

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.1427 to 1429/Bang/2019
Assessment Years : 2012-13 to 2014-15

DCIT (Exemptions), Circle – 1, Bengaluru.	Vs.	M/s. Kammavari Sangham, No.215/9, Mount Extension Hanumantha Nagar, Bengaluru-560 019. <b>PAN : AAATK 2287 R</b>
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. Mudavathu Harish Chandra Naik, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	23.03.2022
Date of Pronouncement	:	29.03.2022

**ORDER**

***Per N V Vasudevan, Vice President***

These are three appeals filed by the Revenue against three orders all dated 28.03.2019 passed by the CIT(A)-11, relating to Assessment Years 2012-13, 2013-14 and 2014-15.

2. The grounds of appeal raised by the Revenue in all these appeals are identical and reads as follows:

- 1. The CIT(A) is opposed to facts and circumstances of the case.*
- 2. Whether in the facts and circumstances of the case, the CIT(A) is right in holding that the assessee is eligible for*

*exemption u/s 11 and 12 of the I.T. Act, 1961, though the assessee trust has collected more than the fee declared or notified in respect of NRI/NRI sponsored and others quota i.e., Management quota in the garb of voluntary contributions/corpus fund and this fact of collecting more than the fee notified has been proved without any dispute in as much as the assessee itself furnishing the details?*

3. *Whether in the facts and circumstances of the case, the CIT(A) is right in law in holding that the assessee is eligible for exemption u/s 11 and 12 of the I.T. Act, 1961, since there is no element of charity in the assessee's activity and there is an unwritten direction from the society that a certain amount is mandatorily payable for the purpose of securing admission in the educational institutions run by the Society, thereby flouting the rules laid down by "Karnataka Educational Institutions prohibition of capitation fee Act, 1984" against collection of capitation fee by educational institutions.*
  4. *Whether in the facts and circumstances of the case, the CIT(A) is right in law in holding that the assessee is eligible for exemption u/s 11 and 12 of the I.T. Act, 1961, when in a decision by the Hon'ble Uttarakhand High Court in the case of Queen's Education Society reported in 177 Taxman 326, it was held that if systematic profits are being earned, then the purpose may not be held as charitable and exemption u/s 11 is not permissible. Though the above ratio has been laid down by the Hon'ble High Court while dealing with the provisions of Sec.10(23C)(iiiad) but such ratio is squarely applicable even in this case as the assessee is involved in collection of capitation fee in the guise of 'Voluntary Contributions'.*
  5. *The appellant craves leave to add, alter or amend all or any of the grounds of Appeal before or at the time of the hearing of the appeal.*
3. The sum and substance of the aforesaid grounds of appeal is that the CIT(A) erred in holding that the assessee is eligible for exemption under

section 11 and 12 of the Income Tax Act, 1961 (hereinafter called 'the Act').

4. The facts and circumstances giving rise to these appeals are that the assessee is a society registered under the Karnataka Societies Registration Act. The assessee runs educational institutions and hospitals. The assessee maintains separate books of accounts for educational institutions like KS Institute of Technology, KS Polytechnic, KS Group of Institutions, KS Hospitals. The Head Office Kammavari Sangham also maintains separate books of accounts. The income of each of the institution is also arrived at by the assessee besides a consolidated income and expenditure account.

5. The trust has been granted registration u/s 12A by the CIT, Karnataka-II, Bangalore vide No. Accts/718/10A/Vol/A-II/K-499 vide order dated 09.10.1990. This - registration was cancelled by the DIT(E), Bangalore vide order in No. DIT(E) / Sangham/ AA.AT.K1281R/ ITO (E-1) /2011-12 dated 23.12.2011. Later the hon'ble ITAT has revoked the cancellation of registration u/s 12A and the registration has been once again granted by the DIT(Exemptions), Bangalore vide order in DIT(E)BLR/ 12AA./230/AAAK2287R/ITO(E) -1/ Vol. 2011-12 dated 23.10.2013.

6. The objects of the trust are:

- a) *To establish student hostels, SishtiVihai.as secondary schools, industrial Training institutions and hospitals with a view to educate and encourage the member of the Kamma Community, who are backward and to run in the institutions on: progressive lines besides offering help to the mennbers of other backward communities.*
- b) *To help the deserving students by means of scholarships, free education an prized so as to encourages them in their educational pursuits and sports activities.*

- c) *To bring to the notice of Governments and other interested bodies the difficulties and problems of the community and to take effective steps to redress the same.*
- d) *To work for the dissemination of knowledge in the community through the of Reading rooms, libraries and purchases of useful books and magazines besides collecting literature relating to the community to help enhance knowledge relating to the community and where found necessary to publish in other languages and distribute the same and by felicitating the eminent and other brilliant scholars in the community.*
- e) *To collect funds exclusively from the members of the community by way of donations and to receive and dispose of moveable and immoveable properties as per rules and byelaws so as to achieve the aims objects of the Sangha to further the welfare of the members. To receive from non- members without any territorial limits prosperities moveable or immovable for the purpose of protecting the interest of the community.*
- f) *To undertake construction, renovation/extention under the auspices of the Sangha, Temples dharmachatrs, Kalyana Mandirs and to utilize the income there for the purposes of the said objectives of the Sangha.*
- g) *To implement any other decisions of the General Body of the Sangha aimed at the general welfare of the community.*

7. In the course of assessment proceedings, the AO noticed in Assessment Year 2012-13 that a sum of Rs.77,20,060/- was shown by the assessee as voluntary contribution. The assessee explained that voluntary contributions are received from some community persons and also at times from others without any compulsion or pressure. These contributions are made from persons with philanthropic ideology and donate voluntarily till the progress achieved by the institution. The AO however came to the conclusion that the voluntary contribution has a nexus with the admission of candidates in a particular year. The AO was of the view that in each succeeding years, there has been similar contributions and these are nothing but contributions in connection with the admission of the ward on being

demand by the assessee. The AO has observed in the Order of Assessment that the donations were not voluntary and the one given out of free will and there was a quid-pro-quo. He held that there was a suggestion and unwritten direction from the assessee and the voluntary donations were mandatorily payable for the purpose of securing admission in the educational institutions run by the assessee. The AO thereafter concluded that the voluntary donations were nothing but capitation fee collected under the guise of voluntary contributions which is opposed to the public policy. The AO thereafter concluded that the amount so paid was capitation fee and such capitation fee collected by the assessee was contrary to the Karnataka Educational Institution Prohibition of Capitation Fee Act, 1984 and thus the surplus generated on account of charging higher fee/voluntary contribution would mean that the means adopted by the assessee to achieve the object should not defeat the object itself. Therefore, the learned A.O. concluded that it was conclusively proved that the assessee had acted against the objects and therefore, the application of the surplus generated by violating the object could not be construed as having applied towards the objects of the trust.

8. The AO thereafter denied the benefit of deduction under section 11 to the assessee by holding that the assessee cannot be regarded as existing for charitable purposes under section 2(15) of the Act. The AO also made a reference to the decision of the Uttarakhand High Court in the case of Queen's Education Society, 177 Taxman 326 wherein it was held that if systematic profits are being earned, then the purpose may not be held as charitable and exemption under section 11 may not be permissible. The

AO thereafter computed the total income of the assessee for Assessment Year 2012-13 as follows:

Gross Income of the Trust	Rs.21,01,48,024
Expenditure	Rs.15,64,47,074
Net Income	Rs. 5,37,00,000

9. For identical reasons, similar Assessment Orders were passed for Assessment Years 2013-14 and 2014-15.

10. Before CIT(A), the assessee submitted that there was no enquiry made by the AO and the inference drawn by AO that voluntary contributions were nothing but contributions given for admission of children by their parents is purely on suspicion, surmise and assumptions. The assessee submitted that it was providing education which by itself is a charitable activity and it is not requirement of law that education must be provided at a subsidized rate or free of cost to be called a charitable activity. It was pointed out that there was no allegation that the assessee did not pursue the objects of the trust or it did not apply the surplus towards objects of the trust. It was pointed out that the Hon'ble High Court of Karnataka in the case of Children's Education Society for the assessment year 2006-07 reported in 358 ITR 373 has taken the view that the application of surplus for educational purposes would be sufficient to conclude that the educational institution exist solely for educational, purposes. Thus, the ratio of the said decision in the case of the Hon'ble Uttarkhand High Court in the case of Queens Educational Society [supra] is no longer a binding precedent applicable in deciding the issue in the case of the assessee.

11. It was also pointed out that on the allegation of assessee having received capitation fees and violated the Karnataka Education Prohibition of Capitation Act, 1984, the assessee pointed out that the competent authority under the said Act has not found that the assessee is collecting capitation fee from the students and consequently has not derecognized the assessee from running educational institution. It was submitted that the AO was therefore not justified in concluding that the assessee received capitation fees. It was pointed out that there was no violation of the provisions of section 13(1)(c) of the Act and in the circumstances, the benefit of section 11 could not have been denied to the assessee.

12. The CIT(A), on consideration of the aforesaid submissions held that the Authority concerned, who executes the law relating "Karnataka Education Prohibition of Capitation Fee Act, 1984" has not noticed or found out that the Institution is collecting capitation fee from students and consequently not de-recognised the institution from running educational institutions. Thus, on the prima facie presumption by A.O, that the assessee is violating some law cannot be reason for denying the benefit otherwise allowable to the assessee. As long as the assessee has been spending the revenue to the set purpose of the Institution, without there being any infringement in terms of Section 13(1)(c) the Act, the AO cannot negate the claim of the assessee on the reason of violation of the provisions of some other Act. The CIT(A) held that the A.O has not established that the funds collected by institution have been utilised for other than the set aims and objects of the trust or the funds were unduly mis-utilized for the benefit of any member or trustee of the society in order to deny the benefit of exemption as provided by the provisions of Income Tax Act. The AO was therefore directed that the benefit of exemption under section 11 be allowed to the assessee.

13. Aggrieved by the order of the AO, the Revenue has filed the present appeals before the Tribunal.

14. We have heard the rival submissions. Learned DR placed reliance on the order of the AO. Learned Counsel for the assessee while reiterating submissions made before the CIT(A) relied on the order of the CIT(A).

15. We have carefully considered the rival submissions. We find that the AO on noticing that the assessee was in receipt of voluntary contributions came to the conclusion that the voluntary contributions were received only from students and were admitted in the assessee's educational institutions. According to the AO, the contributions were not given out of free will and was a quid-pro-quo for admission of students in the assessee's educational institutions. There is no material whatsoever for this conclusion drawn by the AO. On the other hand, the AO has proceeded purely on the basis that there was a suggestion and unwritten direction from the assessee for contributions to be made mandatorily for the purpose of securing admission in the assessee's educational institutions. The AO, thereafter, concluded that voluntary contributions are nothing but a capitation fee. It is seen that the assessee enjoys registration under section 12A of the Act and except for the compliant of the AO that the assessee received voluntary contribution, there has been no other charge in so far as allowing exemption under section 11 is concerned. The receipt of so called capitation fees has been interpreted by the AO as an act which will go against the definition of charitable purpose under section 2(15) of the Act. In this regard, the CIT(A) has rightly observed that the conclusions of the AO are without any material and that the receipt of capitation fees has not been established nor were there any proceedings against the assessee under the Karnataka Educational Institutions (Prohibition of Capitation Fees) Act,



1984. In the given circumstances of the case, we are of the view that the conclusions drawn by the CIT(A) that the assessee cannot be denied the benefit under section 11 of the Act cannot be said to be erroneous and we concur with the said findings.

14. With regard to the decision of the Hon'ble Uttarakhand High Court in the case of Queen's Educational Society (supra), we find that the said decision has since been reversed by the Hon'ble Supreme Court, the decision reported in 377 ITR 699. Apart from the above, we find that the Hon'ble Karnataka High Court in the case of Children's Educational Society (supra) has held that application of surplus for educational purpose is sufficient to conclude that an educational institution is just solely for educational purpose. In the given facts and circumstances of the case, we find no merits in these appeals by the Revenue and consequently these appeals deserve to be dismissed and are hereby dismissed.

15. In the result, the appeals are dismissed.

*Pronounced in the open court on the date mentioned on the caption page.*

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

Sd/-  
**(N.V. VASUDEVAN)**  
**Vice President**

Bangalore,  
Dated: 29.03.2022.  
/NS/\*

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.