आयकर अपीलीय अधिकरण, पुणे **न्यायपीठ "बी"** पुणे **में**

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

श्री आर. के. पांडा, लेखा सदस्य

एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI R.K. PANDA, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1480/PN/2014

निर्धारण वर्ष / Assessment Year : 2008-09

Deccan Education Society,
Fergussion College Campus,
Pune- 411004
PAN No.AAATD3141P ……. अपीलार्थी / Appellant

Vs.

Addl.CIT, Range-1, Pune ……. प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Sunil Pathak
प्रत्यर्थी की ओर से / Department by : Shri A.K. Modi

सुनवाई की तारीख / Date of Hearing : 13.04.2015		घोषणा की तारीख / Date of Pronouncement: 13.07.2015

आदेश / ORDER

PER R.K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 28-02-2014 of the CIT(A)-I, Pune relating to Assessment Year 2008-09.

2. Facts of the case, in brief, are that the assessee is a trust which was set up in the year 1984 and is not registered u/s.12A of the Income-tax Act. It availed exemption u/s.10(22) upto A.Y. 1989-99

and thereafter u/s.10(23C)(iiiab). It has also been granted approval u/s.80G of the Income-tax Act for the purpose of deduction under the section to the donors of the assessee. The assessee trust filed its return of income for the impugned assessment year on 29-09-2008 declaring total income at NIL. The return was duly accompanied with Audit report in Form No.10BB and Auditor's report as per section 34(2) of B.P.T. Act, 1950. In the return of income, the assessee has shown income from other sources amounting to Rs.54,97,44,582/- and has claimed exemption under section 10(23C)(iiiab). Donation of Rs.2,92,18,001/- has been claimed to be corpus donation and the details of such donations were also enclosed with the return of income which also includes anonymous donations.

3. During the course of assessment proceedings, the Assessing Officer noted that the details of income, expenditure and surplus declared by the assessee as per the income and expenditure account filed with the return of income are as under :

Table-1 (Income in Rs.)

	Rent	125,97,417	
	Interest received from bank	209,70,765	
	Grants	29,07,70,462	
	Income from other sources	22,52,05,938	
	Transfer from reserve	200,000	
	Total		54,97,44,562

Table-2 (Expenditure & Surplus in Rs.)

(I)	Amount applied to charitable purposes			
	1. Expenditure on objects of the trust			41,40,54,914
	2. Administrative Expenses			
	(a)	Expenditure in respect of properties	121,03,261	
		Rates, taxes, cesses	3347,424	
		Repairs and maintenance	87,48,969	
		others	6868	

	(b)	Establishment expenses	140,56,793	
	(c)	Legal and professional Fees	413,277	
	(d)	Audit Fees	251,170	
	(e)	Depreciation	272,72,664	
(II)		Surplus carried over to Balance sheet		8,15,92,503
			Total :	54,97,44,582

4. From the auditors report filed in Form No.10BB the Assessing Officer observed that as per item No.III the auditors have observed that "The institution has not disclosed the Gross cost of the fixed assets at the beginning and end of an accounting period showing additions, disposal, acquisitions, and other movements, and the accumulated depreciation in the balance sheet as on 31st March 2008; as per the Accounting Standard (AS-10)-Fixed assets."

5. The Assessing Officer further observed from the balance sheet that the value of immovable properties (at cost) has increased to Rs.24,30,66,596/- from Rs.15,51,39,019/- in the last year. (Sch 5). Further, building under construction of Rs.51,62,643/- has also been shown. The value of furniture, fixtures, dead stock and equipments has increased to Rs.4,82,07,224, from Rs.3,62,63,046 (Sch 6). Investment of Rs.38,50,80,789/- has been shown, including investment in shares, debentures and bonds as against Rs.1,52,89,372/- in the preceding year. The AO further noted from the details filed vide letter dated 3.9.2010, that the assessee has received Salary Grants from the State Govt. of Rs.28,70,35,473/-, other grants of Rs.34,86,635/- and non-salary grants of Rs.248,354/-, aggregating to Rs.29,07,70,462/. Grants for HA School (Rs.1,68,13,416/-) and for RCF Rs.1,40,82,332/-. The assessee submitted the list of 32 institutions run by the trust, at Pune, Wai (Satara Distt), Satara, Sangli and Mumbai, consisting of schools (primary to higher secondary), colleges (arts, science, law),

vocational institutes (Nursing, physiotherapy), management and engineering college.

6. During the course of assessment proceedings the Assessing Officer asked the assessee to explain as to why its claim of exemption u/s.10(23C) (iiiab) should not be denied in view of the following issues :

> "1) Where some of the institutions of the assessee trust (DES) are substantially financed or aided by the State Government, by way of salary grants to the teachers and non-teaching staff of such institutions, with no surplus income, and to the exclusion of the income or expenditure of unaided institutions, whether income/surplus of the unaided institutions would also be covered under the provisions of Section 10(23C)(iiiab), and eligible for exemption under that section?
>
> 2) Whether the income of the assessee shall be exempt from tax u/s 10(23C)(iiiab) or under any other exemption provisions under the IT Act, when there are irrefutable evidence that the assessee collected capitation fee in the form of corpus donations, in relation to granting admission to students in its institutions, using its discretion under management quota or other-wise, in an arbitrary and commercial manner?"

He also asked the assessee to furnish the details of donors along with the amount of donation, identity of the donors and the draft/pay order details etc.

7. It was explained by the assessee that it is a 125 year old public charitable trust started by national leaders like Lokmanya Balgangadhar Tilak, and that it is registered under the Bombay Public Trust,1950. It runs educational institutions in Pune, Mumbai, Sangli, Satara, Wai and Tirupati. Educational institutions run by the assessee include many which are "grantable or aided", i.e. which receive grants from the Maharashtra State Government for payment of salary to the teaching and non-teaching staff. Hence the assessee has always claimed exemption u/s 10(23)(iiiab). Neverthless, as envisaged under section 11, the assessee always applies not less than 85% of its gross income towards the objects of the trust by way of

revenue and capital expenditure. The assessee received interest income of Rs.209.71 lakhs, and rent of Rs.125.97 lakhs, besides other income of Rs. 5161. 76 lakhs by way of grants, fees etc., aggregating to Rs. 5497. 44 lakhs. It was submitted that it has applied Rs.51.14 crores, i.e. 93% of Rs.54.97 crores as stated in Form 10BB. The AO observed from Ann. 3 of the submission (where the assessee has given details of institutions) that salary and non-salary grants received by such institutions amount to Rs.29,07,70,462/- out of which all but salary grant of Rs.16,85,956/- has been spent during the year.

8. The Assessing Officer noted from the details of institutions and courses for such institutions filed by the assessee which are totally unaided and where their income exceeds Rs. 1 crore which are as under :

Name of the institution	Gross Income	Interest (included in Gross Income)	Surplus
FCP (Micro-Biology)	10530849		6616502
FCP (BCS) UG	15528577		8852032
FCP (BCS) PG	16854015		13423257
BMCC (Non-Grant)-BBA/BFT	14690224		10910743
DES Law College	14072598		7069937
IMDR	18712177		6985208
Others (annual receipt < Rs 1 Crore)	91857201		5874222
Grand total	18,22,45,641	109,10,290	845,14,218

9. It was submitted that the assessee receives very little support from the State Government for the purpose of creating the infrastructure required by the “Aided Institutions” and the Government encourages the assessee to generate its own funds for the purpose of creating the infrastructure by running unaided institutions. However, the fees charged by these institutions are

controlled through University, Zilla Parishad and Shikshan Shulka Samiti etc. It was argued that the unaided institutions are not assessees by themselves and form a composite and indivisible part of the assessee's operations and the assessee seeks to utilise the surplus of unaided institutions to satisfy the needs of aided institutions. The fees for various courses of unaided institutions are determined by resolution passed by the assessee's Governing body. It was submitted that during the relevant assessment year the assessee has received donations only towards the corpus of the trust and none towards income contribution and hence no donation amounts appear in the assessee's income and expenditure account.

10. On the basis of the details submitted by the assessee, the Assessing Officer conducted enquiries regarding the claim of the assessee that the donation of Rs.2,92,18,001/- received from about 900 persons were voluntary and towards the corpus and not in relation to admission of students in any of the educational institutions run by the assessee trust. The Assessing Officer issued summons u/s.131 dated 23-11-2010 to 56 donors of Pune and 27 outstation donors selected randomly who had donated singly or cumulatively more than Rs.50,000/- to the assessee trust during the relevant year. From the list submitted by the assessee, the Assessing Officer noted that drafts were prepared in small denomination of Rs.25,000/- each of a series on the same date by one person. Similarly drafts prepared on the same date and from same bank with numbers in series were shown to have been given by various individuals. The Assessing Officer received replies from some of the donors who attended in person and who were examined on oath. The Assessing Officer noted that 16 donors have confirmed that the donations were paid in connection with and to secure the admissions

of their wards/relatives who do not have qualifying marks or failed in the entrance test taken by the assessee's various institutions for grant of admissions in various courses. Copies of the replies and statements of the 16 donors were given to the assessee and the assessee was confronted by the Assessing Officer asking him to explain as to why the claim of exemption made u/s.10(23C)(iiiab) or under any other provisions of the I.T. Act be not denied to the assessee in view of the capitation fee received by it under the garb and guise of corpus donation to grant admission to students in various courses/institutions run by the assessee society. The Assessing Officer also asked the assessee to explain as to why provisions of section 115BBC be not applied to amounts received and credited as corpus donations where the name and address of the donor is not given or supported by identity proof. The Assessing Officer also asked the assessee to explain as to why the exemption be not denied since the assessee has violated provisions of section 13(1)(d) by investing in the form of shares.

11. It was explained by the assessee that in all courses of FCP there is defined management quota for admission which varies from 5% in case of grantable course to 15% in the case of non grantable course. In the absence of any guidelines from the University of Pune in this regard the admission in the management quota are given strictly on the recommendation of eminent persons well associated with the society such as present and past Teachers, Bureaucrats of Central and State Government Departments, Politicians, Ex-Office bearers etc. Before any admission in the management quota is given the members of the council and Government Body informally discuss the benefits that may thereby accrue to the society in the form of better public relations. The name of student admitted in

management quota is also communicated to the UOP in the usual manner. The assessee also explained the procedure for admission to MCA in FCP, MCS in FCP, BCP, BCS, Bio-Technology, Organic Chemistry etc. The assessee also requested the Assessing Officer to grant opportunity to cross examine all the donors whose statements were recorded and who have stated that the donations were not towards the corpus of the rust. The assessee also requested to provide the details of the number of donors to whom summons u/s.131 are issued and the total number of donors who responded to the aforesaid summons.

12. The Assessing Officer informed the assessee that it would not be possible to allow him cross examination of all the witnesses who responded or were examined in view of the time constraint and also the fact that no fault or any inconsistency has been found in the statement of witnesses who confirmed in their reply/statements that donations were made to secure admission of their wards/relatives as also those of their friends/neighbours and associates. The Assessing Officer provided the list of donors/witnesses stated to be residents of Pune as also outside Pune. Copies of replies given by the donors denying any of their relatives being admitted to any of the educational institutions and/or the donation being given to secure admission was also given to the assessee.

13. On the issue of applicability of Section 10(23C)(iiiab), the assessee submitted that as per the assessee's audited accounts, for financial year 2007-08, the assessee's gross income is Rs.54,95,44,582/- and such gross income includes government grants of Rs.29,07,70,462/- which constitutes 52.91% of the assessee's gross income. It was also stated that for this reason, the assessee is not registered u/s 12A. The assessee also referred to the

letter dated 5.10.1974 issued by the then CIT-I, Poona stating that since the assessee institution is exempt from income-tax u/s 10(22) of the IT Act, being an educational institution, registration u/s 12A(a) is not necessary in its case. It was also argued that the provisos to Section 10(23C) are not applicable to the assessee and that it was not required to apply in Form 56/56D and be approved by the prescribed authority for grant of exemption, hence the assessee never applied for grant of approval/exemption. Further, the provisions of section 115BBC expressly excludes reference to the assesses assessed u/s.10(23C)(iiiab). It was also stated that u/s 139(4C)(e) also educational institutions falling u/s.10(23C)(iiiab) are expressly excluded from the requirement of filing return of income. The assessee also claimed that the donations were not anonymous as PAN of 9 persons are mentioned in the letter dated 6.12.2010.

14. Regarding the donor's admission of donations being capitation fee for admission, the assessee argued that out of 877 donors, summons u/s 131 along with questionnaire were issued to 83 persons, out of which 22 persons confirmed giving donation and also referred to admission of certain persons. Thus only 2.51% of the donors alleged that there was a nexus between the donation and certain admissions.

15. The assessee in its submission dated 16.12.2010 further argued without prejudice to any other submission, that :

(a) The issuance of show cause notice is based on the material arbitrarily gathered behind the assessee's back avowedly under Section 131 of the IT Act;

(b) The collection of statements of the witnesses behind the assessee's back contravenes the propriety in law of section 131 of the said Act, causing immense prejudice to our substantial rights in law.

(c) The reliance on unsubstantiated depositions of witnesses collected by administering the oath for charging the assessee for violation of provisions of the said Act, The Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987 and the dictum of the Hon'ble Supreme Court in the case of Islamic Academy of education & others, is wrong and misconceived in law.

(d) No such deposition can be relied upon in law or admissible in evidence for any purpose whatsoever, as no opportunity of cross-examining the said witnesses was ever granted to the assessee, thus disregarding the cardinal principle of law of evidence.

(e) No reasons have been disclosed for ignoring the letters and statements written to the assessee by the witnesses under their own signatures thct the donations given to the assessee were voluntary, and as such the notice suffers from non-application of mind in law.

(f) Even otherwise, no such deposition can be read or relied upon or used for any purposes, unless the assessee's substantial rights in law to cross examine the said witnesses are granted to the assessee.

(g) The issuance of the show cause notice hence, pursuant to arbitrary conclusions arrived at on such enquiry and statements, is *ultra vires* the provisions of the said Act, *non est* in law and nullity.

(h) The contents casting aspersions, allegations and charging the assessee with violations made in the depositions by the concerned witnesses are *ipse dixit* prevaricated, untrue and incorrect. It is denied that any donation was collected by the assessee from any person with a view to secure admission in the assessee's institutions for their ward or relative. All statements to that effect made by the witnesses are false and are denied by the assessee. It is reiterated that there is no *causa causans* between the donations given to the assessee and the admissions given to the students named in the impugned show cause notice, which is also apparent from the very length of time between the two. i) It is denied that that the assessee has violated the provisions of Maharashtra Educational Institutions (Prohibition of capitation fee) Act, 1987,

or the law laid down by the Hon'ble Supreme Court of India in the case of Islamic Academy of Education.

The assessee re-iterated its request for an opportunity to cross examine the aforesaid 22 donors in order to establish beyond doubt the presence or absence of a nexus between the said donation and the said alleged admission.

16. Regarding the observation made on 14.12.2010, that the opportunity for cross-examination of witnesses cannot be given as no fault in their statement/reply has been pointed out by the assessee, the assessee in its submission dated 16.12.2010 stated that the assessee did not have the opportunity of examining the 1051 sheets of impounded documents, which were received on 13.12.2010. The assessee further pointed out following 'factual and possibly fatal infirmities which are patent without a cross-examination' in the aforesaid 22 statements on oath:

(a) The deponents were not made aware of Section 101 of the Indian Evidence Act,1982, according to which the burden of proof is positive and on the donor to prove that the donation was given in consideration for an admission and it is not for the assessee to prove other-wise.

(b) The deponents were not asked to produce any documents or circumstantial evidence to prove that the donations were given in consideration of an admission. The assessee should be confronted with such evidence so that the assessee has an opportunity to disprove it.

(c) The deponents were not asked as to whether they claimed a deduction u/s. 80G of the IT Act in computing their total income for AY 2008-09. If the donors have claimed such a deduction on the basis of the 80G certificate given to them by the assessee, the donors have obviously admitted the fact that the amounts paid to the assessee was actually a donation and not capitation fee.

(d) The fact of admission alleged by deponents was not verified by reference to the records of the assessee-

(i) Deponent No.6 Smt. Padmaja Joshi has alleged that the daughter-in-law Ms. Aditi Deshpande was admitted to MCA Course, however as per list of students admitted to MCA Course in FY 2007-08 does not include her name. (Note: Ms Aditi A Deshpande was actually admitted to MCS with only 9 marks (Entrance + University), in Open (O.U.) category, purportedly without management quota) .

(ii) Shri Kedar S.Edke has stated that his cousin Shri Ninad N. Mohrir was admitted to MSc (Biotechnology) course, but the list of students admitted to that course does not include his name. (Note: Shri Ninad Mohrir was admitted to MSc(Org. Chemistry, as clarified to the AR after verifying from Shri Kedar Edke on phone).

(iii) Deponent No.14 Shri Narayan M. Chaudhari has alleged that his nephew Vishal Digambar Patil was admitted to MCA Course, however the list of students admitted to that course does not include his name. (The fact is that Shri Vishal D. Patil was admitted to BCS (Roll No.5) is undisputed, and that he abandoned the course and returned to his native place, is already stated by the deponent).

(e) If the presumption is that donation is in the nature of capitation fee, the amount of donation received from two students pursuing the same course should be the uniform. In fact it is not. The assessee has cited examples of two donors to show that the donation for MCA was not uniform. Similarly, by citing example of five donors it has been argued that for BSc (Comp. Sc.) the donation amount varies from 25,000/- to Rs.200,000/-.

(f) There is a time gap of at least 88 days between the date of admission and realization of the amount of donation by credit to the assessee's (bank) account. Thus it is patent that the donor gave the donation not before the admission (which allegedly was given in consideration of the donation) as a condition precedent to the said admission but more

than 88 days after the said admission. In such circumstances, there is obviously no quid pro quo between the donation and the said admission.

(g) Deponent No.7 Shri Nishant T Gadpayle has allegedly deposed that he gave the amount (Rs. 98,000/-) in repayment of loan. The assessee submits that it had never given any loan to Shri Gadpayle, and that his other statement, regarding unavailability of draft facility with the extension counter Branch, is totally untrue.

(h) Deponent No. 11 Dr. Sanjay Pendse has stated that his donation was not meant to secure or help any admission, and that his inability to explain the sources of donation cannot be taken against the assessee.

(i) The deponent were not informed of the penal consequences of making a false statement on oath as per section 181 of the IPC.

The assessee claimed that if the aforesaid patent infirmities had been brought to the notice of the deponents, -they would have deposed differently.

17. The assessee in his submission dated 16.12.2010, has also argued that it is true that the donors gave the donation and that a son or daughter of the donor may have been admitted at any institution run by the assessee. The assessee runs about 35 schools and colleges in several places, where about 50,000 students are admitted. It is quite possible that some student may be a relative or acquaintance of some donor. The assessee never gives admission in consideration of donation. However the assessee as a public charitable trust always appeals to every one for donation to promote the noble cause of education. The amount of donation and the time of donation is left entirely to the discretion of the donors.

18. Regarding the investment of funds in shares amounting to Rs.712,650/-, it was stated that it was only 0.0018% of the total investment of Rs.38,50,80,789/- as on 31.3.2008, it was claimed that they were donated to the assessee in 2006 and sold in March, 2010. It was also claimed that provisions of section 13(1)(d) does not apply to the assessee and that there was no malafide intention to violate the provisions.

19. However, the Assessing Officer was not satisfied with the explanation given by the assessee. Tracing the historical background of the erstwhile provisions of Sec. 10(22) which provided for exemption of income of educational institutions and the substituted provisions of Sec.10(23C), the Assessing Officer sought to emphasize that the old provisions were substituted with the new provisions with the aim of withdrawing the freedom of huge accumulations which were often kept idle and unutilized for years together, enjoyed by the institutions under the said provisions. Referring to the provisions of Sec.10(23C), the Assessing Officer stressed upon that the provisions envisaged giving the benefit of exemption to income received by persons on behalf of educational institutions solely existing for educational purposes and not for the purpose of profit, underlining that such exemption is institution specific and not person specific. Drawing attention to the clauses of Sec.10(23C) which provide for exemption of income of educational institutions, the Assessing Officer emphasized that while there is no string attached to the eligibility of exemption under clause (iiiab) to institutions existed solely for educational purposes and not for the purpose of profit and which are wholly or substantially financed by the Govt., or under clause (iiiad) to such educational institutions whose aggregate annual receipts were less than Rs.1 crore, exemption under clause (vi) to institutions

which do not fall under any of the above two categories needed the nod of the prescribed authority. In the opinion of the Assessing Officer, merely because certain institutions run by an assessee were wholly or substantially financed by the Govt. does not ipso facto makes the other unaided educational institutions run by the said entity eligible to exemption u/s. 10(23C) though the assessee has the option of claiming exemption u/s. 11 of the Act in such cases subject to the conditions prescribed thereof. Noting that such other institutions of the assessee which do not fall under clauses (iiiab) or (iiiad) were not approved either under clause (vi) of Sec. 10(23C) or registered U/S.12A of the Act, the Assessing Officer held that income of such institutions would not be eligible for exemption either u/s.10(23C) or Sec.11 of the I.T. Act even if the incomes of such unaided institutions might have also been utilized/applied for running the aided institutions. Thus, the income of such unaided institutions whose aggregate annual receipts exceeded Rs. One crore, quantified at Rs.7,86,39,996/- was held to be taxable income of the assessee trust. However, no separate addition to this effect was made on this ground while computing the total income of the assessee in the assessment order as the assessee was held to be not eligible for any exemption. The AO accordingly treated the status of the assessee as AOP and computed the total income of the assessee at Rs.11,06,10,504/- the details of which are as under :

1. Income as per income & expenditure account		Rs.815,92,503
Less : Transfer from reserve	Rs.200,000	
2. Donation claimed to be corpus donation		Rs.292,18,001
Gross Total income		Rs.11,06,10,504

20. Before CIT(A) it was submitted that the Assessing Officer erred in holding that unaided institutions having receipts over Rs. 1 crore, run by the assessee society were not eligible for exemption u/s.10(23C) or Sec.11 of the I.T. Act. Stressing that the entity under assessment is Deccan Education Society, it was argued that the various educational activities were being carried out by the assessee in an integrated manner and the individual institutions run by the assessee are not separate legal entity by themselves and they could not be registered under the provisions of Sec.10(23C)(vi) or Sec.l2A and therefore, it was not legally correct on the part of the Assessing Officer to artificially divide the institutions as aided and unaided to deny the benefit of exemption. Drawing attention to the provisions of Sec. 10(23C), it was argued that it is not in dispute that the assessee is an institution solely existing for the purpose of education and not for the purpose of profit and substantially aided by the Government inasmuch as 52.91% of the gross income of the assessee constituted grants from the Govt. and therefore, it was legally entitled to get the benefit of exemption u/s. 10(23C). It was argued that it was for this reason that the assessee did not get itself registered U/S.12A of the I.T. Act. It was pointed out that in fact, the Department itself has confirmed this aspect, through a letter issued by the Chief CIT, Pune. Despite this, the assessee has been applying more than 85% of its income towards its objects in compliance of the provisions of Sec.11 & 12. To support its argument that the assessee society is clearly covered by the definition of “other educational institution” as defined in Sec. 10(23C)(iiiab) in spite of the fact that some of the institutions of the assessee are not aided by the Govt., the assessee placed reliance on the following decisions:-

1. Aditanar Educational Institution Vs. Addl.CIT – 224 ITR 310(SC)

2. Pingrove International Charitable Trust Vs. UoI and Ors – 327 ITR 83 (P&H)

3. Birla Vidya Vihar Trust Vs. CIT – 136 ITR 445 (Cal.)

21. It was submitted that the Assessing Officer held to the contrary without negating the position that the assessee is an institution existed solely for educational purposes and substantially funded by the Govt. in total disregard to the judicial precedents and flagrant violations of the principle of natural justice and denied the benefit of exemption u/s.10(23C). It was pleaded that the action of the Assessing Officer in holding that the income of unaided institutions run by the assessee having receipts over Rs. 1 crores was not eligible for exemption u/s.10(23C)(iiiab) be reversed.

22. It was reiterated that the assessee's activity of imparting education is composite and indivisible and it does not have separate undertakings for which assets and liabilities, income and expenses can be separately identified with respect to grantable and non grantable institutions. The assessee needs to be assessed as one person and therefore it was not legally correct on the part of the Assessing Officer to artificially divide the institutions as aided and unaided to deny the benefit of exemption. In case of unaided institutions whose actual receipts exceeded Rs.1 crore, it was argued that the word "other educational institution" in clause (iiiab) refers to the assessee society and not to the individual educational institution. Relying on various decisions it was argued that the Assessing Officer was not justified on facts and in law in holding that the income of the unaided institutions whose annual receipts exceeded Rs. 1 crore is not eligible for exemption in the absence of necessary approval from the prescribed authority u/s.10(23C)(vi).

23. As regards the amounts shown to have been received by the assessee as donation towards corpus fund and treated by the AO as capitation fee, it was argued that the Assessing Officer failed to follow the due process of law and the principles of natural justice. It was argued that the assessee had vehemently protested against the reliance placed by the Assessing Officer on the statements of some of the donors alleging payment of donation in lieu of admission citing that they were recorded on the back of the assessee and without affording the assessee the opportunity to cross examine the deponents in blatant violation of the principles of natural justice. Relying on various decisions it was argued that collection of statements behind the back of the assessee u/s.131 of the I.T. Act contravenes the propriety of law causing immense prejudice to the assessee in its substantial rights in law and such testimonies could not be the basis of drawing adverse inference against the assessee. It was submitted that the Assessing Officer was not justified in denying exemption u/s.10(23C) on charge of alleged acceptance of capitation fee. It was submitted that merely because assessee has accepted donations does not lead to the inference that it existed for the purpose of profit.

24. Based on the arguments advanced by the assessee the Ld.CIT(A) directed the Assessing Officer to afford an opportunity to the assessee and furnish a report to that effect. In compliance to the said direction, the Assessing Officer sent his report wherein it was stated that summons u/s.131 of the Act were issued to the parties who had confirmed in their depositions having given donations to the assessee to secure admissions and the assessee was given opportunity to cross examine them. The cross examinations of the deponents were carried out by Mr. Ghatpande and Mr. Firodiya

Advocate on behalf of the assessee. The Assessing Officer submitted the party-wise outcome of the cross examinations carried out along with the comparative analysis in the context of their original depositions.

25. Reiterating the view of his predecessor the Assessing Officer in his report emphasised that capitation fees were being collected by the assessee in blatant violation of the noble purpose for which the educational institutions ought to have stood for, even giving the constitutional obligations a miss in the process. The Assessing Officer further stated that the assessee had huge surplus and investments and therefore soliciting capitation fees in the guise of donation was not driven by any necessity of funds for carrying out its activities but by mere profiteering. The Assessing Officer further reported that despite repeated requests the assessee was unable to furnish the list of successful candidates who secured admissions in the institutions on merit. The Assessing Officer further reported that the donors in questions were not in the habit of giving donation. The deponents have not positively stated that they were in the habit of giving donations to any other trusts running orphanages, hospitals etc. Therefore, it clearly indicated a systematic exploitation of the situation by the assessee to force the parents and relatives of the students to part with their hard earned income and savings, at times even by taking loans and sale of jewellery to pay donation. The Assessing Officer further reported that the assessee during the entire process of cross examination never denied the modus operandi described by the deponents stated to be adopted by the assessee to collect the donations.

26. The Ld.CIT(A) forwarded the copy of the remand report to the assessee to enable it to file its comments, if any. The assessee in its rejoinder stated that the Assessing Officer has merely repeated the contents of the order of his predecessor without making any attempt to discuss the material facts discovered in the course of cross examination so as to enable the CIT(A) to arrive at appropriate inferences. It was stated that wherever the deponents had given favourable replies the Assessing Officer had ignored them. It was pointed out that the answers of 23 of the 877 donors were found by the Assessing Officer to be against the assessee. Further, out of 23 donors only 6 donors made themselves available for cross examination while veracity or otherwise of the testimonies of the remaining 17 donors remain uncorroborated in the course of cross examination. Referring to the questions posed to the deponents during cross examination it was submitted that the answers to those questions clearly proved beyond doubt that the donations were given voluntarily without being forced or controlled by the assessee and in none of the cases the donors had lodged any complaint against the assessee either with the tax authorities or any other statutory authority nor had there any documentary evidence to support the adverse depositions. Referring to sections 91 and 92 of the Indian Evidence Act, 1872 it was submitted that oral evidence was not admissible for contradicting documentary evidence. It was further submitted that while the Assessing Officer did not understand Marathi the deponents did not understand English leading to a situation where one of the deponents namely Shri Gadpayale's reply that the donation was given to repay the debt of gratitude was interpreted by the Assessing Officer as repayment of loan. It was argued that the donations were not received in terms of quid-pro-quo for admission and were merely the way of expression of gratitude by

parents and their relatives after securing admissions who desired to advance the noble cause of education by contributing to the assessee financially, given the position that Government non-salary grants are not disbursed for years. It was further submitted that the donations were an event subsequent to the admission and not a condition precedent.

27. The assessee further submitted that the fees charged by the assessee institutions are in accordance with the norms stipulated by the relevant authorities which ensure that the poor students are not denied the opportunity of receiving good education. The infrastructure created by the assessee is also in accordance with the policies of the Government which required the assessee to make available a certain area of built up space and open space, certain equipment, a certain number of staff per student and payment to staff as per VIth Pay Commission norms. The creation of such infrastructure is a condition precedent for starting of any new course by the assessee for which substantial funds are required. Since the Government has stopped disbursing non salary grants for the last 10 years most of the educational institutions have to look upon their operating surplus and donations from philanthropic persons to finance such donations. It was argued that in absence of such sources, it would be difficult to start new institutions as also for existing institutions to survive. It was argued that the assessee abhors capitation fee as much as the Assessing Officer but it was a necessity for the assessee to appeal for voluntary donations in order to survive. It was submitted that if educational institutions like the assessee who offer education to the masses are denied exemption under the income-tax Act the poor and the needy people will ultimately be denied education and suffer immensely.

28. The decision of Hon'ble Delhi High Court in the case of Shanti Devi Progressive Education Society was brought to the notice of the Ld.CIT(A). It was accordingly submitted that the Assessing Officer may be directed to grant exemption u/s.10(23C) of the I.T. Act.

29. However, the Ld.CIT(A) was also not satisfied with the arguments advanced by the assessee and upheld the action of the Assessing Officer in denying exemption u/s.10(23C) of the I.T. Act. While doing so, he held that the statements recorded from the donors showed that contributions were paid by the donors as a quid-pro-quo for securing admissions in various institutions run by the assessee and the same are not voluntary contributions or corpus donations. The date(s) of contributions in question coincides with the date(s) of admission and it is only the deposit of the amount and the issue of the receipt thereof, which were delayed by the assessee intentionally so as to claim that there was no link between the admissions and the contributions. This is not a case where the assessee is starved of funds to carry on or to expand its activity thereby forcing it to solicit contributions in addition to prescribed fees and therefore the collection of contribution at the time of admissions either by way of capitation fees or otherwise is a pure commercial consideration for admissions. As the institutions of the assessee are run on commercial lines by collecting amounts in addition to prescribed fees for admissions, the assessee is not eligible for deduction u/s.10(23C). Even otherwise, the income of unaided institutions of the assessee with gross receipts exceeding Rs. One crore, amounting to Rs.7,86,39,996/- is not eligible for deduction as the assessee has not obtained the approval of the prescribed authority as required under sub-clause (vi) of sec.10 (23C). He accordingly upheld the action of the AO treating the status of the assessee as an AOP and assessing

the surplus of the year and the contributions received by the assessee in the guise of corpus donations aggregating to Rs.11,06,10,500/- (which includes income of unaided institutions of Rs.7,86,39,996/-) as taxable business income.

30. Aggrieved with such order of the CIT(A) the assessee is in appeal before us with the following grounds :

> "The following grounds are taken without prejudice to each other –
> On facts and in law,
>
> 1] The learned CIT(A) erred in denying the exemption u/s 10(23C)(iiiab) to the appellant educational society and as a consequence, he erred in assessing the total income at Rs.l 1,06,10,500/- as against the income of Rs. NIL returned by the appellant.
>
> 2] The learned CIT(A) was not justified in denying the exemption u/s 10(23C)(iiiab) when it was granted to the appellant trust in the past years.
>
> 3] The learned CIT(A) erred in holding that –
>
> a. The applicant society has .collected capitation fee for giving admissions to various students and it has violated Maharashtra Educational Institution (Prohibition of Capitation Fee) Act, 1987 and therefore, it is not entitled to the exemption.
>
> b. The appellant does not exist for educational purposes as it generates surplus profits and therefore, it is not entitled to the exemption.
>
> c. The exemption u/s 10(23C)(iiiab) is available to an institute and the appellant being a society running various educational institutes, the exemption is not allowable to the appellant.
>
> 4] 'The learned CIT(A) failed to appreciate that –
>
> a. The appellant society was running a number of colleges / institutes imparting education to about 50,000 students in an year while it had collected donations only from a few hundred persons and thus, it was incorrect to hold that the appellant society is not having educational activity.
>
> b. The appellant had not demanded donation for giving admission to any student and there was no offence registered against the appellant under Maharashtra Educational Institution (Prohibition of Capitation Fee) Act, 1987.
>
> c. If a few donors under a mistaken impression considered that they had given the donation for admission of their students, it did not prove that the appellant was collecting donations for imparting education.

d. All the donations received were duly accounted for in the books of the appellant society and the educational authorities had not raised any objection for the donations collected and they exercised good control over the financial management of the appellant society.

e. The exemption u/s 10(23C)(iiiab) was allowable to the appellant society as it was substantially financed by the Govt.

f. It was incorrect to hold that the exemption u/s 10(23C)(iiiab) was not allowable to the appellant society as this exemption was allowable only to the educational institutes and not to the society running various educational institutions.

g. without prejudice, the exemption u/s 10(23C)(iiiab) ought to have been granted to the various educational-institutions of the appellant society which satisfied the conditions u/s 10(23C)(iiiab).

5] The appellant requests for admission of additional evidences if any required in support of the above grounds.

6] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

31. The assessee has also raised an additional ground which reads as under :

"Without prejudice to the grounds raised in the appeal memo, in case, it is held that the exemption u/s.10(23C) is allowable to each of the educational institutions of the appellant society, in that event, the exemption u/s.10(23C) (iiiad) may be allowed to the institutions whose annual receipts are less than Rs. 1 Cr. in this year."

31.1 After hearing both the sides, the additional ground raised by the assessee is admitted for adjudication.

32. The Ld. Counsel for the assessee strongly challenged the order of the CIT(A). Referring to the provisions of section 10(23C) (iiiab) he submitted that any income received by any person on behalf of any university or other educational institution existing solely for education purpose and not for purpose of profit and which is wholly or substantially financed by the Government is exempt from tax. Referring to the Explanation which has been inserted by the Finance (No.2) Act 2014, w.e.f. 01-04-2015 he submitted that the words "substantially financed" by the Government means if the grant from the Government is more than 50%. Referring to provisions of section

10(23C)(iiiad) he submitted that the income of any university or other educational institution existing solely for educational purposes and not purposes of profit is exempt if the aggregate annual receipts of such university or educational institutions does not exceed the amount of annual receipts as may be prescribed which is Rs.1 crore. Referring to provisions of section 10(23C)(vi) he submitted that the income of any university or other educational institution existing solely for educational purposes and not purposes of profit other than those mentioned in sub clause (iiiab) or sub clause (iiiad) and which may be approved by the prescribed authority is exempt from tax. He accordingly submitted that the various institutions run by the assessee trust may be categorised into 3 types, i.e. (i) some of the institutions run by the trust are aided where the Government grant is more than 50%, (ii) some of the institutions run by the trust are not substantially financed by the Government but where the gross receipts are less than Rs. 1 crore and (iii) some of the institutions run by the trust/society where it is neither substantially financed by the Government nor the receipt is less than Rs. 1 crore and where the approval of the CCIT is required for claiming exemption u/s.10(23C).

33. Referring to pages 115 to 123 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to the copy of rules and regulations of Deccan Education Society and submitted that the society exists solely for educational purposes. Referring to pages 161 & 162 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to the number of students studying in various colleges run by the society and which numbered to 47,251. He submitted that out of 47,251 students only 1,217 students have given donations. Referring to pages 124 to 160 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to the

donations received from 877 students giving the details of donations totalling to Rs.2,84,28,001/-. He submitted that the issue to be decided in this case is as to whether the individual colleges or schools are to be treated as separate institutions for availing of the benefit of provisions of section 10(23C) or the society as a whole which consists of all the institutions run by it.

34. Referring to pages 177 to 179 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to various institutions run by the society where some of the institutions are incurring losses, the grants received is more than 50% and the gross receipt is less than Rs. 1 crore and more than Rs.1 crore etc.

35. Referring to the decision of the Hon'ble Supreme Court in the case of Aditanar Educational Institution Vs. Addl.CIT he submitted that the Hon'ble Supreme Court in the said decision has held that an educational society or a trust or other similar body running an educational institution solely for educational purposes and not for the purposes of profit could be regarded as "other educational institution" coming within the section 10(22) of the I.T. Act. He submitted that the wordings of section 10(22) are similar to the wordings of section 10(23C).

36. Referring to the decision of Hon'ble Delhi High Court in the case of DDIT Vs. Shanti Devi Progressive Educational Society reported in 340 ITR 320 he submitted that in that case the assessee was an educational society running schools during the relevant assessment year which received various amounts towards admission fees, corpus funds and loan from parents. The Assessing Officer sought to assess them in the hands of the assessee but the Tribunal held that the assessee was entitled to exemption. On further appeal

by the Revenue, the Hon'ble High Court dismissed the appeal filed by the Revenue holding that the source of funds was relatable to the activity of education. The loans have been availed by the assessee from nationalised banks for the purpose of creating additional infrastructure/schools and the three sets of amounts had been addressed only towards the object of creating additional infrastructure and easing the liability of the assessee towards the interest burden of loan repayment. There was no finding or allegation of diversion of these funds for the purpose other than carrying on educational activity. There was no diversion of funds to the individual members or taking away of profit for some other activity. Further, the exemption u/s.10(22) has been granted to the assessee for a number of years prior to the assessment years in question and for subsequent years. Accordingly, relying on the principle of consistency the Hon'ble High Court held that the assessee existed only for educational purposes and not for the purpose of profit making and therefore is entitled to exemption u/s.10(22).

37. Referring to pages 188 to 189 of the paper book he submitted that the Assessing Officer in the order passed u/s.143(3) on 13-10-2003 for A.Y. 2005-06 has allowed the claim of exemption u/s.10(23C) (iiiab) to Deccan Education Society. Referring to pages 192 and 193 of the paper book he submitted that the Assessing Officer for A.Y. 2007-08 in the order passed u/s.143(3) on 04-09-2009 has allowed the claim of exemption u/s.10(23C)(iiiab) .

38. Referring to the decision of the Hon'ble Bombay High Court in the case of Vanita Vishram Trust Vs. Chief CIT reported in 327 ITR 121 he submitted that the Hon'ble High Court in the said decision has held that rejection of approval under section 10(23C) is not valid

where the charitable trust, whose sole activity was running educational institutions for last 80 years and primary object of trust is to provide education for women and investment of surplus from activities applied for educational purposes. It must be regarded as existing solely for education.

39. Referring to the decision of the Bangalore Bench of the Tribunal in the case of Sadvidya Educational Institution Vs. Addl.CIT reported in 39 CCH 178 he submitted that the assessee trust in the said case was collecting voluntary contributions/building fund/development funds against admissions given under Management quota in institutions run by the assessee and therefore the Assessing Officer held that assessee was not entitled to claim deduction u/s.11(1)(a) and 11(1)(d). The CIT(A) upheld the action of the Assessing Officer and held that there was a direct nexus between the admissions granted under the Management quota and voluntary contributions collected by the assessee. The Tribunal held that if educational institution has collected money in form of voluntary contributions from public and may be from parents of the students who are studying in institution and issued receipts acknowledging said amount towards building fund and made requisite entries in the books and deposited same in the bank, requirement of section 11(1)(d) is fulfilled. Assessee trust was running several schools starting from nursery to PUC and said fact has been endorsed by Assessing Officer. No question of assessee collecting capitation fees in guise of building fund or development fee. Further voluntary contributions received were for the specific purpose of "building" and assessee had applied such contributions towards object of trust. Assessee had obtained the signatures of the parents of successful students in pre-printed letters before obtaining donation and shown

in statement. Assessee was entitled to exemption u/s.11 in respect of building fund as well as college development fund.

40. Referring to the decision of the Chennai Bench of the Tribunal in the case of Padanilam Welfare Trust Vs. DCIT reported in 10 ITR (Tribunal) 479 he submitted that the Tribunal in the said decision has held violation of prohibition of Capitation Fees Act cannot be a ground taking away the registration of a charitable organisation. It has been held that capitation fee per se is not in the nature of illegal income in absence of any material to show that assessee had made any profit out of the activities carried out by it or any portion of that profit has been enjoyed by any of the trustees or relatives or that there is distribution of profit or such other benefits to the trustees or relatives of the assessee.

41. Referring to the decision of the Kolkata Bench of the Tribunal in the case of Senate of Serampore College Vs. JCIT vide ITA Nos. 1677 and 1678/Kol/2012 for A.Y. 200-10 and 2010-11 order dated 14-10-2014 he submitted that the Tribunal in the said decision has held that accounts of 4 units of Serampore college were separately audited and a consolidated financial statement was also prepared and looked into for the purpose of taxation considering the Serampore college as one and the sole taxable unit. The Tribunal held that although Serampore college consists of 4 units but a single taxable entity who are under the name of Serampore college or Senate of Serampore both are one and same. It was accordingly directed to assess the assessee as sole taxing unit.

42. He also relied on the decision of Hon'ble Punjab and Haryana High Court in the case of Pinegrove International Charitable Trust and others Vs. Union of India and others reported in 327 ITR 73

which has since been upheld by the Hon'ble Supreme Court in the case of M/s. Queen's Educational Society (copy of order filed in paper book) and the decision of the Ahmedabad Bench of the Tribunal in the case of DIT (Exemptions) Vs. N.H. Kapadia Education Trust and submitted that in absence of any finding by the revenue authorities that any part of such donation has gone into for the benefit of any of the trustees and that such money has not been utilised for the purpose of education of the society exemption u/s.10(23C) cannot be denied.

43. So far as the aspect regarding as to whether the trust has to be treated as a whole or individual institutions be granted the benefit of exemption u/s.10(23C) the Ld. Counsel for the assessee referred to Form 56D a copy of which is placed at pages 126 to 129 of the legal compilations and drew the attention of the Bench to Column No.2 which reads "legal status whether trust, registered society/others" Referring to the said form he drew the attention of the Bench to Column No.17 which reads as under :

> "Whether any part of the income or any property of the university or other educational institution or hospital or other medical institution referred to in serial number 1 was used or applied, in a manner which results directly or indirectly in conferring any benefit, amenity or perquisite (whether converted into money or not), on any interested person as specified in sub-section (3) of section 13? If so, details thereof."

44. Referring to the above he submitted that when the form itself asks the assessee to state the legal status, i.e. whether it is a trust or a registered society/others, then there is no requirement of treating each institution as separate entity for claiming exemption u/s.10(23C). The society as a whole should be granted exemption u/s.10(23C).

45. As regards the allegation of the Assessing Officer that the assessee has received grants more than 50% from Government and therefore is not eligible for exemption, the Ld. Counsel for the assessee drew the attention of the Bench to CBDT Notification dated 12-12-2014 a copy of which is placed at Page 73 of the legal compilation and submitted that the said circular says for the purpose of said sub clause (iiiab) and (iiiac) of clause 23 of section 10 any university or educational institution shall be considered as being substantially financed by the Government for any previous year if the Government grant to such university or other educational institution etc. exceeds 50% of the total receipts including any voluntary contributions for such university or other educational institution etc., as the case may be.

46. Referring to the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Indian Institute of Management reported in 196 Taxmann 276 (kar.) he submitted that Hon'ble High Court in the said decision has held that the assessee which is an educational institution and is in receipt of only 37.85% of total income financed by Government grant and deriving the balance income from being tuition fee, donations etc., still qualifies for exemption u/s.10(23C) (iiiab) because in the absence of any definition for the word "substantial" in the Act, what is to be seen is what is the total receipts and from what source and whether the grant of 37.85% of total receipts constitute substantial finance by the Government. He submitted that the Notification by CBDT was issued on 12-12-2014 and since the assessment year involved in the instant case is A.Y. 2008-09 the decision of Hon'ble Karnataka High Court shall prevail.

47. As regards the allegation of the Assessing Officer that assessee has collected capitation fees in the guise of donation he submitted

that the assessee has not violated the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987. The Ld. Counsel for the assessee drew the attention of the Bench to the copy of the Act placed at paper book pages 180 to 186 and submitted that the Act itself allows 5% Management Quota.

48. Referring to some of the sample confirmations placed at pages 244 to 261 of the paper book he submitted that the donors have given donation towards corpus of the society. He submitted that behind every donation there may be an intention but nobody is compelled for giving donation. He submitted that at the time of admission the donor has written one version and before the Assessing Officer the donor has stated otherwise. Thus, there is contradictory statement by the donors before the college authorities and the Assessing Officer. He submitted that there is no such evidence before the Assessing Officer that unless you give donation there will be no admission in the institutions run by the assessee trust. Further, to meet the capital expenditure the assessee has to accept some donation towards the corpus since the Govt. grant is very negligible. There is no diversion of fund for the benefit of the trustees and most importantly there is no complaint by any of the donors before the State authorities for violation of the Capitation Fee Act, if any.

49. As regards the observation of the Ld.CIT(A) that donations were timed for admission the Ld. Counsel for the assessee submitted that that is the time when the people come to the society and it happens with all charitable institutions and not with the assessee only. He submitted that the donations were taken by the assessee voluntarily. So far as the merit list is concerned he submitted that it is a public document. The Ld. Counsel for the assessee reiterated that the

assessee does not exist for profit and has not violated the Capitation Fee Act.

50. Referring to the decision of the Hon'ble Rajasthan High Court in the case of Chief CIT Vs. Geetanjali University Trust reported in 352 ITR 433 he submitted that Hon'ble High Court in the said decision has held that merely because there is some defect in the admission procedure, the assessee will not lose character as entity existing solely for the purpose of education where it has not been found that the income generated by admitting students was not used for purpose of institution. Accordingly, the Hon'ble High Court held that the assessee trust was entitled to exemption u/s.10(23C) (iii)(iiia).

51. In his alternate contention, the Ld. Counsel for the assessee submitted that the assessee trust may be granted exemption u/s.10(23C) (iiiab) to the institutes which are substantially financed by the Government, the details of which are placed at page 177 of the paper book and to the institutions whose gross receipt is less than Rs.1 crore and may be taxed only the surplus of 2 colleges, i.e. DES Law College and Institute of Management Development and Research, Pune where there is surplus and the institutes have not received any grants and the gross receipt is more than Rs.1 crore.

52. The Ld. Departmental Representative on the other hand heavily relied on the order of the CIT(A). He submitted that the assessee trust is existing solely for profit. The assessee has received pay orders or Demand Drafts towards Capitation Fee from the relatives, friends or children of the persons who have deposed before the Assessing Officer. All of them signed in the standard formats prescribed by the College authorities. Therefore, the circumstantial

evidence shows that the admissions were given for money and the donation was quid-pro-quo for the admission and such donation was not voluntary. The trust had sufficient funds and was not in distress. Therefore, by accepting capitation fee in the guise of voluntary donation for giving admission they have violated the provisions of section 10(23C).

53. So far as the argument of the Ld. Counsel for the assessee that wordings of section 10(22) are similar to section 10 (23C) the Ld. Departmental Representative submitted that they are different and distinct. The society is not registered u/s.12A.

54. Referring to the decision of Hon'ble Karnataka High Court in the case of CIT Vs. Childrens Education society reported in 358 ITR 373 which was relied on by the Ld.CIT(A) he submitted that the Hon'ble High Court in the said decision has held that the provision of section 10(23C) refers to each one of the several institutions. He accordingly submitted that the order of the Ld.CIT(A) being in order has to be upheld.

55. The Ld. Counsel for the assessee in his rejoinder submitted that the trust is not charging any fees more than the prescribed limit which is fixed by the Government. The donations received every year appear in the accounts and the Government has not taken any action. Such type of collection is continuing since long. Merely because some donors have stated that they have given donation for admission that does not mean that the institution is existing for profit motive. The donors have given the donation voluntarily and some of them claimed deduction u/s.80G. Therefore, their statements before the Assessing Officer are contradictory to what they have signed before the institution. Therefore, the second version

of the statement before the Assessing Officer has to be ignored or disbelieved. Referring to paper book page 114 he submitted that the assessee has not generated huge surplus. So far as the decision relied on by Ld. Departmental Representative is concerned he submitted that the issue before Hon'ble Karnataka High Court was under sub clauses (iiiad) of clause (23C) of section 10. However here, the issue is under sub clause (iiiab) and (iiiac) of clause (23C) of section 10. He also relied on the latest decision of Hon'ble Supreme Court in the case of M/s. Queen's Educational Society Vs. CIT vide Civil Appeal No.5167 of 2008 order dated 16-03-2015. He further submitted that the courts have granted exemption u/s.10(23C) even in cases where capitation fee has been accepted.

56. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case is a Public Charitable Trust and is operating various educational institutions mainly across various places in Maharasthra which included primary to higher secondary schools, arts, science, commerce and law colleges, vocational institutes like Nursing, Physiotheraphy, Management and Engineering Colleges. Therefore, it is abundantly clear from the various documents filed before us that it is engaged in imparting education. Though the trust is not registered u/s.12A of the I.T. Act, however, it was claiming its income as exempt from tax u/s.10(22) of the I.T. Act upto 1998-99 and u/s.10(23c) (iiiab) thereafter. For the impugned assessment year also the assessee filed return of income declaring Nil income after claiming exemption u/s.10(23C) (iiiab). However, for the impugned assessment year the Assessing Officer

noted that amongst the various institutions run by the assessee there were unaided institutions whose annual receipts exceeds Rs.1 crore. These institutions were neither approved u/s.10(23C)(vi) nor registered u/s.12A of the I.T. Act. Therefore, the Assessing Officer was of the opinion that such other institutions of the assessee which do not fall in clause (iiiab) or (iiiad) and not approved under clause (vi) of section 10(23C) or registered u/s.12A of the I.T. Act would not be eligible for exemption either u/s.10(23C) or section 11 of the I.T. Act. Further, the Assessing Officer noted that donations received by the assessee towards corpus fund were in the nature of capitation fees collected in lieu of admissions, keeping in mind the commercial interest. Therefore, the institution indulges in such a practice with a profit motive could not be entitled for exemption under the provisions of I.T. Act. In view of the above, the Assessing Officer denied the exemption u/s.10(23C) of the I.T. Act.

57. We find in appeal the Ld.CIT(A) upheld the action of the Assessing Officer. While doing so, he observed that the income of the unaided institutions whose annual receipts exceeded Rs. 1 crore is not eligible for exemption in absence of necessary approval from the prescribed authority u/s.10(23C)(vi). He also rejected the argument of the assessee that the word "other educational institutions" in clause (iiiab) refers to the assessee society and not the individual educational institution. According to him the exemption u/s.10(23C) is institution specific and not person specific and the eligibility for exemption of income or otherwise in respect of each institute of the society has to be decided with reference to specific sub clause provided in section 10(23C) and applicable to that institute.

58. So far as the allegation of the Assessing Officer that the assessee has received capitation fee in the guise of donation, he

observed that the statements recorded from the donors showed that the contributions were paid by the donors as quid-pro-quo for securing admissions in various institutions run by the assessee and the same are not voluntary contributions or corpus donations as the donations coincide with the dates of admission and only the depositing of the amount and the issue of receipt thereof were delayed by the assessee intentionally so as to claim that there was no link between the admissions and the donations. Further, according to Ld.CIT(A) the assessee was not starved of funds to carry out or expand its activity and therefore receipt of such contribution at the time of admission either by way of capitation fee or otherwise is a purely commercial consideration for admissions. The institutions are running on commercial lines by collecting amounts in addition to prescribed fees for admissions. In view of the above, the Ld.CIT(A) held that the assessee trust is not entitled to exemption u/s.10(23C) and upheld the action of the Assessing Officer.

59. It is the submission of the Ld. Counsel for the assessee that the trust is not being run on commercial lines. The money collected from students towards fees and donations are spent only for the purpose of education. No portion of the funds of the trust has been diverted for the personal benefit of any of the trustees. There is nothing on record that any person has been denied admission for non payment of donations nor any student or parent has made any complaint to the Government for violation of The Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987. It is also the submission of the Ld. Counsel for the assessee that since the wordings of provisions of section 10(23C) are similar to that of provisions of section 10(22) of the I.T. Act, therefore, in view of the decision of Hon'ble Supreme Court in the case of Aditanar

Educational Institution (Supra) the society which has been formed for sole purpose of establishing, running, managing, or assisting schools and colleges is an educational institution is entitled to exemption.

60. We find merit in the arguments advanced by the Ld. Counsel for the assessee. There is no dispute to the fact that the assessee is a Public Charitable Trust existing solely for educational purposes. It runs around 45 institutions at different places, viz, Pune, Mumbai, Sangli, Satara, Vahi and Tirupati and the number of students are more than 47000. Some of the colleges are receiving grants from the Government where such grants are substantial. Similarly, there are 27 institutions run by the trust where the gross receipt is less than Rs. 1 crore and no grant has been received from the Government. Similarly, there are 3 institutions where the trust has not received any grant and the gross receipt is more than Rs. 1 crores, the list of such details of the institutions are given as under :

	DECCAN EDUCATION SOCIETY, PUNE	PAN: AAATD3141P		AY2008-09		
	NAME OF THE INSTITUIONS (Aided institutions)	GROSS RECEIPTS	EXPENDITURE	SURPLUS/ DEFICIT	GRANTS included in GROSS RECEIPTS	% of the Grants with Total Gross Receipts
	BELOW ONE CRORES UNITS					
1	Shah Kanital Prashala(Primary)	561,192	575,175	(13,983)	561,153	100%
2	Shah Kanital Prashala(Secondary)	9[7]7,211	1,391,797	(414,586)	724,864	74%
3	Navin Marathi Shala, Satara	2,704,976	2,455,538	249,438	1,890,094	70%
4	Technical Institute, Pune	4, 597,062	3,704,790	892,272	2,223,000	48%
5	Navin Marathi Shala, Pune	5,610,342	5,204,816	405,526	3,854,738	69%
		14,450,783	13,332,115	1,118,668	9,253,849	
	ABOVE ONE CRORES UNITS					
6	Dravin Highschool, Wai	10,631,057	10,477,016	214,042	8,589,940	80%
7	Chintamanrao College of	14,312,040	13,292,847	1,019,193	12,257,297	86%
8	New English School Tilak Road,	15,498,360	15,929,992	(431,631)	11,784,538	76%
9	New English School Ramanbag,	16,694,815	15,906,741	788,074	12,799,610	77%
10	New English School, Satara	17,537,302	17,577,697	(40,396)	14,703,814	84%
11	Ahilyadevi High School	17,578,662	16,914,371	664,291	13,480,962	77%
12	Brihan Maharashtra College of	43,818.204	31,142,642	12,675,562	20,630,446	47%
13	Willingdon College, Sangli	48,870,540	47,713,704	1,156,836	41,727,550	85%
14	Kirti College, Murnbai	78,108,685	75,378,625	2,730,060	59,819,333	77%
15	Fergusson College, Pune	168,501,694	132,547,49	35,954,204	85,723,124	51%
		431,611,358	376,881,12	54,730,234	281,516,613	
		443,062,141	390,213,24	55,848,901	290,770,462	

	NAME OF THE INSTITUIONS (Unaided Institutions)	GROSS RECEIPTS	EXPENDITURE	SURPLUS/ DEFICIT	GRANTS	% of the Grants with Total Gross Receipts
	BELOW ONE CRORES UNITS					
1	Sangli Board Hostel, Sangli	3,833	124,173	(120,340)		
2	DES Secondary, Pune(Development Fund)	6,583	-	6,583		
3	NMITD Proposed College, Mumbai	10,829	325,688	(314,859)		
4	Pre-Primary School, Satara (Deposit)	105,291	1,690	103,601		
5	IARDA	119,770	363,544	(243,775)		
6	Abhivyakti	339,318	364,488	(25,170)		
7	Pre-Primary School, Satara	346,742	214,119	132,623		
8	Sangli Board Office, Sangli	420,845	864,872	(444,027)		
9	Primary School, Satara	431.385	664,907	(233,522)		
10	DES Secondary, Pune (Computer)	493,114	394,147	101,967		
11	DES Physiotherapy, Pune	898,076	2,009,865	(1,111,789)		
12	IARDA YCMOU	1,082,899	848,721	234,178		
13	Shah Kantilal Prashala Pre-Primary, Sangii	472,387	218,747	253,640		
14	Shah Kantilal Prashala Primary OCRF	514,846	634,290	(119,444)		
15	Shah Kantilal Prashala Primary, Sangli (E)	1,317,049	568,307	748,742		
16	Shah Kantilal Prashala Secondary, Sangli	373,658	595,301	(221,643)		
17	Shah Kantilal Prashala Pre-Primary, Sangli	301,527	228,752	72,776		
18	Shah Kantilal Prashala Computer	373438	225,007	148,431		
19	DES New Pre-Primary, Pune	1,21-1,091	707,205	503,887		
20	Balak Mandir Satara	1,436 ,571	674,350	762,221		
21	Ranade Balak Mandir, Pune	4,292,^-17	2,063,116	2,229,301		
22	DES Primary, Pune	5,695,944	3,172,135	2,523,810		
23	DES New Primary, Pune	5.75S.830	4,293,906	1,465,924		
24	DES Pre-Primary, Pune	6,014,857	1,436,180	4,578,676		
25	Institute of Management & Research,	6,936,239	5,946,310	989,929		
26	DES Secondary, Pune	7,789,173	5,510,641	2,278,532		
27	Jagganath Rathi Vocational Institute, Pune	8,751,432	8,467,541	283,891		
		55,502,143	40,918,00	14,584,142		

	NAME OF THE Institutions (Unaided Institutions)	GROSS RECEIPTS	EXPENDITURE	SURPLUS/ DEFICIT	GRANTS	% of the Grants with Total Gross Receipts
	ABOVE ONE CRORES UNITS					
1	DES Law College	14,072,598	7,776,889	6,295,709		
2	Institute of Management Development &	18,712,177	12,044,777	6,667,400		
3	DES Central Office	15,395,524	17,199,171	(1,803,648)		
		48,180,298	37,020,837	11,159,461		
	TOTAL NON AIDED INSTITUTIONS	103,682,441	77,938,838	25,743,603		
	Grand Total	549,744,582	468,152,078	81,592,504		

61. The first question that has to be decided in this appeal is as to whether all the institutions are to be considered independently since individual audited accounts are also available or all the institutions to be considered as a whole, i.e. belonging to the trust where consolidated accounts are filed for claiming exemption u/s.10(23C).

62. An identical issue had come up before the Hon'ble Supreme Court in the case of Aditanar Educational institutions. In that case the assessee was a society registered under the Societies Registration Act. Its objects were to establish, run, manage or assist colleges, schools and other educational organisations existing solely for educational purposes. The assessee received donations from a trust during the previous years relevant to the assessment years 1965-66, 1966-67 and 1967-68, in sums of Rs. 15,71,370, Rs. 5,62,432.25 and Rs.4,78,899.67, respectively. The assessee filed "nil" returns for all three years, on the ground that it was an educational institution existing solely for educational purposes. The Income-tax Officer closed the assessments stating that there was no taxable income. The Commissioner of Income-tax, in revision, suo motu, held that the assessee was not entitled to exemption, as the exemption under section 10(22) of the Income-tax Act, 1961, would apply to educational institutions as such and not to anyone who might be financing the running of such an institution. The Appellate Tribunal, by a common order for all three years, held that the assessee was an educational institution within the ambit of section 10(22) of the Act. On a reference at the instance of the Revenue, the High Court held in favour of the assessee on the ground that the sole purpose for which the assessee had come into existence was education at the levels of college and school and that an educational society could be regarded as an educational institution, if the society was running an educational institution not for the purpose of profit, but its existence was solely for the purpose of education. The Revenue appealed to the Supreme Court . The Hon'ble Supreme Court held as under (page 316 and 317) :

> "The sole question that arises for consideration is whether the assessee will be taken in by the words "other educational institution". On this aspect, the High Court held thus :

"'Any educational institution' would fall within the scope of section 10(22) even though it may have or may not have anything to do with the University. The categories are so different that the University cannot be the genus, and the 'other educational institution' the species thereof. Thus, the college here could come under the 'other educational institution'. "

Proceeding further, the High Court held that the assessee came into existence for the purpose of establishing, running, managing or assisting colleges, schools and other educational organisations and in pursuance of its objects, the assessee has established a college. It was further held that the medium through which the assessee could effectuate its objects is the college and by employing this medium, the assessee imparts education. The High Court opined that it is not possible to accept the contention of the Revenue that the assessee is only a financing body and does not, on the facts, come within the scope of "other educational institution" occurring in section 10(22). It was found that the sole purpose for which the assessee has come into existence is education at the levels of college and school and that an educational society could be regarded as an educational institution, if the society was running an educational institution not for the purpose of profit, but its existence was solely for the purpose of education. On the basis of the above findings, the High Court answered the question referred to it in the affirmative and in favour of the assessee. It is this judgment which is objected to by the assessee as also by the Revenue in the main appeals Civil Appeals Nos. 2578-2580 of 1979 and 356, 356A and 356B of 1980.

Counsel for the Revenue mainly stressed the plea that the exemption under section 10(22) of the Act would apply only to educational institutions as such. According to him, in this case, the assessee might be financing for running an educational institution, but it is not itself an educational institution. As noted earlier, the Tribunal held that the assessee was an institution existing for educational purposes and not for the purposes of earning any profit and the assessee itself could be termed as an "educational institution" coming within section 10(22) of the Act. The High Court has concurred with this view. The High Court has further held that the medium through which the assessee could effectuate its objects is the college and by employing this medium, the assessee imparts education and it cannot be stated that the assessee is only a financing body and does not, on the facts, come within the scope of "other educational institution" occurring in section 10(22) of the Act. Reliance was placed on the decision of the Allahabad High Court in Katra Education Society v. ITO [1978] 111 ITR 420, to hold that an educational society could be regarded as an educational institution if the society was running an educational institution. We are of the view that an educational society or a trust or other similar body running an educational institution solely for educational purposes and not for the purpose of profit could be regarded as "other educational institution" coming within section 10(22) of the Act. (See CIT v. Doon Foundation [1985] 154 ITR 208 (Cal) and Agarwal Shiksha Samiti Trust v. CIT [1987] 168 ITR 751 (Raj). It will be rather unreal and hypertechnical to hold that the assessee society is only a financing body and will not come within the scope of "other educational institution" as specified in section 10(22) of the Act. The object of the society is to establish, run, manage or assist colleges or schools or other educational institutions solely for educational purposes and in that regard to raise or collect funds, donations, gifts, etc. Colleges and schools are the media through which the assessee imparts education and effectuates its objects. In substance

> and reality, the sole purpose for which the assessee has come into existence is to impart education at the levels of colleges and schools and so, such an educational society should be regarded as an "educational institution" coming within section 10(22) of the Act. We hold accordingly. In our view, the judgment of the High Court does not merit interference. The plea of the Revenue to the contrary is untenable and we repel the same. All the appeals filed by the Revenue shall stand dismissed, but there shall be no order as to costs."

63. Though the above decision was rendered in the context of provisions of section 10(22), however, it has been omitted by the Finance Act No.2 of 1998 w.e.f. 01-04-1999. We find the provisions of section 10(23C) (iiiab) are similar to that of the provisions of section 10(22). Therefore, in view of the decision of the Hon'ble Supreme Court cited (Supra), we are of the considered opinion that the exemption is available to the society as a whole which has been formed for the sole purpose of establishing, running, managing or assisting schools and colleges in different fields.

64. Further, we find Clause 2 of Form 56D reads as under :

> "2. Legal status, whether trust, registered society/others. Please enclose a copy of the certificate of registration/relevant document evidencing legal status."

65. From the above, it is very clear that it is the trust or the society that has to apply for registration and claim exemption. Had it been the intention of the legislature to grant exemption only to the institutions individually or independently and not to the society as a whole, the language would have been different. The society or trust may run more than one institutions. Therefore, the argument of the Revenue that it should be institution specific and not the Society as a whole in our opinion is not correct.

66. The second question that arises for our consideration as to whether the trust is for profit motive. It is the allegation of the Revenue that the assessee trust was collecting the capitation fee in

the garb of donation and was therefore running with a profit motive. We find the Assessing Officer has not reported the violation, if any, by the assessee trust to the Government of Maharashtra for taking any action for violation of The Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987. None of the persons who have deposed against the assessee by stating that they had given donation for the purpose of getting admission has complained to the Government for any such violation by the society. It is also to be noted that those persons have filled up the requisite proforma stating that they have given donation to the assessee voluntarily and not for seeking admission. Even some of them claimed deduction u/s.80G, a fact stated by Ld. Counsel for the assessee and not controverted by the Ld. Departmental Representative. Therefore, changing the stands after their wards completed their education from the institutions run by the assessee trust are contradictory. Further, it is also a fact that all donations received by the assessee trust are recorded in the books of account. There is no allegation by the Revenue that any part of such donation has been siphoned off for the benefit of any of the trustees or related persons. Nothing has been brought on record that any student has been denied admission for not giving donation. Merely because some of the donors stated that they have given the donation for admission the same in our opinion will not disentitle the society from getting exemption which is existing solely for educational purposes and which is otherwise entitled to the exemption.

67. We find a somewhat similar issue had come up before the Hon'ble Rajasthan High Court in the case of Chief CIT and Another Vs. Geetanjali University Trust reported in 352 ITR 433. In that case the assessee-trust, for the assessment year 2008-09, filed an application seeking exemption of its income under section 10(23C)(vi)

of the Income-tax Act, 1961. After exchange of several letters between the assessee and the authorities whereby several queries were raised and answered, the application of the assessee trust was rejected on the ground that the assessee trust did not satisfy the essential conditions for exemption under section 10(23C). For the assessment year 2010-11 and onwards, the assessee was granted approval under section 10(23C)(vi). On a writ petition the single judge allowed the writ petition by setting aside the order passed by the Chief Commissioner under section 10(23C) and directed the authority to decide afresh the proceedings for the assessment year 2008-09 and onwards till the assessment year 2010-11 by passing afresh speaking order after affording opportunity of hearing to the assessee. On appeal the Hon'ble High Court held as under (Head Notes):

> "Held, dismissing the appeal, that under section 10(23C)(vi) and (via), what is required for the purpose of seeking approval is that the university or mother educational institution should exist ''solely for educational purposes and not for purposes of profit". It was nowhere the case or the finding of the Chief Commissioner that on account of the defect in the admission procedure, assessee ceased to exist solely for educational purposes or it existed for the purposes of profit. Further, it was not the case of the Revenue that the students who were admitted were not imparted education in the college in which they were admitted or the admissions granted were fake or non-existent or that the income generated by admitting the students was not used for the purpose of the assessee. The emphasis on the part of the Chief Commissioner that the purpose of education would not be served if the education is for students who have been illegally admitted and the purpose of education as contemplated in the section would be served only if the students have been legally admitted and not otherwise, went beyond the requirements of the section. Of course, the requirement of an educational institution to provide admissions strictly in accordance with the prescribed rules, regulations and statute needs to be adhered to in letter and spirit, but violation could not lead to its losing the character as an entity existing solely for the purpose of education. Therefore, there, was no interference with the order of the single judge."

68. We find the Pune Bench of the Tribunal in the case of Shikshana Prasaraka Mandali Vs. CIT Central Pune vide ITA Nos.1348 and 1349/PN/2010 order dated 27-03-2014 (where one of

us – Accountant Member is a party) while dealing with denial of registration u/s.12A for violation of The Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987 by accepting donations has observed as under :

> "8. We have considered the rival arguments made by both the sides, perused the order of the Ld.CIT and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find there is no dispute to the fact that the assessee trust is more than 100 years old and it runs more than 60 educational institutions imparting education to more than 70000 students in various fields. The trust was granted registration earlier u/s.12A. However, the Ld.CIT cancelled the registration granted earlier on the ground that the objects of the assessee trust are not genuine since the assessee trust is collecting huge donation from students for admission to the various institutes run by it in violation of the Maharashtra Educational Institutions (Prohibition of Capitation Fe) Act, 1987. The collection of such donations according to him is illegal and therefore the activities of the said society are not genuine. He further observed that the institutes are being run on commercial lines with profit motive. He also held that the assessee trust has violated provisions of section 11(5) r.w.s. 13(1)(d) by investing in shares of cooperative banks.
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> 8.1 . . . . . .
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> 8.2 . . . . . .
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> 8.3 Now coming to the first issue on which the Ld.CIT has cancelled the registration u/s.12A, i.e. the assessee society is collecting huge donation from students for admission to various institutes which is in clear violation of the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987, we find there is no such complain before the Government of Maharashtra or AICTE or any other Government Department either by the Income Tax Department or by any of the student/parents stating that the assessee society has charged Capitation fee for giving admission which is in violation of the Maharashtra Educational Institutions (Prohibition of Capitation Fee Act) 1987. Even the CIT who is alleging that the assessee trust has collected huge donation for admission of students to various institutes run by it has not informed the Government of Maharashtra if he was serious about any such violation done by the society. The submission of the Ld. Counsel for the assessee that as against 70 Management Quota Seats it has collected donation from 9 students and such donation is within the permissible limit prescribed by the Government of Maharashtra and that all such receipts are reflected in the accounts could not be controverted by the Ld. Departmental Representative.
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> 8.4. . . . . .
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> 8.5 . . . . . .
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> 8.6 . . . . . .

8.7 We find the Hon'ble Delhi High Court in the case of Shanti Devi Progressive Education Society (Supra) has observed as under :

"26. We have considered all these opinions as well as the submissions made by learned counsel for the parties. We must at the inception itself note that the three components scrutinized by the Assessing Officer are the Admission Fee, Corpus Fund and the Loans taken from parents. Thus it really can't be disputed that even the source of funds is relatable to the activity of education. It may be noticed that there are factual findings on the loans having been availed of by the assessee from a nationalized bank for the purpose of creating additional infrastructure/schools and the three sets of amounts have been addressed only towards the object of creating additional infrastructure and easing the liability of the assessee towards the interest burden of loan repayment. What is pertinent to be taken note of is that there is no finding or allegation of any diversion of these funds for the purpose other than carrying on educational activity. There is no diversion of funds to the individual members or taking away of profits for some other activity. It does appear to us that the Assessing Authority appears to have been weighed down by the factum of some questions being raised in the Parliament about the manner of collection of funds by the institutions. That alone, would not suffice to deny the exemption under Section 10(22) of the IT Act. There is in fact no material to show or a complaint that there has even been any coercive process to recover these amounts.

27. It cannot be lost sight of that if an institution has to expand, additional infrastructure has to be created, quality education has to be imparted, all these activities require funds. There may be an original corpus of the Society but thereafter the corpus for such activity can be created only through voluntary donations either from any philanthropist or through collection of funds in the process of admission. We are not concerned with the morality of the issue while deciding whether exemption has to be granted. Personal prejudices seem to have stepped in when allegations were made without any material against certain members (which have rightly been struck off by the majority opinion of Tribunal) alleging that these members were well known for making profit through educational institutions. We also fail to appreciate the doubts cast or the possibilities expressed about there being something more to it in view of the funds being deposited in private banks. The opinion is completely based on surmises and conjectures as it seems to suggest that merely because funds were in a private bank, there may have been divergence of funds to the members of the Society. Similarly, the factum of construction being carried out by Ahluwalia Construction Co. (P) Ltd., stated to be a family concern of the President, was not material as there was no allegation of any inflated cost of construction or unreasonable profits being derived from the same by third parties as a mode of divergence of funds."

8.8 We find the Pune Bench of the Tribunal in the case of Dr. D.Y. Patil Education society (Supra) has observed as under :

"13. Though the assessee has denied receipt of capitation fee/donations and running on commercial lines, however, without going into the merits of such plea, the pertinent question is the consequences of acceptance of capitation fee/donations by the assessee at the stage of examining

assessee's application for registration under section 12AA of the Act. Somewhat similar situation arose 10 before the Mumbai Bench of the Tribunal in the case of Ramarao Adik Education Society (supra) wherein the Commissioner of income-tax was considering cancellation of registration on the basis of the plea that the assessee was accepting capitation fee/donations. Following discussion by our co-ordinate Bench is relevant:

"48. Now the question is the legal consequence of the assessee accepting capitation fees / donations from students seeking admission to various courses offered by the Institutions run by the Assessee-Trust. Even in the matter of capitation fees / donations, the Commissioner of Income Tax has no case that the funds collected by the Assessee- Trust through capitation fees / donations have been used for the purposes other than running the Institutions managed by the Assessee Trust. It is to be seen that all the Institutions run and managed by the Assessee Trust are carrying on the activities envisaged in the Memorandum of Association the Assessee-Trust. It is stated by the Commissioner in his order itself that the moneys collected by the Assessee-Trust by way of capitation fees / donations are used for the purpose of not only by the Assessee-Trust but also for other Institutions of similar nature It is to be seen that application of funds for the charitable activities of another eligible Institution amounts to application of funds for charitable purposes. The law has made it very clear that the charitable activities may be carried out directly by an eligible Institution or through another eligible Institution for that matter. Therefore, those observations of the Commissioner stated to be adverse to the Assessee-Trust are not in fact prejudicial to the case of the Assessee-Trust.

49. The Karnataka High Court in the case of Sanjeevamma Hanumanthe Gowda Charitable Trust Vs. Director of Income Tax (Exemption) [285 ITR 327] has considered that in matters of registration and exemption of Charitable Institutions, the satisfaction of the Commissioner should be regarding the application of the income of the trust for the specified purposes, which only entitles the assessee to claim exemption. The Court observed that for arriving at such satisfaction primarily he has to look at the object of the trust, when the same is reduced into writing in the form of trust deed. If on the date of the application the trust has received income from its property, then find out how the said income has been expended, and whether it can be said that the income is utilized towards charitable and religious purposes. Therefore, for the purposes of registration u/s. 12AA of the Act, what the authorities have to satisfy is the genuineness of the activities of the trust or institution and how the income derived from the trust property is applied to charitable or religious purposes and not the nature of the activity by which the income was derived to the trust.

50. The above judgment proposes that what is to be looked into is the character of application of funds and the character of the activities carried out by an assessee and not the colour and nature of the sources out of which necessary funds were collected by the assessee. In other words, the source of funds is not an important ingredient in assessing the character of the activities carried on by a Charitable Institution. The Allahabad High Court in the case of CIT Vs. Red Rose School [163 Taxmann 19] has held that educational activities carried on by a Society are for charitable purposes and not against the public policy. Therefore, the activities carried on by the Assessee-Society in the present case cannot in any way held as opposed to public policy. The objection

expressed by the Commissioner could at a maximum be attributed to the question of accepting capitation fees / donations. In this context, the Commissioner-DR has raised a contention that the donations received by the Assessee-Trust are not voluntary and that fact also should be contributed to justify the cancellation of the registration." On the basis of the aforesaid decision of the Tribunal, which has been rendered after considering the judgments of the Hon'ble Karnataka High Court in the case 11 of Sanjevamma Hanumanthe Gowda Charitable Trust (supra) and that of the Allahabad High Court in the case of CIT v Red Rose School 163 Taxmann 19 (AIL), it is quite clear that the objection raised by the Commissioner with regard to the receipt of capitation fee/donations are factors to be considered at the time of assessments while examining the eligibility of the assessee trust for the benefit of section 11 & 12 and the same do not come into play in the course of the examination by the Commissioner for the purposes of grant of registration under section 12AA of the Act.

14. In view of the aforesaid discussion, in our considered opinion, the Commissioner has examined the application of the assessee on irrelevant considerations which were beyond the scope of enquiry envisaged under section 12AA of the Act. We, therefore, deem it fit and proper to set aside the order of the Commissioner and restore the matter back to his file to be examined afresh strictly in terms of the scope of the enquiry envisaged under section 12AA(1) of the Act."

8.9 We find the Pune Bench of the Tribunal in the case of Maharashtra Academy of Engineering & Educational Research (MAEER) Vs. CIT reported in (2010) 133 TTJ (Pune) 706 while adjudicating cancellation of registration u/s.12AA for taking donation and capitation fee has observed as under :

"(VI) Conclusion :

11. In the recent past the question of interpretation of newly inserted s. 12AA (w.e.f. 1st April, 1997) has always been perennial teaser not only to the trust or institutions but also to the Revenue Department as also faced by the judiciary. To get the answer we have heard both the sides at length, carefully perused the impugned order and also several correspondences filed in the compilation in the light of the case laws cited.

11.1 The law now introduced is to streamline the "Procedure for registration" and by saying so we do not want to enter into the controversy whether the applicability of s. 12AA(3) was retrospective or prospective in nature. Rather we can make an observation that this issue stood answered by Co-ordinate Benches. We want to express that earlier to this section there was no guidelines in the statute for refusal of registration, therefore it was considered eminent to introduce in the statute the said procedure. What bothered the Tribunals and High Courts in the recent past is the scope and the purpose of introduction of s. 12AA in the statute. All those judgments as listed above, in agreement have said that the activities ought to be in fulfilment of the objects for which a trust is created. Sentiments should be in line with the purpose for which the trust is created. The purpose should be philanthropic, charitable, or for public general utility. Service without profit has to be the motive. As in the present case the objects are to undertake, to run and to improve the educational institution for imparting education in divergent fields; deliberated upon ante.

11.2 In any case we have to examine the purpose of enactment of ss. 12A, 12AA and 12AA(3), viz-a-viz ss. 11 and 12.

While reading several case laws as cited supra an important point of view of the Hon'ble Courts have come to our notice that mere registration under s. 12AA would not by itself be a ground for exclusion of such an income from the total income of a trust. To our understanding, also acknowledged in the precedents; the provisions of s. 12AA prescribes conditions for registration of a trust and therefore in the absence of registration disentitles any trust from claiming any benefit of the provisions of s. 11 and s. 12 of the Act in relation to its income. Therefore the conclusion is that s. 12AA prescribes certain conditions for the registration of a trust and thereupon obligates a trust or an institution to seek, rather obtain, a registration under s. 12AA if such trust intends to have the benefits of the exemption as prescribed under ss. 11 and 12 of the Act. It is not the other way round that the benefit of ss. 11 and 12 shall be automatic once the registration is granted. Thus the outcome is that these provisions make it clear that if the trust is not registered under s. 12AA it would not be able to claim any exemption or exclusion of its income from the total income of the previous year, even if such income is otherwise liable for exclusion under any of the clauses of s. 11 and s. 12 of the Act.

11.3 On due consideration of the rival arguments we can summarise the section of the Act governing the issue in hand. The purpose of framing the "Conditions for applicability of ss. 11 and 12" i.e., s. 12A and framing the rules of "Procedure for registration" i.e., s. 12AA is basically meant to open the door to a trust to enter into the framework of the provisions of the statute, in a way; an entitlement to enter into a room where the eligibility of exemptions is kept for adjudication. Thus in a case of refusal of registration, the trust would even not be allowed to enter the room to seek a claim of such exclusion of a receipt from the total income. In simple words; in case of no registration a trust is debarred by law to claim exemption. This is the first step to climb to the level where the exemptions are placed. At this first step the CIT is conferred with the powers to call for such documents and information in order to satisfy himself about the genuineness of the activities and also to enquire that those genuine activities are as per the objects of the trust for which it is seeking registration. The objects and activities should be philanthropic and not against the public interest must be for the benefit at large instead for the benefit of particular individual or group of individuals.

11.4 In the recent past sub-s. (3) was inserted in s. 12AA w.e.f. 1st Oct., 2004 which gives power of cancellation of registration to the CIT, if he finds that the activities are not genuine or not being carried out in accordance with the object of the trust. The need for the enactment had arisen due to belief of some quarter that in the absence of explicit law the CIT cannot exercise the power of cancellation of registration. To overcome this hurdle this sub-section is incorporated and now in operation. Naturally these powers are conferred with a view to ensure that if once a registration has been granted under s. 12AA, a trust or institution may not take any such liberty of misuse of the registration or the provisions by going haywire rather furthering the objects of the trust or genuinely not pursuing the activities for which it was established.

11.5 Considering the arguments and the facts of this case we have noted that the most important feature of s. 12AA is, as also referred to us in this appeal for our adjudication, that this section has only laid down the procedure of registration and this section nowhere speaks that while

considering the application of registration, the CIT shall also look into the procedure of earning of income and sources from where receipts are derived. The argument was, it also does not speak anywhere that while considering the registration the CIT shall also see the manner in which the receipts or the income is being spent by the trust. To our humble understanding of various related provisions, the power of enquiry, in respect of sources of receipts and the utilization of income is entrusted in separate sections as already discussed ante. The language thus used in this section only confines to enquire about the activities of the trust and its genuineness, which means, in consonance with the objects for which created and those objects as also activities should not be a camouflage but pure, sincere, charitable and for public utility at large. What is implicit is that the CIT has to sincerely examine that the objects as also the activities should not be prima facie against the basic structure for which beneficial law is made and also be not in conflict with the general public utility. Naturally an institution if established to carry out an illegal activity or activities are causing any type of nuisance not in the interest of the public at large should definitely lead to cancellation of registration. Therefore, this is the first requisite of the statute to mandate for the registration and in the absence of such registration disentitlement of exemption. So what is explicit is that though an institution may be doing charitable activities as prescribed but in the absence of registration cannot be entitled for the exemptions or benefits of ss. 11 and 12 of the Act. It is also explicit that registration ipso facto does not necessarily entitle an institution to get the receipts excluded from the income or exemption be granted automatically by just showing the registration certificate to the Revenue authorities. In no way the registration certificate is a license to do any type of activity and to get away from the ambits of the tax. An institution has to follow the norms as laid down in other related sections for availing prescribed benefits.

11.6 Procedure of registration is a first step and a preliminary stage where the CIT shall restrict the enquiries as to whether the trust is actually and whole heartedly performing all the duties and activities for which it was created. On careful reading of this section it was gathered that at this initial stage there is no scope of any apprehension of misutilization of funds or to judge the taxability income. The scheme of the Act otherwise does not subscribe and allow a trust to take the benefit of the provisions of ss. 11 and 12 unless it establishes the prescribed utilization of the income, even if, at all the trust holds the registration in its hands. Therefore at the stage of granting registration the CIT is not expected to bother himself about the other provisions of the Act and supposed to confine himself to the procedure of registration as laid down therein. For this view, we draw support from the order of the respected Co-ordinate Bench Tribunal, New Delhi pronounced in the case of Aggarwal Mitra Mandal Trust vs. Director of IT (Exemption) (supra), a portion reproduced below (p. 186 of paper book) :

".....In this situation, if the registration applied for under s. 12A is not granted to it for violation of the provisions of s. 13(l)(b) and it is ultimately found that the assessee-trust actually accomplished the objects as indicated in clause No. 3(4) only for the benefit of public at large without there being any activity undertaken as per object clause Nos. 3(1) and 3(2), it would be deprived of any benefits which otherwise were available to it under s. 11 or s. 12. This certainly is not the legislative intention as reflected in the scheme laid down in ss. 11, 12, 12A, 12AA and 13. On the contrary, the phraseology of s. 13, as already discussed, makes it explicitly clear that the said provisions become operative or relevant only at the stage of assessment when the AO is

required to examine the claim of the assessee for benefits under s. 11 or s. 12 while computing the total income of the assessee of the relevant previous year. The application of s. 13 thus falls within the exclusive domain of the AO and the provisions contained therein can be invoked by him while framing the assessment and not by the CIT while considering the application for registration under s. 12AA."

11.7 An another feature of the impugned order of the learned CIT is in fact bothering us that nowhere he has taken any objection to the charitable and educational nature of the institution. In fact, the objects of the institution as declared in the trust deed, which are extracted earlier, does reflect that all are philanthropic or benevolent in nature, precisely for the purpose of imparting education. Strange enough there is no finding recorded by the learned CIT contrary to this fact. Be that as it may, the real and the only substantial objection for refusal of registration was that the institution has collected donations thus adopted some wrong means of collection of fees. But whether at this preliminary stage he had the right to draw an adverse inference so as to refuse registration or alternatively confine himself to the enquiry about the objects and the activities of the trust as per the limits of the jurisdiction of s. 12AA of the Act. Rather this is also not the case of the learned CIT that the institution is doing some other activity of earning profit other than the activity of running educational institutions. The established factual position is that the institution is not doing in any other activity except running educational institutions. In such circumstances, can we uphold the action of cancellation of registration ? Answer is obvious no.

11.8 While reading the precedents cited from the side of the appellant we come across a decision of a respected Co-ordinate Bench Tribunal, Kolkata pronounced in the case of Kalinga Institute of Industrial Technology (supra) and have found that almost on identical situation, as in the present appeal, it was held that consequence upon a search while the assessment proceedings are pending a cancellation of registration by invoking s. 12AA(3) is a premature action on the part of CIT, because it is expected from him to take precaution to let the assessment get completed, if possible expeditiously, instead of rushing to cancel the registration which shall effect and interrupt the other proceedings under the Act and so prematurely punish a person without judicious hearing as prescribed by the statute. Held portion is worth reproduction as did in para (xii) p. 35 ante.

11.9 We have also gone through a decision referred from the side of the Revenue namely the Jammu & Kashmir Bank Priority Sector Asset Risk Fund vs. CIT (ITA No. 61/Asr/2006 order dt. 1st Sept., 2006) (supra); cited in support of the argument that firstly the CIT has been vested with the powers vide s. 12AA(3), inserted w.e.f. 1st Oct., 2004, to enquire about the genuineness of the activities of a trust and to satisfy himself that such activities are being carried out in accordance with the objects of the trust. Secondly in case of dissatisfaction he is empowered to cancel the already granted registration. Thirdly in case it is found that the activities are not in conformity with the object that too is the good reason for cancellation of registration. Fourthly the sweep of the section is wide enough to empower the CIT to examine the nature of the object whether for general public utility and philanthropic in nature. In our conscientious view there is no disagreement about the above-mentioned four legal proposition as eruditely laid down by the respected Amritsar Bench. Undisputedly we have also to decide this appeal more or less within these parameters. But the basic question is that before stepping towards the cancellation of registration the heavy burden is on the

learned CIT to conclusively demonstrate that all had gone haywire i.e., objects are meant for personal benefits; that engaged in immoral activities or that there is no element of public benefit. In the present appeal none of the above criteria for rejection of registration was in existence, however mainly confined to the finding that by charging donation the trust has infringed the rules of Prohibition of Capitation Fee Act.

11.10 Before we part with it is worth to cite an another latest decision pronounced by respected Co-ordinate Bench of Chandigarh in the case of Himachal Pradesh Environment Protection and Pollution Control Board vs. CIT (ITA No. 74/Chd/2009) [reported at (2009) 125 TTJ (Chd) 98 : (2009) 28 DTR (Chd)(Trib) 289—Ed.] wherein the worth noting observations were as follows :

"17. On a perusal of these objectives, as sanctioned by the statute, it is obvious that the activities performed by the assessee trust are regulatory functions for the public good, and any collection for fees or charges, in the course of discharging these regulatory functions, cannot be viewed as *a* consideration of rendering these services of pollution control measures. We are unable to see any substance in learned CIT's stand that the income earned by assessee as licence fees, consent fees and testing charges are receipts in consideration of rendering the services to trade, commerce or business. What is termed as consent fees is in fact fees accompanying the application for obtaining consent (i.e., permission) of the assessee Board to set up a new unit. It cannot be anybody's case that the processing of applications by itself has *s* commercial motive, or that fees for processing of applications is a fees collected for rendering of service of pollution control which is undisputed sole object of the assessee trust. Similarly, fees for testing charges and licence fees are not also towards rendering of any services of pollution control either. These are not the services with a profit motive but essentially only to recoup the cost of getting the samples tested or processing of licences. In any event, these activities, if these can be at all be construed as rendering of services, these are wholly subservient to the public utility objective of pollution control, and, it cannot be anyone's case that even though the State Pollution Boards like the assessee before us are set up under an Act of the Parliament, but, to use the words employed in the CBDT circular (supra) 'the object of' general public utility' will only be a mask or a device to hide the true purpose which is trade, commerce, or business or rendering of any service in relation to trade, commerce or business'.

19. In any event, as a plain reading of s. 12AA(3) would indicate that a registration granted under s. 12AA can only be withdrawn when the CIT is satisfied that (a) the activities of the trust or the institution are not 'genuine'; or (b) the activities of the assessee are not being carried out in accordance with the objects of the trust or the institution. There cannot be any other legally sustainable reason for cancelling or withdrawing the registration granted under s. 12AA. By no stretch of logic, the activities of the assessee can be said to be not genuine and the assessee is admittedly pursuing the objects for which it was established. When the assessee is engaged in bona fide activities, with the framework of law, to pursue its objectives, it cannot be said that the activities of the assessee are not genuine. Learned CIT has also not brought on record any material to demonstrate activities of the assessee are not being carried out in accordance with the objects of the trust or the institution. Under these circumstances, the withdrawal of registration granted under s. 12AA cannot be sustained in law. Learned CIT has extensively referred to as to why the assessee is not eligible for exemption under s. 11 as the

activities of the assessee cannot be said to be for 'charitable purposes' defined under s. 2(15), but then this aspect of the matter is relevant for the assessment proceedings and not in the context of exercise of CIT's powers under s. 12AA(3). The impugned order passed by the learned CIT is thus vitiated in law on this count as well.

20. For the detailed reasons set out above, we quash the order of the learned CIT and hold that the learned CIT did not have any good reasons, sustainable in law, to withdraw the registration. The impugned order is accordingly set aside."

On reading the above verdict it is gathered that if the objects as permissible in the eyes of law are carried out legally and the object of advancement of education as also the object of general public utility are carried out with due sincerity then the claim of registration is within the ambiguity of s. 12A of the Act.

11.11 As far as the objective of the appellant is concerned this is not the case of the Revenue that the assessee was not imparting education. As we know the term education means to teach subjects to students for the development of his mind and also to equip students to deal with reality. The training process is either theoretical or practical but student has to be taught the essentials of the selected subjects so as to develop his skill and knowledge for the subjects studied by him. The appellant institute, admittedly, fulfils the requirements of imparting formal education by a systematic teaching and instructions. Since the question about the imparting of education has not been doubted or challenged by the Revenue therefore. In our considered opinion the impugned order passed by the respondent is unsustainable in law. Strange enough there is nothing on record to prove sightlessly that the purpose of imparting of education was not fulfilled by this institute thus the Revenue Department has hopelessly failed to establish that there was any illegal activity or infringement of any law so that to doubt the genuineness of the activities. If it was so then it can be held that the allegations of the Revenue as discussed above, remained unsupported thus deserves our dismissal.

11.12 Based upon the facts of this case, we now sum up above discussion; the sine qua non for cancellation of registration are two conditions prescribed in s. 12AA(3) needs to be satisfied are :

(a) That activities of the trust/institution are not genuine.

(b) That activities of the trust are not carried out in accordance with the objects of the trust/institution.

Thus the findings of the learned CIT has not to be only conceptual or contextual but should be within the four corners of law so that not surpassing the power, as listed above, granted in sub-s. (3) of s. 12AA. But unfortunately the fallacy is writ large as gathered on perusing the impugned order. We can hold that the CIT's approach for deciding the eligibility of registration of a trust should be different from the angle by which an assessment of an income is made by the AO. We are afraid about the ramification if we approve the action of learned CIT because in that case it may adversely affect the imparting of education especially when the Revenue has not made out a case that the very purpose for creation of the trust was defeated. Rather we wonder that what purpose does it serve to Revenue by cancelling a registration if the activities are in public interest because in case of any breach of the laws the same is subject to tax under ss. 11 and 12 of IT Act. These two provisions and few

other provisions are competent enough to tackle firmly a defaulter of philanthropic application of income or funds of the trust. The other adverse side of cancellation is that on refusal of registration the entire receipts shall be subject to assessment without granting benefit of s. 11 and s. 12 of IT Act to assess income which do not form part of total income though the factual position could be that major part might have been devoted towards achieving the objects i.e., imparting education, as in this case, but the AO shall be automatically forbidden to grant advantage of exemption consequent upon the cancellation as is mandatory in statute; relevant section already reproduced ante. The outcome of the deliberation made in detail hereinabove is that percurian opinion is to debar the CIT to enter into the area of investigation of source of income and also application of income, so that the amount of correct exempt income be not prejudged.

11.13 The aspect of morality as touched by the learned CIT is appreciable. Every vigilant and law abiding citizen has to be fair in his conduct and should refrain from immoral activities. But existing blue laws are derived from the numerous extremely rigorous laws designed to regulate morals and conduct. These laws are enacted in such a fashion that if implemented correctly and efficiently then there is no scapegoat for an offender. We are tempted to write an idiomatic language due to the sensitivity of the issue, that a CIT cannot be allowed to hold a baton of morality in his hand to hit an immoral; but the statute has given him a flexible stick for inflicting tax on defaulter; that includes a trust or educational institution. The gist is that if the CIT had an information of some wrongful means of earning fees in the form of a donation or the information tells about excessive charging of fees; then the CIT in his rights can pass on the information to the concerned office bearers working under the Maharashtra Capitation Fees (Prohibition) Act. These authorities have enough power to deal with such nature of default, side by side the CIT is to limit his jurisdiction within the ambits of provisions of the Act and expected to give a finding on facts that either the objects are not for general public utility or not achieved as prescribed under law. However presently the situation is that the Revenue has not said about any immoral activity of the appellant or the collection of fees was by wrongful means; hence deregistration sans our approval. Nevertheless the list of fifteen cases, as highlighted by learned CIT, lack desired positive finding as it was left blank on the excuse that even the other authorities could not lay their hands on alleged defaults so it was also difficult for the Revenue authorities to trace the correct position. While dealing with the facts ante, it was found that after exhaustive enquiry few instances; fifteen in numbers; were noticed by the Revenue authorities wherein it was alleged to be the infringement of Capitation Fee Act. But the irony is that in the same breath the learned CIT has accepted the stand of the assessee that it can charge five times the normal fees in case of admission in the defined management quota. Thereupon there was a circumvent in the approach of the learned CIT that the amount of donation be considered together with the fees to find out the violation of prohibition of Capitation Fee Act. But on facts that too did not stand the test of those provisions since admittedly did not exceed the prescribed limit.

11.14 Facts of this appeal are peculiar, as already discussed in above paras in detail and thereupon can comment that prima facie no case was made out by the learned CIT so as to even vaguely demonstrate that the activities of the appellant were not genuine or activity of imparting of education, for which the trust was created, were not carried out. Even the learned CIT has failed to establish that any part of the income/receipt

of the trust was in any manner misutilized by the trustees for their personal benefit i.e., not in fulfillment of the object of the trust. Otherwise also there are three ways to look at this problem. One is, that the donations are raised but not utilized for achieving the objects i.e., towards imparting education; then such an institution must bear the consequence of cancellation of registration since ipso facto infringed s. 12AA(3) condition. Second aspect is, that though the donations received are meant to fulfill the objects but together with fees have infringed Anti Capitation Prohibition Act; then comes within the clutches of that Act but definitely not under s. 12AA(3) provisions. The third aspect is, that the donation plus fees do not exceed the prescribed limit of Anti Capitation Fee Act i.e., five times the normal fees; further that no evidence of misutilization other than the prescribed activity then no action can be suggested under s. 12AA(3). The assessee's case falls under the third category. With the result, totality of the circumstances thus warrants, in the light of the foregoing discussion, not to endorse the view of the learned CIT; consequence there upon reverse those findings. The order of cancellation of registration is hereby revoked. Grounds allowed."

8.10 In view of the above cited decisions, we hold that the finding given by the Ld.CIT that the assessee was collecting huge donation for admission of students to various institutes run by it in violation of provisions of Maharashtra Educational institutions (Prohibition of Capitation Fee) Act, 1987 for which the activities of the assessee trust are illegal and therefore the activities are not genuine is not correct. Further, the conclusion of the Ld. CIT that the institutes are being run on commercial lines with profit motive due to the substantial surplus created year after year is also not correct since the assessee has accumulated its surplus which is within the permissible limit of 15% u/s.11 and 12.

8.11 So far as the 2 decisions relied on by Ld.CIT are concerned we find the Ld. Counsel for the assessee has distinguished the same. We fully agree with his arguments. In any case since 2 views are possible on this issue, the view in favour of the assessee has to be adopted in view of the settled proposition of law. In this view of the matter, we hold that the Ld. CIT is not justified in cancelling the registration u/s.12A of the I.T. Act, 1961. We accordingly set-aside the order of the Ld.CIT and direct him to grant registration u/s.12A of the Income Tax Act. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed."

69. Although the above decision was rendered in the context of denial of registration u/s.12A of the I.T. Act we find the issue there was also denial of registration u/s.12A on the ground that the institutions are accepting capitation fee in guise of voluntary donations and are being run on commercial lines with profit motive. Therefore, the ratio that whether the institutions are being run on commercial lines with profit motive due to acceptance of

capitalisation fee in guise of donation will be applicable to the facts of the present case.

70. We find the Bangalore 'C' Bench of the Tribunal in the case of Sadvidya Educational Institution Vs. Add.CIT while deciding an identical issue where assessee trust was collecting voluntary contributions, donations against building fund, development fund against admissions under Management Quota for which exemption u/s.11 was denied by the Assessing Officer has held as under (Head Notes) :

> "Charitable or religious trust—Exemption u/s 11—Assessee-trust was a registered Society and ran several educational institutions in city of Mysore starting from nursery to PUC—Assessee trust was also registered u/s 12AA and had also obtained exemption u/s 11 and 12—Some of the educational institutions run by assessee were aided institutions, and as per norms fixed by State Government, assessee was entitled to give 50% of admissions under management quota in respect of PU Course—Assessee filed its returns of income, admitting 'Nil' income for AYs 2006-07 & 2008-09 and declaring a loss for AY 2007-08 after claiming exemption u/s 11(1)(a) and 11(1)(d)—In meanwhile, survey was conducted u/s 133A in assessee's premises and certain books and documents containing details of student wise donations collected by way of DDs and donation receipt books for admissions given during FYs 2005-06 and 2006-07 relating to fees and alleged donations collected from students who got admissions into the schools/college run by the assessee were impounded and statement of secretary of assessee was also recorded—AO observed that assessee was collecting voluntary contributions/building fund/development funds against admissions given under management quota in institutions run by assessee and was not entitled to claim deduction u/s.11(1)(a) and 11(1)(d) –CIT(A) upheld findings of AO holding that there was a direct nexus between admissions granted under the management quota and voluntary contributions collected by assessee- Held, if educational institution has collected money in form of voluntary contributions from public and may be from parents of the students who are studying in institution and issued receipts acknowledging said amount towards building fund and made requisite entries in the books and deposited same in the bank, requirement of section 11(l)(d) is fulfilled— Assessee was running several Schools starting from nursery to PUC and said fact has been endorsed by AO—No question of assessee collecting 'capitation fees' in guise of 'building fund or development fee—Further voluntary contributions received were for the specific purpose of 'building fund or development fee' – Further voluntary contributions received were for the specific purpose of 'building' and assessee had applied such contributions towards object of trust – Assessee had obtained the signatures of the parents of successful students in pre-printed letters before obtaining donation and shown instatement – Assessee was entitled to exemption u/s.11 in respect of 'building fund' as well as 'college development fund' – Assessee's appeal allowed.

Held :

In the present case, even if the fees collected were in violation of the norms subscribed by the State Government, the application of the funds were towards the objects of the assessee trust and as such, there was no violation of s.13 of the Act as ascribed by the Revenue, The assessee had obtained the signatures of the parents of the successful students in pre-printed letters without giving the details of amounts' donated, date of contributions etc., but contained the donors' names and their addresses. However, the assessing authority had chosen not to cross-examine such parents who have admitted their children to the institution of the assessee to verify the veracity of the assessee's claim."

71. We find the Chennai Bench of the Tribunal in the case of Padanilam Welfare Trust Vs. Dy.CIT reported in 10 ITR 479 has observed as under (Head Notes) :

"Charitable institution—Registration under s.12AA—CIT withdrawing registration alleging that capitation fees was collected by the trustees and there was diversion and misuse of funds—Violation of Prohibition of Capitation Fees Act cannot be a ground to take away the registration of a charitable organization—Capitation fee per se is not in the nature of illegal income-There is nothing to show in the seized materials that the assessee had made any profit out of the activities carried on by it and any portion of that profit has been enjoyed by any of the trustees or the relatives. Surplus funds of the assessee-trust year to year have been used only for the purposes of furthering the objects of the assessee-trust—There is no distribution of profit or such other benefits to the trustees or relatives of the assessee-trust—Therefore action of the CIT in withdrawing the registration granted to the assessee under s. 12AA is not sustainable in law

Held :

It is found that the first ground pointed out by the CIT to cancel the registration granted to the assessee under s. 12A on the ground of accepting capitation fees is not sustainable in law. The CIT is not to conduct investigation into the sources of

72. We find the Hon'ble Supreme Court in the case of M/s. Queen's Educational Society vs. CIT vide Civil Appeal No.5167/2008 order dated 16-03-2015 has approved the decision of the Hon'ble Punjab and Haryana High Court in the case of Pine Grove International Charitable Trust Vs. Union of India reported in 327 ITR 73 has observed as under :

"23. The Punjab and Haryana High Court, by the impugned judgment dated 29th January, 2010 expressed its dissatisfaction with the view taken by the Uttarakhand High Court in the case of Queen's Educational Society as follows:

"8.8 We have not been able to persuade ourselves to accept the view expressed by the Division Bench of the Uttrakhand High Court in the case of Queens Educational Society (supra). There are variety of reasons to support our opinion. Firstly, the scope of the third proviso was not under consideration, inasmuch as, the case before the Uttrakhand High Court pertained to Section 10(23C)(iiiad) of the Act. The third proviso to Section 10(23C)(vi) is not applicable to the cases falling within the purview of Section 10(23C)(iiiad). Secondly, the judgment rendered by the Uttarkhand High Court runs contrary to the provisions of Section 10(23C)(vi) of the Act including the provisos thereunder. Section 10(23C)(vi) of the Act is equivalent to the provisions of Section 10(22) existing earlier, which were introduced with effect from 1st April, 1999 and it ignores the speech of the Finance Minister made before the introduction of the said provisions, namely. Section 10(23C) of the Act [See observations in American Hotel and Lodging Association Educational Institute's case (supra)]. Thirdly, the Uttrakhand High Court has not appreciated correctly the ratio of the judgment rendered by Hon'ble the Supreme Court in the case of Aditanar Educational Institution(supra) and while applying the said judgment including the judgment which had been rendered by Hon'ble the Supreme Court in the case of Children Book Trust (supra), it lost sight of the amendment which had been carried out with effect from 1st April, 1999 leading to the introduction of the provisions of Section 10(23C) of the Act. Lastly, that view is not consistent with the law laid down by Hon'ble the Supreme Court in American Hotel and Lodging Association
Educational Institute (surpa)."

It then summed up its conclusions as follows:

"8.13 From the aforesaid discussion, the following principles of law can be summed up:—

(1) It is obligatory on the part of the Chief Commissioner of Income Tax or the Director, which are the prescribed authorities, to comply with proviso thirteen (un-numbered). Accordingly, it has to be ascertained whether the educational institution has been applying its profit wholly and exclusively to the object for which the institution is established. Merely because an institution has earned profit would not be deciding factor to conclude that the educational institution exists for profit.

(2) The provisions of Section 10(23C)(vi) of the Act are analogous to the erstwhile Section 10(22) of the Act, as has been laid down by Hon'ble the Supreme Court in the case of American Hotel and Lodging Association (supra). To decide the entitlement of an institution for exemption under Section 10(23C)(vi) of the Act, the test of predominant object of the activity has to be applied by posing the question whether it exists solely for education and not to earn profit [See 5-Judges Constitution Bench judgment in the case of Surat Art Silk Cloth Manufacturers Association (supra)]. It has to be borne in mind that merely because profits have resulted from the activity of imparting education would not result in change of character of the institution that it exists solely for educational purpose. A workable solution has been provided by Hon'ble the Supreme Court in para 33 of its judgment in American Hotel and Lodging Association's case (supra). Thus, on an application made by an

institution, the prescribed authority can grant approval subject to such terms and conditions as it may deems fit provided that they are not in conflict with the provisions of the Act. The parameters of earning profit beyond 15% and its investment wholly for educational purposes may be expressly stipulated as per the statutory requirement. Thereafter the Assessing Authority may ensure compliance of those conditions. The cases where exemption has been granted earlier and the assessments are complete with the finding that there is no contravention of the statutory provisions, need not be reopened. However, alter grant of approval if it comes to the notice of the prescribed authority that the conditions on which approval was given, have been violated or the circumstances mentioned in 13th proviso exists, then by following the procedure envisaged in 13th proviso, the prescribed authority can withdraw the approval.

(3) The capital expenditure wholly and exclusively to the objects of education is entitled to exemption and would not constitute part of the total income.

(4) The educational institutions, which are registered as a Society, would continue to retain their character as such and would be eligible to apply for exemption under Section 10(23C)(vi) of the Act. [See para 8.7 of the judgment-Aditanar Educational Institution case (supra)]

(5) Where more than 15% of income of an educational institution is accumulated on or after 1st April, 2002, the period of accumulation of the amount exceeding 15% is not permissible beyond five years, provided the excess income has been applied or accumulated for application wholly and exclusively for the purpose of education.

(6) The judgment of Uttrakhand High Court rendered in the case of Queens Educational Society (supra) and the connected matters, is not applicable to cases fall within the provision of Section 10(23C)(vi) of the Act. There are various reasons, which have been discussed in para 8.8 of the judgment, and the judgment of Allahabad High Court rendered in the case of City Montessori School (supra) lays down the correct law."

And finally held:

"8.15 As a sequel to the aforesaid discussion, these petitions are allowed and the impugned orders passed by the Chief Commissioner of Income Tax withdrawing the exemption granted under Section 10(23C)(iv) of the Act are hereby quashed. However, the revenue is at liberty to pass any fresh orders, if such a necessity is felt after taking into consideration the various propositions of law culled out by us in para 8.13 and various other paras.

8.16 The writ petitions stand disposed of in the above terms."

24. The view of the Punjab and Haryana High Court has been followed by the Delhi High Court in St. Lawrence Educational Society (Regd.) v. Commissioner of Income Tax & Anr., (2011) 53 DTR (Del) 130. Also in Tolani Education Society v. Deputy Director of Income Tax (Exemption) & Ors., (2013) 351 ITR 184, the Bombay High Court has expressed a view in line with the Punjab and Haryana High Court view, following the judgments of this Court in the Surat Art Silk Manufacturers Association Case and Aditanar Educational Institution case as follows:

"…..The fact that the Petitioner has a surplus of income over expenditure for the three years in question, cannot by any stretch of logical reasoning lead to the conclusion that the Petitioner does not exist solely for educational purposes or, as that Chief Commissioner held that the Petitioner exists for profit. The test to be applied is as to whether the predominant nature of the activity is educational. In the present case, the sole and dominant nature of the activity is education and the Petitioner exists solely for the purposes of imparting education. An incidental surplus which is generated, and which has resulted in additions to the fixed assets is utilized as the balance-sheet would indicate towards upgrading the facilities of the college including for the purchase of library books and the improvement of infrastructure. With the advancement of technology, no college or institution can afford to remain stagnant. The Income-tax Act 1961 does not condition the grant of an exemption under Section 10(23C) on the requirement that a college must maintain the status-quo, as it were, in regard to its knowledge based infrastructure. Nor for that matter is an educational institution prohibited from upgrading its infrastructure on educational facilities save on the pain of losing the benefit of the exemption under Section 10(23C). Imposing such a condition which is not contained in the statute would lead to a perversion of the basic purpose for which such exemptions have been granted to educational institutions. Knowledge in contemporary times is technology driven. Educational institutions have to modernise, upgrade and respond to the changing ethos of education.

Education has to be responsive to a rapidly evolving society. The provisions of Section 10(23C) cannot be interpreted regressively to deny exemptions. So long as the institution exists solely for educational purposes and not for profit, the test is met.

25. We approve the judgments of the Punjab and Haryana, Delhi and Bombay High Courts. Since we have set aside the judgment of the Uttarakhand High Court and since the Chief CIT's orders cancelling exemption which were set aside by the Punjab and Haryana High Court were passed almost solely upon the law declared by the Uttarakhand High Court, it is clear that these orders cannot stand. Consequently, Revenue's appeals from the Punjab and Haryana High Court's judgment dated 29.1.2010 and the judgments following it are dismissed. We reiterate that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, Surat Art Silk Cloth, Aditanar, and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit. In addition, we hasten to add that the 13th proviso to Section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in Section 10(23C) read with Section 11 of the Income Tax Act."

73. From the submission of the Ld. Counsel for the assessee we further find that out of more than 47000 students the assessee trust has collected donations from only 1217 students out of which only 23 persons had admitted to have given donations for admission. We find out of the above 23 persons only 6 were available for cross examination. We find the relatives or parents of the students have filled up the declaration stating that they have given voluntary donations to the institutions, even some of them claimed deduction u/s.80G also. Nothing has been brought on record that any such amount of donation has not been accounted for in the books of account or has been utilised by any of the trustees or their relatives or has not been utilised for purposes other than education. Therefore, we are of the considered opinion that the assessee trust whose main object is imparting education, cannot be denied the benefit of provisions of section 10(23C)(iiiab) and (iiiac) merely on the basis of contradictory statements of a few donors. Neither any donor nor the Assessing Officer has lodged any complain before Government authorities for violation of the Act. Assessments of the trust have been completed in the past accepting the exemption u/s.10(23C) of the Act. Therefore, we find no reason to deviate in absence of any evidence brought on record for denying the exemption claimed u/s.10(23C) for the year. So far as the decision relied on by Ld. Departmental Representative is concerned, the same in our opinion is not applicable to the facts of the present case which was in context of section 10(23C)(iiiad). In view of our reasons given above we hold that the Ld.CIT(A) is not justified in denying the exemption u/s.10(23C) (iiiab) of the I.T. Act. We accordingly set aside the same and the grounds raised by the assessee are allowed.

74. Since the assessee succeeds on the main grounds, therefore, the additional ground raised by the assessee being academic in nature is not being adjudicated.

75. In the result, the appeal filed by the assessee is allowed.

Pronounced in the Open court on 13-07-2015.

Sd/- Sd/-

(VIKAS AWASTHY) **(R.K. PANDA)**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 13th July, 2015.

सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील)-I, पुणे / The CIT(A)-I, Pune
4. आयकर आयुक्त-I, पुणे / The CIT-I, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" पुणे / DR, ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune