

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JUNE, 2023

PRESENT

THE HON'BLE MR JUSTICE P.S.DINESH KUMAR

AND

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

INCOME TAX APPEAL NO. 554 OF 2018

BETWEEN:

1. PR COMMISSIONER OF INCOME-1
TAX (EXEMPTIONS)
UNITY BUILDING ANNEXE
MISSION ROAD
BANGALORE-560 027.
 2. THE ADDITIONAL COMMISSIONER
OF INCOME TAX
EXEMPTIONS RANGE
BENGALURU
- ...APPELLANTS

(BY SHRI. E.I. SANMATHI, STANDING COUNSEL)

AND:

M/S RASHTREEYA SIKSHANA SAMITHI TRUST
RV TEACHERS COLLEGE BUILDING
2ND BLOCK, JAYANAGAR
BENGALURU-560 011.
PAN:AAATR0758A

...RESPONDENT

(BY SHRI. VIKRAM HUILGOL, SENIOR ADVOCATE A/W
SHRI. SANDEEP HUILGOL, ADVOCATE)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A
OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED
06.04.2018 PASSED IN ITA NO.1732/BANG/2017, FOR THE
ASSESSMENT YEAR 2012-13, PRAYING TO DECIDE THE
FOREGOING QUESTION OF LAW AND / OR SUCH OTHER

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Location: HIGH
COURT OF
KARNATAKA



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QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND ETC.

THIS ITA IS COMING ON FOR *FINAL HEARING*, THIS DAY, **P.S.DINESh KUMAR, J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal by the Revenue directed against order dated April 6, 2018 in ITA No.1732/Bang/2017 passed by the ITAT¹, Bengaluru, for A.Y.2012-13 has been admitted to consider following questions of law:

"1. *Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in law in holding that the assessee is eligible for exemption under section 11 and 12 of the Act though the assessee – trust has collected more than the fee declared or notified through the 'Karnataka Educational Institutions prohibition of capitation fee Act, 1984' (by the State Government) in the garb of voluntary contributions / corpus fund and this fact of collecting more than the fee notified has been proved without any dispute in as much as the assessee itself furnishing the details?*

2. *Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in holding that the assessee is eligible for exemption under section 11 and 12 of the Act when the purpose of running the educational institutions is overshadowed by profit making motives of the*

¹ Income Tax Appellate Tribunal

Society and the assessee – trust is making huge surplus every year and is involved in collection of capitation fee in the guise of ‘Voluntary Contributions’ and is evident that the charity is no more in spirit and practice and the assessee is indulging in commercial activity?”

2. Heard Shri E.I.Sanmathi, learned standing counsel for the Revenue and Shri Vikram Huilgol, learned Senior Advocate for the assessee.

3. Undisputed facts of the case are, assessee is a charitable trust registered under Section 12A of the Income Tax Act, 1961². It has obtained approval under Sections 11 and 12 of the Act. For A.Y.2012-13, assessee filed returns of income declaring income as *nil*. The case was selected for scrutiny and notices under Sections 142(1) and 143(2) were issued. Assessee filed revised returns. The difference between two returns was claimed as corpus donations and according to the assessee, the Trust was exempted in original returns and had disclosed the income under the head ‘other income’ in revised returns. Subsequently, the Additional Commissioner of Income Tax, Exemptions

² ‘The Act’ for short

Range, Bengaluru, vide letter dated 13.02.2015, took up the case for scrutiny assessment and subsequently, the AO³ passed the assessment order dated 30.03.2015 holding that income from other source as income by the Trust. The CIT(A)⁴ confirmed AO's order. The ITAT, by impugned order has reversed the order passed by the AO and held that assessee is entitled for exemption.

4. Assailing the impugned order, Shri Sanmathi for the Revenue submitted that the assessee has collected a sum of Rs.27,23,55,000/- as donation in violation of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984⁵. Placing reliance on *New Noble Educational Society Vs. Chief Commissioner of Income-Tax*⁶, he argued that since there was violation of provisions of the KEI (Prohibition of Capitation Fee) Act, assessee is not entitled for exemption as the same shall also amount to violation of Sections 11 and 12 of Act.

³ Assessing Officer

⁴ Commissioner of Income Tax(Appeals)

⁵ 'KEI (Prohibition of Capitation Fee) Act' for short

⁶ [2022] 143 taxmann.com 276 (SC) para 70

5. In reply, Shri Vikram Huilgol, learned Senior Advocate, placing reliance on the decision of this court in *Kammavari Sangham Vs. Deputy Director of Income-tax (Exemptions)*⁷ submitted that this court has taken a view that so long as exemption certificate is in force, the Income Tax Authorities are bound by the same and that assessee had filed an affidavit before the ITAT stating that no action under the KEI (Prohibition of Capitation Fee) Act was initiated against the assessee. The ITAT has considered this aspect and recorded a finding in para 18 of the impugned order that the said affidavit was not contraverted by the Revenue. Therefore, the very premise of the Revenue that assessee has violated the provisions of the KEI (Prohibition of Capitation Fee) Act is factually unfounded.

6. In reply, Shri Sanmathi submitted that merely because no action has been initiated under the KEI (Prohibition of Capitation Fee) Act, it does not *ipso facto* mean that there was no violation and IT

⁷ [2023] 146 taxmann.com 367 (Karnataka) para 16

authorities can always consider violation of any statute while framing the assessment.

7. We have carefully considered rival contentions and perused records.

8. This court in *Kammavari Sangham* has held that so long as the exemption certificate is in force, the assessee is entitled for its benefit. In *New Noble Educational Society* relied upon by Shri Sanmathi, it is held that the compliance with registration under the different tax law is also a relevant consideration and it can legitimately weigh with the tax authority while deciding the applications for approval under Section 10(23C).

9. Undisputed facts of this case in hand are, the exemption certificate was in force as on the date of issuance of notice. The AO has denied the benefit of exemption by holding that the assessee had received a sum of Rs.27,23,55,000/- as capitation fee in the guise of voluntary contribution.

10. Shri Huilgol pointed out from para 18 of the impugned order that the assessee had filed an affidavit before the ITAT stating that no action under the KEI (Prohibition of Capitation Fee) Act, was initiated against the assessee. The ITAT has recorded that the learned departmental representative had not contradicted the said affidavit either orally or by filing a counter affidavit. Based on this factual aspect, the ITAT has recorded thus in the impugned order;

"37. In the light of the above, we are of considered opinion that the Appellant is carrying out education which is charitable within the meaning of section 2(15), it has applied and/ or accumulated sums as required by section 11(1)(a), the explanation thereto and section 11(2), it is duly registered under section 12A and has not violated section 13. Further there is no private gain and all the funds are ploughed back only into education. Thus accumulations and application are as per the provisions of section 11. Therefore, exemption under section 11 and 12 has to be allowed to the assessee. We hold that the assessee is entitled to exemption u/s.11 and 12 of the Act. In the result grounds 3 to 5 of assessee appeal are allowed."

The AO had held that there was violation under the KEI (Prohibition of Capitation Fee) Act, and

accordingly, brought the money collected by the assessee to tax. In challenge before the ITAT, the assessee has filed an affidavit stating that no action was initiated against the assessee by the State and that has remained uncontroverted. The resultant position is, the AO, based on assumption and surmise, has held that there was violation under the KEI (Prohibition of Capitation Fee) Act by the assessee and that incorrect assumption has been rightly reversed by the ITAT. So far as the authority in *New Noble Educational Society* is concerned, the Apex Court has held that the registration under different statutes is also a relevant consideration while deciding the application for approval under Section 10(23C) of the Act. In the case on hand, we are not dealing with a situation where the IT Department was considering any application for granting exemption. On the other hand, the department had issued the exemption certificate and the AO on an incorrect assumption has treated the money collected by the assessee as capitation fee under the KEI (Prohibition of Capitation

Fee) Act. Therefore, the said authority does not lend any support to the Revenue. This court has already taken a view in *Kammavari Sangham* and the same is applicable to the facts of this case.

11. In view of the above, this appeal by the Revenue must fail and hence, the following;

ORDER

- (i) Appeal is ***dismissed***; and
- (ii) Questions of law are held in favour of the assessee and against the Revenue.

No costs.



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**Sd/-
JUDGE**

**Sd/-
JUDGE**