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

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA Nos.1492 & 1493/Bang/2010
(Assessment years: 2006-07 & 2007-08)

M/s. Marimallappa's Charities,
Narayanashastri Road,
Mysore. … Appellant
PA No.AAATNM 6787 G

Vs.

Asst. Commissioner of Income-tax,
Range-I, Mysore. … Respondent

AND

ITA No.675/Bang/2014
(Assessment year: 2010-11)

Deputy Commissioner of Income-tax,
Circle 1(1),
Mysore. … Appellant

Vs.

M/s. Marimallappa's Charities,
Range-I, Mysore. … Respondent

Assessee by : Shri Veerabhadraiah, Advocate.
Revenue by : S/Shri Pramod Kumar Singh, CIT(DR), P.Chandrashekar, CIT(DR) & Dr. P.K.Srihari, Addl.CIT(DR)

Date of hearing : 17/05/2016
Date of pronouncement : 24/06/2016

O R D E R

Per INTURI RAMA RAO, AM :

The appeals bearing ITA Nos.1492 & 1493/Bang/2010 are filed by the assessee and are directed against the common order of the ld.CIT(A), Mysore, dated 25/10/2010 for the assessment year 2006-07 and 2007-08. Appeal bearing ITA No.675/Bang/2014 is filed by the revenue directed against the order of the ld.CIT(A), Mysore, dated 12/08/2013 for the assessment year 2010-11.

2. Since in all these appeals, common issues are involved, we proceed to dispose of the same vide this common order for the sake of convenience.

3. Briefly facts of the case are as under: The assessee is a society registered under the provisions of the Societies Registration Act of Karnataka. It is formed for the purpose of running several educational institutions in the Mysore City. It was duly registered under the provisions of sec.12A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short]. Return of income for the assessment year 2006-07 and 2007-08 were filed disclosing 'nil' income after claiming exemption u/s 11(1)(a) and 11(1)(d) of the Act.

Survey operations under the provisions of sec.133A of the Act were conducted on 17/05/2007. It was found by the Assessing Officer (AO) during the course of survey proceedings that certain books and documents relating to receipt of money alleged to be capitation fee/donation collected by the assessee-society from the students who got admission into school and colleges. Such amount was disclosed in the return of income as voluntary donations and claimed exempt u/s 11 of the Act. The AO had examined on oath the honorary secretary of the trust on this issue who admitted that the assessee-society had been collecting amount over and above the fees prescribed by the Government. He admitted that no receipts were issued in respect of such donations or capitation fee, but however accounted the same in the books of account as voluntary contributions. Based on this information, the AO had inferred that the assessee-society has been collecting capitation fee as *quid pro quo* for giving admissions to the students and the assessee-society was called upon as to why this amount cannot be brought to tax under the head 'income from other sources'. The assessee-society stated that the donations are exempt u/s 11 & 12 of the Act. The said submission of the assessee-society was rejected by the AO holding that the fees received by the assessee-society are not voluntary contributions. The AO also relied upon the decision of the Apex Court in the case of *Islamic Academy of Education vs. State of Karnataka* (2003)(6 SCC 697) wherein the Hon'ble Supreme Court had heavily deprecated the practice of collecting capitation fee from students and held that education was not a saleable commodity and the collection of capitation fee is contrary to the constitutional framework of India. The Hon'ble Supreme Court categorically held that collection of any such fee by the educational institution cannot be recognized as a charitable activity within the meaning of sec.2(15) of the Act. Respectfully following the decision of the Hon'ble Supreme Court, the AO brought to tax the amount collected over and above fees prescribed by the Government as capitation fee under the head 'income from other sources'. Accordingly, for the assessment year 2006-07 an amount of Rs.83,73,000/-, for the assessment year 2007-08, an amount Rs.1,18,10,485/- and for the assessment year 2010-11 an amount of Rs.87,03,560/- was brought to tax.

4. Being aggrieved, the assessee-society filed an appeal before the CIT(A). The assessee-society contended that donations collected are in the nature of voluntary contributions and therefore, exempt from tax by the provisions of section 11(1)(a) of the Act. The CIT(A) held that donations collected are in the nature of capitation fee as it was found by the CIT(A) that excess money collected in the form of donations or capitation fee was directly linked to admission given under the management quota. The CIT(A) relied upon the decision of the ITAT, Hyderabad Bench in the case of *Vodithala Education Society vs. ADIT(Exemption*) in ITA No.1138/H/2006 dated 31/10/2007 and held that the said income is not exempt from tax u/s 11(1) of the Act. He accordingly, upheld the assessment done by the AO for the assessment years 2006-07 and 2007-08. However, for the assessment year 2010-11, the CIT(A) relied on the decision of the jurisdictional High Court in the case of

DIT(Exemptions) vs. Sri Bellimatha Mahasamsthana Socio Cultural and Educational Trust (336 ITR 694) held that even though the amount was collected as donation, since it was applied for charitable purpose, the same is exempt from tax.

5. Against this background, the assessee-trust is in appeal before us in ITA Nos.1492 & 1493/Bang/2010 for assessment years 2006-07 and 2007-08 and the revenue is in appeal before us in ITA no.675/Bang/2014 for assessment year 2010-11.

6. Before us, learned counsel for the assessee submitted that voluntary contributions are exempt u/s 11(1) of the Act. He also submitted that the judgment of the Hon'ble Supreme Court in the case of *Islamic Academy of Education* (supra) and *TMA Pai Foundation vs. State of Karnataka* (8 SCC 481) are not applicable to the facts of the case. He further submitted that the assessee-trust neither demanded any donations from parents of the students, nor there any direct nexus can be established with the amount of donation received with the admission. The entire amount has been offered to income-tax as voluntary contribution and therefore, is clearly exempt from tax and in support of this he relied on the decision of the Hon'ble Punjab & Haryana High Court in the case of *Dy.CIT vs. Sulab International Social Service Organization* (350 ITR 189). He also relied on the decisions of the jurisdictional High Court in the case of *CIT vs. CMR Janadhara Trust* in ITA No.73 of 2009 dated

20/01/2015 and *CIT vs. Bharatiya Samskriti Vidyapith Trust* in ITA No.278 of 2007 dated 13/11/2013 and the decisions of the co-ordinate bench of Tribunal in the cases of *ACIT vs. JSS Mahavidyapeetha* in ITA No.735/Bang/2012 dated 19/04/2013. and *Sree Adichunchanagiri Shikshana Trust vs. Add.CIT* in ITA Nos.1258 & 1259/Bang/2008 dated 31/12/2008.

7. On the other hand, learned Departmental Representative vehemently argued that in terms of provisions of Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 any amount collected over and above fees prescribed by the Government amounts to capitation fee. Collection of capitation fee has been held to be against public policy and the Constitution of India. Therefore, learned Departmental Representative prayed that amount collected in form of capitation fee, even though accounted in the books of account, cannot be exempted u/s 11(1) in as much as they are not voluntary contributions and *quid pro quo* is clearly established by the AO.

8. We heard rival submissions and perused material on record. The only issue in the present appeal is whether the amount collected by the management of the society over and above the prescribed fees charged by the Government is in the nature of capitation fees or voluntary contribution. It is undisputed fact that the assessee has been collecting amounts

over and above the fee prescribed by the Government. The contention of the assessee is that such amount is nothing but voluntary contribution by the donors whereas the AO had categorically given a finding that there was clear nexus between funds collected and admission of students under management quota. This finding could not be controverted by the assessee-society either before the lower authorities or before us. In terms of the provisions of Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 any amount collected over and above the prescribed fee is in the nature of capitation fee. The Hon'ble Supreme Court had heavily deprecated the practice of collecting capitation fee from students in the case of *Islamic Academy of Education* (supra) as follows:

> "*Collection of capitation fee is contrary to the constitutional scheme and prohibited by State enactment. Moreover, education was used as an apparatus/mode to collect capitation fee. In other words, exorbitant money was collected illegally in the guise of running the educational institution. When the assessee used the charitable activity/educational institution as an apparatus for selling the education, in our opinion, the element of charity no longer remains in the activity of the assessee. In other words, when the assessee sells the seat of the professional course and collects capitation fee, the activity of the assessee cannot remain a charitable activity, within the meaning of sec.2(15) of the Income tax Act. Education would remain as a charity only in a case where the education was imparted systematically in a fee prescribed by the Government. In our opinion, it is not intention of the Parliament to recognize any body/society or institution as a charitable institution where 'education' was a saleable commodity. In the case on hand, the material found during the course of survey operation clearly established the collection of money over and above the fee*

> *prescribed by Government for admission of a student. Therefore, it is a clear case of sale of education by the assessee-society. In our opinions such, the assessee cannot be considered as a charitable institution under section 2(15) of the Income-tax Act. Therefore, the assessee is not eligible for exemption under section 11 of the Income-tax Act."*

In terms of above law, amount collected by the assessee-society is in the nature of capitation fee and it is not a voluntary contribution. Even in terms of the judgment of the Hon'ble Supreme Court in the case of *Safdarjung Enclave Educational Society vs. MCD,* AIR 1992 (SC 1456) any donation made in order to gain advantage or benefit cannot be called a voluntary contribution. The Hon'ble Supreme Court held as follows:

> *"Where a person gives money to another without material returns, he donates that sum. An act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another, without any consideration, is a donation. A gift or gratuitous payment is in simple English a donation. We do not require lexicographic learning or precedential erudition to understand the meaning of what many people do every day, viz., giving donation to some fund or other, or to some person or other."*

Furthermore, assessee-society had not led any evidence on record in support of the proposition that contributions are voluntary and made forming part of corpus of the society. No piece of evidence was produced against the finding of the AO that no record of receipt of donations as to the names and address of the donors and no receipt were issued for donations collected. This finding of the AO remains uncontroverted. Even before us, the assessee-society made no efforts to prove that the contributions are voluntary in nature. Therefore, the provisions of sec.12 are not applicable which lay down that any voluntary contributions received by trust wholly for charitable purpose shall, for the purpose of section 11 shall be deemed to be income derived from property held under trust which is exempt from tax under the provisions of sec.11(1)(a) of the Act. For better appreciation of the provisions of law, the relevant provisions of sections 11(1)(a) and 12 are extracted below:

> **"Income from property held for charitable or religious purposes.**
>
> **11.** (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the incomeð
>
> (*a*) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart[27] is not in excess of fifteen per cent of the income from such property;
>
> ……………………………….."

> **"Income of trusts or institutions from contributions.**
>
> **12.** (1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or

religious purposes and the provisions of that section and section 13 shall apply accordingly. "

Therefore, having held that amount received over and above the prescribed fee by the Government is in the nature of capitation fee which is not voluntary in nature, the income so received is not exempt u/s 11(1)(a) or any of the provisions of the Act in the hands of the receiving trust. In the case-laws relied on by the learned counsel for assessee, the issue before their Lordship was whether development fund collected and utilized for charitable purpose is exempt from tax or not u/s 11(1)(a) of the Act, whereas in the present case, the issue is whether capitation fee collected which is not a voluntary contribution as envisaged under the provisions of sub-section (1) of sec.12 is exempt u/s 11 of the Act. Therefore, the ratio laid down by the jurisdictional High Court in the cases of *CMR Janadhara Trust* (supra) *Bharatiya Samskriti Vidyapith Trust* (supra) and the decisions of the co-ordinate bench of Tribunal in the cases of *ACIT vs. JSS Mahavidyapeetha* in ITA No.735/Bang/2012 dated 19/04/2013. and *Sree Adichunchanagiri Shikshana Trust vs. Add.CIT* in ITA Nos.1258 & 1259/Bang/2008 dated 31/12/2008 is not applicable to facts of present case. The Hon'ble jurisdictional High Court in the case of *Sri Bellimatha Mahasamsthana Socio Cultural and Educational Trust* (supra) held that in absence of evidence that donations were received for consideration of allotment of seats in an educational institution, the donations are held to be voluntary contributions which ar exempt under sec.11(1)(a) of the Act whereas in the present case, as we have held that donations are not voluntary contributions, the ratio laid down in that case is also not applicable to the facts of the present case. The decision of the Hon'ble jurisdictional High Court in the case of *Director of Income-tax vs. Garden City Educational Trust* (330 ITR 480) relied on by the CIT(A) for the assessment year 2010-11 is not at all applicable to the facts of the present case as that case relates to grant of registration u/s 12A of the IT Act. Further, the ld.CIT(A) failed to recognize the distinction between voluntary contribution as envisaged in sec.12 and involuntary contribution like receipt of capitation fees. Thus, the CIT(A) clearly fell in error in allowing the appeal for the assessment year 2010-11 following the decision of the jurisdictional High Court in the cases of *Sri Bellimatha Mahasamsthana Socio Cultural and Educational Trust* (supra) and *Garden City Educational Trust* (supra). Further, the co-ordinate bench of Tribunal in ITA Nos.206 & 207/Bang/2014 dated 17/06/2016 in the case of *Deputy Director of Income Tax (Exemptions), vs. M/s. Kammavari Sangham* (to which one of us viz. Accountant Member is a party) held in identical facts as follows:

> *"18. From a careful perusal of the orders of the lower authorities and details of receipt of donation/voluntary contribution, we find that these donations/voluntary contributions were received over and above the tuition fees. There is no iota of evidence produced by the assessee to support that these donations were towards the corpus. Had it been a case*

of donation towards corpus, there should be a specific narration on the donation receipts that this contribution was made towards the corpus. Moreover in Karnataka receipt of donation/capitation fee is strictly prohibited by the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984. Through this legislation, the Govt. of Karnataka has prohibited the receipt of capitation fees by defining that "capitation fee" means any amount by whatever name called, paid or collected directly or indirectly in excess of the fee prescribed u/s.5, but does not include the deposit specified under the proviso to Sec.3. Undisputedly, the assessee has received these voluntary contributions/donations over and above the tuition fees. Now the onus is upon the assessee to demonstrate that the voluntary contributions/donations falls within the proviso to section 3 of the Act, but no evidence is placed on record that proviso to section 3 would apply in the case of assessee. Where the definition of "capitation fee" has been given in the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, no other definition of "capitation fee" can be adopted, as the word "capitation fee" has not been defined in the Income-tax Act. The Revenue has also established that donation/voluntary contribution was collected from the parents of the students admitted during the year and more so the parents were not financially sound to part with substantial amount of donation in Lakhs to the educational institution. Therefore, we are of the view that the receipts of the assessee from the parents of students is nothing but capitation fees and once capitation fee is charged for admission of the students by the educational institution, the educational institution can be held that it is not engaged in charitable activities, but selling the education in the light of the judgment of the Hon'ble Supreme Court in the case of Ms. Mohini Jain v. State of Karnataka & Ors. (1992) 3 SCC 666 wherein the Hon'ble Supreme Court has held that capitation fees was nothing but price of selling education and such "teaching shops" were contrary to the Constitutional scheme and abhorrent to our Indian culture. We have also carefully examined the judgments referred to by the parties and in the case of P.S. Govindaswamy Naidu & Sons v. ACIT, 324 ITR 44 (Mad), the Hon'ble Madras High Court has held that where it was found that amount paid by parents of students admitted to assessee's educational institution was not corpus donation amount, but it was collected *only by way of capitation fees, such capitation fees was not exempt in the hands of assessee institution. "*

In the result, the appeals filed by the assessee for assessment years 2006-07 and 2007-08 are dismissed and the appeal by the revenue for assessment year 2010-11 is allowed.

Order pronounced in the open court on this 24th June, 2016

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Place : Bangalore
D a t e d : 24/06/2016

srinivasulu, sps

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By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore