries in book s of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In *Hira Lal* v. *Ram Rakha* [A. I. R. 1953 Pepsu 113] the High Court, while negativing a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been prove, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business re relevant whenever they refer to a matter in which the court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that the were in accordance with facts.

282. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not

admissible under section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court."

26. It is established in law by the Hon'ble Apex Court that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. Following the law declared by the Hon'ble Apex Court, we are of the view that the action taken by the respondent/Revenue against the Assessee based on the material contained in the diaries/loose sheets, are contrary to the law declared by the Hon'ble Apex Court. In that view of the matter, impugned notices issued under section 153C of the Act, based on the loose sheets/diaries are contrary to law, which require to be set aside in these writ appeals, as the same are void and illegal."

50. As all the additions made in the hands of this assessee appellant is based only on seized diaries written by Mr. H B Shivarm without any corroborative material in the form of statements of parents of the student who allegedly paid the fees, or two whom the fees is refunded or to the alleged agents to whom the marketing and commission expenditure is paid. The ld DR could not show any

other material other than the diaries written by H B Shivram. There was also no answer how the contradictory statements of that person has been dealt with in the assessment of assessee or the assessment of that person. Therefore, in view of above findings and respectfully following the decision of Honourable jurisdictional high court and also decision of coordinate benches in similar circumstances, we direct the ld AO to delete the addition made on account of (i) non receipt or refund of fees of Rs 7,65,54,000/- , (ii) addition of Rs 76,56,000/- on account of alleged unaccounted expenditure of payments made to agents and (iii) Fees income of Rs 7,74,75,000/-.

51. Thus Ground no 3 to 11 of the appeal are allowed.

52. In view of our decision in case of the appeal of the assessee both the grounds raised in the appeal of the ld AO becomes infructuous and hence dismissed.

53. In the result ITA no.1096/bang/2024 filed by assessee is partly allowed and ITA No.1207/bang/2024 filed by the ld. AO is dismissed.

Pronounced in the open court on this 22nd day of May, 2025.

Sd/-	Sd/-
(SOUNDARARAJAN K.) JUDICIAL MEMBER	(PRASHANT MAHARISHI) VICE PRESIDENT

Bangalore,
Dated, the 22nd May 2025.
/*Desai S Murthy* /

Copy to:

1. Assessee 2. Revenue 3. Pr. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By Order

Assistant Registrar
ITAT, Bangalore.