

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1060-1559-1560-1561/Bang/2024
Assessment Years: 2017-18, 2018-19, 2019-20 & 2020-21

M/s Sri Devaraj Urs Educational Trust, For Backward Classes (Regd.) No.1, Tamaka, Kolar – 563 101. PAN – AAATS 5344 P	Vs.	The Asst. Commissioner of Income Tax, Central Circle – 1(4), Bangalore. .
APPELLANT		RESPONDENT

ITA No.903-1547-1548-1549/Bang/2024
Assessment Year: 2017-18, 2018-19, 2019-20 & 2020-21

The Asst. Commissioner of Income Tax, Central Circle – 1(4), Bangalore.	Vs.	M/s Sri Devaraj Urs Educational Trust, For Backward Classes (Regd.) No.1, Tamaka, Kolar – 563 101. PAN – AAATS 5344 P .
APPELLANT		RESPONDENT

Assessee by	:	Shri Sandeep, C.A
Revenue by	:	Shri Murali Mohan, CIT (DR)

Date of hearing	:	16.07.2025
Date of Pronouncement	:	08.09.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is a set of 8 cross appeals filed by the assessee and the revenue arising from the order of Commissioner of Income Tax (Appeal) [hereafter learned CIT(A)] for A.Ys. 2017-18 to 2019-20 dated 28th June 2024 and order for A.Y. 2020-21 dated 29th March 2024.

First, we take up ITA No. 1060/Bang/2024, an appeal by the assessee for the A.Y. 2020-21 as the lead case.

2. The Ground No. 1 of the assessee's appeal is general in nature and therefore the same does not require any separate adjudication. Therefore, the same is hereby dismissed as infructuous.

3. The issue raised by the assessee through **Ground Nos. 2.1 and 2.3 to 3.6** are interconnected and pertains to the addition of Rs. 23,77,50,000/- on account of collection of capitation fees.

4. The relevant facts are that the assessee i.e. M/s Devaraj Urs Educational Trust for Backward Classes, Kolar, was set up to provide education in the fields like medicine, engineering, pharmacy, nursing, and schooling. The trust was officially registered on 14th November 1984. Shri R. L. Jalappa is the founder trustee and chairman, and his children Shri J. Rajendra and Smt. J. Saraswati are also trustees. Shri G. H. Nagaraj is the secretary of the assessee trust and actively involved in day-to-day affairs of the assessee trust. The trust is running several educational institutions.

4.1 A search under section 132 of the Act was carried out at the trust on 10th October 2019. During the search at the premises of Sri Devaraj Urs Medical College Tamka Kolar, an excel sheet was found and seized from the computer operated by the cashier namely Shri P Narayanaswami. The impugned excel sheet was maintained in tabular form containing details such as *S. Nos., Name of Doctor, course, total, Fee, Balance, Received and Balance.*

4.2 The impugned sheet was confronted to the cashier Shri P Narayanaswami while recording his statement under section 132(4) of the Act. He explained that the impugned sheet reflects the details of the doctors who enrolled in assessee's medical college for PG courses, the amount written there is in lakh. He further explained that amount noted in Total column reflect total amount payable including capitation fee, the fee column reflects the amount of course fee, the balance column reflects the capitation fee in cash, the Rcd column reflects the amount received out of capitation fee and last column i.e. bal reflects capitation fee yet to be received. However, Shri P Narayanaswami claimed that he has not received the cash. He (Shri P Narayanaswami) stated that cash was received by Shri Nagaraj. He (Shri P Narayanaswami) only maintained the excel sheet at his (Shri Nagaraj) instruction/direction. He further confirmed his statement in the statement recoded under section 131(1) of the Act subsequent to the search operation.

4.3 The first page of impugned excel sheet contained names of 15 doctors allegedly enrolled in different medical courses offered by the assessee. Applying the explanation of the cashier, the assessee from

these doctors allegedly charged capitation fee of Rs. 9.82 crore out which Rs. 2.72 crore was received and 7.10 crore was yet to be received. Below to the names of 15 doctors, it mentions Old (UG) against which noted capitation fee of Rs. 5 crore which is still outstanding. The next page further contains names of 5 doctors from whom capitation fee of Rs. 2.505 crores were charged out of which 1.735 crores received and Rs. 77 lakh was yet to be received. Below that it mentions Old PG allegedly on which capitation of fee of Rs. 1.2 crore was charged which has been fully received.

4.4 When the impugned excel sheet and statement of cashier Shri P Narayanaswami was confronted to Shri GH Nagpal, he stated that he does not know anything about the same.

4.5 Besides above, a search proceeding was also carried out in the case of Sri Siddhartha Education Society as on 10th October 2019 (same date on which search was carried in the case of present assessee). In connection with the search at Sri Siddhartha Education Society, the residential premises of one agent namely Shri T Babu was also covered. As a result, incriminating documents in relation to the admission got done by him in various medical colleges for UG/PG courses against the capitation fee were found and seized marked as annexure A/TB/2, A/TB/3 and A/TB/5. The statement of Shri T Babu was recorded as on the date of search i.e. 10th October 2019 under section 132(4) of the Act where he explained the modus operandi for admission of the student in various medical colleges under management quota. He explained the noting on the seized materials etc. Further, his statement was recorded

under section 131(1) of the Act as on 05th November 2019 wherein it was enquired about the admissions, he got done in the assessee's medial college. To which, he replied that during the financial year 2019-20, he got the admissions of 15 students in MBBS courses (relevant seized materials Pages 25 to 39 of annexure A/TB/3), 4 students in PG Course. He provided the names of those students showing total course fees, capitation fee agreed (including his commission), capitation fee collected out of the agreed amount. As per the details provided by Shri T Babu, capitation fee of Rs. 10.1025 crore was agreed for admission of 15 students under MBBS course out which an amount of Rs. 4.625 crore only was collected. Likewise, for admission in PG courses capitation fee was agreed for only 2 students for Rs. 75 Lakh each and out of the same Rs. 60 lakh was collected. The name of the student provided by the agent Shri T Babu for admission in PG course (4) are matching with the name appearing in the excel sheet found and seized from the computer operated by the cashier of the assessee at Sri Devaraj Urs Medical College.

5. In view of the above the finding of search proceedings, the AO was of the opinion for the receipt of unaccounted money based on the excel sheet being found from assessee's premises, the cashier who maintained the sheet admitted the receipt of capitation fees in the statement recorded under section 132(4) of the Act which was further confirmed by him in the statement recorded under section 131(1) of the Act after the search. The statement was not retracted at any stage. As per the ratio laid down by the Hon'ble Kerala High Court in the case of Abdul Razzack reported in 20 taxmann.com 48, the statement carries

evidentiary value unless contra evidence brought on record. The details recorded in excel sheet is further corroborated by the materials found at the premises of agent Shri T Babu and his statement recorded under section 132(4) and 131(1) of the Act. The names of the students noted in the seized materials found from the cashier and agent Shri T Babu were real students studying with the assessee's college which has been confirmed by the information received from registrar of the assessee's trust in response to notice issued under section 133(6) of the Act. Hence, the impugned seized material evidences receipt of capitation fees, considering the statement of cashier and agent and corroborative materials found. As such all these materials become a self-speaking document having bearing on the income of the assessee.

5.1 Hence, the AO drawn inference that the assessee has received unaccounted capitation fees in cash. Accordingly, a show cause notice was issued proposing to make addition of capitation fee of 23,77,50,000/- for A.Y. 2020-21 which includes Rs. 10,10,25,000/- based on list of 15 MBBS student provided by the agent T Babu, Rs. 12,32,50,000/- based on excel sheet found from the assessee's premises and Rs. 1,34,75,000/- for two additional students for which capitation fees estimated by the AO at Rs. 67.375 lakh each.

6 Further, the copy of material seized from the assessee premises and material seized from Shri T Babu along with copy of his statement was provided to the assessee for rebuttal. Subsequently, the opportunity of cross examination of Shri T Babu was also accorded on 23rd August 2021. However, the copy of the statement of student sought by the

assessee was not provided by holding that those statements were not utilized against the assessee. Hence, the same were not required to be provided to the assessee.

6.1 The assessee submitted that the seized materials are undated, unsigned and without any narration. Therefore, the same are in the nature of dumb documents and cannot be treated as evidence. It was argued that merely certain loose sheet/paper found, the presumption under section 292C of the Act cannot be applied. As such, the onus is upon the revenue to prove that the loose sheet/paper, note pad etc found belong to the assessee. As the seized materials do not contain the name or seal of the assessee, the revenue authority failed to discharge their onus to prove that the material belongs to the assessee.

6.2 The assessee claimed that amount of capitation fee was quantified on estimated basis without asserting to direct materials found during the course of search. The assessee asserted that the entire purpose of the search is to assess the income based on the incriminating materials found. The seized material relied on is not qualified as incriminating materials and no extrapolation of unaccounted income can be made based on such seized materials. Hence, the entire basis for proposed addition is based on estimation and reliance on the statement recorded during the search which is not allowed under the provisions of law.

6.3 The assessee further submitted that assuming it collected such huge amount of cash then such cash cannot be hidden physically. Only

way to hide such cash either to invest somewhere or expend but no such investment or unaccounted expenditure is brought on record and neither the physical cash was found.

6.4 The assessee on merit submitted that addition was proposed on account of capitation fees from student which includes 2 students from whom the fees of Rs. 67.375 lakh were estimated but the names of the students were not found in the alleged excel sheet.

6.5 The assessee reiterated that the loose sheet, note pad etc found during the search are not the incriminating materials, therefore no addition can be made in the absence of the incriminating materials merely relying on the statement of employee and third party.

6.6 Furthermore, the assessee submitted that identical addition was made in earlier assessment years based on identical materials found during the search and statement recorded. However, such addition was deleted by the Tribunal in ITA Nos. 500 to 506/Bang/2020 vide order dated 16-08-2021 for the AYs 2010-11 to 2016-17.

7. However, the AO rejected the assessee's submission. The AO held that the excel sheet found from the computer operated by the cashier clearly contains the name of the students, courses in which they admitted, and amount paid including capitation fee. The impugned material was confirmed by the cashier in his statement recorded under section 132(4) of the Act and later on under section 131(1) of the Act. Further, materials were seized from the premises of the agent Shri T

Babu specifying that the capitation fee was collected from the students which further confirmed by Shri T Babu in his statement. Both the cashier and T Babu have not retracted from their respective statements at any stage of the proceedings. The student's name appearing therein in the seized materials are matching with the information received from the office of the registrar. Hence, the seized materials found are incriminating in nature and not the dumb documents.

7.1 The excel sheet and other materials found from the assessee's premises were showing receipt of capitation fee. The person who made entry therein is the employee of the assessee. Therefore, the presumption under section 292C of the Act is rightly applied.

7.2 The AO held that the quantification of the unaccounted capitation fee was made on the basis of the statement of the cashier/ agent which was based on the seized materials. Therefore, the claim of the assessee that quantification made merely on estimation basis is not acceptable. The AO also referred the judgment of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax vs. H.M. Esufali in AIR 1973 2266 where it was held that task of detecting the escaped/ unaccounted turn over by the revenue is not easy therefore it would always involve some degree of estimation based on the materials found.

7.3 The AO also rejected the assessee's contention that the addition was proposed merely relying on the statement. The AO held that the statement of the cashier, and the agent Shri T Babu is based on materials seized during the search. Similarly, the amount of the

capitation fees was quantified and proposed for the addition was based on the impugned seized materials which is corroborated by the statement and information received from the registrar.

7.4 The AO found that names of 2 students out of 23 students, though not found in the excel sheet recovered from the assessee's premises but their names were appearing in the seized materials found from the premises of the agent Shri T Babu. Hence, the proposed addition for capitation fees from those 2 students for Rs. 67.5 lakh each is supported by the seized materials which is not merely an extrapolation.

7.5 The AO regarding the deletion of the addition made in earlier year by the Tribunal held that the facts are distinguishable as in the present case, the receipt of capitation fee has been corroborated by the materials seized from the agent Shri T Babu and information received from the registrar that those students are studying in the assessee's medical college. Hence, the facts for the year under consideration are different from the earlier assessment year. Thus, the AO in view of the above made the addition of capitation fee for Rs. 23,77,50,000/- only to the total income of the assessee.

8. The aggrieved assessee preferred an appeal before the learned CIT(A).

9. Before the learned CIT(A), the assessee contended that the additions made by the AO were based on the seized materials,

particularly Excel sheets, loose sheets, handwritten notepads, and digital data retrieved from computers, found from cashier or third party namely Shri T Babu which are nothing but "dumb documents" having no evidentiary value in the absence of corroboration, authentication, or link to the assessee. It was submitted that these documents did not carry the name or seal of the assessee trust, nor they were maintained by any person authorized by the trust to handle admissions or financial collections. Hence, the seized materials do not belong the assessee's trust. It was also argued that the AO has extrapolated certain figure to arrive at capitation fees which establishes the fact that seized materials relied by the assessee are nothing but dumb documents. Furthermore, it was submitted that loose sheets are not the books of accounts, therefore the same cannot be made basis for making the addition.

9.1 The assessee argued that the AO had heavily relied on unverified and unauthenticated third-party documents, particularly those seized from the premises of one Shri T. Babu, an alleged agent, and Shri Narayana Swamy P, an accountant. As such, the trust disowned both individuals in relation to any activity of collecting capitation fees. It was contended that Shri T. Babu was never employed by or related to the trust, and hence, any material found at his premises cannot be relied upon against the trust. Similarly, Shri Narayana Swamy P was described as a cashier working in the pharmacy of the hospital and had no role in admissions or fee collections. In addition, the statement given by the Shri Narayana Swami and Shri T Babu cannot be relied upon as they are contradicting to each other. Shri T Babu in his statement recorded under section 131(1) of the Act stated that cash collected on account of

capitation was given to Shri Narayana Swami whereas Shri Narayana Swami stated that he never received cash on account of capitation fees.

9.2 The assessee further contended that no authorization or resolution was brought on record by the department to show that either Shri Narayana Swamy P or Shri T. Babu were given the authority to collect any capitation fees on behalf of the trust. It was also pointed out that the statements made by these individuals were recorded either under coercion or were post-search depositions which lacked legal sanctity. Hence, reliance placed on such statements was erroneous and violated the principles of natural justice.

9.3 A specific contention was raised that the statement of the students and their parent were recorded during and after the search but the same were not provided by the AO which amounts to the violation of principles of natural justice.

9.4 Without prejudice to the above, regarding the quantum of addition based on materials provided by Shri T Babu, the assessee argued that even if the material was assumed to be correct, the AO erred in making additions based on the agreed capitation fee rather than actual amounts received. For instance, in one case, the AO added ₹10.10 crores based on the agreed amount, whereas only ₹4.62 crores were allegedly received. The assessee submitted that the balance amount was never collected, and there was no evidence to show that the students paid the entire agreed fee.

9.5 The assessee also raised specific objections to individual additions, particularly in the case of Dr. Sowmya and Dr. Anil Kumar, arguing that they were admitted under the merit quota and their names did not appear in the seized materials and similarly, there was no corresponding amount recorded in the excel sheet. The addition of ₹67.37 lakhs in each of their cases was, therefore, unwarranted. The assessee emphasized that lack of direct and specific evidence connecting the students, seized materials, and alleged receipts should lead to deletion of these additions.

9.6 On the issue of correlation between seized data and admissions, the assessee contended that the seized data from the agent Shri T Babu residence pertained to undergraduate students, while the data from the college premises related to postgraduate admissions, hence the AO erred in correlating the two data-sets. Lastly, it was argued that the absence of the academic year column in some Excel sheets prevented the AO from establishing the relevant assessment year, thus making the addition on speculative basis.

10. However, the learned CIT(A) after carefully considering the submissions of the assessee, the assessment order, seized materials, and judicial precedents, rejected the contentions raised by the assessee and upheld the additions made by the Assessing Officer. The Id. CIT(A) held that the seized materials were not "dumb documents" as claimed by the assessee, but rather constituted "speaking documents" duly corroborated by the statements recorded under section 132(4) of the Act and official records obtained from the college registrar.

10.1 The learned CIT(A) noted that the Excel sheet was directly retrieved from the trust's own computer system, and Shri Narayana Swamy P, the cashier, in his deposition under section 132(4) of the Act, clearly admitted that the Excel sheets were maintained by him under the direction of Shri G.H. Nagraj, the Secretary of the Trust. Thus, its authenticity stood confirmed by the statement of the cashier who maintained it. These Excel sheets contained names of students enrolled in the medical college run by the appellant trust, along with details of capitation fees received in cash. Importantly, this statement was never retracted and was corroborated by the seizure of the same Excel sheet from the trust's own premises.

10.2 In addition, the Id. CIT(A) emphasized that Shri T. Babu, whose premises were also searched, admitted in his statement that he had arranged admissions in the appellant's medical college and had received capitation fees in cash. His statement, too, was recorded under section 132(4) of the Act and further under section 131(1) of the Act in post search proceedings. The names of students (PG course) found in the materials seized from his (T Babu) premises matched those found in the Excel sheet seized from the college, and both matched with the student list obtained from the Registrar of the appellant college in response to summons issued under section 131(1A) of the Act.

10.3 The learned CIT(A) regarding the contention of the assessee that loose sheet or materials found during the search are not the books of account, held that loose sheet found and seized during the search contains valuable information, therefore the same are regarded as

incriminating documents and presumption under section 132(4) of the Act and 292C of the Act can be applied unless the assessee produces contrary materials to disprove the contents of the loose sheets. In this regard, the learned CIT(A) referred the judgment of Hon'ble Jharkhand High Court in the case of Mahabir Prasad Rungta vs. CIT reported in 43 taxmann.com 328, decision of Hon'ble Madras High Court in the case of M. Vivek vs. DCIT reported in 432 ITR 53 and other case laws.

10.4 The learned CIT(A) also dismissed the contention of the assessee that the seized material does not belong to it as the same does not contain name or seal of the assessee. The learned CIT(A) reiterated that the excel sheet was retrieved from the computer installed at assessee's premises which was used by the cashier of the assessee trust. The cashier also confirmed the contents of the sheet. The excel sheet found was further corroborated with the materials found from the agent Shri T Babu and confirmed by him. Therefore, there is clear relationship between the seized material and the assessee which establishes the entries in the seized materials are true and correct.

10.5 The contention of the assessee that Neither Shri Narayna Swami, the cashier nor Shri T Babu were authorized to collect the capitation fee was also rejected by the learned CIT(A). It was held that such authorization cannot be found in search proceedings for the reason that the appellant trust as well as its employees are well aware of the fact that collection of capitation fee is prohibited and offence under the law. Therefore, no such authorization can be given in writing.

10.6 The learned CIT(A) further rejected the assessee's contention for not providing the statement of the students and their parents alleging the violation of principle of the natural justice. As such, the learned CIT(A) confirmed the view of the AO that the statement of students and their parents were not used against the assessee, therefore the same are not required to be provided.

10.7 Regarding the quantum of addition in respect of collection of capitation fee from MBBS student based on material seized from the agent Shri T Babu, the Id. CIT(A) rejected the assessee's plea to restrict the addition to ₹4.62 crores on the ground that no evidence was filed to show that the balance amount was not collected. On the contrary, it was reasoned that students would not be granted admission without making the full payment. Hence, the addition of the entire agreed amount of ₹10.10 crores was confirmed.

10.8 The objections raised in relation to Dr. Sowmya and Dr. Anil Kumar were also dismissed. The Id. CIT(A) recorded that both names appeared in the seized Excel sheet and that both were admitted under management quota, indicating payment of capitation fee. The contention that no specific amount was recorded against their names was found irrelevant since the modus operandi and context clearly implied such payment of capitation fees.

10.9 On the non-correlation between undergraduate and postgraduate admissions, the Id. CIT(A) held that such distinction was not sufficient to rebut the overall findings. The overlap of student names in seized

materials from both premises, along with corroborative statements, rendered this argument unconvincing.

10.10 Even the absence of "year" column in some entries was held to be immaterial since the surrounding details, including the list from the Registrar, the names of students, the amount recorded, and the context, all clearly linked the seized materials to the relevant assessment years only.

10.11 Finally, the Id. CIT(A) concluded that the assessee trust was engaged in the unaccounted collection of capitation fees, which were not recorded in its regular books of account, and hence, the AO's action of making additions based on seized materials and corroborated depositions was fully justified. All the grounds of appeal raised by the assessee in this regard were dismissed.

11. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

12. The learned AR before us filed paper book running from pages 1 to 1029, written submission running from pages 1 to 197 and argued that the documents relied upon by the AO are merely "dumb documents" and cannot be treated as credible evidence. He submitted that various Hon'ble Courts and Tribunals have explained that such loose sheets, scribbled note pads, and unsigned papers, without corroborative evidence, do not have any evidentiary value. The AO himself admitted that documents can be termed "dumb" in certain situations, and in the

present case, the seized material falls within that category, even by the AO's own definition. The Secretary of the appellant trust had categorically denied any connection with the seized entries and clarified that the trust never authorized anyone to collect fees in cash from students or parents. The assessee has not admitted to any of the entries in the seized materials.

12.1 The learned AR further pointed out that the loose sheets and note pads do not evidence any completed transactions, and the AO's inferences are based on assumptions, speculation, and conjecture. There is no independent, cogent, or reliable evidence to support the AO's conclusions. The seized loose sheets are undated, unsigned, and do not contain the name or seal of the appellant, hence the burden lies on the revenue to prove they belong to the appellant, which has not been done in the present case. Section 132(1)(iii) of the Act allows seizure only of books of account or other documents contemplated in clauses (a) and (b) of section 132(1) of the Act. Loose sheets and note pads are not books of accounts and therefore could not have been seized under this provision of the Act.

12.2 He referred to section 292C of the Act, explaining that its presumption applies only to books of accounts, other documents, or valuable articles, but does not to any loose sheets or scribbled note pads. Even otherwise, the presumption under section 292C of the Act is rebuttable, and in this case, the assessee has denied ownership or authorship of the seized materials. The material does not bear the appellant's name or seal, and neither the authorized officer nor the AO

has discharged the burden to prove otherwise. The AO has not even invoked the provisions of section 292C of the Act in his findings, indicating that it is applicable in the given facts and circumstances.

12.3 The learned AR argued that the AO failed to analyze the seized materials year-wise, instead making a consolidated analysis for multiple years. This approach is contrary to the spirit of the search and seizure provisions, which requires incriminating materials to be correlated with the relevant year. Reliance was placed on judicial precedents, including the decision in the case of Sinhgad Technical Education Society's case and IBC Knowledge Park (P) Ltd., which held that the additions in search-based assessments can only be made for the years basing on incriminating materials found during search.

12.4 He also submitted that the department failed to prove that the trust's executive committee was involved in cash collections. The case rests solely on the statement of one individual, which the appellant has denied. Even if cash was collected, it could have been without the committee's knowledge and for personal gain of the individuals involved. There is no proof that the trust authorized such collections or payments.

12.5 The learned AR pointed out that the appellant requested copies of statements of parents and students recorded during the search, but these were not provided on the reason that they were not being used against the assessee. This indicates that the statements were favourable to the assessee. In this respect, he relied on the judgment of Hon'ble Supreme Court ruling in C. Vasantlal & Co. v. CIT reported in 45 ITR 206

which requires the assessee to be given an opportunity to explain materials collected by the AO.

12.6 The learned AR contended that no addition can be based solely on third-party statements, citing the Hon'ble Delhi High Court decision in Principal CIT v. Best Infrastructure (India) (P) Ltd. reported in 84 taxmann.com 287, which held that statements recorded under section 132 of the Act do not by themselves constitute incriminating materials. He distinguished the facts of the present case from cases like Dayawanti Gupta, noting that there is no admission or evidence of unaccounted sales, purchases, or habitual offences here. Therefore, the seized materials and statements do not justify any addition in the given set of facts and circumstances.

12.7 The learned AR further argued that even if it is assumed that cash was collected, the AO failed to consider the practical aspect that such a huge amount of unaccounted cash could not have been physically concealed without either being converted into assets or being spent. No attempt was made by the AO to identify any assets created from the alleged cash. When the search was conducted, no cash was found, which disproves the allegation of the AO. The AO's theory that the appellant collected capitation fees in cash and diverted them for the benefit of trustees is not supported by any reliable evidence.

12.8 The learned AR submitted that if the AO truly believed the funds were diverted to trustees, a substantive addition should have been made in the trustees' cases under section 153C of the Act, rather than making

a protective addition in its case. Section 153C specifically deals with the situations where seized material belongs to another person, and in such cases, the AO must transfer the materials to the AO having jurisdiction over that person. The fact that no such action was taken shows that the seized material is not conclusive proof either against the appellant or the trustees.

12.9 The Id. AR emphasized that the statement of Mr. Narayana Swamy, who is merely a cashier in the hospital pharmacy, is irrelevant to the admissions in the medical college. No nexus has been established between him and the alleged transactions. Even if such a nexus is assumed, both Mr. Narayana Swamy and Mr. Nagaraj have denied receiving any cash from students. Similarly, reliance on the statement of Mr. Babu is misplaced, as he is not an employee of the appellant trust and no documentary evidence links him to the trust. Statements from parents or students who allegedly paid cash have not been provided despite repeated requests, which undermines the credibility of the AO's case.

12.10 The learned AR pointed out that the entire addition is based on uncorroborated oral statements and so-called "dumb documents" like computer printouts, which have no evidentiary value without supporting materials. Judicial precedents, including *PCIT v. Best Infrastructure India Pvt. Ltd.*, *CIT v. Harjeev Aggarwal*, *Dr. B.G. Memorial Trust v. CIT (Exempt)*, and *Kandadevi S. Doshi v. ITO*, make it clear that additions cannot be based solely on unsubstantiated oral statements or loose sheets.

12.11 He further, without prejudice, submitted that even if the allegation of capitation fees is accepted, only the actual amount received can be taxed, and not the amount allegedly recorded. The statement of Mr. T Babu himself confirms that students did not pay any fees after the search proceedings. Hence, the addition, if any, should be restricted to the recorded receipts, which in this case have not been established at all.

13. On the contrary, the learned DR before us filed a paper book running from pages 1 to 72 and contended that the assessee's claim that the materials seized from the employee's computer were "dumb documents" is factually wrong and legally without merit. He submitted that this plea is only an attempt to dilute the clear and verifiable incriminating evidence found during the search. In this case, the electronic data was recovered from the computer of the cashier of Sri Devaraj Urs Academy of Higher Education & Research, located inside the trust premises, thereby establishing a direct and undeniable link to the trust's financial dealings. The seized material contains specific details such as the names of students, amount paid towards fees, outstanding balances, and reductions, which are directly connected to the collection of unaccounted capitation fees.

13.1 The learned DR contended that the seized data is not vague or unsupported but has been corroborated through multiple independent sources. This includes the trust's own admission and payment records, which exactly match the details in the seized data, as well as other

incriminating materials recovered from Shri T. Babu, who acted as an intermediary in admissions. The materials from Shri T. Babu further confirms the capitation fee transactions recorded in the data seized from the trust premises. Both the AO and the learned CIT(A) have compared the seized electronic data with the trust's official records and the statements recorded during the search, finding that they match and prove the receipt of unaccounted capitation fees.

13.2 The learned DR submitted that the assessee's blanket denial of collecting capitation fees is not credible, particularly since the seized data matches the institution's own records and the intermediary's records. The non-cooperation of trust officials in explaining the seized material, including the Secretary's outright denial without evidence, supports the view that the trust was trying to suppress its true income. The seized documents are not "dumb" but are "speaking documents" that form a coherent and credible chain of evidence.

13.3 On the issue of statements, the learned DR pointed out that during the search and assessment proceedings, several incriminating documents and statements were recorded under oath from key persons, including Shri Narayanaswamy P (cashier), Shri T. Babu, Shri G.H. Nagraja (Secretary), and Trustee Shri G.S. Anand. These statements were taken following due legal procedure, without coercion or undue influence, and have not been retracted. Since Shri Narayanaswamy P and Shri G.H. Nagraja were directly working for the trust in responsible positions, their depositions are highly relevant and admissible.

13.4 The learned DR emphasized that these statements are not stand-alone but are supported by seized documents detailing with the capitation fee collections. When read together, the statements and documents clearly establish the unaccounted income of the trust. Citing settled law, he argued that statements recorded under section 132(4) of the Act carry evidentiary value when supported by material evidence, and such voluntary statements cannot be ignored without strong contrary proof. The assessee has produced no credible evidence to rebut these statements or explain the seized documents. Mere denial does not discharge the burden of proof once incriminating material is found.

13.5 In conclusion, the Id. DR submitted that the assessee's objection to the reliance on statements and seized documents is baseless. The combined effect of the seized data, corroborating records, and voluntary statements proves beyond doubt the unaccounted receipt of capitation fees and the violation of statutory provisions. Therefore, he prayed that the appeal be dismissed, and the order of the Id. CIT(A) be upheld.

14. We have heard the rival contention of both the parties and perused the material available on records. From the preceding discussion it is noted that the addition for the sum of ₹ 23,77,50,000/- has been made by the AO which was subsequently confirmed by the Id. CIT-A on the allegation that the assessee received capitation fee in cash from students who took the admission. The case of the Department rests primarily on the following:

- (i) An Excel sheet recovered from a computer used by the cashier of the Trust along with his statement, and
- (ii) Certain papers recovered from a third party, Shri T. Babu and along with the statement.

14.1 We note that the search carried out at the assessee's premises resulted in recovery of an Excel sheet from the computer operated by the cashier, Shri P. Narayana Swamy. The said sheet contained names of some students with details of certain amounts against the respective names. However, it is important to note the following facts:

- The Excel sheet is not a regular book of account. It is not signed or authenticated. It has no date or reference to the institution's records. It did not contain any writing suggesting collection of capitation fee.
- The cashier admitted that he prepared the sheet and explained that noting therein represent collection of capitation fee in cash. But he categorically stated that he never received cash. He further stated that the Secretary was the person who managed all admission-related matters.
- The Secretary, Shri G.H. Nagaraj, denied ever receiving any capitation fee.

14.2 Thus, the Department's own witnesses contradict each other. On the one hand, the cashier admits to preparing the sheet but disowns cash handling. On the other hand, the Secretary, who has authority to admit students, denies receipt of capitation. This conflict itself weakens the evidentiary value of the Excel sheet.

14.3 It is also important to highlight that in law, a loose sheet or a Excel file has very limited evidentiary value. It is settled position of law that unless supported by strong corroborative evidence such as actual cash seizure, asset discovery, or payer confirmation, no addition can be made solely on the basis of such a document.

14.4 We further note that apart from the impugned Excel sheet, the AO also placed heavy reliance on documents seized from the premises of a third-party, Shri T. Babu, who is alleged to be an admission agent. These documents contained some hand-written noting in diary containing name of students and payments.

14.5 However, it is settled law that documents found at a third-party's premises cannot automatically be used against an assessee unless there is clear and direct linkage with the assessee. Here, Shri T Babu was not an employee of the assessee Trust. In our considered view his writings are therefore only third-party papers and to use such third-party papers against the assessee, the Department must prove:

- That the entries in those papers represent actual transactions with the assessee;
- That the entries are supported by independent corroboration; and
- That the alleged cash has a traceable trail to the assessee's accounts or assets.

14.6 In this case, none of these conditions are satisfied. On the contrary, a comparison between the Excel sheet of the cashier and the third-party's papers shows a glaring mismatch at least in two cases. For example, as per Shri T. Babu's records, no capitation fee was agreed, committed, or collected from Dr. Karuna and Dr. Saumya. Yet, the Excel sheet attributes a capitation of ₹30 lakh to Dr. Karuna, of which ₹25 lakh is shown as collected. This inconsistency is material and remains unexplained by the Revenue. These mismatches destroy the so-called corroboration.

14.7 Moving ahead, it is important to note that the addition made is very large amount ₹23.78 crores. It is difficult to believe that such a huge volume of cash could have been received and yet leave no trace. In our considered opinion, if the Trust had received such sums, it would have utilized them either in creating assets, meeting expenses, or investing elsewhere. However, the Department has not brought any evidence of:

- Cash seized during search,
- Unaccounted assets,
- Unexplained expenditure, or
- Any bank deposit trail.

14.8 The absence of evidence indicating the utilization of such cash receipt is a serious gap. The large-scale cash dealings of this magnitude cannot remain invisible. In absence of such corroboration of utilization or trace of cash, mere a loose sheet or a third-party note cannot by itself establish receipt of cash.

14.9 Furthermore, the Department's allegation is that students or their parents paid the capitation fee. Hence, in the given circumstances, their statements would be the most important primary evidence. However, the Department admitted that the statements of students and their parents were not furnished to the assessee, stating that "they were not used" against the assessee. This itself shows that the students/parents did not support the allegation of revenue.

14.10 If the primary parties to the alleged transaction do not incriminate the assessee, then the entire case based only on secondary evidence (like Excel sheet or third-party notes) falls apart. Moreover, non-supply of those statements denies the assessee the opportunity to cross-examine, which is a violation of natural justice.

14.11 We further notice glaring contradictions in the versions of witnesses relied by the revenue which are as follows:

- The cashier admits preparing the Excel sheet but denies handling cash or receipt of alleged cash.
- The Secretary denies receiving any capitation fee.
- The third-party Shri T Babu alleges payment to the cashier.

14.12 Thus, their statement contradicts each other and therefore these three versions cannot stand together. They are inconsistent and irreconcilable. Therefore, in our considered view the additions of such huge volume cannot be sustained when the Department's own witnesses give contradictory statements, and no corroboration is available.

14.13 Furthermore, it is noted that the provision of section 292C of the Act permits a presumption that documents found in possession belong to the person. But this presumption is rebuttable. However, in the given case, the secretary denied of any receipt of capitation, the cashier denied cash handling, and the document itself is not part of books. Thus, in the given facts and circumstances the presumption provided under section 292C of the Act stands rebutted.

14.14 Courts have consistently held that loose papers by themselves do not constitute sufficient evidence. The Hon'ble Supreme Court in

CBI v. V.C. Shukla [1998] 3 SCC 410 and Common Cause (A Registered Society) vs Union of India reported in 77 taxmann.com 245 held that noting on loose papers without corroboration cannot justify additions. The Hon'ble Court have time and again taken view that the search assessments must be based on incriminating material relating to the year.

14.15 In view of the above detailed discussion and on a holistic consideration, we find that the Excel sheet is only a private loose record without corroboration. The third-party documents relied by the revenue contradict rather than support the allegation. The witness of the revenue such cashier, Shri T babu and secretary of assessee trust contradict each other. Most importantly there is no utilization trail of such huge cash found as alleged and the statements of students/parents who are direct and primary party are not against the assessee. In such circumstances, the evidentiary threshold required for sustaining an addition in a search assessment is not met. Therefore, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the addition of ₹23,77,50,000/- only. Hence the ground of appeal of the assessee is hereby allowed.

15. The next issue raised by the assessee through Ground No. 2.2 of its appeal is that the learned CIT(A) erred in relying on data retrieved from electronic device without satisfying the conditions prescribed under section 65B of the Act.

15.1 At the outset, we note that the issue raised was not pressed by the learned AR of the assessee. Hence the same is being dismissed as not pressed.

16. In the result, the appeal of the assessee is hereby partly allowed.

Coming to ITA No. 903/Bang/2024, an appeal by the Revenue for A.Y. 2020-21

17. The only effective issue raised by the revenue is that the learned CIT(A) erred in allowing the claim of exemption under section 11 of the Act.

18. The relevant facts are that the AO based on the allegation that the assessee has collected capitation fee on the admission from the students which is prohibited and further diverted such fund of capitation fee to trustees held that the assessee is not eligible to claim exemption under section 11 of the Act. The AO held that the collection of capitation fee establishes that the assessee is not running its activity for charitable purposes and further by diverting the capitation fee to the trustee has violated the provisions of section 13(1)(a) and 13(1)(c)(ii) of the Act. The AO further found that in consequence to earlier search proceeding and materials found therein, the registration of the assessee under section 12AA of the Act was cancelled by the Id. PCIT (Exemption). Therefore, the AO considering the overall facts disallowed the claim of the assessee under section 11 of the Act.

19. The aggrieved assessee preferred an appeal before the learned CIT(A).

20. The assessee before the learned CIT(A) submitted that the AO was wrong in denying exemption under section 11 of the Act on the ground that registration under section 12AA of the Act was cancelled. It was submitted that the order of the Principal Commissioner of Income Tax (PCIT) dated 23-03-2018 cancelling the registration had already been quashed by the Hon'ble ITAT, Bangalore in ITA No. 155/Bang/2022 dated 08-06-2022, and the registration under section 12AA of the Act was restored with retrospective effect from 20-01-1992.

20.1 Regarding the allegation of receipt of capitation fees, the assessee reiterated that the statements of Shri Narayana Swamy P and Shri T Babu, relied upon by the AO, contradicted each other and therefore could not be relied upon. It was pointed out that Shri G.H. Nagraja, Secretary of the Trust, had stated in his statement that he did not know anything about capitation fees. The assessee contended that the alleged oral statements, without independent corroborating evidence, could not be the basis for additions. It also relied on various judicial precedents to argue that additions could not be made solely on the basis of statements recorded during search proceedings without proper verification.

20.2 The assessee further submitted that even if, without admitting, capitation fees were received, such receipts had been used for the objects of the Trust, and therefore exemption under section 11 should

be available. It also cited the decisions of the Hon'ble Gujarat High Court in K.T. Doctor v. CIT (124 ITR 501) and the ITAT Bangalore in M.J. Balachander v. DCIT 2012 (12) TMI 1002 to argue that the Trust should not be penalized for alleged acts of individuals in their personal capacity.

21. However, the Learned CIT(A) after considering the facts in totality noted that the Hon'ble ITAT had indeed restored the assessee's registration under section 12AA of the Act with retrospective effect from 20-01-1992, and therefore, in principle, exemption under section 11 could not be denied on the ground of cancellation of registration. However, on examining the facts and material on record, the Id. CIT(A) upheld the AO's finding that the assessee Trust had received capitation fees in violation of section 13(1)(c) of the Act and the Karnataka Education Institution (Prohibition of Capitation Fees) Act, 1984.

21.1 The Id. CIT(A) further held that the capitation fees received were unaccounted and not recorded in the books of account, and its (capitation fees) acceptance was a clear violation of law. The plea that such receipts were applied for the objects of the Trust was rejected as the assessee failed to produce any supporting documents. Judicial precedents cited by the assessee were distinguished on facts as they did not deal with situations where corroborating documentary evidence existed.

21.2 Accordingly, the Id. CIT(A) partly allowed the appeal by granting exemption under section 11 only to the extent of the declared income applied for the objects of the Trust, but upheld the addition of Rs. 23.77

crores on account of unaccounted capitation fees, treating it as taxable income not eligible for exemption.

21.3 Being aggrieved by the order of the learned CIT(A), the revenue is in appeal before us.

22. The learned DR before us submitted that the learned CIT(A) committed an error in granting the benefit of section 11 exemption to the assessee trust for the assessment years 2017-18, 2018-19, and 2019-20, despite his own clear finding that the assessee had collected capitation fees. It was argued that this finding amounts to a direct admission of a violation of the objectives of a charitable trust and of section 13(1)(c) of the Act.

22.1 The learned DR pointed out that section 13(1)(c) of the Act specifically denies the benefit of section 11 of the Act, if any income or property of the trust is used for the personal benefit of trustees or other specified persons. Since, the Id. CIT(A) himself accepted that the assessee collected unaccounted capitation fees, this violation was clearly triggered. Once such a violation is established, the trust automatically forfeits the exemption under section 11 of the Act. The Id. CIT(A) could not, therefore, confirm the violation of section 13 of the Act but still grants the benefit of section 11/12A of the Act.

22.2 It was further submitted that the addition made by the AO was based on solid incriminating materials such as excel sheets from the cashier's computer, detailing the names of students and amounts of

capitation fees paid. These were corroborated by the sworn statements of key individuals—Shri Narayana Swamy (cashier), Shri G.H. Nagaraj (Secretary), and Shri T. Babu (agent)—all of whom confirmed the receipt of unaccounted capitation fees. The Id. CIT(A) accepted this incriminating evidence but failed to apply its legal consequence, which should have been denial of exemption under section 11 of the Act.

22.3 The Id. DR also stressed that the registration under section 12A of the Act was cancelled by the Id. PCIT in March 2018, and though the ITAT quashed the cancellation in its order dated 08.06.2022, this order has not attained finality since the Revenue has filed an appeal before the Hon'ble High Court of Karnataka. Hence, the status of registration remains unsettled, and therefore, the Id. CIT(A) should not have granted the benefit of section 11 of the Act when the very basis of exemption was under challenged.

22.4 Finally, the learned DR argued that the Id. CIT(A)'s order suffers from a serious contradiction on one hand, it upholds the AO's finding of violation of section 13 of the Act due to acceptance of capitation fees, and on the other hand, it still allows the exemption under section 11 of the Act. This, according to the Id. DR, is a fundamental legal error, making the Id. CIT(A)'s decision legally untenable and liable to be reversed.

23. On the other hand, the learned AR reiterated the submission as made before the learned CIT(A).

24. We have heard the rival contentions of both the parties and perused the materials available on record. The revenue's objection is primarily based on the cancellation of the assessee's registration under section 12AA of the Act and the alleged collection of capitation fees. In this regard, we note that, in the assessee's own case for the year under dispute, vide our order in ITA No. 1060/Bang/2024 (discussed in the earlier paragraphs of this order), we have already held that the allegation regarding collection of capitation fees is not sustainable and the related addition stands deleted.

24.1 We further observe that the Hon'ble ITAT, Bangalore in ITA No. 155/Bang/2022 dated 08.06.2022 has restored the assessee's registration under section 12A of the Act with retrospective effect from 20.01.1992. This restoration has not been stayed, and therefore, for the year under appeal, the assessee held a valid registration under section 12A of the Act. Once the registration is in force and there is no valid finding of violation under section 13(1)(c) of the Act in view of our decision deleting the capitation fee addition, the assessee is entitled to the benefit of exemption under section 11 of the Act.

24.2 The revenue's argument that the ITAT order restoring registration is under challenge before the Hon'ble High Court does not alter the position for the present year, as no stay has been granted. The law is clear that so long as the registration subsists, the benefit of section 11 cannot be denied merely because the revenue has preferred an appeal. In view of the above, since both the foundation for denial of section 11 of the Act benefit i.e. cancellation of registration and the finding of

capitation fee collection no longer survives, in our considered opinion, the revenue's ground fails. We therefore uphold the order of the learned CIT(A) for granting exemption under section 11 of the Act to the assessee and dismiss the ground of appeal filed by the revenue.

25. In the result, the appeal of the revenue is hereby dismissed.

Coming to ITA No. 1547 to 1549/Bang/2024, the appeals by the Revenue for A.Ys. 2017-18 to 2019-20.

26. At the outset, we note that the issues raised by the Revenue in its grounds of appeal for the AYs 2017-18 to 2019-20 are identical to the issue raised by the Revenue in ITA No. 903/Bang/2024 for the assessment year 2020-21. Therefore, the findings given in ITA No. 903/Bang/2024 shall also be applicable for the assessment years 2017-18 to 2019-20. The appeal of the Revenue for the A.Y. 2020-21 has been decided by us vide paragraph No. 24 of this order against the Revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2020-21 shall also be applied for the assessment years 2017-18 to 2019-20. Hence, the grounds of appeal filed by the Revenue for A.Ys. 2017-18 to 2019-20 are hereby dismissed.

27. In the result, all the appeals of the Revenue for A.Ys. 2017-18 to 2019-20 are hereby dismissed.

Coming to ITA No. 1561/Bang/2024, an appeal by the assessee for A.Y. 2019-20

28. The assessee has raised as many as 7 grounds of appeal and sub-grounds which are running into several pages. Hence, we for the sake of brevity are not inclined to reproduce the same here.

29. The issue raised by the assessee through Ground No. 1 of the appeal is general in nature and does not require any separate adjudication. Hence, the same is being dismissed as infructuous.

30. The assessee through Ground Nos. 2 to 4 of the appeal has challenged the validity of the search under section 132 of the Act, notice issued under section 153A of the Act and assessment framed under section 153A of the Act on different technical grounds.

31. At the outset, we note that the issue raised by the assessee on merit of the case has been decided in its favour. Accordingly, we do not find any reason to adjudicate the impugned issue on hand. As such, we keep the issue open. Both the Id. AR and the DR did not raise any objection at the time of hearing, if the technical issue is kept open. Accordingly, the impugned ground of appeal of the assessee is dismissed as infructuous.

32. The issues raised by the assessee through Ground Nos. 5.1 & 5.3 to 6.10 of its appeal are interconnected and pertain to the addition on account of capitation fee of Rs. 7,44,00,00/- based on material seized and statement recorded during the search.

32.1 At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2019-20 are identical to the issue raised by the assessee in ITA No. 1060/Bang/2024 for the assessment year 2020-21. Therefore, the findings given in ITA No. 1060/Bang/2024 shall also be applicable for the assessment year 2019-20. The appeal of the assessee for the A.Y. 2020-21 has been decided by us vide paragraph No. 14 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2020-21 shall also be applied for the assessment year 2019-20. Hence, the ground of appeal filed by the assessee for A.Y. 2019-20 is hereby allowed.

32.2 The issue raised by the assessee through Ground No. 5.2 of its appeal is that the learned CIT(A) erred in relying on electronic evidence without satisfying the condition prescribed under section 65B of the Indian Evidence Act.

32.3 At the outset, we note that the caption issue raised was not pressed by the learned AR of the assessee. Hence the same is being dismissed as not pressed.

33. The issue raised by the assessee through Ground No. 7 of its appeal is that the learned CIT(A) erred in confirming the payment of Donation for Rs. 90,39,666/- only.

34. The relevant facts are that the AO while computing the income has not allowed the deduction of the payment towards donation for Rs.

90,39,666/- on the ground that the assessee is not eligible for exemption under section 11 of the Act.

35. The aggrieved assessee preferred an appeal before the learned CIT(A) who confirmed the addition made by the AO by holding as under:

5.9.1 Having held that the appellant is eligible for exemption u/s 11, the issue of allowing donations needs to be addressed. The appellant during the appellate proceedings has not provided the basic details such as name of the parties, amount of donations, donation receipts etc. in support of the claim of donations and to establish the genuineness of the donations made by the appellant. In the absence of basic details the claim of the appellant becomes untenable.

36. Being aggrieved by the finding of the learned CIT(A), the assessee is in appeal before us.

37. The learned AR before us argued that the AO wrongly denied the exemption under sections 11 and 12 of the Act. Since, the exemption under these sections was denied, the deduction claimed for donations as application of income in the return was also disallowed, and the amount was treated as income in the assessee's hands. The learned AR pointed out that there was no other reason or finding given by the AO for denying this deduction. The learned AR further submitted that the learned CIT(A) had allowed exemption under sections 11 and 12 of the Act, but still denied the deduction of the donation claimed on the ground that no documentary evidence was provided. It was argued that the deduction for donation was never disputed earlier, and now asking for documents and verifying them amounts to going beyond the scope of assessment. Such an action of the lower authorities was not justified, and the deduction should be granted without asking for further evidence. Without prejudice to these submissions, the Id. AR stated that

the documentary evidence for donations is already available in the paper book, and requested the Tribunal to direct the Assessing Officer to verify the details and allow the deduction.

38. On the other hand, learned DR vehemently supported the finding of the lower authorities.

39. We have heard the rival contentions of both the parties and perused the materials available on record. It is undisputed fact that the learned CIT(A) has already accepted the eligibility of the assessee for exemption under sections 11 and 12 of the Act. Once such eligibility is accepted, the donation made for the objects of the trust constitutes application of income and is allowable. However, the only reason for denial by the learned CIT(A) is the alleged absence of documentary evidence during the appellate proceedings. However, the assessee has specifically stated that all relevant documents, including donation receipts and details of donees, are available in the paper book filed before us.

39.1 In our considered view, when the exemption under sections 11 and 12 is allowed, disallowance of donation merely for want of verification at the appellate stage is not sustainable, particularly when the assessee has produced the complete evidence. Further, we note that in the earlier years, such deduction was never questioned and there is no finding from the lower authorities to doubt the genuineness or the purpose of the donation. In addition to the above, it is also pertinent to note that the AO has disallowed the donation as the registration under

section 12AA of the Act was cancelled during the relevant time. As such, during the assessment stage no document was sought by the AO but the Id. CIT-A while granting the deduction has changed the basis of denial i.e. for want of documents. In our considered view, the Id. CIT-A cannot expand the scope of the assessment without issuing an enhancement notice which has not been in the present case. Hence, in these facts and circumstances, we deem it appropriate, to set-aside the order of the Id. CIT-A and direct the AO to delete the addition made by him. Accordingly, the ground raised by the assessee is hereby allowed.

40. In the result, the appeal of the assessee is hereby partly allowed.

Coming ITA No. 1559/Bang/2024, an appeal filed by the assessee for A.Y. 2017-18.

41. The assessee has raised extensive grounds of appeal running into several pages, hence for the sake of brevity, we are not inclined to reproduce the same.

42. The issue raised by the assessee through Ground No. 1 of its appeal is general in nature and does not require any separate adjudication. Hence, the same is hereby dismissed as infructuous.

43. The assessee through Ground No. 2 of its appeal challenged the validity of the search proceedings under section 132 of the Act and in

consequence challenged the validity of assessment under section 153A of the Act.

43.1 At the outset, we note that the issue raised by the assessee on merit of the case has been decided in its favour. Accordingly, we do not find any reason to adjudicate the impugned issue on hand. As such, we keep the issue open. Both the Id. AR and the DR did not raise any objection at the time of hearing, if the technical issue is kept open. Accordingly, the impugned ground of appeal of the assessee is dismissed as infructuous.

44. The assessee through Ground No. 3 of its appeal challenged the validity of the notice issued under section 153A of the Act as the same does not clearly mention whether issued for assessment or reassessment.

44.1 At the outset, we note that the issue raised by the assessee on merit of the case has been decided in its favour. Accordingly, we do not find any reason to adjudicate the impugned issue on hand. As such, we keep the issue open. Both the Id. AR and the DR did not raise any objection at the time of hearing, if the technical issue is kept open. Accordingly, the impugned ground of appeal of the assessee is dismissed as infructuous.

45. The assessee through Ground No. 4.1 of its appeal challenged the validity of the assessment order under section 153A of the Act on account of absence of incriminating material.

46. The relevant facts are that during the course of the search at the premises of the assessee an excel sheet was recovered from the computer operated by the cashier namely Shri Narayna Swami. Likewise, certain notepad or diary was also found from the premises of an alleged agent Shri T Babu in an independent search in case of third parties. Such note pad/ diary contains the information concerning the capitation fees received by the assessee. The AO based on these seized materials and statement of cashier, Shri Narayna Swami and agent Shri T Babu alleged that the assessee has received unaccounted capitation fee in cash from the students. The AO accordingly made addition of capitation fee for the year under consideration as well as disallowed the assessee's claim of exemption under section 11 of the Act.

47. The aggrieved assessee preferred an appeal before the learned CIT(A) and contended that there was no incriminating material found in relation to the year under consideration. Therefore, the proceedings under section 153A of the Act cannot be initiated for the year under consideration and assessment made in the absence of incriminating material being unearthed during the search is invalid and void ab-inito.

48. The contention raised by the assessee was dismissed by the learned CIT(A) by holding that incriminating material in the form of excel sheet evidencing receipt of capitation fee was found from the assessee's premises and the impugned material has been corroborated by the material found from third party Shri T Babu as well as from the

deposition made by the assessee's cashier and shri T babu under section 132(4) of the Act and 131(1) of the Act.

49. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

50. The learned AR before us argued that under section 153A of the Act, an assessment for any year can only be made if incriminating material for that year is found and seized during the search. If no such incriminating material exists for a particular year, then no assessment can be made for that year. In support of this, the Id. AR relied on several judicial precedents, including the decision of the Pune Tribunal in *Sinhgad Technical Education Society v. ACIT*, which was later upheld by the Hon'ble Bombay High Court and Hon'ble the Supreme Court. These rulings held that in the absence of incriminating materials relating to the relevant assessment year, the Assessing Officer (AO) cannot disturb settled and completed assessments. The learned AR also referred to judgments of the Hon'ble Karnataka High Court in the case of *CIT v. Lancy Constructions*, the Delhi High Court in *CIT v. Kabul Chawla*, and the Karnataka High Court in *PCIT v. Smt. Lakshmi Singh and Smt. Sunita Bai*, which reiterated the same principles.

50.1 The learned AR submitted that, in the present case, there was no incriminating material for AYs 2017–18 and 2018–19. The addition for AY 2017–18 was based only on extrapolation, and no addition was made for AY 2018–19. Hence, in absence of incriminating material, the assessments are bad in law and liable to be quashed.

51. On the contrary the learned DR argued that the assessee's claim of no incriminating material for the relevant assessment years is factually wrong. During the search, specific and detailed incriminating evidence were found. This included electronic records from the computer of the cashier at Sri Devaraj Urs Academy of Higher Education & Research. The seized excel sheets contained names of students, details of capitation fee collections, total fees, amounts received, balances, and reductions, which clearly showed unaccounted cash transactions outside the regular books of accounts. The names and fee amount mentioned in these sheets matched with the records of medical students enrolled in the institution run by the trust.

51.1 The learned DR further submitted that incriminating material was also found from the premises of agents involved in the admission process, confirming a systematic practice of collecting capitation fees and linking the unaccounted income directly to the trust. Statements recorded during the search, including that of the cashier Shri Narayanaswamy, confirmed that the data was entered on the instructions of senior trust officials. This corroborated the seized documents and proved their authenticity.

51.2 The learned DR pointed out that the seized materials related specifically to AY 2017–18 to AY 2020–21, covering details of PG medical admissions during this period. Hence, incriminating material for the years under consideration is clear and direct. The assessee's reliance on judicial precedents about the necessity of incriminating material for

completed assessments was misplaced because in this case the material is detailed, specific, and corroborated. Both the AO and Id. CIT(A) examined the facts in detail, recorded clear findings, and rightly upheld the additions. Therefore, the assessments framed under section 153A are valid and fully supported by law.

52. We have heard the rival contentions of both the parties and perused the materials available on record. The issue before us relates to the determination whether any incriminating material relatable to the year under consideration, i.e., AY 2017–18, was found during the search so as to justify an addition under section 153A of the Act in light of the ratio laid down by the Hon'ble Supreme Court in *PCIT v. Abhisar Buildwell Pvt. Ltd.* [2023] 149 taxmann.com 399 (SC). The Hon'ble Supreme Court has held that in respect of unabated/completed assessments, no addition can be made under section 153A of the Act unless incriminating materials pertaining to that assessment year is found during the search.

52.1 In the present case, the excel sheet recovered from the computer operated by the cashier, Shri Narayanaswamy, admittedly does not contain any dates. Consequently, it is not possible to correlate the entries in that excel sheet with the financial year relevant to AY 2017–18. The other materials relied upon by the Revenue, namely pages 25 to 39 of Annexure A/TB/03 seized from the premises of the agent Shri T. Babu, does contain dates; however, those dates fall within the financial year 2019–20, relevant to AY 2020–21, and not to the year under consideration. Further, in his statements recorded under sections 132(4)

and 131(1) of the Act, Shri T. Babu repeatedly stated that the entries pertain to FY 2019–20.

52.2 We also note that one of the students in respect of whom the AO made addition for AY 2017–18 does not even feature in the seized material. Moreover, the seized material has already been held by us, while adjudicating the assessee's appeal for AY 2020–21, to be a "dumb document" lacking corroboration, and the addition for that year based on such material has been deleted.

52.3 In view of these facts, we find that there is no direct or corroborative incriminating material found during the search which pertains to AY 2017–18. The additions made for this year are thus based on extrapolation and assumptions rather than on any seized material for the year. Applying the law laid down by the Hon'ble Supreme Court in *Abhisar Buildwell Pvt. Ltd.*, we hold that the assessment under section 153A for AY 2017–18, being a completed/unabated assessment on the date of search, could not have been disturbed in the absence of incriminating material for that year. Accordingly, the additions made are unsustainable in law and are directed to be deleted.

53. The issue raised by the assessee through Ground No. 4.2 of the appeal is that the assessment order is invalid as passed without proper approval under section 153D of the Act.

53.1 At the outset, we note that the issue raised by the assessee on merit of the case has been decided in its favour. Accordingly, we do not

find any reason to adjudicate the impugned issue on hand. As such, we keep the issue open. Both the Id. AR and the DR did not raise any objection at the time of hearing, if the technical issue is kept open. Accordingly, the impugned ground of appeal of the assessee is dismissed as infructuous.

54. The issue raised by the assessee through Ground No. 5.2 of its appeal is that conditions prescribed under section 65B of Indian Evidence Act were not complied with.

54.1 At the outset, we note that the impugned ground of appeal has not been pressed by the learned AR of the assessee. Hence, this ground of appeal is hereby dismissed as not pressed.

55. The next issue raised by the assessee through Ground Nos. 5.1 & 5.3 to 6.4 are interconnected and pertains to the addition of Rs. 67,37,500/- on account of capitation fee.

56. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2017-18 are identical to the issue raised by the assessee in ITA No. 1060/Bang/2024 for the assessment year 2020-21. Therefore, the findings given in ITA No. 1060/Bang/2024 shall also be applicable for the assessment year 2017-18. The appeal of the assessee for the A.Y. 2020-21 has been decided by us vide paragraph No. 14 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2020-21 shall also be applied for the assessment year 2017-18.

Hence, the ground of appeal filed by the assessee for A.Y. 2017-18 is hereby allowed.

57. The next issue raised by the assessee through Ground No. 7 of the appeal is that the learned CIT(A) erred in disallowing the payment of donation fee for Rs. 3,79,74,767/- only.

58. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2017-18 are identical to the issue raised by the assessee in ITA No. 1561/Bang/2024 for the assessment year 2019-20. Therefore, the findings given in ITA No. 1561/Bang/2024 shall also be applicable for the assessment year 2017-18. The appeal of the assessee for the A.Y. 2019-20 has been decided by us vide paragraph No. 39 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2019-20 shall also be applied for the assessment year 2017-18. Hence, the ground of appeal filed by the assessee for A.Y. 2017-18 is hereby allowed.

59. In the result, the appeal of the assessee is hereby partly allowed.

Coming to ITA No. 1560/Bang/2024, an appeal by the assessee for A.Y. 2018-19

60. The issue raised by the assessee through Ground No. 1 of its appeal is general in nature and does not require any separate adjudication. Hence, the same is hereby dismissed as infructuous.

61. The assessee through Ground No. 2 of its appeal challenged the validity of the search proceedings under section 132 of the Act and in consequence challenged the validity of assessment under section 153A of the Act.

61.1 At the outset, we note that the issue raised by the assessee on merit of the case has been decided in its favour. Accordingly, we do not find any reason to adjudicate the impugned issue on hand. As such, we keep the issue open. Both the Id. AR and the DR did not raise any objection at the time of hearing, if the technical issue is kept open. Accordingly, the impugned ground of appeal of the assessee is dismissed as infructuous.

62. The assessee through Ground No. 3 of its appeal challenged validity of notice issued under section 153A of the Act as the same does not clearly mentions whether issued for assessment or reassessment.

62.1 At the outset, we note that the issue raised by the assessee on merit of the case has been decided in its favour. Accordingly, we do not find any reason to adjudicate the impugned issue on hand. As such, we keep the issue open. Both the Id. AR and the DR did not raise any objection at the time of hearing, if the technical issue is kept open. Accordingly, the impugned ground of appeal of the assessee is dismissed as infructuous.

63. The assessee through Ground No. 4.1 of its appeal challenged the validity of the assessment order under section 153A of the Act on account of absence of incriminating material.

64. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2018-19 is identical to the issue raised by the assessee in ITA No. 1559/Bang/2024 for the assessment year 2017-18. Therefore, the findings given in ITA No. 1559/Bang/2024 shall also be applicable for the assessment year 2018-19. The ground of appeal of the assessee for the A.Y. 2017-18 has been decided by us vide paragraph No. 52 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2017-18 shall also be applied for the assessment year 2018-19. Hence, the ground of appeal filed by the assessee for A.Y. 2018-19 is hereby allowed.

65. The issue raised by the assessee through Ground No. 4.2 of the appeal is that the assessment order is invalid as passed without proper approval under section 153D of the Act.

65.1 At the outset, we note that the issue raised by the assessee on merit of the case has been decided in its favour. Accordingly, we do not find any reason to adjudicate the impugned issue on hand. As such, we keep the issue open. Both the Id. AR and the DR did not raise any objection at the time of hearing, if the technical issue is kept open. Accordingly, the impugned ground of appeal of the assessee is dismissed as infructuous.

66. The issue raised by the assessee through Ground No. 5.2 of its appeal is that condition prescribed under section 65B of Indian Evidence Act was not complied with.

66.1 At the outset, we note the impugned ground of appeal has not been pressed by the learned AR of the assessee. Hence, this ground of appeal is hereby dismissed as not pressed.

67. The next issue raised by the assessee through Ground Nos. 5.1 & 5.3 to 6.2 are interconnected and pertains to payment of donation being disallowed.

68. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2018-19 is identical to the issue raised by the assessee in ITA No. 1561/Bang/2024 for the assessment year 2019-20. Therefore, the findings given in ITA No. 1561/Bang/2024 shall also be applicable for the assessment year 2018-19. The ground of appeal of the assessee for the A.Y. 2019-20 has been decided by us vide paragraph No. 39 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2019-20 shall also be applied for the assessment year 2018-19. Hence, the ground of appeal filed by the assessee for A.Y. 2018-19 is hereby allowed.

69. In the result, the appeal of the assessee is hereby partly allowed.

70. In the combined results, all the appeals filed by the assessee are hereby partly allowed whereas all the appeals of Revenue are hereby dismissed.

Order pronounced in court on 8th day of September, 2025

Sd/-

(KESHAV DUBEY)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore,
Dated, 8th September, 2025

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore