IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Tax Case Appeal Nos. 303, 304, 305, 306, 307, 308, 309 and 310 of 2021
and 59, 60, 62 and 63 of 2022
and
CMP.Nos.8729, 8730, 8731, 8733, 8734, 8740 and 8755 of 2021

T.C.A. No. 303 of 2021

Commissioner of Income Tax
Chennai .. Appellant

Versus

M/s. MAC Public Charitable Trust
MAC/ICH Building, VHS Campus
TITI Post, Chennai - 600 113
(PAN AAATM 0484C) .. Respondent

T.C.A. No. 304 of 2021

Commissioner of Income Tax
Chennai .. Appellant

Versus

M/s. Sri Venkateswara Educational and Health Trust
No.1/3A, River View Road
Kotturpuram
Chennai - 600 085
(PAN AAATS 2327L) .. Respondent

T.C.A. No. 305 of 2021

Commissioner of Income Tax
Chennai .. Appellant

Versus

M/s. United Educational Foundation
MAC/ICH Building, VHS Campus
TITI Post, Chennai - 600 113
(PAN AAATU 3411D) .. Respondent

T.C.A. No. 306 of 2021

Commissioner of Income Tax
Chennai .. Appellant

Versus

M/s. United Educational Foundation
MAC/ICH Building
MAC/ICH Building, VHS Campus
TITI Post, Chennai - 600 113
(PAN AAATU 3411D) .. Respondent

T.C.A. No. 307 of 2021

Commissioner of Income Tax
Chennai .. Appellant

Versus

M/s. Sri Venkateswara Educational and Health Trust
No.1/3A, River View Road
Kotturpuram
Chennai - 600 085
(PAN AAATS 2327L) .. Respondent

T.C.A. No. 308 of 2021

Commissioner of Income Tax
Chennai .. Appellant

Versus

M/s. Sri Venkateswara Educational and Health Trust
No.1/3A, River View Road
Kotturpuram, Chennai - 600 085
(PAN AAATS 2327L) .. Respondent

T.C.A. No. 309 of 2021

Commissioner of Income Tax
Chennai .. Appellant

Versus

M/s. MAC Charities
MAC/ICH Building, VHS Campus
TITI Post, Chennai - 600 113
(PAN AAATM 0483F) .. Respondent

T.C.A. No. 310 of 2021
Commissioner of Income Tax
Chennai .. Appellant

Versus

M/s. MAC Charities
MAC/ICH Building, VHS Campus
TITI Post, Chennai - 600 113
(PAN AAATM 0483F) .. Respondent

T.C.A. No. 59 of 2022
Director of Income Tax (Exemptions)
Exemptions - IV
Chennai - 600 034 .. Appellant

Versus

M/s. United Educational Foundation
MAC/ICH Building
VHS Campus
Chennai - 600 113
PAN AAATU3411D .. Respondent

T.C.A. No. 60 of 2022

Director of Income Tax (Exemptions)
Exemptions - IV
Chennai - 600 034 .. Appellant

Versus

M/s. Sri Venkateshwara Educational & Health Trust
No.1/3A, River View Road
Kotturpuram
Chennai - 600 085
PAN AAATS2327L .. Respondent

T.C.A. No. 62 of 2022

Director of Income Tax (Exemptions)
Exemptions - IV
Chennai - 600 034 .. Appellant

Versus

M/s. MAC Public Charitable Trust
MAC/ICH Block 2
VHS Campus, Adyar TTTI Post
Taramani
Chennai - 600 113
PAN AAATM0484C .. Respondent

T.C.A. No. 63 of 2022
Director of Income Tax (Exemptions)
Exemptions - IV
Chennai - 600 034 .. Appellant

Versus

M/s. MAC Charities
MAC/ICH Block 2
VHS Campus, Adyar TTTI Post
Taramani
Chennai - 600 113
PAN AAATM0483F .. Respondent

TCA No. 303 of 2021:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the order dated 13.11.2019 passed in ITA No. 616/Chny/2019 on the file of the Income Tax Appellate Tribunal, "A" Bench, Chennai.

TCA No. 304 of 2021:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the order dated 13.11.2019 passed in ITA No. 620/Chny/2019 on the file of the Income Tax Appellate Tribunal, "A" Bench, Chennai.

TCA No. 305 of 2021:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the order dated 13.11.2019 passed in ITA No. 617/Chny/2019 on the file of the Income Tax Appellate Tribunal, "A" Bench, Chennai.

TCA No. 306 of 2021:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the order dated 13.11.2019 passed in ITA No. 1497/Chny/2019 on the file of the Income Tax Appellate Tribunal, "A" Bench, Chennai.

TCA No. 307 of 2021:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the order dated 13.11.2019 passed in ITA No. 622/Chny/2019 on the file of the Income Tax Appellate Tribunal, "A" Bench, Chennai.

TCA No. 308 of 2021:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the order dated 13.11.2019 passed in ITA No. 621/Chny/2019 on the file of the Income Tax Appellate Tribunal, "A" Bench, Chennai.

TCA No. 309 of 2021:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the order dated 13.11.2019 passed in ITA No. 618/Chny/2019 on the file of the Income Tax Appellate Tribunal, "A" Bench, Chennai.

TCA No. 310 of 2021:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the order dated 13.11.2019 passed in ITA No. 619/Chny/2019 on the file of the Income Tax Appellate Tribunal, "A" Bench, Chennai.

TCA No. 59 of 2022:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the order dated 12.04.2017 passed in ITA No. 2890/Mds/2014 on the file of the Income Tax Appellate Tribunal, "C" Bench, Chennai.

TCA No. 60 of 2022:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the order dated 12.04.2017 passed in ITA No. 2889/Mds/2019 on the file of the Income Tax Appellate Tribunal, "C" Bench, Chennai.

TCA No. 62 of 2022:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the order dated 12.04.2017 passed in ITA No. 2885/Mds/2014 on the file of the Income Tax Appellate Tribunal, "C" Bench, Chennai.

TCA No. 63 of 2022:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the order dated 12.04.2017 passed in ITA No. 2887/Mds/2014 on the file of the Income Tax Appellate Tribunal, "C" Bench, Chennai.

For Appellants : Mr. J. Narayanaswamy
Senior Standing Counsel
in all the Tax Case Appeals

For Respondents : Mr. Haja Nazirudeen, Senior Advocate
assisted by Mr. Hari Babu
for Mr. S. Sithirai Anandam
in all the Tax Case Appeals

COMMON JUDGMENT

R. MAHADEVAN, J.

INTRODUCTION

1. 'Education' is a means to cognitively enlighten the bonded soul by empirical methods, which not only transcends beyond the mystical cycle of

birth, but also to achieve terrestrial satisfaction and then mundane goals. It is a tool to eradicate social injustice. Globalization in every field has resulted in creation of more opportunities. Every rational parent, not privileged by affluence, strives to get their children educated beyond their means. Their quest to fulfil their dreams through their children has envisioned certain educational institutions to metamorphose the service, once known and worshipped to be a noble occupation, into an opportunity to make money. Our Constitution, under various Articles has enunciated the principles for equality and equal opportunity, the requirement to protect women, children and the youth of this nation and to prevent them from exploitation.

2. Education has been dealt with in the Constitution, in the following manner:

> *"**Article 14.** Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*
>
> ***Article 15**. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—*
> *(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*
> *(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—*
> *(a) access to shops, public restaurants, hotels and places of public entertainment; or*
> *(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.*
> *(3) Nothing in this article shall prevent the State from making any special provision for women and children.*

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,— (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

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***Article 19**. Protection of certain rights regarding freedom of speech, etc.— (1) All citizens shall have the right—*

.....

(g) to practise any profession, or to carry on any occupation, trade or business

.....

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

.....

Article 21A. ***Right to education***.—*The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.*

.....

Article 28.*Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.*

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Cultural and Educational Rights

Article 29. *Protection of interests of minorities.—*

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30. *Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.*

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Directive Principles of State Policy

....

Article 37. *Application of the principles contained in this Part.—The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance*

of the country and it shall be the duty of the State to apply these principles in making laws.

Article 38. *State to secure a social order for the promotion of welfare of the people.—(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.*

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 39.*Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—*

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

.....

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

[(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

.....

Article 41. *Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.*

Article 45. *Provision for early childhood care and education to children below the age of six years.—The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.*

Prior to the Constitution 86th Amendment Act, 2002, ***Article 45*** *read as under.*

Provision for free and compulsory education for children.

"The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years"

Article 46. *Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.*

.....

Fundamental Duties

Article 51A*. Fundamental duties.—It shall be the duty of every citizen of India*
.....
(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Article 243G*. Powers, authority and responsibilities of Panchayats.— Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to— (a) the preparation of plans for economic development and social justice; (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule*

Extract of Eleventh Schedule.

....
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries

Article 243W*. Powers, authority and responsibilities of Municipalities, etc.— Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow— (a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to— (i) the preparation of plans for economic development and social justice; (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule; (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.*

Extract of the Twelfth Schedule.

.....
3. Planning for economic and social development.
....
13. Promotion of cultural, educational and aesthetic aspects.

Seventh Schedule

List III - Concurrent List.

.....

25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

3. The educational system in our country is unique. Our country is diverse with beliefs, castes and languages. The above provisions of the Constitution make it clear that our forefathers were of the initial opinion that every citizen must be provided with atleast basic education upto the age of 14 years and hence the States were directed to take steps within 10 years to ensure the same under Article 45. Article 41 casts a duty on the State to make effective provision for right to education, of-course depending upon their economic viability and development. Later, the provisions were amended and ultimately, after the declaration of the Apex Court in ***Mohini Jain v. State of Karnataka [(1992) 3 SCC 666]*** that right to education is concomitant to fundamental right and the Judgment of the Apex Court in ***Unnikrishnan J.P. and Ors. v. State of Andhra Pradesh and Ors. [(1993) 1 SCC 645]***, wherein, the right to education was held to be a fundamental right encompassed by right to life under Article 21 of the Constitution, right to free education until the age of 14 years was held to be absolute and education thereafter, though was still the responsibility of the State, was subject to economic capacity and development

of the State, by the the 86th Amendment Act, passed in 2002, the Right to education was made a fundamental right upto the age of 14 by inserting Article 21A to the Constitution with effect from 01.04.2010. The States were also required to promote and protect the educational and economic interest of the weaker section of the people and protect them from social injustice and exploitation. Therefore, by the very First Amendment to the Constitution in 1951, Article 15 was amended to save the challenge to any action taken by the State to protect the interest of the weaker sections. The minorities are guaranteed a right to establish and maintain educational institutions. The local bodies have been entrusted with duties to promote education under the Constitution as found in the eleventh and twelfth schedule. By the Constitution 42nd Amendment Act, 1976, the subject of education was moved from State list to Concurrent list. The primary responsibility of education, though was reposed with the State, the Constitution also by Article 19 (1)(g) facilitated private players in the field of education. Still, such private institutions can be treated only as supplementing the efforts of the State and the responsibility of the State is never shed away. Equality and equal opportunity in our system is achieved through the policy of reservation. Though the reservation was initially only contemplated for seats in House of the People and Legislative Assemblies, it was later extended to employment and then, to the field of

education. The Constitution, though directed the States to endeavour protection of weaker section of the society, such protection was made available only on socio communal lines and only recently, the economic aspect of the social justice has been considered and Article 15 (6) has been inserted by One Hundred and Third Amendment with effect from 14.01.2019. The Constitution as it imposes a duty upon the State to provide education to its citizens, at the same time imposes a duty on the parents to provide education to their children. It is the duty of the State to take steps to remove the inequalities prevailing in the society. Our Constitution postulates four types of backwardness, namely, social, educational, economical and political backwardness. On a closer look, 'education' acts as a common tool to assuage the inequalities and eradicate other backwardness. The inequalities in the system have been abridged through reservation policies, which are an exemption to right to equality propounded under Article 15 of the Constitution. At the same time, the policies have impacted some meritorious students, because all meritorious candidates cannot be accommodated in the system, designed to eradicate the inequalities and promote social justice. The endeavour of the parents, combined with the aspirations of the students, who cannot be blamed, and the failure of the States to fulfil the duties enshrined upon them by the Constitution, has fed the private educational institutions, to

further their greed and device methods to collect monies contrary to prescribed fee, by circumventing law. Such amount, termed as "Capitation Fee" by the Revenue, whereas termed as "Voluntary Contributions" or "Donations" by the assessees, is the subject matter of the dispute before this Court.

The Appeals

4. All these tax case appeals are filed by the Revenue assailing the orders dated 12.04.2017 and 13.11.2019 passed by the Income Tax Appellate Tribunal, Chennai, in favour of the respondents/Assessees.

5. On 15.06.2021, this Court admitted the Tax Case Appeal Nos. 303, 304, 305, 306, 307, 308, 309 and 310 of 2021 by framing the following substantial questions of law:

> *"(1) Whether on facts and in the circumstances of the case, the Tribunal was right in holding that the Assessee is entitled for benefit of Section 11 with respect to the receipts of the capitation fees/monies under the head donation from its sister trusts.*
>
> *(2) Whether on facts and in the circumstances of the case, the Tribunal was right in not appreciating that the said monies are the capitation fee received by the trusts in a quid pro quo manner for allotment of seats to the students in the college run by the sister trusts having common controlling trustee and the same was illegally passed on as voluntary donation.*
>
> *(3) Whether on facts and in the circumstances of the case, the Tribunal was right in not appreciating the Assessees' aiding of illegal action of receipt of capitation fee is against the public policy and the provisions of Tamil Nadu Educational Institution (Prohibition of Collection of Capitation Fee) Act, 1992 and no benefit under Section 11 of Income Tax Act is warranted."*

6. Subsequently, on 22.02.2022, TCA Nos. 59, 60, 62 and 63 of 2022 were admitted by raising the following questions of law:

> *(1) Whether on the facts and in the circumstances of the case and in law, the ITAT was right in holding that the Assessees are eligible for exemption under Section 11 of the Income Tax Act without taking cognizance of the fact that quid-pro-quo element was involved in the trust accepting donations from donors?*
>
> *(2) Whether on the facts and in the circumstances of the case, the ITAT was legally 'justified' in deciding the case on the ground that the AO has not enquired into the source of the donors without appreciating that the jurisdictional High Court in the case of **CIT vs. Taj Borewells (291 ITR 232)** and the Honourable Supreme Court in the case of **CIT vs. Hariprasad & Sons (99 ITR 118)** have held that the source of source cannot be enquired into?*

7. As the issues involved in all these appeals are common, they were taken up for hearing together and were disposed of by this common judgment.

Brief facts of the case

8.1. The respondent in TCA Nos.60/2022 and 304, 307 and 308/2021 relating to the assessment years 2011-12, 2012-13, 2013-14 and 2014-15 respectively / Sri Venkateswara Educational and Health Trust is an Assessee on the file of the Deputy Commissioner of Income Tax (Exemption), Chennai. They had registered themselves as Charitable Trust under Section 12A (a) of The Income Tax Act, 1961 (in short, "the Act") vide order bearing C.No.1146-III (58)/84 dated 02.08.1984. They had filed their return of income admitting 'nil' income for the assessment year 2011-12 on 28.09.2011.

8.2. The assessing officer had taken up the return of income filed by the assessee for scrutiny under Section 143 (1) of the Act and issued notice under

Section 143 (2) of the Act. In response, the representative of the Assessee appeared and submitted details called for from time to time. On verification of return of income and other details during scrutiny, it unfolded that Rs.9,90,50,000/- was received by the Assessee as corpus donation from M/s. MAC Charities, M/s. MAC Public Charitable Trust and M/s. Spic Educational Foundation etc. This amount was received by the Assessee as donations from number of persons. In order to verify the same, elaborate exercise was undertaken by the Assessing Officer by issuing summons to various persons and their sworn statements were recorded.

8.3. During the enquiry, it revealed that the said amount was paid to M/s.United Educational Foundation, in lieu of procuring seats in Sri Venkateswara College of Engineering located at Sriperumbudur, Kancheepuram District, which is a unit of the Assessee - Sri Venkateswara Educational and Health Trust. On further analysis, the Assessing Officer concluded that there was a nexus between M/s. United Educational Foundation, M/s. MAC Charities, M/s. MAC Public Charitable Trust and Sri Venkateswara College of Engineering. The Assessing Officer also concluded that the Assessee utilised M/s.United Educational Foundation, M/s. MAC Charities, M/s.MAC Public Charitable Trust as a tool for transfer of capitation fees received from the students and thereby virtually sold education for a price.

Such practice of receiving donation and/or capitation fee as a condition precedent for admitting a student is opposed to the provisions of the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992. The enquiry also unfolded that the Assessee demanded and insisted the parents of the students, who wish to get admission for their children, to pay capitation fee to the other trust in the name of their relatives or friends of the parents, but not in their name. The parents also, in the interest of admitting their children in the said College, were forced to pay capitation fee in the name of their relatives or friends. According to the Assessing Officer, the analysis of the fund transactions confirms that the Assessee made to appear that the contributors voluntarily paid the capitation fee, which was channelised through M/s. United Educational Foundation. Thus, the Assessee had purposefully and intentionally channelised the capitation fee in the name of donations back to themselves, thereby exempting the receipt of amount at both ends.

8.4. In the case of M/s. United Educational Foundation, the Assessing Officer was of the view that donations were received purportedly under capitation fee from the students for getting admission and it was ineligible for exemption under Section 11 of the Act. The amount so received was transferred through M/s. MAC Charities and M/s. MAC Public Charitable

Trust as corpus donation and the date of receipt of the amount in the hands of M/s. MAC charities, M/s. MAC Public Charitable Trust and Sri Venkateswara College of Engineering confirms that the Assessee had systematically adopted the same manner of channelising the amount to evade tax.

8.5. The Assessing Officer also noticed that as per the Trust Deed dated 01.08.1984, the founder of the Trust was Mr. L.V. Ramaiah, but on examination of the supplementary deed dated 13.06.1995, it was executed by Dr. A.C. Muthiah. An amendment deed dated 17.12.2011 was also perused which indicates that it was executed by Mr. M.H. Avadhani. Therefore, the Assessee was called upon to submit evidence for change in trustees and to explain, whether it was intimated to the Director of Income Tax (Exemptions), but the Assessee failed to respond to the same.

8.6. During the course of hearing, it was informed that M/s. MAC charities had received donations from M/s. United Educational Foundation, out of which, donations were given to the Assessee trust. But, it was not informed as to when some of the donors to M/s. United Educational Foundation, were summoned, examined on oath and stated that the donations were paid in lieu of admission of some students known to them in the college run by the Assessee. Thus, it is clear that the Assessee is running a college and for admitting the students in the same, they have collected fees from the students in accordance

with the AICTE norms; apart from the applicable fees, they have also collected various other amounts towards tuition fees, campus recruitment, transport etc., in the form of donation with specific direction that these donations shall form part of the corpus; and no donations have been collected from any of the students. However, the reply of the assessee was not accepted by the assessing officer. According to the assessing officer, the Assessee trust and other trusts are connected with each other. The capitation fee has been received in lieu of procuring seats in Sri Venkateswara College of Engineering as donation by M/s. United Educational Foundation and it was systematically routed through the other "pass-through" trusts belonging to Mr. A.C. Muthiah and ultimately it reached Sri Venkateswara College of Engineering operating under the name and style of M/s.Sri Venkateswara Educational and Health Trust as corpus donation. Therefore, the Assessing Officer after having held that the capitation fee received was treated as income not eligible for exemption under section 11 of the Act, determined the taxable income of the Assessee at Rs.9,90,50,000/- and the tax payable at Rs.4,13,59,162/- for the assessment year 2011-2012 by the assessment order dated 31.03.2014. Similarly, the assessing officer passed the assessment orders on 30.03.2015, 30.03.2016, 31.12.2016, determining the taxable income and tax payable by the assessee, in respect of the assessment years 2012-13, 2013-14 and 2014-15 as well.

9.1. The Assessee viz., M/s.MAC Public Charitable Trust / respondent in TCA Nos.62/2022 and 303/2021 relating to the assessment year 2011-12 and 2014-15 respectively, is a trust registered under Section 12A(a) of the Act as per the proceedings of the Commissioner of Income Tax, Tamilnadu-III vide C.No.1146-III(136)/84 dated 19.12.1984. For the assessment year 2011-12, they had filed their return of income on 26.09.2011 admitting 'nil' income. On scrutiny of same, notice under section 143(2) was issued on 03.08.2012, to which, the Assessee produced the documents called for. On verification of the records, it was noticed that the Assessee trust received a sum of Rs.4 crores as donations and paid a sum of Rs.3.98 crores as donations. The donations were received from M/s. United Educational Foundation (Rs.3.60 crores), M/s. MAC Charities (Rs.20 lakhs) and M/s. First Leasing Company of India Ltd and the same was paid to M/s.Sri Venkateswara Educational & Health Trust (Rs.3.60 crores) and other donations to the tune of Rs.0.38 lakhs.

9.2. After a detailed analysis, the assessing officer issued a show cause notice on 07.03.2014 calling upon the assessee to explain as to why the exemption under section 11 should not be denied for the income of Rs.3.60 crores as the said receipt was not a voluntary contribution. On receipt of the same, the assessee replied on 24.03.2014 stating *inter alia* that the donations

are voluntary only and the trust has not in any way secured admissions in Sri Venkateswara College of Engineering for the donors, who happen to be trusts only. Being dissatisfied with the reply filed by the assessee, the assessing officer concluded that the assessee trust was used as tool to transfer the fund from one trust to other trust under the guise of charity. While so, the assessing officer held that the amount of non-voluntary contribution i.e., capitation fees received of Rs.3,60,00,000/- was treated as income not eligible for exemption under section 11 and taxed protectively in the hands of the assessee at the rate applicable to an Association of Persons (AOP) and accordingly, passed the assessment order on 31.03.2014, determining the taxable income at Rs.3,60,00,000/- and tax payable at Rs.1,65,27.680/- for the assessment year 2011-12. On the same reasoning, by order dated 27.12.2016, the Assessing Officer completed the assessment for the assessment year 2014-2015, determining the taxable income at Rs.8,00,00,000/- by treating the same as not eligible for exemption under section 11 of the Act. It was further observed that penalty proceedings against the Assessee under Section 27 (1) (c) of the Act will be initiated separately.

10.1. The Assessee viz., M/s. United Educational Foundation / respondent in TCA Nos.59/2022, 305 and 306/2021 relating to the AY 2011-12, 2013-14 and

2014-15 respectively, is a registered trust under Section 12AA of the Act, vide order passed in DIT (E) No.2(1359)/08-09 dated 24.09.2009. For the Assessment year 2011-2012, the Assessee filed its return of income on 30.09.2011 admitting 'Nil' income. After processing the same, the assessing officer issued a notice dated 03.08.2012 under Section 143 (2) of the Act. In response, the representative of the Assessee appeared before the assessing officer and produced documentary evidence, including a letter dated 12.08.2013 furnishing the details of the donors, their address, Pan Number and the manner in which the donation was paid viz., demand draft/pay order. On perusal of the same, the assessing officer noticed that the Assessee received a sum of Rs.22,03,77,500/- as donation from 1206 persons on various dates and claimed exemption under section 11 of the Act. It was also noticed that out of the sum of Rs.22,03,77,500/- the Assessee had donated Rs.18,74,67,000/- as donations to various trusts/institutions. The assessing officer, in order to verify the claim for exemption, had undertaken an elaborate exercise, issued summons to all the donors in exercise of his powers conferred under Section 131 (1) (b) of the Act and recorded their statements without any coercion, force or threat. Some of the donors had feigned ignorance as they were not aware of the Assessee trust or its activity and without any knowledge, their names were misused and their signatures were obtained as donor by their

relatives/friends. During such enquiry, it also came to light that Sri Venkateswara Engineering College, Sriperumbudur, Kancheepuram District had demanded payments for allotment of seats in their college and the payments were made towards capitation fee. The Assessing Officer also, in the order of assessment dated 31.03.2014, referred to the statement obtained from some of the donors and concluded that the persons who wanted to get admission for their wards in Sri Venkateswara Engineering College were forced to pay capitation fee, but the capitation fee was recorded in the books of the Assessee trust as "voluntary contribution". The assessing officer also concluded that the said contribution in the hands of Assessee has been routed through various other trusts viz., MAC Charities and MAC Public Charitable Trust on various dates and ultimately it reached Sri Venkateswara College of Engineering.

10.2. On the basis of the above materials collected during the assessment proceedings, the assessing officer issued a show cause notice dated 07.03.2014 calling upon the Assessee to explain as to why exemption under section 11 should not be denied for the income of Rs.22,03,77,500/-. An explanation was offered by the Assessee on 18.03.2014 stating that the donations received from the donors are voluntary. It was also stated that the Assessee trust is an

independent trust and it is in no way connected with Sri Venkateswara Engineering College. It was also stated that donations to other trust is proper application of funds and there is nothing wrong in the donations given to MAC Charities etc. The Assessing Officer, after considering the explanation of the Assessee, was of the opinion that the amount of non-voluntary contribution i.e., capitation fee received at Rs.22,03,77,500/- has to be treated as income and the Assessee was not eligible for exemption under section 11 of the Act, for the assessment year 2011-12.

10.3. On the above said reasoning, the assessing officer passed the orders of assessment dated 31.03.2016 and 31.12.2016, relating to the assessment years 2013-14 and 2014-15, determining the tax payable by the assessee at Rs.16,22,60,670/- and Rs.16,33,99,970/-, respectively.

11.1. The Assessee namely M/s. MAC Charities / respondent in TCA Nos. 63/2022, 309 and 310 of 2022 relating to the AY 2011-12, 2013-14 and 2014-15 respectively, is a trust registered under Section 12A(a) of the Act vide the order in DIT(E) No.2(102) /90-91 dated 15.11.2000. For the assessment year 2011-12, they had filed their return on 26.09.2011 admitting 'nil' income. The Assessee's case was taken up for scrutiny and notice under section 143(2) was

issued on 03.08.2012. In response, the Assessee's representative appeared and produced the documents called for. On verification of the return of income, it was noticed that the Assessee trust had received Rs.12.75 crores as donations and paid Rs.67.38 crores as donations. The donations were received from M/s. United Educational Foundation (Rs.10.65 crores) and M/s. MAC Medical Foundation (Rs.2.00 crores). Out of the said donations, an amount of Rs.5.00 crores was paid to Sri Venkateswara Educational and Health Trust.

11.2. After a detailed analysis, the assessing officer was of the view that the assesssee acted as a fund transferor to transfer the capitation fee received for giving admission to the students who enrolled during the FY 2010-11 by receiving the money from M/s. United Educational Foundation and transferring them to Sri Venkateswara College of Engineering which is a unit of M/s.Sri Venkateswara Educational & Health Trust in the form of 'donations received' and 'donation paid'. Hence, the assessee was issued with a show cause notice dated 07.03.2014 calling upon them to explain as to why exemption under section 11 should not be denied for the income of Rs.10.65 crores as the said receipt was not a voluntary contribution. In response, they submitted a reply dated 19.03.2014, stating *inter alia* that the donations were voluntary and the trust has not in any way secured admission in the said college for the donors, who happen to be trusts only. However, the assessing

officer, upon analysing the manner in which the funds were channelised and reached Sri Venkateswara College of Engineering, concluded that the amount received purported to be donation, was in fact capitation fee received from the students for accommodating them in the said college; the same was not a voluntary contribution and hence, the Assessee was ineligible for exemption under Section 11 of the Act. Accordingly, the assessing officer passed an order of assessment dated 31.03.2014 determining the taxable income at Rs.10,65,00,000/- and tax payable at Rs.4,45,51,040/- for the AY 2011-12. On the same reasoning, similar assessment orders were passed by the assessing officer determining the tax payable at Rs.14,53,56,240/- and Rs.7,76,87,580/- in respect of the assessment years 2013-14 and 2014-15 respectively.

12. Assailing the orders of assessment passed by the Assessing Officer for various assessment years, the Assessee Trusts filed statutory appeals before the Appellate Authority namely the Commissioner of Income Tax (Appeals). Before the CIT(A), on behalf of the Assessees, it was contended that the donations were received voluntarily; and the Assessee Trusts were in no way connected with the securing admission of students in Sri Venkateswara College of Engineering for the children of the donors. In the records of the Assessee Trusts, they had shown these donations as income only and applied

the same for charitable purposes as per law. As a charitable institution, there is no prohibition under law to receive donation from another charitable institution. In this context, on behalf of the Assessees, reliance was placed on the decision of the Allahabad High Court in ***CIT v. J.K. Charitable Trust [(1992) 196 ITR 31]*** wherein it was observed that as a charitable institution, the Assessee can directly contribute to another charitable institution which advances similar cause. It was further observed that in the absence of any allegation of malafides, the amount contributed to other charitable institutions out of the income accumulated under sub-section (2), is outside the mischief of sub-section (3) of Section 11. In other words, such contribution does not amount to application of the income for purposes other than charitable or religious. By placing reliance on the said decision of the Allahabad High Court, it was contended that when there was no allegation by any of the donors that the amount was made to be tendered involuntarily, the entire investigation conducted by the Assessing Officer and the consequential orders of assessment were liable to be set aside.

13. After hearing both sides and upon perusal of the available materials, the Appellate Authority viz., CIT(A) observed that the Assessee Trusts themselves are donors established for the purpose of carrying out charitable and religious activities. They have donated their income to another trust and there is no bar

or embargo in doing so. The Assessee Trusts had donated money not only to Sri Venkateswara Educational and Health Trust, but also to other Trusts. Such donations, other than corpus donations, shall, for the purposes of Section 11 of the Act, deemed to be income derived from the property held under the trust for carrying out charitable and religious activities. Therefore, it was concluded that the donations paid by the Assessee Trusts to other trusts are income in the hands of recipient trusts for the purpose of Section 11 (1) of the Act. Accordingly, by separate orders dated 01.08.2014 and 31.12.2018, the CIT(A) allowed the appeals preferred by the respondent trusts. The relevant portion of the order dated 01.08.2014 passed by the Appellate Authority in the appeal preferred by M/s. MAC Public Charitable Trust, relating to AY 2011-12, can be useful to be extracted hereunder:

> *"4.2 The donation received is spent on objects of the trust and to meet the administrative expenses of the trust. The Assessee received donation of Rs.3.60 crores from M/s. United Education Foundation which is also registered u/s.12A(a) of the Act. The Assessee paid donation of Rs.3.60 crores to M/s. Sri Venkateswara Educational and Health Trust which is also registered u/s.12A(a) of the Act. The Assessee also received donation from other trusts and paid donation to other trusts also. It is a fact that Dr.A.C.Muthiah is a trustee in M/s. United Education Foundation from which Rs.3.60 crores was received as donation by the Assessee trust. He is not a trustee in Sri Venkateswara Educational and Health Trust. The donation given by M/s. United Education Foundation to the Assessee trust is on its own volition and there is no coercion by the Assessee trust exerted on the donor trust. The AO did not bring any evidence to prove that the donation given by M/s. United Education Foundation to the Assessee trust is either by undue influence or intimidation. The alleged collection of capitation fee by the United Education Foundation for admission to engineering college owned by Sri Venkateswara Educational and Health Trust is no way connected with the activities of the trust. No evidence was brought on record by the AO to prove that the Assessee trust exerted*

influence on the parents, relatives or friends of the parents of the students to pay donation/capitation fee to the United Education Foundation in order to get admission in the engineering college owned by Sri Venkateswara Educational and Health Trust. In the circumstances, whether the donation in the hands of M/s. United Education Foundation is voluntary or not is not an issue relatable to the Assessee trust. The only common link is that the founder trustee of the Assessee trust, Dr. A.C. Muthiah is also the trustee of the United Education Foundation which gave donation to the Assessee trust. it is also a fact that the father of Dr. A.C. Muthiah is the founder trustee of Sri Venkateswara Educational and Health Trust which owns the engineering college and recipient of donation from the Assessee trust.

4.3 It is also pertinent to observe that the Assessee trust received donation from other trusts and paid donation to other trusts also. In this context, it is not tenable to deny exemption u/s.11 of the Act to the Assessee trust on the basis of unconnected transactions of accepting donation/capitation fee by the United Education Foundation for admission in the engineering college owned by Sri Venkateswara Educational and Health Trust. It was not established by the AO that the trustee Mr. A.C. Muthiah or Mr. M.A. Chidambaram derived benefit from the trusts in which they are trustees. The voluntary or involuntary nature of donation in the hands of M/s. United Education Foundation has nothing to do with the activities of the Assessee trust as it received donation from M/s. United Education Foundation only and not from the relatives/ friends of the parents of students who got admission in the engineering college owned by Sri Venkateswara Educational and Health Trust. There is no prohibition in any law of the land to take donation and pay donation from and to the trusts recognized u/s.12A(a) of the Act. Hence, I am of the considered view that the taxation of Rs.3,60,00,000/- as non-voluntary contribution (capitation fee) in the hands of Assessee trust is devoid of any merit and not tenable in the eyes of law as no capitation fee was received by the Assessee trust. The donation paid by the United Education Foundation and other trusts to the Assessee trust is a voluntary contribution only and hence cannot be taxed. The AO is therefore directed to delete the addition of Rs.3,60,00,000/- made in the assessment order.

4.4 Regarding the deposit of Rs.17,95,000/- with M/s. SPK MAC Charitable Trust as on 31.03.2011, the Assessee contended that the said amount is not an investment but a loan transaction. In the Assessee's own case, the jurisdictional Tribunal held that it is not in violation of Sec.13 of the Act. Respectfully following the decision, the AO's finding is rejected and it is held that there is no violation of Sec.13 of the Act by the Assessee trust. Reliance is also placed on the decision of Delhi High Court in the case of DIT (E) vs. ACME Educational Society (2010) 326 ITR 146.

4.5 Regarding the treatment of donation paid by the Assessee to other trusts as non-application, it is to be observed that the Assessee not only

donated money to Sri Venkateswara Educational and Health Trust but also donated to ten other trusts. The donations other than corpus donations shall for the purposes of sec.11 be deemed to be income derived from property held under trust for wholly charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly as per sec.12 (1) of the Act. Hence the donation received by the Assessee trust at Rs.4 crores is income of the Assessee for the purpose of Sec.11(1) of the Act. Similarly, the donation paid by the Assessee trust to other trusts are income in the hands of recipient trusts for the purpose of sec.11 (1) of the Act.

4.6. .....

The above decisions and instructions are squarely applicable to the facts of the case and hence the additions made are not tenable. The donation receipt of Rs.3.60 crores from M/s. United Education Foundation is brought to tax in the hands of the Assessee protectively. The same amount was taxed in the hands of M/s. United Education Foundation substantively. The same amount was also taxed substantively in the hands of M/s. Sri Venkateswara Educational and Health Trust. Thus the same amounts were taxed thrice which is against the principles of taxation. Therefore, the assessment order passed by the AO is set aside and the AO is directed to accept the income returned.

4.7. In fine, the following conclusions are arrived at:

1. There is no prohibition in law for a charitable institution to receive donation from another charitable institution.

2. There is also no prohibition in law for a charitable institution to give donation to another charitable donation

3. The donation given by the Assessee trust is application of income and hence exempt u/s.11 of the Act.

4. The donation received and given by the Assessee trust are voluntary in nature.

5. The Assessee trust is not connected with receipt of donation/capitation fee by any trust from anyone.

6. The Assessee trust is not connected with the admission of students to any Engineering College.

7. In result, the appeal of the appellant trust is fully allowed.*"*

14. Aggrieved by the orders so passed by the Appellate Authority dated 01.08.2014 relating to the AY 2011-12, the Revenue preferred the appeals before the Income Tax Appellate Tribunal. It was contended on behalf of the Revenue before the Tribunal that the funds were mostly diverted to their connected/related charitable Trusts in order to secure admission for the

relatives/wards of the donors in the educational institution run by M/s.Sri Venkateswara Educational & Health Trust. To buttress this submission, the Revenue placed reliance on the sworn statements recorded from various persons.

15. The Tribunal, by a common order dated 12.04.2017, rejected the contentions so made on the side of the Revenue by observing that the statements recorded from the donors revealed that they made the donations voluntarily to the charitable institutions. Further, the Assessing Officer did not examine the source of investment made by the donors. While so, it could be inferred that the Assessing Officer had coerced the individual donors and obtained the statements. The Tribunal also, was of the view that none of the donors or the parents/students studying in the educational institutions did make any complaint to any of the authorities complaining the so-called extortion of money in the form of donation for securing admission in the educational institutions run by M/s. Sri Venkateswara Educational & Health Trust. It was the further view of the Tribunal that there is no bar for the Assessee Trusts to receive and/or accept voluntary donations from the donors or from the relatives/parents of the students studying in the educational institutions connected with the charitable trusts. In effect, the Tribunal opined that the

Assessing Officer had not brought out credible materials to show that the Assessee Trusts had received donations as a condition precedent for allotment of seats to the student in M/s. Sri Venkateswara College of Engineering, Sriperumbudur. Accordingly, the Tribunal dismissed the appeals preferred by the Revenue. The relevant portion of the order dated 12.04.2017 passed by the Tribunal can profitably be extracted hereunder:

> *"10. .....However, the facts also reveals that initially all the donors who had submitted sworn statements before the Ld. AO against the Assessee had earlier replied to the Ld. AO stating that the donations were voluntarily made by them to the charitable institutions. In this situation we fail to understand the reason for the change of stand by the donors before the Ld. AO on the subsequent proceedings. In all the instances the donors have donated huge sum often extending to more than five lakhs to the charitable institutions. It is pertinent to mention at this juncture that the Ld. AO has not examined the source of investment made by the donors. Further according to the findings of the Ld.AO, in most of the cases the relatives/parents of the students studying in M/s.Sri Venkateswara Educational & Health Trust have paid donations to connected/related charitable Trusts. From these facts and circumstances of the case it appears that the Ld.AO might have coerced to obtain the sworn statements from the donors in the manner convenient to the Revenue so as to drop further proceedings against the donors for examining their source of income with respect to the amount of donations made. Further it is not always possible for the relationship between the parents and students to be cordial with the management of the educational institutions. We do not find any other reason as to why the donors have changed their mind while giving the sworn statements when they had already stated otherwise in the written submission submitted before the Ld.AO on the earlier occasion. Thus reliance cannot be placed on the sworn statement given by the donors which is subsequent to their confirmation letter given on the earlier occasion that they had extended voluntary contribution to the charitable institutions unless some other material evidence proves otherwise. It is also pertinent to mention that the donors or the parents/students studying in the educational institutions had not complained to any authorities regarding extortion by way of donations for securing admission in the educational institutions managed by M/s. Sri Venkateswara Educational & Health Trust. It is a well-known fact that accepting donations for granting admission in the education institutions is against the law of the land viz., The Tamil Nadu*

Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992 and in violation of the same leads for penal action which includes imprisonment. In the case of Assessee trust, nothing is brought before us to point out that the law enforcing authorities of the State Govt., or the Central Govt., have initiated any coercive action against any of these Assessees for violating any provisions of the relevant Act. Further nothing is brought before us to establish that the Assessee trusts are barred from accepting donations from the relatives/parents of the students studying in the educational institutions connected to those charitable trusts. In the case of MAC Educational Foundation, the Assessee trust had received from M/s. United Education Foundation. Though the Ld.AO state that the Assessee Trust has received the donation for granting admission to students in M/s.Sri Venkateswara College, Sriperumbudur, he has not brought out any evidence to prove the same. Therefore, there is no merit in the case of M/s.MAC Educational Foundation for treating the amount as non-voluntary contribution. In the case of M/s. Sri Venkateswara Educational and Health Trust, the Ld.AO had simply stated that the Assessee trust has received capitation fees without any evidence to establish the same. It is also not clear whether this amount is received from other connected/related trusts or directly received from the donors. The Ld.AO instead of clarifying these issues has made substantive addition in the hands of the Assessee, which is erroneous. Further it is apparent that the Ld.AO without examining the correct source of actual donation had come to the conclusion that there were quid-pro-quo arrangements for the payment of donation only based on certain presumptions and assumptions and not based on well ascertained facts. Though it may appear from the circumstance of the case that there may be quit-pro-quo arrangement for receipt of donation, unless it is established by cogent evidence drastic decision cannot be arrived at by withdrawing the benefit of Section 11 of the Act to all the charitable trusts which will jeopardize the functioning and the very existence of the charitable educational institutions. Moreover, there is no finding with respect to any violation of Section 13 of the Act, because the donations received by the respective charitable trusts are spent according to the objects of the trusts. It is also apparent that this bench of the Tribunal in ITA No.627/Mds/2014 vide order dated 27.06.2014 for the assessment year 2010-2011 and ITA No.1799/Mds/2012 vide order dated 29.08.2013 for the assessment year 2008-2009 in the case of M/s. MAC Public Charitable Trust had held that the benefit of Section 11 & 12 of the Act cannot be denied to the Assessee for extending loan to another connected/related charitable educational institution. Further the Assessee trusts have issued valid receipts for the donations received and had maintained the names, address of the donors as per the provisions of the Act. The Ld.CIT (A) had also made a categorical finding that the Assessee trust had not only extended donation to M/s. Sri Venkateswara Educational and Health Trust but to various other charitable institutions for carrying out charitable activities. Considering these facts and

circumstance of the case, we are of the considered view that no interference is necessary in the decision of the Ld.CIT(A) who had extensively analysed the issue and decided the matter by placing reliance on the various decisions of higher judiciary. Therefore, we hereby sustain the order of the Ld.CIT (A) in the case of all the Assessees trusts mentioned hereinabove."

The aforesaid order of the Tribunal dated 12.04.2017 is under challenge in TCA Nos.59, 60, 62 and 63 of 2022 at the instance of the Revenue.

16. In the mean while, challenging the orders dated 31.12.2018 passed by the CIT(A) relating to the AYs 2012-13, 2013-14 and 2014-15, the Revenue filed appeals before the Tribunal. It was contended on behalf of the Revenue that the Appellate Authority erred in deleting the disallowance made by the Assessing Officer and accepted the claim of the Assessees towards receipt of the amount as voluntary donation. It was further contended that the donations were in fact collected by the Assessee Trusts towards capitation fee as a condition precedent for admitting the students in the Engineering College run by Sri Venkateswara Educational and Health Trust.

17. However, the Tribunal, by a common order dated 13.11.2019, rejected all the appeals, by placing reliance on the earlier order dated 12.04.2017, mentioned supra, without examining the merits of the contentions raised by the Revenue. The relevant portion of the said order dated 13.11.2019 is quoted below for ready reference:

> *"7. We have considered the rival submissions and perused the materials available on record. Perusal of the orders of the Co-ordinated Bench of this Tribunal in the Assessee's own case in respect of all Assessees clearly show that the Co-ordinated Bench of this Tribunal has confirmed the order of the learned Commissioner of Income Tax (Appeals) for the Assessment year 2011-2012 by holding that no interference was necessary in respect of the decision of the learned Commissioner of Income Tax (Appeals) who has extensively analysed the issue and decided the matter by placing reliance on the various decisions of the Hon'ble High Court and upheld the orders of the learned Commissioner of Income Tax (Appeals). In the present case, it is noticed that the learned Commissioner of Income Tax (Appeals) has followed jurisdictional discipline and has followed the decision of the Co-ordinate Bench of this Tribunal in the Assessee's own case referred to supra in the chart referred to above. This being so, we find no reason to interfere in the order of the learned Commissioner of Income Tax (Appeals). Consequently, the appeals filed by the Revenue stands dismissed."*

Aggrieved by the aforesaid order of the Tribunal, the Revenue is before this court by filing TCA Nos.303, 304, 305, 306, 307, 308, 309 and 310 of 2021.

CONTENTIONS OF THE PARTIES

18.1. Mr. J. Narayanasamy, learned Senior Standing Counsel appearing for the appellant / Revenue, at the outset, submits that the Appellate Authority and the Tribunal have committed a grave error in not considering the fact that the Assessee Trusts, in order to avoid legal consequence of receiving capitation fee, which is opposed to the provisions of the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee), Act, 1992, have insisted the parents of the students to pay such fee to M/s. United Educational Foundation in the name of their relatives or friends and not in their name. This was amply proved by the Revenue by a detailed examination of the case and by

recording the statement of individual donors as well as some parents. Adding further, the learned senior standing counsel submitted that the Appellate Authority as well as the Tribunal, did not take note of the nexus between M/s. United Educational Foundation, M/s. MAC Charities, M/s. MAC Public Charitable Trust and M/s. Sri Venkateswara College of Engineering in successfully channelising the donations received from one Trust to the other; the amount received in the form of donation was in fact towards capitation fee to procure seat for the student in the college; and therefore, it cannot be said that the amount received was a voluntary contribution.

18.2. The learned Senior Standing Counsel for the Revenue further submitted that the founder trustee of the Assessee trust namely MAC Public Charitable Trust Dr. A.C. Muthiah is also the trustee of M/s.United Educational Foundation, which gave donation to the Assessee trust; the said Dr. A.C. Muthiah is also the founder trustee of Sri Venkateswara Educational and Health Trust, which owns the College viz., Sri Venkateswara College of Engineering; and thus, the Assessee Trusts are having nexus with one another and the donations received by M/s. United Educational Foundation were systematically channelised so as to reach the college operating by Sri Venkateswara Educational and Health Trust as corpus donations. The Assessing Officer also, on appreciation of the evidence collected during the

course of enquiry, has concluded that there was a clear nexus among the Assessee Trusts. However, the appellate authority as well as the Tribunal simply brushed aside the said fact and erroneously held that the assessees are eligible for exemption under section 11 of the Act.

18.3. In effect, it is the submission of the learned Senior Standing Counsel appearing for the revenue that the respondents /Assessees are part of a group trust. Their modus operandi is that students of the educational institution of Trust - A are asked to give donations to Trust - C. Thereafter, Trust - C transfers the donation amount received to Trust - B and from Trust - B to Trust - A. Such is the arrangement within the group trusts and they have common trustees. In order to prove this modus operandi resorted to by the Assessee-Trust, the Assessing Officer recorded statements from 1500 persons out of which around 50 percent of those who have given statement, conceded that the donation was a *quid pro quo* transaction for admission. However, certain parents retracted their statements, which was mainly relied on by the Appellate Authority as well as the Tribunal to set aside the orders of assessment. Stating so, the learned Senior Standing Counsel submitted that the channelisation of the donations in such a way cannot be treated as voluntary donations. The respondents / Assessees also admitted that the donation received by one trust has been re-donated to the other Trust, which would

amply fortify the stand of the Revenue that the transaction is ungenuine. Therefore, the orders of the Appellate Authorities granting exemption to the assessees by treating the donations so received as voluntary, will have to be set aside.

18.4. The learned Senior Standing Counsel for the Revenue invited the attention of this Court to the Orders passed by the Tribunal, wherein, it was observed that the Department had not checked the source of income of the donors, and contended that examination of source of income of the donors is not only unnecessary, but also unwarranted given the nature of enquiry conducted by the Assessing Officer. When the entire transaction has been made in a *quid pro quo* manner, which could be evident from the statements made by some of the parents of the students, it was a clear case of involuntary donation and therefore, the Assessing Officer was wholly justified in passing the orders of assessment. It is also submitted that the exemption granted to the respondents / trusts under Section 12(1) of the Act is to enable them to receive voluntary contribution; the donations and/or contributions received by the respondent trusts are proved to be involuntary; and hence, they are not entitled to the exemption any longer.

18.5. The learned Senior Standing Counsel for the Revenue further submitted that the capitation fee received was for allotment of seats by the Trust and

hence, it cannot be said to be a voluntary contribution/donation to the trust. Such receipt of capitation fee cannot be passed on as a donation by one trust to another and claimed exemption thereof. The nature of money received by the respondent Trusts had lost their character of voluntary donation/contribution at the time of original receipt itself. Therefore, the manner in which the monies spent subsequently will not be construed as donation especially when the so-called money received have landed finally in the hands of the College or the trust running the college that allotted seats.

18.6. Referring to the provisions of Tamil Nadu Educational Institutions (Prohibition of Capitation Fee) Act, 1992, the learned Senior Standing Counsel appearing for the Revenue submitted that section 2 (a) defines "capitation fee", which means any amount, by whatever name called, paid or collected directly or indirectly in excess of the fee prescribed under Section 4 of the Act. According to the learned Senior Standing Counsel, as per the statements given by the parents/relatives in this case, they had paid capitation fee over and above the prescribed fee for admission and the same is also punishable under the said Act. Taking note of the same, the Assessing Officer assessed the capitation fee received by the respondents-Assessees to tax. However, the Appellate Authority as well as the Tribunal overturned such decision and

passed the orders impugned herein by observing that the assessing officer might have coerced the donors to obtain such statements to suit the revenue; the statements of the donors cannot be relied on as some of the donors have changed their version later. Such an observation made by the Tribunal, according to the learned Senior Standing Counsel, is in contravention to the decision of the Delhi High Court in ***Brij Basi Education and Welfare Society v. Principal Commissioner of Income Tax Central III, New Delhi [(2021) 125 taxmann.com 95 (Delhi)],*** wherein in para No.15, it was held that in cases where the summoned parties go back on their statement, it is for the Assessee to prove their bonafides with corroborating evidence. If the Assessee failed, then the order of the assessing authorities, assessing the money, had to be confirmed.

18.7. The learned Senior Standing Counsel for the Revenue also submitted that the Tribunal had erroneously held that the State Government had not initiated any action against the Trusts and therefore, the Assessing Officer cannot treat the amount received as capitation fee for denying exemption. In fact, the Tribunal did not consider that as per the provisions of the Act, the Assessing Officer is a statutory authority who can independently make his own decision upon scrutiny of the records and pass orders for disallowing the income. Hence, the Assessing Officer need not depend upon the State

Government authorities to initiate action under the Tamil Nadu Educational Institutions (Prohibition and Capitation Fee) Act 1992. With these submissions, the learned Senior Standing Counsel prayed for allowing the Tax Case Appeals by setting aside the orders passed by the Appellate Authority as well as the Tribunal.

18.8. In support of his contentions, the learned Senior Standing Counsel appearing for the appellant placed reliance on the following decisions:

(i) In ***T.M.A. Pai Foundation and others v. State of Karnataka and others [2002 (8) SCC 481],*** the Constitutional Bench of the Hon'ble Supreme Court in Para Nos.28, 57 and 69, held as follows:

> *"28. We will now examine the decision in Unni Krishnan's case. In this case, this Court considered the conditions and regulations, if any, which the State could impose in the running of private unaided/aided recognised or affiliated educational institutions conducting professional courses such as medicine, engineering etc., The extent to which the fee could be charged by such an institution and the manner in which admissions could be granted was also considered. This Court held that private unaided recognized /affiliated educational institutions running professional courses were entitled to charge a fee higher than that charged by government institutions for similar courses, but that such a fee could not exceed the maximum limit fixed by the State. It held that commercialization of education was not permissible and "was opposed to public policy and Indian tradition and therefore charging capitation fee was illegal....."*
>
> *57. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable" it is clear that an educational institution cannot charge such a fee as is not required for the*

purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the education.

69. In such professional unaided institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students."

(ii) In ***Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others [(2016) 7 SCC 353]***, in para No.140, it was observed by the Hon'ble Supreme Court as follows:

"140. Capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. Profession has to be distinguished from business or a mere occupation. Where in business, and to a certainextent in occupation, there is a profit motive, profession is primarily a service to society wherein earning is secondary or incidental. A student who gets a professional degree by payment of capitation fee, once qualified as a professional, is likely to aim more at earning rather than serving and that becomes a bane to society. The charging of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialisation of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated."

(iii) In ***P.S. Govindasamy Naidu & Sons v. Assistant Commissioner***

of Income Tax [(2010) 324 ITR 44 (Madras)] the Division Bench of this Court held as follows:

> *"5. It is seen from the order of the assessing authority that on an examination of a random number of parents who admitted the children into the college, it was found that the amount paid was not to the corpus donation account, but it was collected only by way of capitation fee. The Assessee treated it on its own as corpus donation and issued receipts as corpus donation and credited it under the corpus donation account. The Assessing Authority rightly held that it is immaterial how the recipient, namely the Assessee herein, accounted for the same and issued receipts towards charitable purpose at the time of receipt of the income. Admittedly, it was towards capitation fee. In such circumstances, the assessing authority rightly rejected the contention of the Assessee that the contribution by the parents towards capitation fee could not be characterised as voluntary payment to be credited under the head "corpus donation". It is also seen that the assessing authority referred to the decision of the Income-Tax Appellate Tribunal, "B" Bench, Bombay in a similar circumstance, wherein it was held that the donation given for material gain for securing admission could not be characterised as donation towards charitable purpose, and as such, the Assessee is not entitled to have the benefit.*
>
> *6. A perusal of the order of the Commissioner of Income Tax (Appeals) shows that he merely applied the decision made in earlier years to grant the relief and considered the payment as a voluntary contribution and hence exempted under section 11 (1) (d). However, going by the statement recorded from the parents, rightly, the Tribunal came to the conclusion that these amounts, were in fact paid only by way of capitation fee and not towards corpus account of the Assessee-trust. In the absence of any material to disturb this fact, we do not find any merit in the submission made by the learned counsel for the Assessee that the provisions, namely section 10(22) of the Income Tax Act, 1961, really call for an interpretation before this Court. In the face of an admitted fact that the amount was paid only towards capitation fee, we find no justification to accept the plea of the Assessee that the matter has to be admitted on the question of interpretation."*

(iv) In ***Brij Basi Education and Welfare Society (supra),*** it was held by the Delhi High Court as follows:

> *"15. The law regarding reopening of assessment is well-settled. The reliance placed upon the findings of the earlier assessment proceedings is misplaced. If the assumption of jurisdiction is held to be valid, the*

Appellant cannot place undue credence on the earlier assessment proceedings. Once an assessment is reopened, the initial order of assessment ceases to be operative and the proceedings start afresh. The Appellant's contention that since the AO had originally accepted the donations to be genuine, he is precluded from treating them to be bogus and making additions, is untenable. The Tribunal has noted that though the Assessee had initially submitted the confirmation of donation at the time of original assessment, however, during investigation by the CBI, some of the donors have confessed that they have not given any such donation. Under interrogation of the donors it was unearthed that the donation detail submitted by the Assessee in the original assessment proceedings was false. Thus, the genuineness of the donors could not be established. This case invited deeper scrutiny owing to the discovery of facts during CBI investigation that adversely impinged the findings determined in the earlier round of assessment. However, the Appellant failed to discharge the onus of proof cast upon it. No attempt was made to produce credible material to corroborate the transactions or to explain the contradictory evidence that it was confronted with. Appellant also never took any steps to examine the witnesses and as a result, on the basis of the material on record, the tax authorities concluded that the genuineness, creditworthiness remained unsubstantiated. In wake of this factual position, the donations were treated as bogus, justifying the additions. Therefore, the third substantial question of law, premised on findings that are purely based on fact calls for no interference."

Thus, the learned senior standing counsel contended that both the CIT (A) and the Tribunal failed to appreciate the correct law and erred in deciding the dispute against the revenue and therefore, the orders passed by them are liable to be set aside.

19.1. Per contra, Mr. Haja Nazirudeen, learned senior counsel appearing for the respondents / Assessees would submit that the object of the trust is to run educational institutions and other activities; and is to support other institutions by donating the donated money. There was no *quid pro quo* as contended by

the learned counsel for the department. The trustees in the trusts do not get benefitted in any way at all. Thus, section 13 is not attracted in this case. Continuing further, the learned senior counsel submitted that the respondents / trusts have registration under sections 12A as well as 80G of the Act and hence, the power to divert funds under section 12 exists. The application of the donated money is towards the object of the trust, more particularly, charitable purposes only. Therefore, the same becomes relevant in view of section 13(1)(c) r/w section 13(3). It is also submitted by the learned senior counsel that during the course of proceedings, no opportunity for cross examination of the witnesses was provided to the respondents / assessees.

19.2. In support of his submissions, the learned Senior counsel appearing for the respondents / Assessees relied on the following decisions:

(i) In ***Ganga Bai Charities vs. Commissioner of Income Tax and another [(1992) 3 Supreme Court Cases 690]*****,** in para No.8, it was held by the Hon'ble Supreme Court as follows:

> *"8. The crux of the statutory exemption under Section 11 (1) (a) of the Act is not the income earned from property held under the trust but the actual application of the said income for religious and charitable purposes. It is, therefore, necessary to indicate in the trust deed the broad objectives for which the income derived from the property is to be utilised. There is no mention in the trust deed as to how the income derived from the trust property is to be utilised. The public uses the building on payment of rent to the trustees. What is to be done with the money so collected has not been provided in the trust deed. There is no mandate in the trust deed that the income derived from the trust property is to be spent on religious or charitable purposes."*

(ii) In ***Commissioner of Income Tax, Bombay City-VII v. Trustees of the Jadi Trust [1981 SCC Online Bombay 347 = (1982) 133 ITR 494]*** the Bombay High Court held as follows:

> *"22. So far as the provision of s.11 of the Act which was in force at the material time is concerned, we do not think that the legal position is in any way different. As already pointed out when a trust which holds property for charitable or religious purposes hands over a donation to another trust which is also at trust made for the application of its funds for charitable or religious purposes there can hardly be any purposes by the donor trust. As already pointed out it would be permissible for a trust either to directly apply the income for charitable purposes or to a charitable work in the field as put by Slade, J., or the same funds or income could be utilised through the medium of another charitable institution which applies its funds or income to charitable purposes. The Tribunal is, in our view, right in holding that the Assessee was entitled to the relief under s.11 (1) (a) of the I.T. Act, but the propriety of the direction given by the Tribunal need not be dealt with in this reference. However, it has been argued by Shri Dastur that the trustees would be representative Assessees as contemplated by s.161 (1) (iv) and, therefore, in view of the provisions of s.161 (1), the tax could be levied and recovered from the trustees "in like manner and to the same extent as it would be leviable and recoverable" from the HCJ Trust, because according to the learned counsel, the income is recovered by the trustees of the Assessee-trust for and on behalf of the HCJ Trust because the amount has to be donated to the HCJ Trust for charitable purposes. The contention before us was that it has already been ascertained that the amounts given by way of donation to the HCJ Trust have been applied to charitable purposes by the HCJ Trust and, therefore, the HCJ Trust would itself be entitled to the exemption under s.11 of the Act and consequently no income would be assessable to tax in the hands of the assessing trust. It is, however, not possible to discuss the controversy at this stage of the reference finally though it cannot be disputed that the Assessee-trust was receiving income for the benefit of the HCJ Trust and consequently the provisions of s.l61(1) would be attracted for the purposes of determining whether the Assessee is liable to be assessed to any tax on the income by way of donation to the HCJ Trust."*

(iii) In ***Commissioner of Income Tax v. A.M.M. Arunachalam Educational Society [1998 SCC Online Mad 1318 = (2000) 243 ITR 229]*** wherein, it was observed by this court as follows:

> *"7. There is no dispute about the fact that the Assessee exists only for*

educational purposes, namely, for running a school and not for purposes of profit. it is an educational institution. Section 10 (22) of the Act exempts "any income" of such institution. That would clearly include dividend income as well.

8. Counsel for the Revenue, however, contended that this Court has held in the case of Addl CIT vs. Aditanar Educational Institution (1979) 118 ITR 235, that a society merely running a college cannot utilise the provision as an instrument for exemption in respect of all its sources of income which had no connection with its educational activity. The decision of the Supreme Court in Aditanar Educational Institution vs. Addl. CIT, (1997) 224 ITR 310, to which a reference has already been made was the decision in an appeal from the judgment of this Court in the case of Addl. CIT vs. Aditanar Educational Institution, (1979) 118 ITR 235, and the Supreme Court has not in that judgment held that the width of language of Section 10 (22) notwithstanding income qualifying for exemption should be limited or restricted, having regard to its proximate connection or otherwise with the activity of running educational institutions. The observation made by this Court having regard to the issues which were considered therein were obiter. It is obvious that granting exemption to the income of the educational institutions is to enable such institutions to utilise the monies available with them for the purpose of running the educational institutions. The source from which the money is received is not of any consequence, what is relevant is the application. So long as the institution is an educational institution, which is not engaged in earning profit, income of such institution is exempt under section 10 (22).

(iv) In ***Trustees of Vanita Vishram v. Commissioner of Income Tax, Bombay [2005 SCC Online Bombay 721]*** the Bombay High Court held as follows:

"22. In the instant case, there is no dispute about the fact that the Assessee existed only for educational purposes, viz., for running schools and not for the purposes of making profit. Now the question is : whether or not the income by way of interest derived by the Trust from and out of investment of its surplus income/funds, made to augment the resources for running school is exempt under section 10(22) of the Act. In this connection, it must be mentioned that there is an integral unity between the Trust and the school for the purposes of section 10 (22). The amount invested belonged to the school. Consequently, the interest derived on such investments also belonged to the school. The school is not merely a building in which it is housed, or the equipment that is contained in it but something more. It is an institution, and that institution belongs to the Trust. In dealing with the question, whether the income is that of the

school, the significance of the expression "any income of a university or other educational institution" in section 10(22) has to be noticed. In our opinion, both words "any" and "of" carry a definite meaning. it is not income from the educational institution that is exempt but any income of the educational institution. If the word had been "from" the position would have been that the income should have been derived from the actual running of the school itself. What appears to be relevant is that the income should reach the school to be utilised by it for educational purposes and; not for the purposes of profit."

(v) In ***Sanjeevamma Hanumanthe Gowda Charitable Trust vs. The Director of Income Tax (Exemptions) Ward-w [ILR 2006 Kar 4043]***, it was held by the Karnataka High Court held as follows:

"5. Section 11 of the Act deal with exemptions available to income from property held for charitable or religious purposes. Exemption from tax will be allowed only in respect of the income actually applied to the purposes of the trust. Income derived for trust property must be determined on commercial principles. In order to be eligible for the aforesaid exemption the Assessee has to get the trust registered under Section 12A of the Act. The Assessee has to make an application in the prescribed form and comply with the other legal requirements mentioned in the aforesaid section. On receipt of such application for registration the Commissioner is under an obligation to follow the procedure prescribed under Section 12AA before he grants or refuses registration. What he is expected to do on receipt of such an application is, he shall call for such documents or information from the trust in order to satisfy himself about the genuineness of the activities of the trust or institution. In addition to securing information in the aforesaid manner, it is open to the Commissioner to make such enquiries as he deems necessary in this behalf. Having regard to the scheme of Sections 11, 12 and 13 ultimately what the Commissioner has to look into is not the source of income to the trust but whether such income is applied for charitable or religious purposes. The satisfaction of the Commissioner should be regarding the application of the income of the trust for the aforesaid purposes which only entitles the Assessee to claim exemption. 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 i.e., towards the object of the trust. Therefore, for the purpose of Registration under Section 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 purpose and not the nature of the activity by which the income was derived to the trust."

(vi) ***The Commissioner of Income Tax v. M/s. HPS Social Welfare Foundation [(2010) 235 CTR 330 = (2010) 329 ITR 310]*** wherein it was observed by the Delhi High Court as follows:

> *9. Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal, both have found that the organisations to which donations were given by the Assessee during assessment year in question were genuine charity organisations. There was no evidence before the assessing officer to show that these were not genuine organisations or were not engaged in social and charitable activities. The Assessing Officer attributed personal elements to these donations without even indicating any Assessing officer does not show that the Directors of HCL Perot Systems were connected with these organizations or were managing their affairs. The payments to all the organisations were made by account payee cheques. Confirmation from 74 out of 76 organisations were submitted by the Assessee. Deletion in respect of remaining two donations were confirmed by CIT (A) and have not been interfered with by the ITAT. If the Assessing Officer doubted any particular donation, he could have summoned the office bearers of the organisation which received that donation. That having not been done, he could not have disputed the genuineness of the donations.*
>
> *10. There was absolutely no material before the Assessing Officer to show that the funds given to these NGOs/Institutions were used for personal benefit of HCL Perot System or any of its Directors. Therefore, it cannot be said that the finding of fact recorded by Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal upholding genuineness of the donations is perverse, calling for intervention by this Court. No contravention of Section 13 of Income Tax Act having been made out and the genuineness of the donations having been accepted by Commissioner of Income Tax (Appeals) as well as by the Income Tax Appellate Tribunal, there is no ground for interference by this Court under Section 260A of Income Tax Act. No substantial question of law arises for our consideration in this case. The appeal as well as CM 3907/2010 for condonation of delay are hereby dismissed."*

20. We have heard the learned Senior Standing Counsel for the appellant / revenue and the learned counsel for the respondents / Assessees and also perused the materials placed before us.

DISCUSSION & FINDINGS

21. At the outset, pertinently, be it noted, an understanding of the facts at hand would reveal that the case of the respondents / Assessees is nothing more than a fig leaf to conceal the violation of the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992 (hereinafter shortly referred to as "the Capitation Fee Act"). Therefore, before appreciating the rival contentions made by the parties, it is essential to delve into the legal provisions.

Relevant provisions under the Income Tax Act, 1961

22. The following provisions of the Income Tax Act, 1961, are relevant for the purpose of the present cases:

> ***Section 2 (15)*** *of the Income Tax Act, defines "Charitable Purpose" as follows:*
> *"(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:*
> ***Provided*** *that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—*
> *(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*
> *(ii) the aggregate receipts from such activity or activities during the*

previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;"

Section 2 (24)

(24) "income" includes—
(i) profits and gains ;
(ii) dividend ;
(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23) (subsequently omitted), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10 or by an electoral trust.
Explanation: For the purposes of this sub-clause, "trust" includes any other legal obligation;]
……..
Earlier, prior to the Amendment Act, 1987, sub-clause (iia) stood as follows:
(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes, not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

The provision was amendment by Amending Act, 1987 by omitting the words "*not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution" with effect from 1-4-1989. Subsequently the provision was amended and stands as above at the relevant point of time when the assessment orders were passed.*

Incomes not included in total income.

10. *In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—*

(23C) any income received by any person on behalf of—
……
(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or
(iiiac) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring

medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by the Government.

[Explanation.—For the purposes of sub-clauses (iiiab) and (iiiac), any university or other educational institution, hospital or other institution referred therein, 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, hospital or other institution exceeds such percentage of the total receipts including any voluntary contributions, as may be prescribed, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year; or

(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or

(iiiae) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed; or

(iv) any other fund or institution established for charitable purposes which may be approved by the prescribed authority, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or

(v) any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be approved by the prescribed authority, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof;

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority; or

(via) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiac) or sub-clause (iiiae) and which may be approved by the prescribed authority :

***Provided** that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred*

to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall make an application in the prescribed formand manner to the prescribed authorityfor the purpose of grant of the exemption, or continuance thereof, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) :

***Provided further** that the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the prescribed authority may also make such inquiries as it deems necessary in this behalf:*

***Provided also** that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) —*

(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income shall in no case exceed five years; and

(b) does not invest or deposit its funds, other than—

(i) any assets held by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of the fund, trust or institution or any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1973;

(ia) any asset, being equity shares of a public company, held by any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1998;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution before the 1st day of March, 1983;

(iii) any accretion to the shares, forming part of the corpus mentioned in sub-clause (i) and sub-clause (ia), by way of bonus shares allotted to the fund, trust or institution or any university or other educational institution or any hospital or other medical institution ;

(iv) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in

the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11:

Provided also *that the exemption under sub-clause (iv) or sub-clause (v) shall not be denied in relation to any funds invested or deposited before the 1st day of April, 1989, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 1993 :*

Provided also *that the exemption under sub-clause (vi) or sub-clause (via) shall not be denied in relation to any funds invested or deposited before the 1st day of June, 1998, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 2001:*

Provided also *that the exemption under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (b) of the third proviso to this sub-clause, subject to the condition that such voluntary contribution is not held by the trust or institution or any university or other educational institution or any hospital or other medical institution, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1992, whichever is later:*

Provided also *that nothing contained in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall apply in relation to any income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:*

Provided also *that any notification issued by the Central Government under sub-clause (iv) or sub-clause (v), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President*, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:*

Provided also *that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, every notification under sub-clause (iv) or sub-clause (v) shall be issued or approval under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall be granted or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received:*

Provided also *that where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of section 288 and furnish along with the return of income for the relevant assessment year, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:*

Provided also *that any amount of donation received by the fund or institution in terms of clause (d) of sub-section (2) of section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the previous year and shall accordingly be charged to tax:*

Provided also *that where the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered under section 12AA or to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established :*

Provided also *that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government or is approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—*

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not—

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

(A) are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer:

***Provided also** that in case the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or after the 1st day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be made on or before the 30th day of September of the relevant assessment year from which the exemption is sought :*

***Provided also** that any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of the said section shall be included in the total income :*

***Provided also** that all pending applications, on which no notification has been issued under sub-clause (iv) or sub-clause (v) before the 1st day of June, 2007, shall stand transferred on that day to the prescribed authority and the prescribed authority may proceed with such applications under those sub-clauses from the stage at which they were on that day:*

***Provided also** that the income of a trust or institution referred to in sub-clause (iv) or sub-clause (v) shall be included in its total income of the previous year if the provisions of the first proviso to clause (15) of section 2 become applicable to such trust or institution in the said previous year, whether or not any approval granted or notification issued in respect of such trust or institution has been withdrawn or rescinded :*

***Provided also** that where the fund or institution referred to in sub-clause (iv) or the trust or institution referred to in sub-clause (v) has been notified by the Central Government or approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), has been approved by the prescribed authority, and the notification or the approval is in force for any previous year, then, nothing contained in any other provision of this section [other than clause (1) thereof] shall operate to exclude any income received on behalf of such fund or trust or institution or university or other educational institution or hospital or other medical institution, as the case may be, from the total*

income of the person in receipt thereof for that previous year.
Explanation.—In this clause, where any income is required to be applied or accumulated, then, for such purpose the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this clause in the same or any other previous year;]

Section 11 of the Income Tax Act,1961 now under consideration prior to Direct Tax Laws (Amendment) Act, 1987, stood as follows:

Income from property held for charitable or religious purposes.
11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—
[(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property;
(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty-five per cent of the income from such property;]
(c) income [derived] from property held under trust—
(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extern to which such income is applied to such purposes outside India, and
(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:
Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income.
[Explanation : For the purposes of clauses (a) and (b),—
(1) in computing the twenty-five per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;
(2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of seventy-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—
(i) for the reason that the whole or any part of the income has not been received during that year, or

(ii) for any other reason,

then—

(a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is receded or during the previous year immediately following as does not exceed the said amount, and

(b) in the case referred to in sub-clause (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount,may, at the option of the person in receipt of the income (such option to be exercised in writing before the expiry of the time allowed under sub-section (1) or sub-section (2) of section 139 whether fixed originally or on extension for furnishing the return of income) be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately following the previous year in which the income was derived.]

[(1A) For the purposes of sub-section (1),—

(a) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain;

(ii) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

(b) where a capital asset, being property held under trust in part only for such purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the appropriate fraction of such capital gain;

(ii) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.

Explanation : In this sub-section,—

(i) "appropriate fraction" means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes;

(ii) "cost of the transferred asset" means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in sub-clause (b) of clause (1) of section 55;

(iii) "net consideration" means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.]

[(1B) Where any income in respect of which an option is exercised under clause (2) of the Explanation to sub-section (1) is not applied to charitable or religious purposes in India during the period referred to in sub-clause (a) or, as the case may be, sub-clause (b), of the said clause, then, such income shall be deemed to be the income of the person in receipt thereof—

(a) in the case referred to in sub-clause (i) of the said clause, of the previous year immediately following the previous year in which the income was received, or

(b) in the case referred to in sub-clause (ii) of the said clause, of the previous year immediately following the previous year in which the income was derived.]

[(2) [Where seventy-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—]

(a) such person specifies, by notice in writing given to the [Assessing] Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

[(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5)].]

[(3) Any income referred to in sub-section (2) which—

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

[(b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5) , or]

(c) is not utilised for the purpose for which it is so accumulated or set apart

during the period referred to in clause (a.) of that sub-section or in the year immediately following the expiry thereof,

shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.]

[(3A) Notwithstanding anything contained in sub-section (3), where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (b) of sub-section (2) cannot be applied for the purpose for which it was accumulated or set apart, the [Assessing] Officer may, on an application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in India as is specified in the application by such person and as is in conformity with the objects of the trust; and thereupon the provisions of sub-section (3) shall apply as if the purpose specified by such person in the application under this sub-section were a purpose specified in the notice given to the [Assessing] Officer under clause (a) of sub-section (2).]

(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the [Assessing] Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes [***].

[(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income, being profits and gains of business, unless—

(a) the business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or is of a kind notified by the Central Government in this behalf in the Official Gazette; or

(b) the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution, and separate books of account are maintained by the trust or institution in respect of such business.]

[(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely:—

(i) investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;

(ii) deposit in any account with the Post Office Savings Bank;

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative

land mortgage bank or a co-operative land development bank),
Explanation : In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);
(iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);
(v) investment in any security for money created and issued by the Central Government or a State Government;
(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;
(vii) investment or deposit in any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
(viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is approved by the Central Government for the purposes of clause (viii) of sub-section (1) of section 36;
(ix) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is approved by the Central Government for the purposes of clause (viii) of sub-section (1) of section 36;
(x) investment in immovable property.
Explanation : "Immovable property" does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building)even though attached to, or permanently fastened to, anything attached to the earth;]
[(xi) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964).]]

Section 11 of the Act was omitted by Amendment Act, 1987 with effect from 1-04-1989. By Amendment Act, 1989, the provision was reintroduced with effect from 1-4-89 with certain modifications and the amended provision stood as under:

*"**Income from property held for charitable or religious purposes.***

***11.** (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person*

in receipt of the income—

[(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty-five per cent of the income from such property;]

(c) income [derived] from property held under trust—

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

***Provided** that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income.*

[(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution;]

[Explanation: For the purposes of clauses (a) and (b),—

(1) in computing the twenty-five percent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;

(2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of seventy-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—

(i) for the reason that the whole or any part of the income has not been received during that year, or

(ii) for any other reason,

then—

(a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, and

(b) in the case referred to in sub-clause (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount, may, at the option of the person in receipt of the income (such

option to be exercised in writing before the expiry of the time allowed under sub-section (1) [* *] of section 139 [* * *] for furnishing the return of income) be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately folio-wing the previous year in which the income was derived]*

[(1A) For the purposes of sub-section (1),—

(a) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain;

(ii) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

(b) where a capital asset, being property held under trust in part only for such purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the appropriate fraction of such capital gain;

(ii) in. any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.

Explanation: In this sub-section,—

(i) "appropriate fraction" means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes;

(ii) "cost of the transferred asset" means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in sub-clause (b) of clause (1) of section 55;

(iii) "net consideration" means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any

expenditure incurred wholly and exclusively in connection with such transfer.]

[(1B) Where any income in respect of which an option is exercised under clause (2) of the Explanation to sub-section (1) is not applied to charitable or religious purposes in India during the period referred to in sub-clause (a) or, as the case may be, sub-clause (b), of the said clause, then, such income shall be deemed to be the income of the person in receipt thereof—

(a) in the case referred to in sub-clause (i) of the said clause, of the previous year immediately following the previous year in which the income was received or

(b) in the case referred to in sub-clause (ii) of the said clause, of the previous year immediately following the previous year in which the income was derived]

[(2) [Where seventy-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—;].

(a) such person specifies, by notice in writing given to the [Assessing] Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

[(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5)].]

[(3) Any income referred to in sub-section (2) which—

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

[(b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or]

(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof,

shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or, as the case may be, of the previous year immediately following the expiry of the period aforesaid]

[(3A) Notwithstanding anything contained in sub-section (3), where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (b) of sub-section (2) cannot be applied for the purpose for which it was accumulated or set apart, the [Assessing]Officer may, on an

application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in India as is specified in the application by such person and as is in conformity with the objects of the trust; and thereupon the provisions of sub-section (3) shall apply as if the purpose specified by such person in the application under this sub-section were a purpose specified in the notice given to the [Assessing] Officer under clause (a) of sub-section (2),]

(4) For the purposes of this section" property held under trust" includes a business undertaking so held and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the [92][Assessing] Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking such excess shall be deemed to be applied to purposes other than charitable or religious purposes[* *].*

[(4A). Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income, being profits and gains of business, unless—

(a) the business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or is of a kind notified by the Central Government in this behalf in the Official Gazette; or

(b) the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution,

and separate books of account are maintained by the trust or institution in respect of such business.]

[(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following namely:—

(i) investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;

(ii) deposit in any account with the Post Office Savings Bank;

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a cooperative land mortgage bank or a co-operative land development bank).

Explanation: In this clause," scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to

the Reserve Bank of India Act, 1934 (2 of 1934);
(iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);
(v) investment in any security for money created and issued by the Central Government or a State Government;
(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon ate fully and unconditionally guaranteed by the Central Government or by a State Government;
(vii) investment or deposit in any [public sector company];
(viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is approved by the Central Government for the purposes of clause (viii) of sub-section (1) of section 36;
(ix) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is approved by the Central Government for the purposes of clause (viii) of sub-section (1) of section 36;
(x) investment in immovable property.

Explanation: "Immovable property" does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;]
[(xi) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);]
[(xii) any other form or mode of investment or deposit as may be prescribed]"

23. It is pertinent to mention here that since the old provision of Section 2 (24) (iia) was being widely used for tax avoidance by giving donations to a trust in the form of corpus donations so as to keep this amount out of the regulatory provisions of sections 11 to 13, by the Amending Act, 1987 it was omitted to secure that all donations received by a charitable or religious trust or institution, including corpus donations and it was sought to be treated as income of such trust or institution. However, exemption to the corpus

donations was granted under the provisions of the new section 80F, introduced by the Amending Act, 1987, subject to the condition that such corpus donations, if spent for charitable purposes or invested in specified assets mentioned in section 80F.

24. At this juncture it is necessary to quote the budget speech of the then Finance Minister, for the year 1984-1985, which reads as follows:

> *"Mr. Speaker, Sir, I notice that certain provisions of tax laws are being misused by a section of the taxpayers. I had occasion last year to deal at some length with taxation of charitable and religious trusts and institutions. I find that some of these trusts and institutions are trying to circumvent the investment pattern for trust funds laid down by the Finance Act, 1983. It is necessary to ensure that all such trusts and institutions strictly conform to the prescribed investment pattern and that such income or property is not used for providing benefit to the settlers trustees, etc. I , therefore, propose to provide for taxation of the income of defaulting trusts and institutions at the maximum marginal rate of income-tax. while on this subject, I would like to refer to a tendency noticed to create private trusts which carry on business. To curb such practice, I propose to provide that where such trusts have profits and gains of business the entire income of the trust will be charged to tax at the maximum marginal rate, an exception being made only in the cases where the trust is created by will for dependant relatives."*

25. The major changes that were introduced by the Amending Act, 1989 are that Sections 11, 12, 12A and 13 which were omitted by Direct Tax Laws (Amendment) Act, 1987, were reintroduced by Direct Tax Laws (Amendment) Act, 1989 with effect from 01-04-1989. Section 11(d) was inserted with effect from 1-4-1989 and sub-clause (xii) was inserted to sub-clause (5) of Section 11. Section 80F which was introduced by the Amending Act 1987, was omitted. Any voluntary contribution with a specific direction that it shall form part of the corpus, was to be excluded from the income of the Trust under

Section 11 (1) (d).

Subsequent Amendments to Section 11

26. By Finance (No 2) Act, 1991, Section 4A was substituted for the existing section with effect from 01-04-1992, which reads as under:

> *(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.*

27. By 36th Finance Act, 2000, the following words were substituted in Section 11 (5) (viii) and in section 11 (5) (ix) with the then existing provision:

> *"which is eligible for deduction under clause (viii) of sub-section (1) of section 36];"*

28. By Finance Act, 2000, the following provisions were inserted:

> ***Proviso to Section 11 (5) (vii)***
>
> ***"Provided** that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,—*
> *(A) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company;*
> *(B) such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;*
>
> *ixa) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.*
> *Explanation.—For the purposes of this clause,—*
> *(a) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;*

(b) "public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);
(c) "urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport;"

29. By Finance Act, 2001, Second Proviso to sub-section 2 of Section 11 was inserted with effect from 1-4-2002.

> ***Provided further*** *that in respect of any income accumulated or set apart on or after the 1st day of April, 2001, the provisions of this sub-section shall have effect as if for the words "ten years" at both the places where they occur, the words "five years" had been substituted.*

30. By Finance Act, 2002, the following modifications were made to Section 11:

> ***Section 7. Amendment of Section 11***
>
> *In Section 11 of the Income Tax Act, with effect from the 1st day of April, 2003*
> *(a) in sub-section (1),*
> *(i) in clause (a), for the words twenty-five per cent , the words fifteen per cent shall be substituted;*
> *(ii) in clause (b), for the words twenty-five per cent , the words fifteen per cent shall be substituted;*
> *(iii) in the Explanation,*
> *(A) in clause (1), for the words twenty-five per cent , the words fifteen per cent shall be substituted;*
> *(B) in clause (2), for the words seventy-five per cent , the words eighty-five per cent shall be substituted;*
> *(b) in sub-section (2),*
> *(i) for the words seventy-five per cent , the words eighty-five per cent shall be substituted;*
> *(ii) after the second proviso, the following Explanation shall be inserted, namely:*
> *Explanation. Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under Section 12-AA or to any fund or institution or trust or any university or other educational institution or any hospital or other*

medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (vi-a) of clause (23-C) of Section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter. ;
(c) in sub-section (3),
(i) after clause (c), the following clause shall be inserted, namely:
(d) is credited or paid to any trust or institution registered under Section 12-AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (vi-a) of clause (23-C) of Section 10, ;
(ii) for the words set apart or ceases to remain so invested or deposited or , the words set apart or ceases to remain so invested or deposited or credited or paid or shall be substituted;
(d) in sub-section (3-A), the following proviso shall be inserted, namely:
Provided that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (d) of sub-section (3) of Section 11.

31. By Finance Act, 2003, the following second proviso was inserted to sub-section 3A of Section 11.

***Provided further** that in case the trust or institution, which has invested or deposited its income in accordance with the provisions of clause (b) of sub-section (2), is dissolved, the Assessing Officer may allow application of such income for the purposes referred to in clause (d) of sub-section (3) in the year in which such trust or institution was dissolved.*

32. By Finance (No.2) Act 2014, with effect from 01.04.2015, the following sub-sections were inserted to Section 11.

"6) In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.
*(7) Where a trust or an institution has been granted registration under clause (*b*) of sub-section (1) of section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and the said registration is in force for any previous year, then, nothing contained in section 10 [other than clause (*1*) and clause (*23C*) thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that*

previous year."

33. By Finance Act 20/2015, the following amendments were made to Section 11:

> *"In section 11 of the Income-tax Act, with effect from the 1st day of April, 2016,—*
> *(I) in sub-section (1),in Explanation,in clause(2),after sub-clause (b), inthelong line, for the brackets, words and figures "(such option to be exercised in writing before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income)", the brackets, words and figures "(such option to be exercised before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income, in such form and manner as may be prescribed)" shall be substituted;*
> *(II) in sub-section (2), for clauses (a) and (b) and the first and second provisos, the following shall be substituted, namely:—*
> *"(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;*
> *(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);*
> *(c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:*
> *Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.".*

34. Section 12 deals with the income of trusts or institutions from contributions and the same is reproduced below:

> ***12.** (1)] Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13shall apply accordingly.*
> *(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause*

(a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.

Explanation.—For the purposes of this sub-section, the expression "value" shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13.

(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or] which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the previous year and shall accordingly be charged to tax."

35. The following provisions explain the conditions for applicability of sections 11 and 12 and the procedure for registration:

Section 12A. *(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—*

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the [Principal Commissioner or] Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under section 12AA :

Provided *that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,—*

(i) from the date of the creation of the trust or the establishment of the institution if the [Principal Commissioner or] Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;

(ii) from the 1st day of the financial year in which the application is made, if the [Principal Commissioner or] Commissioner is not so satisfied:

Provided further *that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;*

(aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the [Principal Commissioner or] Commissioner and such trust or institution is registered under section 12AA;

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(c) [***]

(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:

*[**Provided** that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year: (Inserted by the Finance (No. 2) Act, 2014, w.e.f. 1-10-2014.)*

Provided further *that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:*

Provided also *that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA.]*

The words "Principal Commissioner or" were inserted with retrospective effect from 1-4-2013 by Finance (No 2) Act, 2014.

Procedure for registration.

Section 12AA. *(1) The **[**Principal Commissioner or**]** Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) of sub-section (1) of section 12A, shall—*

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of

activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant :

***Provided** that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.*

(1A) All applications, pending before the Principal Chief Commissioner or Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Principal Commissioner or] Commissioner and the [Principal Commissioner or] Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) of sub-section (1)of section 12A.

(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

***Provided** that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]*

(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution: (Inserted by the Finance (No. 2) Act, 2014, w.e.f. 1-10-2014.)

***Provided** that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.*

The words "Principal Commissioner or" were inserted with retrospective effect from 1-4-2013 by Finance (No 2) Act, 2014.

36. The following provisions, which deal with the cases where section 11 is not applicable, are relevant:

> ***Section 11 not to apply in certain cases.***
>
> ***Section 13.*** *(1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—*
> *(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;*
> *(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;*
> *(bb) [* * *]*
> *(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—*
> *(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or*
> *(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied,*
> *directly or indirectly for the benefit of any person referred to in sub-section (3) :*
> ***Provided*** *that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution :*
> ***Provided further*** *that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June, 1970;*
> *(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the*

previous year—

(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or

(iii) any shares in a company, other than—

(A) shares in a public sector company;

(B) shares prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11,

are held by the trust or institution after the 30th day of November, 1983:

***Provided** that nothing in this clause shall apply in relation to—*

(i) any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973;

(ia) any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March, 1983;

(iia) any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1993, whichever is later;

(iii) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984 or any subsequent assessment year.

Explanation.—Where the trust or institution has any other income in addition to profits and gains of business, the provisions of clause (iii) of this proviso shall not apply unless the trust or institution maintains separate books of account in respect of such business.

Explanation.—For the purposes of sub-clause (ii) of clause (c), in determining whether any part of the income or any property of any trust or institution is during the previous year used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by section 7 [other than sub-clause (ii) of clause (a) thereof] of the Finance Act, 1972.

(2) Without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—

(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both;

(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;

(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;

(d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;

(e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;

(f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;

(g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3):

***Provided** that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;*

(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern in which any person referred to in sub-section (3) has a substantial interest.

(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :—

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

(cc) any trustee of the trust or manager (by whatever name called) of the institution;

(d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.

(4) Notwithstanding anything contained in clause (c) of sub-section (1) but without prejudice to the provisions contained in clause (d) of that sub-

section, in a case where the aggregate of the funds of the trust or institution invested in a concern in which any person referred to in sub-section (3) has a substantial interest, does not exceed five per cent of the capital of that concern, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such investment, by reason only that the funds of the trust or the institution have been invested in a concern in which such person has a substantial interest.

(5) Notwithstanding anything contained in clause (d) of sub-section (1), where any assets (being debentures issued by, or on behalf of, any company or corporation) are acquired by the trust or institution after the 28th day of February, 1983 but before the 25th day of July, 1991, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such assets, by reason only that the funds of the trust or the institution have been invested in such assets if such funds do not continue to remain so invested in such assets after the 31st day of March, 1992.

(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), but without prejudice to the provisions contained in sub-section (2) of section 12, in the case of a charitable or religious trust running an educational institution or a medical institution or a hospital, the exemption under section 11 or section 12 shall not be denied in relation to any income, other than the income referred to in sub-section (2) of section 12, by reason only that such trust has provided educational or medical facilities to persons referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3).

(7) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section.

(8) Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year.*

37. The following sub-section (9) shall be inserted after sub-section (8) of section 13 by the Finance Act, 2015, w.e.f. 01.04.2016 :

(9) Nothing contained in sub-section (2) of section 11 shall operate so as to exclude any income from the total income of the previous year of a person in receipt thereof, if—

(i) the statement referred to in clause (a) of the said sub-section in respect of such income is not furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year; or

(ii) the return of income for the previous year is not furnished by such person on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the said previous year.

Explanation 1.—For the purposes of sections 11, 12, 12A and this section, "trust" includes any other legal obligation and for the purposes of this section "relative", in relation to an individual, means—

(i) spouse of the individual;

(ii) brother or sister of the individual;

(iii) brother or sister of the spouse of the individual;

(iv) any lineal ascendant or descendant of the individual;

(v) any lineal ascendant or descendant of the spouse of the individual;

(vi) spouse of a person referred to in sub-clause (ii), sub-clause (iii), sub-clause (iv) or sub-clause (v);

(vii) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

Explanation 2.—A trust or institution created or established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of clause (b) of sub-section (1).

Explanation 3.—For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,—

(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3);

(ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern."

38. Upon a conjoint reading of the above legal provisions, it is manifest that charitable purpose, as contemplated under the Act though would include education, would not include the advancement of any other object of general public utility, if the object involved is the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other

consideration, irrespective of the nature of use or application, or retention, of the income from such activity. Thus, it is clear that Section 10 (23C) and Section 11 deal with income that are not to be treated as part of total income. Section 10 (23C) exempts the income received by the institution existing solely for educational purposes provided that it is registered and applies its income, wholely and exclusively the objects for which it is established. However, incidental profit if any received in the course of its educational activities shall not deprive the institution of its exemption. The provisions are explicit as the primary condition is that an institution must solely exist for educational purposes. Whereas, under Section 11, though the object is same, it deals with income from property held by charitable or religious trusts. Section 11 of the Act states that income from property held for religious or charitable purposes shall not be included in the total income of the previous year. Section 12 deals with income of trusts or institutions from contributions. Any voluntary contribution received by such trust created wholly for charitable or religious purposes or by an institution established for such purpose, with such contribution not forming part of the corpus, shall be treated as income derived from the property, thereby Section 11 (1) (a) and (b) would apply to such contributions. Further, as per section 12 (2), the value of any services to any person referred in Section 13 (3) shall not be eligible for deduction. Section

12A deals with making application for registration of the trust/association so that the said institution will have the benefit of exemption under section 11 and section 12 of the Act. It is mandatory for every institution claiming exemption to register themselves. The procedures for registration and cancellation are contemplated in Section 12AA. As per section 12AA(1)(b) of the Income-tax Act, 1961, the commissioner before granting the registration is to be satisfied about the objects of the trust and the genuineness of its activities. However, the commissioner is vested with the power under 12AA (3) to cancel the registration if the activities are not genuine. The objects are irrelevant, when the activities are not genuine. The application of the funds is also subject to scrutiny by the commissioner. Further, similar to Section 10 (23C), the requirement under Section 12 is that the trust must be "wholly" for charitable purpose. If it turns out that the activities are not genuine or not being carried out in accordance with the objects of the trust, not only is the registration liable to be cancelled, the claim of exemption under Section 11 is also liable to be rejected. The word "genuine" must be read as in compliance with all the laws of the land. If the institution or trust is used as a cloak to violate law, irrespective of whether any benefit is achieved or not, the benefit of registration cannot be permitted to accrue to the assessee. Section 12AA (3) is an independent provision as the right to cancel the registration is not restricted

just towards the fulfilment or not of the objects of the trust or association.

39. The object and the relevant provisions of the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992, for effective adjudication of the present cases, are extracted below:

Object:

"Whereas the practice of collecting capitation fee for admitting students into educational institutions is widespread in the State;
And Whereas this undesirable practice, besides contributing to large scale commercialisation of education has not been conducive to the maintenance of educational standards;
And Whereas it is considered necessary to effectively curb this undeniable practice, in public interest, by prohibiting the collection of capitation fee and to provide for matters relating thereto;"

Relevant provisions:

*"**Section 2. Definitions.** - In this Act, unless the context otherwise requires,-*
(a) "capitation fee" means any amount, by whatever name called, paid or collected directly or indirectly in excess of the fee prescribed under section 4;
(b) "educational institution", means any institution, by whatever name called, whether managed by any person, private body, local authority, trust or University, carrying on the activity of imparting education leading to a degree or diploma (including a degree or diploma in law, medicine or engineering) conferred by any University established under any law made by the Legislature of the State of Tamil Nadu and any other educational institution or class or classes of educational institutions (other than any educational institution established by the Central Government or under any law made by Parliament) as the Government may, by notification, specify;
....
(d). "management" includes the managing committee or any person, body of persons, committee or any other governing body by whatever name called in whom the power to manage or administers the affairs of an educational institution is vested: Provided that the Board of Trustees or governing body of Wakf Board, by whatever name called, constituted or appointed by any law for the time being in force relating to the charitable and religious institutions and endowments and Wakfs shall be deemed to be

a management for the purposes of this Act;

.....

3. Prohibition of collection of capitation fee. *- Notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any Court or other authority, no capitation fee shall be collected,-*

(a) by any person who is in charge of, or is responsible for, the management of any educational institution; or

(b) by any other person either for himself or on behalf of any such educational institution or on behalf of any such management of any educational institution.

4. Regulation of fee, etc. *- (1) Notwithstanding anything contained in any other law for the time being in force, the Government may, by notification, regulate the tuition fee or any other fee or deposit that may be received or collected by any educational institution or class or classes of such educational institutions in respect of any or all class or classes of students: Provided that before issuing a notification under this sub-section, the draft of which shall be published in the Tamil Nadu Government Gazette stating that any objection or suggestion which may be received by the Government, within such period as may be specified therein, shall be considered by them.*

(2) No educational institution shall receive or collect any fee or accept deposit in excess of the amount notified under sub-section (1).

(3) Every educational institution shall issue an official receipt for the fee or deposit received or collected by it."

40. The above provisions make it clear that any amount collected in excess of prescribed fee, either directly or indirectly is to be treated as capitation fee, irrespective of whether it is voluntary contribution or donation. Similarly, not only there is a prohibition for the educational institution or the person in-charge to collect any amount in the nature of capitation fee, but also against any other person either for himself or on behalf of any such educational institution or on behalf of any such management of any educational institution. The provisions are plenary to cover not only the individuals associated with the institutions directly, but also other institutions and any person acting on

behalf of the management of any other institution. Such exhaustive provisions are to enable the State to eradicate cartels and routing of funds.

41. Juxtaposing the provisions of both the Acts viz., Income Tax Act, 1961 and the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992, with each other, it is explicit that collection of any amount in excess of what has been prescribed as fee or in the nature of donation or voluntary contribution either directly or indirectly to the institution or through some other person or institution or trust, as *quid pro quo* for the seat in any educational institution, would render the activity of both the entities ungenuine. Such actions would render the object of "charity" a farce and the transaction will have to be treated as a commercial activity, depriving the assessees of the benefits of Sections 11 and 12 of the Act.

42. At this juncture, it is necessary to understand the general concept of "education" as viewed by the Supreme Court as well as in the context of the Capitation Fee Act.

EDUCATION- NOT A TRADE, BUSINESS OR COMMERCE

43. In the Constitution Bench judgement of the Hon'ble Supreme Court in ***Unnikrishnan, J.P. and Ors. vs. State of Andhra Pradesh and Ors.***

[(04.02.1993 - SC) : (1993) 1 SCC 645], it was held that:

> *"164. ....*
> *While we do not wish to express any opinion on the question whether the right to establish educational institution can be said to be carrying on any "occupation" within the meaning of Article 19(1)(g), - perhaps, it is - we are certainly of the opinion that such activity can neither make a trade or business nor can it be a profession within the meaning of Article 19(1)(g). Trade or business normally connotes an activity carried on with a profit motive.*
> *Education has never (been) commerce in this country. Making it one is opposed to the ethos, tradition and eligibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting education has never been treated as a trade or business in this country since times memorial. It has been treated as a religious duty. It has been treated as charitable activity. Jut never as trade or business.*
> *We agree with Gajendragadkar, J. that "education in its true Inspect is more a mission and as vocation rather than a profession or trade or business, however Wide may be the denotation of the two latter words..."(see University of Delhi 1961(1) SCR 03. The Parliament too has manifested its intention repeatedly (by enacting the U.G.C. Act, Act and A.I.C.T.E. Act that commercialisation of education is not permissible and that |no person shall be allowed to steal a march over a more meritorious candidate because of his economic power. The very same intention is expressed by the Legislatures of Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu in the Preamble to their respective enactment prohibiting charging of capitation fee.*
> *165. We are, therefore, of the opinion, adopting the line of reasoning in R.M.D.C. v. State of Bombay MANU/SC/0019/1957 : [1957]1SCR874 , that imparting education cannot be treated as trade or business. Education cannot be allowed to be converted into commerce nor can the petitioners seek to obtain the said result by relying upon the wider meaning of "occupation". The content of the ' expression "occupation" has to be ascertained keeping in mind the fact that Clause (g) employs all the four expressions viz., profession, occupation, trade and business. Their fields may; overlap, but each of them does certainly have a content of its own, distinct from the others). Be that as it may, one thing is clear imparting of education is not and cannot be allowed to become commerce. A law, existing or future, ensuring against it would be a valid measures within the meaning of Clause (6) of Article 19. We cannot, therefore, agree with the contrary proposition enunciated in 1968 Bombay 91, 1984 A.P. 251 and 1986 Karnataka 119."*

44. In ***Christian Medical College, Vellore Association v. Union of India and Ors. [(29.04.2020 - SC) : (2020) 8 SCC 705]***, the Hon'ble Supreme Court

observed as follows:

"31. In Modern Dental College and Research Centre (supra), the Constitution Bench of this Court considered the provisions of Articles 19(1)(g), 19(6), 26 and 30 in relation to the right to freedom of occupation of private unaided minority and non-minority educational institutions. This Court observed that the activity of education is neither trade nor profession, i.e., commercialisation and profiteering cannot be permitted. It is open to impose reasonable restrictions in the interest of general public. The education cannot be allowed to be a purely economic activity; it is a welfare activity aimed at achieving more egalitarian and prosperous society to bring out social transformation and upliftment of the nation.

.....

(g) The Court also took note of prevailing situation of corruption in the field of education and commercialisation of education thus:

68. ....

86. It is, therefore, to be borne in mind that the occupation of education cannot be treated on a par with other economic activities. In this field, the State cannot remain a mute spectator and has to necessarily step in order to prevent exploitation, privatisation and commercialisation by the private sector. It would be pertinent to mention that even in respect of those economic activities which are undertaken by the private sector essentially with the objective of profit-making (and there is nothing bad about it), while throwing open such kind of business activities in the hands of private sector, the State has introduced regulatory regime as well by providing Regulations under the relevant statutes.

(h).....

38. In Unni Krishnan case, MANU/SC/0333/1993 : (1993) 1 SCC 645, this Court also rejected the argument that the said activity could be classified as a "profession". However, the right of professional institutions to establish and manage educational institutions was finally regarded as an "occupation" befitting the recognition of this right as a fundamental right Under Article 19(1)(g) in T.M.A. Pai Foundation, MANU/SC/0905/2002 : (2002) 8 SCC 481, in the following words: (SCC p. 535, para 25)

> *25. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1)(g). "Occupation" would be an activity of a person undertaken as a means of livelihood or a mission*

> *in life. The above quoted observations in Sodan Singh case, MANU/SC/0521/1989 : (1989) 4 SCC 155, correctly interpret the expression "occupation" in Article 19(1)(g).*
>
> *40. It becomes necessary to point out that while treating the managing of educational institution as an "occupation", the Court was categorical that this activity could not be treated as "business" or "profession". This right to carry on the occupation that education is, the same is not put on a par with other occupations or business activities or even other professions. It is a category apart which was carved out by this Court in T.M.A. Pai Foundation, MANU/SC/0905/2002 : (2002) 8 SCC 481. There was a specific purpose for not doing so. Education is treated as a noble "occupation" on "no profit no loss" basis. Thus, those who establish and are managing the educational institutions are not expected to indulge in profiteering or commercialising this noble activity. Keeping this objective in mind, the Court did not give complete freedom to the educational institutions in respect of right to admit the students and also with regard to fixation of fee. As far as admission of students is concerned, the Court was categorical that such admissions have to be on the basis of merit when it comes to higher education, particularly in professional institutions.*
>
> *……"*

45. Once again in the recent orders of the Hon'ble Supreme Court in ***Rashtreeya Sikshana Samithi Trust and Ors. v. Committee for Fixation of Fee Structure of Private Professional Colleges and Ors. [(19.05.2022 - SC) : AIR 2022 SC 2434]***, it has been recorded with sufficient precision and clarity that the Courts cannot turn a Nelson's eye to the menace of capitation fee rampant in the State of Tamil Nadu like many other States as well. The following observations would lend support to this:

> *"6. Before we proceed to deal with the suggestions made for effectively stopping the practice of charging capitation fee by medical colleges, it is necessary to refer to how this Court has previously dealt with the evil practice of charging capitation fee and the immediate need to stop the practice of collection of capitation fee by private medical colleges. In TMA Pai Foundation and Ors. v. State of Karnataka MANU/SC/0905/2002 : (2002) 8 SCC 481, this Court observed that a rational model should be adopted by the management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the State or university to ensure that no capitation fee is charged and there is no*

profiteering, though a reasonable surplus for the furtherance of education is permissible.

7. While clarifying the judgment of this Court in TMA Pai Foundation1, this Court in Islamic Academy of Education and Anr. v. State of Karnataka and Ors. MANU/SC/0580/2003 : (2003) 6 SCC 697 observed that once fee is fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fee. If any other amount is charged, under any other head or guise, e.g. donations, the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate Regulations, if not already framed, whereunder if it is found that an institution is charging capitation fees or profiteering, that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation. In the said judgment, this Court took note of the fact that the States of Tamil Nadu, Maharashtra, Karnataka and Andhra Pradesh have enacted statutes prohibiting collection of capitation fee and regulating admission process in professional colleges. In terms of the provisions of the said Acts, the management of the professional colleges were prohibited from charging any amount other than fee determined under the said Acts. This Court further observed that the expression "capitation fee" does not have any fixed meaning. It referred to the definition of capitation fee in the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992, which is as follows:

Capitation fee means any amount by whatever name called, paid or collected directly or indirectly in excess of the fee prescribed Under Section 4;

8. Lastly, in P.A. Inamdar v. State of Maharashtra MANU/SC/0482/2005 : (2005) 6 SCC 537, this Court held that capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. This Court observed that it cannot shut its eyes to the hard realities of commercialization of education and evil practices being adopted by many institutions to earn large amounts. This Court was of the opinion that the method of admission has to be regulated so that the admissions are based on merit and transparency if the charging of capitation fee and profiteering has to be kept in check.

9. In spite of the State Governments enacting legislations prohibiting the practice of charging capitation fee and making it an offence, the stark reality which cannot be ignored is that capitation fee being charged for admission to medical colleges is prevalent even today. For the present, by this Order, we are only concerned with the suggestions that are made by the learned Amicus Curiae for curbing the menace of capitation fee, after taking note of the suggestions and comments of learned Counsel appearing for the States, medical colleges and National Medical Council for the issuance of appropriate directions.

10. Pursuant to orders dated 6.08.2014 and 20.04.2022, Shri Hargurvarinder S. Jaggi, Officer on Special Duty in the Supreme Court of India, has been nominated for rendering assistance to learned Amicus Curiae in the matter of setting up a web portal which would serve as a platform for the aggrieved persons to provide information relating to any demand of capitation fee made

by the private medical colleges. Though, we are informed that no complaint has been received by any State Government regarding charging of capitation fee, it was suggested that a web portal under the aegis of Supreme Court would provide confidence in the public to furnish any information relating to capitation fee being charged by private medical colleges. The Ld. Amicus Curiae further suggested that all candidates taking the National Eligibility-cum-Entrance Test (NEET) for undergraduate, postgraduate and super speciality courses should be informed about the web-portal wherein complaints with respect to charging of capitation fee can be registered. In addition, a pamphlet should also be issued to the students and parents regarding the existence of website at the time of counselling. The Chief Secretaries of the State Governments and Union Territories should ensure that the details of the website are published in English as well as vernacular newspapers to spread awareness amongst the public at large. This website could be maintained by the National Informatics Centre (NIC) under the Ministry of Electronics and Information Technology.

11. The other suggestions relate to the steps to be taken by the concerned authorities to prevent the practice of charging capitation fee. One important suggestion in this regard is the completion of all rounds of counselling, including stray vacancies round, at least two weeks before the last date for completion of the admission process as per the Schedule fixed by the National Medical Council and Dental Council of India. It was brought to our notice that names of ten students for each seat which remains to be filled in stray vacancies round are sent by the competent authority from which the private medical colleges are given liberty to make admissions on the basis of merit. For the purpose of ensuring transparency in the process, the names of students which are recommended by the authority for admission in the stray round vacancy have to be made public along with the rank allotted to them in the NEET exam. It was suggested that the admissions should be made strictly on the basis of merit and in the event of any admission to the contrary, suitable action shall be taken against the private medical colleges. We are in agreement with the suggestions made by the learned Amicus Curiae.

12. Another point made by the learned Counsel relates to fee that is charged by the private medical colleges in the guise of additional charges such as establishment fee, room rents/hostel fee, mess fee, bus fee, library fee, laboratory fee, internet charges, special posting fee etc. It was suggested that the Fee Fixation Committees in the State should fix a price band for different expenses and the colleges should be directed not to charge any amount from students in addition to the prices that are fixed by the Fee Fixation Committee. We see force in the submission made by the learned Counsel on this behalf. The Fee Fixation Committees have to fix the fee without leaving any scope for the managements of private medical colleges to charge any additional fee which is not part of fee fixed by the Committees. We make it clear that the Fee Fixation Committees have to take into account all components of fee proposed to be charged by the Management while determining the fee to be paid by the students. For this purpose, assistance

can be sought from the report of Hon'ble Mr. Justice B.N. Srikrishna dated 26.08.2021 for reviewing the existing fee structure and for fixing the norms and guidelines for charging tuition and other fees in which the Committee has prescribed the parameters and guidelines for the types of fees to be charged by the institutions recognized by the AICTE. The report also prescribes the minimum and maximum fees which includes the tuition fee, development fee, examination fee and other fees.

13. It was submitted that the managements of private medical colleges should be directed not to receive fee through cash payment and to prohibit certain private medical colleges from insisting on payment of fee for entire course in advance. The latter issue of payment of fee for the entire course in advance is the subject matter of another SLP bearing SLP (C) No. 11296 of 2021 titled JNU Institute for Medical Sciences and Research Centre and Ors. v. Deepesh Singh Beniwal and Ors., in which this Court on 23.09.2021 had directed the Ministry of Health and Family Welfare, Government of India to conduct a meeting with all the stakeholders to find a solution to the issue. For the former issue, we are in agreement with the suggestion that the managements of private medical colleges should not accept any fees in cash in order to avoid the charging of capitation fee. It has also been suggested that the Director General of Health Services and other concerned authorities of the State Governments should ensure that the All-India Quota and State Quota round of counselling is completed strictly in accordance with the time Schedule that is fixed. The regulatory authorities should be directed to consider fixing a Schedule by which the last round of counselling, that is stray round, is completed at least two weeks before the last date of closure of admissions.

14. The conspectus of the above discussion would lead us to the following conclusions:

(a) A web-portal under the aegis of Supreme Court has to be set-up wherein any information about the private medical colleges charging capitation fees can be furnished by the students. The web-portal has to be maintained and regulated by the National Informatics Centre (NIC) under the Ministry of Electronics and Information Technology;

(b) The Chief Secretaries of the States and Union Territories are directed to publish the details about the web-portal in the English as well as vernacular newspapers at the time of admission. In addition, a pamphlet should be compulsorily given to the students and their parents at the time of counselling informing them about the availability of the web-portal;

(c) While fixing the Schedule for the admission process, the National Medical Commission and the Dental Council of India have to make sure that the counselling for all the rounds, including the stray vacancy round, is completed at least two weeks before the last date of admission;

(d) The names of students who are recommended by the authority for admission in the stray round vacancy have to be made public along with rank allotted to them in the NEET exam. The admissions should be made strictly on the basis of merit and in the event of any admission to the contrary, suitable action shall be taken against the private medical colleges;

(e) While fixing fee, the Fee Fixation Committees of the States should take into account all the components of fee, leaving no scope for managements to charge any additional amounts apart from what has been prescribed by the fee fixation committee from time to time. In the event that the management intends to charge additional amounts over and above the price band fixed by the Fee Fixation Committee, or for any component not included in the structure fixed by the Fee Fixation Committee, the same can only be done with the concurrence of the Fee Fixation Committee;

(f) The management of private medical colleges are strictly prohibited from accepting payment of fees in cash, in order to avoid charging of capitation fee. The students or any other aggrieved persons are at liberty to report on the web-portal regarding collection of fees in cash by any medical colleges;

(g) The Director General of Health Services and other concerned authorities to the State Governments should ensure that the All-India Quota and State Quota rounds of counselling are completed strictly in accordance with the time Schedule that is fixed."

46. In ***Lok Shikshana Trust v. CIT*** **[(1976) 1 SCC 254 : 1976 SCC (Tax) 14],** the Hon'ble Apex Court held as follows:

"5. The sense in which the word "education" has been used in Section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of Section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling."

"9. It is true that there are some business activities like mutual insurance and cooperative stores of which profit-making is not an essential ingredient, but that is so because of a self-imposed and innate restriction on making profit in the carrying on of that particular type of business. Ordinarily profit

motive is a normal incidence of business activity and if the activity of a trust consists of carrying on of a business and there are no restrictions on its making profit, the court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust involves the carrying on of an activity for profit. The expression "business", as observed by Shah, J., speaking for the Court in the case of State of Gujarat v. Raipur Mfg. Co. [AIR 1967 SC 1066 : (1967) 1 SCR 618 : (1967) 19 STC 1] though extensively used in taxing statutes, is a word of indefinite import. In taxing statutes, it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. Whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit motive. By the use of the expression "profit motive" it is not intended that profit must in fact be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or even a series of transactions. It predicates a motive which pervades the whole series of transactions effected by the person in the course of his activity. In the case of CIT v. Lahore Electric Supply Co. Ltd. [(1966) 60 ITR 1 : (1966) 2 SCR 720 : AIR 1966 SC 843] Sarkar, J. speaking for the majority observed that business as contemplated by Section 10 of the Indian Income Tax Act, 1922, is an activity capable of producing a profit which can be taxed. In the case of the appellant-trust the activity of the trust, as already observed earlier, has in fact been yielding profits and that apparently accounts for the increase in the value of its assets."

"42. The difficult question, however, still remains: What is the meaning of "charitable purpose" which is only indicated but not defined by Section 2(15) of the Act? It seems to me that a common concept or element of "charity" is shared by each of the four different categories of charity. It is true that charity does not necessarily exclude carrying on an activity which yields profit, provided that profit has to be used up for what is recognised as charity. The very concept of charity denotes altruistic thought and action. Its object must necessarily be to benefit others rather than one's self. Its essence is selflessness. In a truly charitable activity any possible benefit to the person who does the charitable act is merely incidental or even accidental and immaterial. The action which flows from charitable thinking is not directed towards benefitting one's self. It is always directed at benefitting others. It is this direction of thought and effort and not the result of what is done, in terms of financially measurable gain, which determines that it is charitable. This direction must be evident and obligatory upon the trustee from the terms of a deed of trust before it can be held to be really charitable."

"43. We think that this governing idea of charity must qualify purpose of every category enumerated in Section 2(15) of the Act of 1961. We think that

the words introduced by the Act of 1961 to qualify the last and widest category of objects of public utility were really intended to bring out what has to be the dominant characteristic of each and every category of charity. They were intended to bring the last and most general category in line with the nature of activities considered truly charitable and mentioned in the earlier categories.

44. Coming now to the deed of trust before us, we find that the word "education" is mentioned by the maker of the trust in a rather ceremonial or ritualistic fashion as a label for what he considers to be charitable objects. The third set of objects, in clause 2 of the deed does not appear to be stated there merely as a means of serving the general purpose of "education" separable from these objects in clause (c). On the other hand, there are strong grounds for believing, in the light of other provisions and profit-making activities and background of the trust, that education was mentioned as the object in the deed only as a convenient cloak to conceal and serve the real and dominant purpose of clause 2(c) which was to run a profitable newspaper and publishing business without paying the tax on it. Just as mere making of profit as a consequence or incident of altruistic activity is not decisive of the real purpose or object of the activity, so also the carrying on of a business for profit does not cease to be so merely because losses are actually incurred in certain years or because those who carry it or call it "education" It would be difficult to find any commercial activity which makes profits always or which expressly gives out that its existence depends upon profit-making although, in practice, and, ultimately, its continuance may depend on profit-making. A newly started business may, initially, have to run at a loss; but, at a later stage, it may earn magnificent profits. Therefore, the test of the real character or purpose of an activity cannot be whether its continuance is made to depend upon profits resulting from it or not. Such a test would be artificial and specious. I do not think that the qualification introduced by Section 2(15) of the Act of 1961 was intended to compel courts to look for the conditions on which continuance of activities of public utility is made to depend. If profit-making results from them and these profits can be utilised for non-charitable purposes the trust which makes this possible would not be exempt from paying income tax."

"45. In the trust deed before us, as we have already indicated, the trustee had not only wide powers of utilisation of trust [Trustees of the Tribune Press, Lahore v. CIT, (1939) 7 ITR 415 (PC) : 66 IA 241] : funds for purposes of the trust but could divert its assets as well as any of the funds of the trust to other institutions whose objects are "similar to the objects" of the trust and of "carrying out the objects and purposes of this trust either fully or partially". The whole deed appears to me to be cleverly drafted so as to make the purpose of clause 2(c) resemble the one which was held to be protected from income tax in the Tribune case. Indeed, the very language used by the Privy Council in the Tribune case, for describing the objects of the trust in that case, seems to have been kept in view by the draftsman of the trust deed before us. And, we find that the power of diverting the assets and income of

the trust, although couched in language which seems designed to conceal their real effect, is decisive on the question whether the trust is either wholly or predominantly for a charitable purpose or not. The trustee is given the power of deciding what purpose is allied to or like an object covered by the trust and how it is to be served by a diversion of trust properties and funds. If the trustee is given the power to determine the proportion of such diversion, as he is given here, the trust could not be said to be wholly charitable. He could divert so much as to make the charitable part or aspect, if any, purely illusory. Indeed, this was the law even before the qualifying words introduced by the 1961 Act. [See: East India Industries (Madras) Pvt. Ltd. v.CIT, Madras [(1967) 65 ITR 611 : (1967) 3 SCR 356 : AIR 1967 SC 1554] ; CIT, Madras v. Andhra Chamber of Commerce ; Md. Ibrahim Raza v. CIT, Nagpur [1930 LR 57 IA 260 : AIR 1930 PC 226 : 125 IC 879] . Such a "trust" would be of doubtful validity, but I refrain from further comment or any pronouncement upon the validity of such a trust as that was neither a question referred to the High Court in this case nor argued anywhere.

46.The amendment of the 1961 Act considered by us compels closer scrutiny of deeds of ostensibly charitable trusts with a view to discovering their real purposes by analysing the effects of their terms and what they permit. It narrows the scope of exemption from income tax granted at least under the last and widest category of charitable trusts mentioned in Section 2(15) of the Act as was held in CIT, v. Indian Chamber of Commerce [(1971) 81 ITR 147 (Cal)] ..."

47. In ***Commissioner of Income tax (Exemptions) Kolkatta v. Batanagar Educational and Research Trust [LL 2021 SC 337]***, the Hon'ble Apex Court, while restoring an order of cancellation of the registration under Section 12AA of the Act, held as follows:

"11. The answers given to the questionnaire by the Managing Trustee of the Trust show the extent of misuse of the status enjoyed by the Trust by virtue of registration under Section 12AA of the Act.

These answers also show that donations were received by way of cheques out of which substantial money was ploughed back or returned to the donors in cash. The facts thus clearly show that those were bogus donations and that the registration conferred upon it under Sections 12AA and 80G of the Act was completely being misused by the Trust. An entity which is misusing the status conferred upon it by Section 12AA of the Act is not entitled to retain and enjoy said status. The authorities were therefore, right and justified in cancelling the registration under Sections 12AA and 80G of the Act."

48. The Hon'ble Supreme Court had heavily deprecated the practice of

collecting capitation fee from students in the case of ***Islamic Academy of Education*** (supra) in the following terms:

> "*Collection of capitation fee is contrary to the constitutional scheme and prohibited by State enactment. Moreover, education was used as an apparatus/mode to collect capitation fee. In other words, exorbitant money was collected illegally in the guise of running the educational institution. When the assessee used the charitable activity/educational institution as an apparatus for selling the education, in our opinion, the element of charity no longer remains in the activity of the assessee. In other words, when the assessee sells the seat of the professional course and collects capitation fee, the activity of the assessee cannot remain a charitable activity, within the meaning of sec.2(15) of the Income tax Act. Education would remain as a charity only in a case where the education was imparted systematically in a fee prescribed by the Government. In our opinion, it is not intention of the Parliament to recognize any body/society or institution as a charitable institution where 'education' was a saleable commodity. In the case on hand, the material found during the course of survey operation clearly established the collection of money over and above the fee prescribed by Government for admission of a student. Therefore, it is a clear case of sale of education by the assessee-society. In our opinions such, the assessee cannot be considered as a charitable institution under section 2(15) of the Income-tax Act. Therefore, the assessee is not eligible for exemption under section 11 of the Income-tax Act.*"

49. Even in terms of the judgment of the Hon'ble Supreme Court in ***Safdarjung Enclave Educational Society v. MCD [AIR 1992 SC 1456],*** any donation made in order to gain advantage or benefit cannot be called as voluntary contribution. The relevant passage of the same is usefully extracted below:

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

50. It is therefore beyond the pale of any doubt that education can never be a

commercial activity or a trade or business and those in the field of education will have to constantly and consistently abide by this guiding principle. However, the undeniable reality staring at our face is the collection of capitation fee as a condition precedent for admission into educational institutions. The present appeals raise the twin issues of the blatant violation of the Capitation Fee Act and then drawing a premium on their own illegal act by seeking exemption under Sections 11, 12AA and 80G of the Act.

51. The appellate authority and the Tribunal have failed to consider the provisions of the Capitation Fee Act and have given perverse findings. Under section 2(a) of the Capitation Fee Act, "capitation fee" means any amount, by whatever name called, paid or collected directly or indirectly in excess of the fee prescribed under section 4. The Act was enacted with its avowed object of prohibiting any fee paid in excess of the fee as regulated under Section 4 of the Act. The source of the excess payment has been consciously not mentioned. Thus, technicalities such as parents of the students admitted in the Assessee institutions not paying the fee directly but through relatives and friends, can be of no consequence to help the assesses wriggle out of their acts. The appellate authority curiously has rendered a finding that there is no violation of any law and the Tribunal also failed to look into this aspect.

52. Having said about the source of the capitation fee called donations, the next question would be about the identity of the sister Trusts of the assesees in order to determine the real beneficiaries, and whether they are entitled to exemption under the Act. This Court will necessarily have to lift the veil to answer the same. The sister Trusts in whose favour donations have been made in close proximity to the admissions made in respect of the students, are run by common controlling trustees. This factor and the systematic and repeated modus operandi of the Trusts in transferring the funds from one to another are rather too ambiguous to be seen as an act that cannot be treated as barred in law or an act that does not attract the rigour of the Capitation Fee Act. In other words, it can be even said that what the educational institutions were doing directly prior to the coming into force of the Capitation Fee Act, is now being done in a manner as to doubly benefit them by not only indulging in such statutory offences but also seeking the benefit of tax exemptions by adopting the modus operandi as stated above and elaborated by the counsel for Revenue. The insolent acts of the managements, despite the laws and dictums of the Apex Court on the nature of education as a noble occupation and on consistent deprecation against Capitation Fee in any form, has been incessant throughout.

LIFTING THE CORPORATE VEIL

53. In this regard, useful reference is made to the following judgments on

the doctrine of 'lifting the corporate veil'.

(i) In ***Balwant Rai Saluja & Ors. v. Air India Ltd. & Ors. [(2013) 15 SCC 85]***, it was held by the Hon'ble Supreme Court as follows:

> *"14. It is well settled that the court can lift the veil, look to the conspectus of factors governing employment, discern the naked truth though concealed intelligently. The court has to be astute in piercing the veil to avoid the mischief and achieve the purpose of law. It cannot be swayed by legal appearance.*
> *68. The said principle has been followed by this Court in catena of cases namely,* ***Kanpur Suraksha Karamchari Union*** *and* ***Basti Sugar Mills Ltd.*** *referred to supra. In the case of State of UP v. Renusagar Power Co. (supra), this Court held as under:*
> *55...On the other hand these English cases have often pierced the veil to serve the real aim of the parties and for public purposes. See in this connection the observations of the Court of appeal in DHN Food Distributors Ltd. v. London Borough of Tower Hamlets. It is not necessary to take into account the facts of that case. We may, however, note that in that case the corporate veil was lifted to confer benefit upon a group of companies under the provisions of the Land Compensation Act, 1961 of England. Lord Denning at p. 467 of the report has made certain interesting observations which are worth repeating in the context of the instant case. The Master of the Rolls said at p. 467 as follows:*
> *Third, lifting the corporate veil. A further very interesting point was raised by counsel for the claimants on company law. We all know that in many respects a group of companies are treated together for the purpose of general accounts, balance sheet and profit and loss account. They are treated as one concern. Professor Gower in his book on company law says: 'there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group'. This is especially the case when a parent company owns all the shares of the subsidiaries, so much so that it can control every movement of the subsidiaries. These subsidiaries are bound hand and foot to the parent company and must do just what the parent company says. A striking instance is the decision of the House of Lords in Harold Holdsworth and Co. (Wakefield) Ltd. v. Caddies. So here. This group is virtually the same as a partnership in which all the three companies are partners. They should not be treated separately so as to be defeated on a technical point. They should not be deprived of the compensation which should justly be payable for disturbance. The three companies should, for present purposes, be treated as one, and the parent company, DHN, should be treated as that one. So that DHN are entitled to claim compensation accordingly. It was not necessary for them to go through a conveyancing device to get it....*
> *XXX*

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65. Mr. Justice O. Chinnappa Reddy speaking for this Court in LIC v. Escorts Ltd. had emphasised that the corporate veil should be lifted where the associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected. After referring to several English and Indian cases, this Court observed that ever since A. Salomon & Co. Ltd. case a company has a legal independent existence distinct from individual members. It has since been held that the corporate veil may be lifted and corporate personality may be looked in. Reference was made to Pennington and Palmer's Co. Laws.

66. It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties. The horizon of the doctrine of lifting of corporate veil is expanding. Here, indubitably, we are of the opinion that it is correct that Renusagar was brought into existence by Hindalco in order to fulfil the condition of industrial licence of Hindalco through production of Aluminium. It is also manifest from the facts that the model of the setting up of power station through the agency of Renusagar was adopted by Hindalco to avoid complications in case of takeover of the power station by the State or the Electricity Board. As the facts make it abundantly clear that all the steps for establishing and expanding the power station were taken by Hindalco, Renusagar is wholly owned subsidiary of Hindalco and is completely controlled by Hindalco. Even the day-to-day affairs of Renusagar are controlled by Hindalco. Renusagar has at no point of time indicated any independent volition. Whenever felt necessary, the State or the Board have themselves lifted the corporate veil and have treated Renusagar and Hindalco as one concern and the generation in Renusagar as the own source of generation of Hindalco. In the impugned order the profits of Renusagar have been treated as the profits of Hindalco.

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68. The veil on corporate personality even though not lifted sometimes, is becoming more and more transparent in modern company jurisprudence. The ghost of Salomon case still visits frequently the hounds of Company Law but the veil has been pierced in many cases. Some of these have been noted by Justice P.B. Mukharji in the New Jurisprudence.

69. The above said judgment is followed by this Court in ***D.D.A.*** *v.* ***Skipper Construction Co.*** *(supra). The relevant paragraphs read as under:*

26. The law as stated by Palmer and Gower has been approved by this Court

in TELCO v. State of Bihar. The following passage from the decision is apposite:

...Gower has classified seven categories of cases where the veil of a corporate body has been lifted. But, it would not be possible to evolve a rational, consistent and inflexible principle which can be invoked in determining the question as to whether the veil of the corporation should be lifted or not. Broadly stated, where fraud is intended to be prevented, or trading with an enemy is sought to be defeated, the veil of a corporation is lifted by judicial decisions and the shareholders are held to be the persons who actually work for the corporation.

27. In DHN Food Distributors Ltd. v. London Borough of Tower Hamlets the court of appeal dealt with a group of companies. Lord Denning quoted with approval the statement in Gower's Co. Law that "there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group".

The learned Master of Rolls observed that "this group is virtually the same as a partnership in which all the three companies are partners". He called it a case of "three in one" - and, alternatively, as "one in three".

28. The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people."

The concept of resulting trust and equity...."

(Emphasis laid by the Court)

*70. In **Kapila Hingorani** v. **State of Bihar** (supra), this Court held as under:*

"26. The proposition that a company although may have only one shareholder will be a distinct juristic person as adumbrated in Salomon v. Salomon and Co., has time and again been visited by the application of doctrine of lifting the corporate veil in revenue and taxation matters. (See Dal Chand and Sons v. CIT and Juggilal Kamlapat v. CIT.)

27. The corporate veil indisputably can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the

revenue or workman or against public interest. (See CIT v. Sri. Meenakshi Mills Ltd., Workmen v. Associated Rubber Industry Ltd., New Horizons Ltd. v. Union of India, State of U.P. v. Renusagar Power Co., Hussainbhai v. Alath Factory Thezhilali Union and Secy., H.S.E.B. v. Suresh.)"

(Emphasis laid by the Court)

(ii) In ***State of Rajasthan & Ors. v. Gotan Lime Stone Khanji Udyog Pvt. Ltd. & Ors. [(2016) 4 SCC 469]***, it was held by the Hon'ble Supreme Court that:

> *"23. The principle of lifting the corporate veil as an exception to the distinct corporate personality of a company or its members is well recognized not only to unravel tax evasion but also where protection of public interest is of paramount importance and the corporate entity is an attempt to evade legal obligations and lifting of veil is necessary to prevent a device to avoid welfare legislation. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc.*
>
> *24. In **State of U.P. v. Renusagar Power Company MANU/SC/0505/1988 :** (1988) 4 SCC 59 this Court observed:*
> ***66.** It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties. The horizon of the doctrine of lifting of corporate veil is expanding....*
> ***67.** In the aforesaid view of the matter we are of the opinion that the corporate veil should be lifted and Hindalco and Renusagar be treated as one concern and Renusagar's power plant must be treated as the own source of generation of Hindalco and should be liable to duty on that basis. In the premises the consumption of such energy by Hindalco will fall Under Section 3(1)(c) of the Act. The learned Additional Advocate-General for the State relied on several decisions, some of which have been noted.*
> ***68.** The veil on corporate personality even though not lifted sometimes, is becoming more and more transparent in modern company jurisprudence. The ghost of Salomon case (1897 AC 22) still visits frequently the hounds of Company Law but the veil has been pierced in many cases. Some of these have been noted by Justice P.B. Mukharji in the New Jurisprudence (Tagore Law Lectures, P. 183).*
>
> *25. In **Delhi Development Authority v. Skiper Construction Company (P) Ltd MANU/SC/0497/1996 :** (1996) 4 SCC 622, it was observed:*

24. Lifting the corporate veil:

In Aron Salomon v. Salomon & Company Limited (1897) AC 22, the House of Lords had observed, "the company is at law a different person altogether from the subscriber...; and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands received the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by that Act". Since then, however, the Courts have come to recognise several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is "when the corporate personality is being blatantly used as a cloak for fraud or improper conduct". (Gower: Modern Company Law-4th Edn. (1979) at P. 137). Pennington (Company Law-5th Edn. 1985 at P. 53) also states that "where the protection of public interests is of paramount importance or where the company has been formed to evade obligations imposed by the law", the court will disregard the corporate veil. A Professor of Law, S. Ottolenghi in his article "From Peeping Behind the Corporate Veil, to Ignoring it Completely" says the concept of 'piercing the veil' in the United States is much more developed than in the UK. The motto, which was laid down by Sanborn, J. and cited since then as the law, is that 'when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. The same can be seen in various European jurisdictions. [(1990) 53 MLR 338]. Indeed, as far back 1912, another American Professor L. Maurice Wormser examined the American decisions on the subject in a brilliantly written article "Piercing the veil of corporate entity" (published in (1912) 12 CLR 496) and summarised their central holding in the following words:

The various classes of cases where the concept of corporate entity should be ignored and veil drawn aside have now been briefly reviewed. What general rule, if any, can be laid down ? The nearest approximation to generalization which the present state of the authorities would warrant is this: When the conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime, the courts will draw aside the web of entity, will regard the corporate company as an association of live, up-and-doing, men and women shareholders, and will do justice between real persons.

25. In Palmer's Company Law, this topic is discussed in Part-II of Vol-I. Several situations where the court will disregard the corporate veil are set out. It would be sufficient for our purposes to quote the eighth exception. It runs:

The courts have further shown themselves willing to 'lifting the veil' where the device of incorporation is used for some illegal or improper purpose.... Where a vendor of land sought to avoid the action for specific

performance by transferring the land in breach of contract to a company he had formed for the purpose, the court treated the company as a mere 'sham' and made an order for specific performance against both the vendor and the company.

Similar views have been expressed by all the commentators on the Company Law which we do not think it necessary to refer.

(underlining is ours)"

26. It is thus clear that the doctrine of lifting the veil can be invoked if the public interest so requires or if there is allegation of violation of law by using the device of a corporate entity. In the present case, the corporate entity has been used to conceal the real transaction of transfer of mining lease to a third party for consideration without statutory consent by terming it as two separate transactions -the first of transforming a partnership into a company and the second of sale of entire shareholding to another company. The real transaction is sale of mining lease which is not legally permitted. Thus, the doctrine of lifting the veil has to be applied to give effect to law which is sought to be circumvented."

(iii) In ***K.T. Doctor v. Commissioner of Income-Tax [1980 SCC OnLine Guj 139 : (1980) 124 ITR 501]***, an argument was raised that the doctrine of lifting the corporate veil is not applicable to trusts and also found favour with the Gujarat High Court. On appeal, the Hon'ble Supreme Court [230 ITR 744] dismissed the appeal of the revenue with the following reasons :

"We find that there is no discussion about the plea of device in the judgment of the Tribunal, though, it is true, that the appeals before the Tribunal were by the assessee. We also find that even in the judgment of the High Court, this aspect does not seem to have been argued or dealt with. In the circumstances, it is not possible for us to examine the theory of device. These appeals are dismissed accordingly. No costs."

54. From the above judgments, it is clear that there is no bar to apply the doctrine in the case of trusts. What is to be seen, is the existence of the systemised mechanism to collect the capitation fee as donation through other entities. These principles laid down in the above-stated cases while expounding the concept of lifting the corporate veil, especially in cases

relating to tax evasion, and in cases where public interest and policy are sought to be defeated by fraud, are squarely applicable to the present appeals where while the Assessee Trusts are controlled by common trustees and are in indeed sister Trusts, this Court may be constrained to lift the veil to see the real beneficiaries and the object of the donations by relatives/friends of parents as *quid pro quo* for admissions into the Assessee educational institutions as well as the other Assessees who are not educational institutions. On lifting the veil, it is clear as daylight that the modus operandi adopted by the Assessee Institutions and Trusts are with the twin objectives of circumventing/violating the provisions of the Capitation Fee Act as well as evading tax while seeking tax exemption under the corporate veil of being different and distinct entities receiving funds from each other for purely charitable purposes. Suffice it to say, nothing can be farther from the naked truth that cannot hide itself sufficiently behind the fig leaf of the legal cover sought to be taken by the Assessees under the guise of being charitable trusts and seeking exemption thereof.

55. Further, an elaborate exercise was undertaken by the Assessing Officer by issuing summons to various persons and their sworn statements were recorded. These sworn statements point to the factum of payment of amounts extending to atleast around Rs. 5 Lakhs in each of the cases as well as the

nexus between the Assessee institutions. The fact that these payments were made by the relatives/friends of the parents of the students who obtained admission in the Assessee institutions would prove the nature of the donations and the reasons therefor. That apart, it is clearly evident that the funds that have been given for admissions, have been routed through the other trusts. The fact that there have been some statements and their change subsequently can at best be said to be under fear of being exposed, which would ultimately tell on the future of the students. At this juncture, it will be useful to refer to the judgment of the Rajasthan High Court in ***PCIT v. Shri Roshan Lal Sancheti in Income Tax Appeal No.47/2018 dated 30.10.2018,*** wherein, after referring to the several decisions, it was held as follows:

> *"This court in CIT, Bikaner Vs. Ravi Mathur, supra, which judgment has been relied by the ITAT in the present case, after considering catena of previous decisions, held that the statements recorded under Section 132(4) of the IT Act have great evidentiary value and they cannot be discarded summarily and cryptic manner, by simply observing that the assessee retracted from his statement. One has to come to a definite finding as to the manner in which the retraction takes place. Such retraction should be made as soon as possible and immediately after such statement has been recorded by filing a complaint to the higher officials or otherwise brought to the notice of the higher officials by way of duly sworn affidavit or statement supported by convincing evidence, stating that the earlier statement was recorded under pressure, coercion or compulsion. We deem it appropriate to reproduce para 15 of the said judgment, which reads thus,*
>
> > *"15. In our view, the statements recorded under Section 132(4) have great evidentiary value and it cannot be discarded as in the instant case ITA No.720/JP/2017 M/s Bannalal Jat Construction Pvt. Ltd., Bhilwara vs. ACIT, Central Circle-Ajmer by the Tribunal in a summary or in a cryptic manner. Statements recorded under Section 132(4) cannot be discarded by simply observing that the assessee retracted the statements. One has to come to a definite finding as to*

the manner in which retraction takes place. On perusal of the facts noticed hereinbefore, we have noticed that while the statements were recorded at the time of search on 9.11.1995 and onwards but retraction, is almost after an year and that too when the assessment proceedings were being taken up in November 1996. We may observe that retraction should be made as soon as possible and immediately after such a statement has been recorded, either by filing a complaint to the higher officials or otherwise brought to the notice of the higher officials, either by way of a duly sworn affidavit or statements supported by convincing evidence through which an assessee could demonstrate that the statements initially recorded were under pressure/coercion and factually incorrect. In our view, retraction after a sufficient long gap or point of time, as in the instant case, loses its significance and is an afterthought. Once statements have been recorded on oath, duly signed, it has a great evidentiary value and it is normally presumed that whatever stated at the time of recording of statements under Section 132(4), are true and correct and brings out the correct picture, as by that time the assessee is uninfluenced by external agencies. Thus, whenever an assessee pleads that the statements have been obtained forcefully/by coercion/undue influence without material/contrary to the material, then it should be supported by strong evidence which we have observed hereinbefore. Once a statement is recorded under Section 132(4), such a statement can be used as a strong evidence against the assessee in assessing the income, the burden lies on the assessee to establish that the admission made in the statements are incorrect/wrong and that burden has to be discharged by an assessee at the earliest point of time and in the instant case we notice that the AO in the Assessment Order observes:-

> *"Regarding the amount of Rs. 44.285 lakhs, it is now contended that the statement u/s 132(4) was not correct and these amounts are in ITA No.720/JP/2017 M/s Bannalal Jat Construction Pvt. Ltd., Bhilwara vs. ACIT, Central Circle-Ajmer thousands, not lakhs i.e. it is now attempted to retract from the statements made at the time of S & S operations."*

Therefore, what we gather from the Assessment Order and on perusal of the above finding that the retraction was at the stage when the assessment proceedings were being finalized i.e. almost after a gap of more than an year. Such a so-called retraction in our view is no retraction in law and is simply a self-serving statement without any material."

56. It is also to be pointed out that the judgment of the Delhi High Court in ***CIT v. Sunil Aggarwal,*** (supra), relied on by the assessees, does not in any manner extend assistance to them because that was a case in which the court

found that the assessee, apart from retracting the statement, also discharged the onus on him through cogent material to rebut the presumption that stood attracted in view of the statement made under Section 132(4) of the Act with reference to the entries in the books of accounts of the sales made during the year and the stock position. Similar was the position in ***Kailashben Manharlal Chokshi v. Commissioner of Income-tax [(2008) 174 Taxman 466 (Gujarat)]***, wherein the High Court of Gujarat found that the assessee gave proper evidence in support of his retraction. This Court in ***M. Narayanan and Bros. v. Assistant Commissioner of Income-tax (***supra), held that when assessee had explained his statement as not correct in context of materials produced, no amount could be added to his income on the basis of his statement. Similarly, what has been held by the High Court of Bombay in ***Commissioner of Income- tax, Central- II, Mumbai v. Omprakash K. Jain [(2009) 178 Taxman 179 (Bombay)]*** was that the assessing officer, while considering whether retraction was under duress or coercion, had also to consider genuineness of documents produced before him.

57. The Punjab and Haryana High Court in ***Commissioner of Income-Tax v. Lekh Raj Dhunna***, taking note of the fact that the assessee had made a statement under Section 132(4) of the IT Act, whereby a surrender of Rs.2 lakh was made and further that, the assessee had admitted that he had earned

commission from a party, which was not disclosed in the return filed by him and certain documents were seized which bore the signature of the assessee, held in para 16 of the report as under:

> *"16. Thus, in view of sub-sections (4) and (4A) of Section 132 of the Act, the Assessing Officer was justified in drawing presumption against the assessee and had made addition of Rs.9 lakhs in his income under Section 68 of the Act. The onus was upon the assessee to have produced cogent material to rebut the aforesaid presumption which he had failed to displace. The assessee retracted from the said statement, vide letters dated November 24, 1998, and March 11, 1999, during the course of assessment proceedings. However, no value could be attached thereto in the present case. In case the statement which was made by the assessee at the time of search and seizure was under pressure or due to coercion, the assessee could have retracted from the same at the earliest. No plausible explanation has been furnished as to why the said statement could not be withdrawn earlier. In such a situation, the authenticity of the statement by virtue of which surrender had been made at the time of search cannot be held to be bad. The Tribunal, thus, erred in concluding otherwise. The Tribunal, therefore, was not justified in reversing the order of the Assessing Officer which was affirmed by the Commissioner of Income-tax (Appeals) also."*

The Punjab and Haryana High Court in ***Bachittar Singh v. Commissioner of Income-Tax ,*** held as under:-

> *"7. It is not disputed that the statement was made by the assessee at the time of survey, which was retracted on May 28, 2003, and he did not take any further action for a period of more than two months. In such circumstances, the view taken by the Tribunal that retraction from the earlier statement was not permissible, is definitely a possible view. The mere fact that some entries were made in a diary could not be held to be sufficient and conclusive to hold that the statement earlier made was false. The assessee failed to produce books of account which may have been maintained during regular course of business or any other authentic contemporaneous evidence of agricultural income. In the circumstances, the statement of the assessee could certainly be acted upon."*

58. The High Court of Kerala in ***the Commissioner of Income Tax v. O. Abdul Razak*** (supra) in para nos.8, 9 and 10 of its decision, held as under:

> *"8. It cannot be doubted for a moment that the burden of proving the undisclosed income is squarely on the shoulders of the department.*

Acquisition of properties by the assessee are proved with the documents seized in search. Since under statement of consideration in documents is the usual practise the officer questioned the assessee on payments made over and above the amounts stated in the documents. Assessee gave sworn statement honestly disclosing the actual amounts paid. The question now to be considered is whether the sworn statement constitutes evidence of undisclosed income and if so whether it is evidence collected by the department. In our view the burden of proof is discharged by the department when they persuaded the assessee to state details of undisclosed income, which the assessee disclosed in his sworn statement, on being confronted with the title deeds seized in search.

9. Section 132 of the Income tax Act deals with search and seizure and sub-Section (4) of Section 132 empowers the authorised officer during the course of the search and seizure to examine on oath any person who is found to be in possession or control of any books of account, documents, money or valuable articles or things etc. and record a statement made by such person which can be used in evidence in any proceedings under the Income Tax Act. The explanation appended to Clause (4) also makes it clear that such examination can be in respect of any matters relevant for the purpose of any investigation and need not be confined to matters pertaining to the material found as a result of the search. A plain reading of Section 132(4) would clearly show that what was intended by empowering an officer conducting the search to take a statement on oath was to record evidence as contemplated in any adjudication especially since Section 131 confers on all officers empowered therein with the same powers as vested in a court under the Code of Criminal Procedure, for the purpose of the Income Tax Act.

10. A Division Bench of this Court in C.I.T. v. Hotel Meriya, (2011) 332 ITR 537 considered the scope of a statement recorded under Section 132(4) and found that such statement recorded by the officer as well as the documents seized would come within the purview of evidence under Section 158(BB) of the Income-tax Act read with Section 3 of the Evidence Act and Section 131 of the Income Tax Act. Based on the above finding, it was also held that such evidence would be admissible for the purpose of block assessments too. The explanation to Section 132(4) of the Income Tax Act was also noticed by the Division Bench to further emphasise that the evidence so collected would be relevant in all purposes connected with any proceedings of the Income Tax Act."

59. The Allahabad High Court in ***Dr. S.C. Gupta v. Commissioner of Income-Tax*** *(*supra), in para 7 of its judgment, held as under:

"7. As regards the assessee's contention that the statement having been retracted the Assessing Officer should have independently come to a conclusion that there was additional income as sought to be assessed and that there was no material to support that there was such income, this

contention in our view is not correct. As held by the Supreme Court in Pullan-gode Rubber Produce Co. Ltd. v. State of Kerala, (1973) 91 ITR 18 an admission is an extremely important piece of evidence though it is not conclusive. Therefore, a statement made voluntarily by the assessee could form the basis of assessment. The mere fact that the assessee retracted the statement could not make the statement unacceptable. The burden lay on the assessee to establish that the admission made in the statement at the time of survey was wrong and in fact there was no additional income. This burden does not even seem to have been attempted to be discharged. Similarly, P.K. Palwankar v. CGT, [1979] 117 ITR 768 (MP) and CIT v. Mrs. Doris S. Luiz, [1974] 96 ITR 646 (Ker) on which also learned counsel for the assessee placed reliance are of no help to the assessee. The Tribunal's order is concluded by findings of fact and in our view no question of law arises. The applications are, accordingly, rejected."

60. All the aforementioned judgments were considered by this Court in ***M/s. Bannalal Jat Constructions Pvt. Ltd.*** (supra) wherein also, the assessee retracted from his statement initially given under Section 132(4) of the Act on 10.10.12014 followed by confirmation statement under Section 131 on 04.12.2014 and made the following observations:

"Reverting back to the present case, the ITAT, on the basis of such statement of Shri Bannalal Jat, concluded that he was managing his business affairs of both his proprietary concern as well as appellant-company from his residence and that in the absence of individual cash-book of respective concerns and other details maintained by him, it is not possible to identify whether the cash so found belongs to the proprietary concern or to the assessee company. Subsequently, when the statement under Section 132(4) of the IT Act was recorded on 10.10.2014, which was concluded at his residence, Shri Bannalal Jat categorically admitted that the cash amount of Rs.1,21,43,210/- belonged to his company M/s. Bannalal Jat Construction Private Limited and the same was its undisclosed income. Thereafter another statement under Section 132(4) of the IT Act was recorded at his business premises on 11.10.2014. In reply to question No. 8, he was asked to explain the source of cash amounting to Rs.3,380/- found at his office and Rs.1,21,43,210/- found at his residence, he submitted regarding the amount of Rs.1,21,43,210/- found at his residence that he was unable to give any explanation and admitted that he was in the business of civil construction and in such business, various expenses have been inflated and shown in the books of accounts, and that the income so generated on account of such inflation in expenses is represented in the form of cash was found at his residence. This undisclosed income belonged to his company M/s Bannalal Jat Construction

Pvt. Ltd. In response to question no.11 wherein he was asked to provide any other explanation which he wishes to provide, he submitted that pursuant to search operations where various documents, loose papers, entries, cash, investment, advances and individual expenditure details have been found and taking all that into consideration, he surrendered Rs.4,01,43,210/- as his undisclosed income. He also categorically stated that the said disclosure is in the hands of M/s Bannalal Jat Construction Private Limited in respect of unexplained cash amounting to Rs.1,21,43,210/- and Rs.2,50,00,000 and Rs.30,00,000/- totalling to Rs.2,80,00,000 in his individual capacity."

61. In view of the law discussed above, it must be held that statement recorded under Section 132(4) of the Act and later, confirmed in statement recorded under Section 131 of the Act, cannot be discarded simply by observing that the assessees have retracted the same, because such retraction ought to have been generally made within a reasonable time or by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duly sworn affidavit or statement supported by convincing evidence. Such a statement when recorded at two stages cannot be discarded summarily in cryptic manner by observing that the assessees in the belatedly filed affidavit have retracted from their statements. Such retraction is required to be made as soon as possible or immediately after the statement of the assessees was recorded. Duration of time when such retraction was made, assumes significance and in the present case, retraction has been made by the assessees after eight months to be precise, 237 days.

62. It is settled position of law that the admission though important is not conclusive. It is open to the assessee who made the admission to show that it is

incorrect as held by the Hon'ble Supreme Court in ***Pullangode Rubber Produce Company Ltd. v. State of Kerala & Another [91 ITR 0018 (SC)]***. The onus falls on the person who had earlier admitted to prove it wrong. Therefore, the statements could form the basis of assessment.

63. The statements given to the Assessing officer under Section 132 (4) have legal force. Unless the retractions are made within a short span of time, supported by affidavit swearing that the contents are incorrect and it was obtained under force, coercion and by lodging a complaint with higher officials, the same cannot be treated as retracted. This position laid down in catena of decisions by the various High Courts in ***CIT vs. Lekh Raj Dhunna [344 ITR 352 (P&H)], Bachittar Singh v. CIT [328 ITR 400 (P&H)], Rameshchandra & Co. v. CIT [168 ITR 375 (Bom.)], Dr. S.C. Gupta v. CIT, [248 ITR 782 (All.)], CIT v. Hotel Meriya [332 ITR 537 (Kerala)], CIT v. O. Abdul Razak [350 ITR 71 (Kerala)]***.

64. The reasoning adopted by the Tribunal that the Assessing Officer might have coerced to obtain the sworn statements from the donors in the manner convenient to the Revenue so as to drop further proceedings against the donors for examining their source of income with respect to the amount of donations made, is based on surmises and conjectures. The further reasoning that the donors or the parents/students studying in the educational institutions had not

complained to any authorities regarding extortion by way of donations for securing admission in the educational institutions managed by M/s. Sri Venkateswara Educational & Health Trust, is naive and cannot be accepted in the background of the menace of capitation staring at society starkly in the face. The Tribunal went further to hold that in the case of Assessee trusts, nothing was brought before it to point out that the law enforcing authorities of the State Government or the Central Government have initiated any coercive action against any of these Assessees for violating any provisions of the relevant Act. Here, it is to be noted that the very modus operandi adopted by the educational institutions is not in the form of direct coercion, but in the manner of admitting students on the clear understanding that such seats are offered in return for donations, which are nothing but capitation fee. The fact that a long-winding and indirect route has been adopted for capitation fee to reach the institution cannot change the character of the payment from an illegal capitation fee to a voluntary contribution/donation. There is preponderance of evidence that the contributions are non-voluntary considering the multitude of facts, such as, the detailed sworn statements of the persons, who had made the contributions, being the relatives/friends of the parents of the students, who were given seats in the Assessee educational institution, the nexus between the other Assessee institution, which collected and passed on the contribution

though not an educational institution by itself, having common trustees being well-knit, as can be seen from the facts. That apart, the fact that no action has been initiated by the State cannot be a reason to allow the exemption under the provisions of the Act or absolve the liability of the assessees, that too after the device to route the capitation fee was discovered. Further, it is also settled law that illegality cannot be perpetuated. Similarly, any decision even in the assessees' own case cannot have any bearing on the adjudication of the issues before us, because each assessment is independent and has to rest on its own facts. As such, when the contributions cannot be treated as voluntary, the further question of their application to charitable purposes or otherwise, need not be gone into, meaning thereby that the assesses are not entitled to the benefits of Sections 11 and 12 of the Act.

MEANING OF "VOLUNTARY CONTRIBUTION"

65. Reference may also be had to cases where the term "voluntary contributions" have been expounded for the purposes of Section 12 of the Act. In ***CIT v. Madhya Predate Anaj Tilhan Vyapari Mahasangh, [(1988) 171 ITR 677],*** the High Court of Madhya Pradesh interpreted the expression "voluntary contribution" under section 12 of the Act as *"The contributions, in order to be voluntary, had to be made willingly and without compulsion and*

the money was to be gifted or given gratuitously without consideration and these tests were satisfied on the facts of the present case." In ***Russel v. Vestry of St. Giles [3 E & B 416]***, Lord Campbell observed that *"voluntary contributions" here do not mean annual subscriptions (or entrance fees) paid for value received or expected to be received by the party paying, but means a gift made from disinterested motives for benefit of others*. In ***Society of Writers to the Signet v. IRC, [1886] 2 TC 257 (C Sess)***, the court held that *the entrance fees and subscriptions paid by entrants to a society or institution as a condition precedent to their membership and as the price of admission to the privileges and benefits of the society or institution are given under a contract and are not voluntary*. These observations were considered and approved by the Bombay High Court in ***Trustees of Shri Kot Hindu Stree Mandal v. Commissioner of Income Tax, [1993 SCC Online Bom. 619]***. Thus, it is clear that in law, unless a contribution is made gratuitously and without consideration, it cannot be treated as "voluntary contributions" for the purpose of exemption of tax under Sections 11 and 12 of the Act. Applying the same to the facts of the present case, this court is of the opinion that the findings of the first Appellate Authority and the Tribunal that the assessees more particularly, the educational institutions are entitled to collect donations and as long as the donations are applied as per the objects, they are to be treated as voluntary

contributions and hence, the claim of exemption under Section 11 cannot be denied, are unacceptable as the same are completely against the provisions of the Capitation Fee Act and the object of granting exemption under the Income Tax Act. In the present batch of cases, the assessing officer has clearly established the fact that "capitation fee" has infact been collected. While so, such illegality cannot be ignored.

66. In this context, it will be useful to refer to the following judgments of the Kerala High Court:

(i)In ***Travancore Education Society v. CIT [(2014) 369 ITR 534 (Ker)]***, while dealing with a challenge to rejection of application for registration, it was held as follows:

> "*4. The facts being as above, we are fully in agreement with the Tribunal that on materials it was evident that the trust was not carrying on any charitable activities entitling it for registration under Section 12AA of the Act.*
> *5. In this appeal, the appellant has produced Annexures A5 and A6, affidavits filed before the Commissioner of Income Tax (Appeals) and before the Income Tax Appellate Tribunal, which show that the endeavor made therein is mainly to retract from the statements given by them. In so far as affidavit filed before the Commissioner of Income Tax Appeals is concerned, that appeal arising out of assessment order is still pending. The other affidavit filed before the Tribunal shows that for the first time before the Tribunal such an attempt was made. Having regard to the fact the affidavit only contained unsubstantiated claims made therein, we do not think that this affidavit would improve the case of the appellant.*
> *6. The learned counsel for the appellant also placed reliance on the judgments in Fifth Generation Education Society v. Commissioner Income Tax [185 ITR 635], New Life In Christ Evangelistic Association v. Commissioner of Income Tax [246 ITR 532] to contend that when application is made under Section 12AA, the Commissioner is not required to examine the application of income of a trust. In our view, this*

principle has no application to the facts of the case. The rejection of the application made by the petitioner, as we have already noted, was for the reason that they were collecting capitation fee for admission and not on the ground that the funds of the trust were not applied for charitable purpose. For all these reasons, we do not find any merit in this appeal."

(ii)In ***Dawn educational Charitable Trust v. CIT, Kochi [2014 SCC OnLine Ker 2988 : (2015) 370 ITR 724],*** it was held as follows:

"*3. Apart from above factual situation, clause 6 of the trust deed further indicates that the trust is at liberty having absolute discretion to accept contributions as donation and contributors have no right or control over the management or in the administration of the trust. All these facts borne on record revealed during the enquiry persuaded the Commissioner to reject the application. This came to be confirmed by Appellate Tribunal endorsing views of the Commissioner.*

4. Learned counsel arguing for appellant contends, charitable trust does not mean, it imparts education only to the poor. Even if poor children are excluded, it could still be charitable as long as running an educational institution. He tries to convince the Bench with his stand placing reliance on the decision reported in Nedumchalil C. Trust v. Municipal Commissioner (1991 (2) KLT 180). The question that arose was whether the fact of special wards for patients who pay full price are run or that salary is paid inclusive of the expenditure for the trustees will not change the nature of the trust, i.e., charity and charitable purpose. In that context, referring to Section 101(1)(d) of the Municipalities Act, 1961 (Kerala) with reference to general meaning of charitable purpose learned Single Judge of this Court opined what amounts to charity so far as Municipalities Act. We are not concerned with similar situation and further said judgment can only have a persuasive value and not binding on the Division Bench. We have to consider the controversy before us with reference to Income Tax Act how an application for registration under Section 12A of the Income Tax Act has to be considered. It is well settled that even if nomenclature of the trust may indicate it is meant for charitable purpose, but if activities reveal otherwise, that should weigh with the authorities who grant registration. Similarly, while considering claim of exemption, authorities under the Act would look into the actual activity of the institution, especially main activity of the institution. In the absence of facts indicating that the activities carried on attracts definition of charitable purpose, one cannot find fault with rejection of registration. When the school is running on commercial lines under the clad of charitable purpose, the parties were justified making enquiries and rejecting the application.

The above judgment of the Kerala High Court was confirmed by the Apex

Court in ***CC No. 16157/2014 on 13.10.2014.***

67. Insofar as the assessing officer, not enquiring about the source of the donors, it is an undisputed fact that the sums have been paid by the parents or acquaintances to the institutions/trusts for securing the seat. Such persons are the source for the assessees. As rightly contended by the learned Senior Standing Counsel for the Revenue, it is not necessary for the assessing officer to go into the source of the source to tax the assessees under assessment and the same cannot be a reason to allow the deduction, which the assessees are not otherwise entitled to.

CONCLUSION

68. In view of our above findings that the amounts collected by the assessees are capitation fee in *quid pro qua* for allotment of seat in deviation of the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992 and the same are neither a voluntary contribution nor to be treated as applied for charitable purpose, the orders of the Appellate Authority as well as the Tribunal, which are impugned in these appeals, are absolutely perverse in nature and therefore, they are set aside. Accordingly, all the substantial questions of law are answered in favour of the Revenue and against the Assessees.

69. Our country, though has developed considerably, after independence and

made several strides marching forward in different fields including in education, we are yet to reach the stage we aspired to, as a nation with specific reference to education. The States are unable to comply with the directions enshrined in the Constitution to thrive for education for all, which would encompass within it the access to all sections of the society by providing equal opportunity. Parents are reluctant to make their ward attend Public Schools unlike in other countries. As per the report of the All India Survey on Higher Education for the year 2019-20, by the Ministry of Education, Higher Secondary Department, 78.6% of colleges are privately managed. In the Union Budget for the year 2022-2023, a sum of Rs.1,04,277 crores has been allocated for school education, literacy and higher education. Despite the fact that there are State laws making it penal to collect capitation fee and the repeated dictum of various Courts including the Apex Court, the menace of capitation fee could not be curtailed, forget eradication. Education is a means to achieve equality. It not only instils confidence in the mind of the student, but also is a tool to eradicate exploitation. It offers employment opportunity, besides helping in churning oneself into a better person. The development of a country is to be weighed in terms of the educated. Privitization of education aids in collection of Capitation Fee. We hope that the Central and State government will thrive to ensure that all those who deserve, but are unable to get admission in

educational institutions for want of funds, are accommodated to pursue education and take appropriate steps to eradicate the collection of capitation fee by creating policies and awareness and for that purpose, on the lines of the web-portal under the aegis of the Supreme Court, a web-portal of a similar nature must be set-up, wherein any information about the private colleges charging capitation fees can be furnished by the students or their parents or anyone having first-hand information in this regard. The web-portal has to be maintained and regulated by the National Informatics Centre (NIC) and the Information Technology and Digital Services Department, Government of Tamil Nadu; and the State Government is directed to publish the details about the web-portal in the English as well as vernacular newspapers at the time of admission. In addition, a pamphlet should be compulsorily given to the students and their parents at the time of counselling informing them about the availability of the web-portal stated above. Apart from that, in view of the fact that the present appeals filed by the Revenue are allowed, it is natural that

(i) The Assessing Authority shall proceed further on the basis of the orders of assessment of tax, which are the subject matter of these appeals.

(ii) The Assessing Authority shall also proceed further for cancellation of registration certificate issued to the Assessees/trusts under Section 12A of the Act thereby not to treat the respondents as charitable

institutions any longer.

(iii) The Assessing Officer shall also proceed to reopen the previous assessments, if permissible by law, based on tangible materials relating to collection of capitation fee, since it is illegal and is punishable.

70. With the above observations and directions, all these tax case appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D., J.) **(M.S.Q., J.)**

31.10.2022

Internet : Yes / No
Index : Yes / No
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To

1.The Income Tax Appellate Tribunal
C Bench, Chennai.

2.The Income Tax Appellate Tribunal
A Bench, Chennai.

3.The Income Tax Officer (Exemptions)
Ward-4, Chennai.

4.The Commissioner of Income Tax (Appeals)
Chennai – 34.

5.The Deputy Director of Income Tax (Exemptions)-IV
Chennai.

R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

rsh/rk

TCA No. 303 of 2021 etc., batch

31.10.2022