

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "A", BANGALORE**

**Before Shri George George K, JM & Shri B.R.Baskaran, AM**

ITA No.2771/Bang/2017 : Asst.Year 2008-2009

ITA No.2772/Bang/2017 : Asst.Year 2009-2010

ITA No.2773/Bang/2017 : Asst.Year 2010-2011

ITA No.2774/Bang/2017 : Asst.Year 2011-2012

M/s.Sri Basaveshwar Veerashaiva Vidyavardhak Sangha Hungund Road Bagalkot - 587 101. <b>PAN : AAAAB2169A.</b>	v.	The Deputy Commissioner of Income-tax, Central Circle 2(2) Bangalore
(Appellant)		(Respondent)

ITA No.60/Bang/2018 : Asst.Year 2008-2009

ITA No.61/Bang/2018 : Asst.Year 2009-2010

ITA No.62/Bang/2018 : Asst.Year 2010-2011

ITA No.63/Bang/2018 : Asst.Year 2011-2012

The Deputy /Asst.Commissioner of Income-tax, Central Circle 2(2) Bangalore	v.	M/s.Sri Basaveshwar Veerashaiva Vidyavardhak Sangha,Hungund Road Bagalkot - 587 101.
(Appellant)		(Respondent)

Assessee by : Sri.Ramasubramaniam, CA  
Revenue by : Sri.Sumer Singh Meena, CIT (OSD)-DR

<b>Date of Hearing : 22.12.2021</b>	<b>Date of Pronouncement : 28.12.2021</b>
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**ORDER**

**Per George George K, JM:**

These cross appeals are directed against consolidated orders of the CIT(A), dated 18.02.2016. The relevant assessment years are 2008-2009 to 2011-2012. Common issues are raised in these appeals, hence, these appeals were heard together and are being disposed of by this consolidated order.

We shall first adjudicate the Revenue's appeals.

**Revenue's appeals (ITA No.60/Bang/2018 to ITA No.66/Bang/2018)**

2. Identical grounds are raised in all the assessment years, they read as follows:-

*“1. Based on the facts and circumstances of the case, whether ld.CIT(A) was correct in allowing exemption u/s 11 of the IT Act, 1961 especially when capitation fee was collected from the students over and above the fees prescribed.*

*2. Based on the facts and circumstances of the case, whether ld.CIT(A) was correct in allowing unexplained receipts / unnamed donation when incriminating documents against the assessee were found and seized and confirmed by the third parties.*

*3. Any other grounds which may be urged at the time of hearing.”*

3. The brief facts of the case are as follows:

For the assessment years 2008-2009 to 2011-2012, the assessments were completed by making additions of unexplained receipts and students advance fees. Later, two additions made by the Assessing Officer was deleted by him in orders passed u/s 154 of the I.T.Act on the basis that the assessee has recorded the same in its books of account and disclosed in the returns of income. However, the A.O. denied the benefit of exemption u/s 11 of the Act on the basis of incriminating material pertaining to assessment years 2012-2013 and 2013-2014 found during the course of search.

4. Aggrieved by the assessments completed for assessment years 2008-2009 to 2011-2012, the assessee filed these

appeals before the first appellate authority. The assessee raised various grounds, both on legal as well as on merits. The following are the issues raised by the assessee before the first appellate authority.

- (i) denial of natural justice;
- (ii) validity of search;
- (iii) denial of exemption u/s 11 of the Act;
- (iv) status – A.O. erred in completing the assessment order in the name of assessee as an AOP;
- (v) unexplained receipts / unnamed donations;
- (vi) students advance fees;
- (vii) depreciation.

5. The assessee during the course of hearing before the first appellate authority, did not press the issues raised in (v) to (vii) referred supra. The CIT(A) rejected the plea of the assessee insofar as sr.no.(i), (ii) and (iv). As regards the denial of exemption u/s 11 of the Act, the CIT(A) held in favour of the assessee. Also with regard to unexplained receipts / unnamed donations, the CIT(A) held that the same cannot be taxed as anonymous donations.

6. Aggrieved, the Revenue has filed these appeals before the Tribunal. The learned Departmental Representative strongly relied on the assessment orders and the grounds raised.

7. The learned AR, on the other hand, has filed a paper book enclosing the statement of total income and consolidated financial statements for the relevant assessment years, brief

written submission, the case laws relied on, etc. The learned AR reiterated the submissions made before the Income Tax Authorities.

8. We have heard rival submissions and perused the material on record. For the relevant assessment years, the assessments were completed by making addition of unexplained receipts and students advance fees. Later, two additions made by the Assessing Officer were deleted by him in orders passed u/s 154 of the Act on the basis that the assessee has recorded the same in its books of account and disclosed in the return of income. However, the A.O. denied the benefit of exemption u/s 11 of the Act on the basis of material unearthed, which was pertaining to assessment years 2012-2013 and 2013-2014. The observation of the A.O. to deny the benefit of exemption, reads as follows:-

*“By virtue of collection of capitation fees (illegal activity), not accounting large portions of the same in the books of account, not utilizing the capitation fees collected for the objects of the trust and by allowing the persons referred to u/s 13(3) to misappropriate the same, the activities of the trust are not charitable as per Section 2(15) of the Income Tax Act. Hence, the assessee is not entitled to claim the exemption u/s 11(1) of the income Tax Act, 1961 and is accordingly denied the same for A.Y. 2008-09, 2009-10, 2011-12, 2012-13, 2013-14, 2014-15.” (Refer para 7(d) at page 52 of the assessment order for A.Y. 2008-2009)*

8.1 None of the documents referred for denying the exemption u/s 11 of the Act pertains to assessment years 2008-2009 to 2011-2012. The Hon'ble Karnataka High Court in the case of IBC Knowledge Park Private Limited v. CIT reported in 385 ITR 346 had held that unless in the material

seized during the course of search show undisclosed income and are incriminating in nature, jurisdiction u/s 153C of the Act cannot be assumed. The ratio of the above decision would apply to section 153A of the Act also. The latest judgment of the Hon'ble jurisdictional High Court in the case of Pr.CIT v. M/s.Delhi International Airport Pvt. Ltd. in ITA No.322/2018 & Ors. (judgment dated 29<sup>th</sup> September, 2021) also followed the judgment of the Hon'ble Karnataka High Court in the case of IBC Knowledge Park Pvt. Ltd. v. CIT (supra). The relevant finding of the Hon'ble jurisdictional High Court in the case of Pr.CIT v. M/s.Delhi International Airport Pvt. Ltd. (supra), reads as follow:-

*“30. Thus, it is clear that the Assessing Officer while passing the order under Section 153A read with Section 143(3) of the Act, ordinarily cannot disturb the assessment / reassessment order which has attained finality, unless the materials gathered in the course of the proceedings establishes that the finalized assessments are contrary to the material unearthed during the course of 153A proceedings, as held by the Co-ordinate Bench of this Court in the case of IBC Knowledge Park (P) Ltd. supra. A concluded assessment could not be disturbed without there being any basis for doing so which is impermissible in law. Even in case of a searched person, the same reason would hold good.....”*

8.2 The judgment of the Hon'ble Delhi High Court in the case of CIT v. Kabul Chawla reported in (2016) 380 ITR 573 (Delhi) had summarized the legal position as regards assessment u/s 153A of the Act, as follows:-

*“37. On a conspectus of Section. 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*

*i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily*

*issued to the person searched requiring him to file returns for six A Ys immediately preceding the previous year relevant to the A Y in which the search. takes place.*

*ii. Assessments and reassessments pending on the date of the search shall abate The total income for such AYs will have to be computed by the AOs as afresh exercise.*

*iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the total income of the aforementioned six years In separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs in which both the disclosed and the undisclosed income would be brought to tax".*

*iv. Although. Section. 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information. available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*

*v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*

*vi. Insofar as pending assessments are concerned the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each A Y on the basis of the findings of the search and any ether material existing or brought on the record of the AD.*

*vi. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."*

8.3 The Hon'ble jurisdictional High Court in the case of Pr.CIT v. M/s.Delhi International Airport Pvt. Ltd. (supra) had also referred to the judgment of the Hon'ble Delhi High Court in the case of CIT v. Kabul Chawla (supra) (Refer para 20 of the Karnataka High Court judgment). From the above judicial pronouncements, cited supra, it is clear that the assessments which are not pending and hence does not abate, the addition can be made only on the basis of incriminating material found during the course of search. The details of the assessments, which are already completed and the date of expiry to issue of notice u/s 143(2) of the Act for the assessment years 2008-2009 to 2011-2012 are as follows:-

Assessment Year	Assessment order u/s 143(3) dated	Date of expiry to issue of notice u/s 143(2)	Page ref. to paper book-1
2008-2009	21.12.2010	---	27-28
2009-2010	---	30.09.2010	---
2010-2011	03.07.2012	---	29-30
2011-2012	25.02.2013	---	31-33
2012-2013		30.09.2013 (return filed on 28.03.2013)	

8.4 As mentioned earlier, perusal of the assessment orders for assessment years 2008-2009 to 2011-2012 would show that none of the material seized would relate to the assessment years concerned. The assessment orders for the relevant assessment years were already completed or the date for issuance of notice u/s 143(2) of the Act had already been expired. Therefore, in such circumstances, the assessments for the assessment years 2008-2009 to 2011-2012 are unabated / concluded assessments and necessarily incriminating material are necessary for disturbing the

already completed assessments. In the light of the above said reasoning and the judicial pronouncements, cited supra, since there is no incriminating material found during the search for the relevant assessment years, we hold that the CIT(A) was justified in directing the A.O. to grant the benefit of exemption u/s 11 of the I.T.Act. It is ordered accordingly.

**Assessee's appeals (ITA No.2771/Bang/2017 to ITA No.2772/Bang/2017)**

9. In assessee's appeals, the grounds raised relate to issue of validity of search, validity of assessment, status, denial of natural justice etc. The learned AR did not press these grounds, hence, the appeals filed by the assessee are dismissed.

10. In the result, the appeal filed by the Revenue as well as assessee are dismissed.

Order pronounced on this 28<sup>th</sup> day of December, 2021.

**Sd/-**  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 28<sup>th</sup> December, 2021.

Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-II, Bangalore
4. The Pr.CIT (Central), Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore