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

BEFORE: SHRI R.S. PADVEKAR, JUDICIAL MEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No. 923/PN/2010

Assessment Year : 2006-07

Bharati Vidyapeeth, **Lal Bahadur Shashtri Road,** **Navi Peth, Pune-411030** (Appellant) PAN No.AAATB1836D	**Vs.**	**The Asst. Comm. of Income Tax, Cen. Cir.-2(2), Pune** (Respondent)

ITA No. 1034/PN/2010

Assessment Year : 2006-07

The Asst. Comm. of Income Tax, Cen. Cir.-2(2), Pune (Appellant)	**Vs.**	**Bharati Vidyapeeth,** **Lal Bahadur Shashtri Road** **Navi Peth, Pune-411030** (Respondent) PAN No.AAATB1836D

ITA No. 340/PN/2011

Assessment Year : 2007-08

Bharati Vidyapeeth, **Lal Bahadur Shashtri Road,** **Navi Peth, Pune-411030** (Appellant) PAN No.AAATB1836D	**Vs.**	**The Asst. Comm. of Income Tax, Cen. Cir.-2(2), Pune** (Respondent)

Assessee By: **Shri Sunil Pathak**
Revenue By: **Shri S.K. Singh**

O R D E R

PER R.S. PADVEKAR, JM:-

These three appeals are arising out of assessments framed u/s. 153 (c) r.w.s. 143(3) of the Income-tax Act. These appeals pertain to the A.Ys. 2006-07 and 2007-08. In this case, the appeal in the preceding years have already been disposed of on the jurisdictional issue as it was submitted at the time of argument by the Learned Counsel for the assessee.

2. In both the assessment years, it is necessary to narrate the background of this case. There was a search and seizure operation u/s. 132(1) of the Act was carried out by the Investigation wing of Income Tax Department (in short "the Revenue") against one Shri Ramchandra Dada Shinde on 20-07-2005, covering his office situated in Bharati Vidyapeeth Bhavan which is the premises owned by the assessee trust as well as his residence at "Ashirvad", Bharati Nagar, Paud Road, Kothrud, Pune. As noted by the Assessing Officer, Shri Ramchandra Dada Shinde is the trusted employee of the trustees and he was also working as Accounts Officer looking after the Accounts of various trusts of Bharti Vidyapeeth Group including the present assessee. In this case the registration of the assessee trust was cancelled by the CIT(Central), Pune by exercising his powers u/s. 12AA (3) of the Act vide order dated 08-11-2007. The assessee had challenged the cancellation of the registration before the ITAT, Pune and order of CIT(Central), Pune was cancelled and registration granted to the assessee u/s. 12A was restored.

3. Another aspect to be considered in this case that is the reference was made by the Assessing Officer u/s. 142(2A) for the special audit and the entire assessment is based as per the audit report given by the Special Auditors. The assessee has not pressed the grounds taken in respect of reference made to the special audit u/s. 142(2A) and hence, we are also skipping the discussion on the said issue. In the present case, there is no dispute about the fact that no search action has been carried out u/s. 132(1) against the assessee trust nor against any of the trustees and it is also not disputed that the warrant of authorization was only on the name of Shri R.D. Shinde who was only searched. On the basis of the search carried out against Shri R.D. Shinde, the assessments of the present

assessee trust have been framed u/s. 153C of the Act. On the basis of the material/documents as well as the cash found and seized from Shri R.D. Shinde, there are multiple issues are arising in these appeals for not giving the benefit of Sec. 11 to the assessee trust and the entire income has been brought to tax by treating the assessee as a AOP on the reason that the assessee has violated provisions of Sec. 11(5) r.w.s. 13(1)(d) and 13(1)(c) of the Act and registration granted u/sec. 12A was cancelled. The core issue which arises for our consideration in this case is whether the cash seized from the Shri R.D. Shinde who was admittedly the employee of the assessee trust and the cabin which was occupied by him belongs to the assessee trust as his employer, is there any evidence to show that seized cash belongs to the assessee and it is undisclosed income to be taxed in hands of the assessee.

4. Now we take up assessee's appeal for the A.Y. 2006-07 being ITA No. 923/PN/2010. The assesse has filed the concise grounds in place of the original grounds which are as under:

1. *The learned CIT(A) erred in not appreciating that the asst. u/s 153C was null and void and barred by limitation of time.*

2. *The learned CIT(A) erred in holding that the reference for special audit u/s 142(2A) was valid and the asst. made consequent thereto was valid in law.*

3. *The learned CIT(A) erred in holding that the appellant trust was not entitled to the exemption u/s. 11 and the income was taxable in the hands of the appellant.*

4. *The learned CIT(A) erred in holding that the activities of the appellant trust were covered under the provisions of section 10(23C) and accordingly, the claim of exemption of the appellant trust could be entertained only u/s 10(23C)(vi) and not u/s 11 - 13.*

5. *The learned CIT(A) erred in holding that the appellant trust has violated the provisions of section 13(l)(d) by investing the funds in the modes other than those prescribed in section 11(5) of the Act and hence, the exemption u/s. 11 was not allowable.*

6. *The learned CIT(A) erred in holding that the appellant trust has violated the provisions of section 13(1)(c) of the Act.*

7. *The learned CIT(A) erred in holding that the appellant trust was charging some capitation fee for admissions to the students without appreciating the correct facts of the case.*

8. *The learned CIT(A) erred in holding that the cash and the loose papers found with Shri Shinde belonged to the appellant and not to Shri Shinde and that the appellant had received the capitation fee as per these papers.*

9. *The learned CIT(A) erred in confirming an addition of Rs.2,00,50,000/- made to the total income of the appellant on the basis of the various loose papers found with Shri Shinde.*

10. *The learned CIT(A) erred in confirming the addition of Rs.3, 14,83,8707- made by the learned A.O. being the cash found with Shri Shinde on the ground that the same pertained to the appellant and not to Shri Shinde.*

11. *The learned CIT(A) erred in confirming the following additions to the total income in the hands of the appellant –*

    i. *Disallowance of Rs. 77,69,011/- u/s 40(a)(ia)*
    ii. *Contribution of Rs. 1,10,039/- to gratuity fund*
    iii. *Disallowance u/s 40A(3) - Rs. 26,012/-*
    iv. *Donations given of Rs. 9,01,000/-*
    v. *Liabilities written back Rs. 31,99,423/-*
    vi. *Disallowance of revenue expenditure of Rs. 1,27,55,250/- on the ground that it is a capital expenditure*

12. *The learned CIT(A) erred in not setting off the excess deficit in the hands of the appellant trust till A.Y. 1998-99 against the income of] the appellant for this year.*

13. The learned CIT(A) erred in holding that the donations received against the issue of coupons were on account of the capitation fee charged for admissions and they were not the corpus donations.

14. The learned CIT(A) erred in holding that the donations received specifically by cheques as corpus donations also constituted income of the appellant.

15. The learned CIT(A) erred in holding that in the asst. u/s 153C, the additions could be made on any issue not necessarily connected with the incriminating material found during the search.

16. The appellant requests for reduction in the interest charged u/s 234A/B/C.

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

5. So far as Ground Nos. 1, 2, 12 and 13 same are not pressed by the assessee. As these grounds are not pressed, hence these grounds are dismissed as not pressed.

6. So far as Ground No. 3 is concerned the assessee has challenged the finding of the Ld. CIT(A) holding that the assessee trust is not entitled to exemption u/s. 11 of the Act for the reasons given in his order. Ground Nos. 4, 5, 6, and 7 in which the main reasons for denying the exemption to the assessee u/s. 11 have been challenged. So far as the facts pertaining to this case are concerned, we prefer to go with the order of the Ld. CIT(A) in which all the facts and the case of the Department are discussed in the proper sequence which are stated as under:

5.1 M/s.Bharati Vidyapeeth (BVP) was founded by Shri Patangrao Shripatrao Kadam and Shri Anandrao Bahirji Patil, through a deed of trust executed on 10/5/1964, with the primary objective of propagating education in various fields in Modern India in general and Maharashtra in particular. This trust was registered under Bombay Public Trust Act, 1950. Certificate of registration u/s.12A *from Commissioner of Income-tax, Pune was obtained on 13/9/1973 vide registration No.CH/P/PNA/86/73-74, issued vide No.P165/Registration of Trust (86)773-74/13/9/1973. Numerous educational and allied institutions in diverse fields, including medical colleges, engineering colleges, management institutes and schools etc. have been opened and run under the aegis of this trust since the granting of registration in 1973 entitling BVP exemption from the payment of taxes under the Income-tax Act. As per the list given approximately 208 institutes are presently run in and around Pune, Mumbai, Thane, Navi Mumbai, Solapur, Satara, Kolhapur and Sangli etc. in Maharashtra and others in Delhi. Bharati Vidyapeeth, deemed university is also part of the above trust. BVP has been enjoying the exemption from payment of taxes since 1973 till A.Y. 1998-99. Exemption for subsequent assessment years has been either withdrawn or denied subsequent to the search and discovery of certain facts held adverse by the Income-tax Department in respect of the conduct of the appellant trust.*

5.2 After noticing reports from various corners about the illegal practices being carried out in the educational institutes in and around Pune, the investigation unit of the Income-tax Department at Pune, after apparently carrying out necessary ground work, carried out searches and surveys in the case of many groups of educational institutes run by different trusts along with certain known agents, on 20/7/2005. In almost all the groups, which were covered in search / survey operations on that day, incriminating documents including cash were found and seized. In the case of the appellant group, the office cabin along with associated rooms of Shri Ramchandra Dada Shinde, situated at the 8th floor of Bharati Vidyapeeth Bhavan, LBS Marg, Pune, the head office of Bharati Vidyapeeth Group, was covered, as he was known to be the key person involved for this work. Shri Ramchandra Dada Shinde was working as the Accounts Manager of the Group, who was also admittedly associated with the process of admission.

5.3 It is important to discuss here the implication of the search conducted in the name of Mr Ramchandra Dada Shinde, as the appellant during the course of assessment and thereafter has been trying to raise many grounds / objections on the same. The appellant has denied the ownership of evidences itself on the ground that the search was not in its name. While it may be true as the warrant of *authorization for search was undisputedly in the name of Mr. Shinde, but the premise to be searched was that of BVP, situated at Bharti Vidya Bhawan, LBS Marg, Pune. If the objective of operations carried out on that date is understood along with the background described at para 5.2 above, it can be seen to be a precise and specifically targeted operation to unearth the evasion of taxes undertaken by trusts of Pune engaged in educational activity. From this specifically targeted operation itself it can be easily inferred that the credible information was available with the investigation wing that Mr Shinde is the key person involved in this activity on behalf of BVP. This got fully substantiated from the discovery made during search. Because of the above, however, the appellant has got an argument that the search is in the name of Shri Shinde and therefore, cash and other documents found should be considered legally to be belonging to him. The presumption available u/s.132(4A) also was claimed to be applicable in his name. In fact, as would be seen from the arguments made by the appellant, in the context of their different grounds of appeal, that the appellant, because of s.132(4A), has been arguing that the incriminating documents found and seized along with the cash should be held to be belonging to Sri Shinde and not the trust. Such a proposition does not appear correct. First of all, the presumption is not mandatory because the word used in s.132(4A) is "may" and not "shall". Therefore, the option is with the department to exercise it or not and if exercise it, in what manner? Furthermore, the presumptions are required to be applied where the evidences found are not indicative of its real ownership. In other words, where it is not possible to infer or attach an evidence to a particular person, the above provision comes to the rescue of the department. Had that not been the case, section 153C would not have been on the statute wherein, the AO on coming to the satisfaction that seized material belongs to other than the searched person, can initiate proceeding similar to S.153A in the case of that other person. Because in that case, the department is permitted legally to presume that the same belong to the other person from whom it is not seized. It can further be seen, in the present case that even if the warrant was in the name of Mr. Shinde, the premise searched was that of the appellant and therefore, the legal presumption can still, in my opinion, be raised against the appellant, whose premise was searched. Furthermore, Mr. Shinde was only an employee of the appellant. Mr.Shinde was a person of small means as could be seen from the discussions made* *ahead, working with the appellant to look after accounts and admissions. He had no independent office of himself. Therefore, the claim of the appellant, which has been made in respect of many grounds, that the presumption cannot be raised against the appellant, is incorrect. If the facts and circumstances suggest that the incriminating documents and cash belong to the appellant, the case of the department becomes stronger because the presumption also can be considered to be supporting the said view.*

5.4 As a consequence of the above search, unaccounted cash amounting to Rs.3,14,83,870/- was found and seized from three almirahs which were lying in searched premise, with Mr.Shinde, along with various other incriminating documents suggesting charging of capitation fee/donations in addition to regular fee from students seeking admissions. Shri Shinde, being a trusted person of the BVP, expectedly admitted the money to be belonging to him in lieu of consultations given by him in respect of admissions in colleges and hostels etc. The entries available in seized documents for collection of money in lakhs in addition to fees were also claimed by him to be representing his consultancy charges being earned without the knowledge and consent of BVP. However, it is important to note that the seized documents, though show collection of fee and other unaccounted money, do not bear any noting at any place to support the claim of Mr.Shinde that they represent his consultation fee. The Department relying on the nature of recording in the loose papers seized during search and the fact that such huge amount cannot be given to Shri Shinde for the kind of consultation he was claiming to be giving, concluded that the money belonged to the trust and the trust was involved in collecting capitation fee. Strength was also drawn in this context from the statement given by Shri Shinde in this context to say that such collections for the earlier two years are in the vicinity of Rs.2 crores each and the same has been deposited in cash in various fund accounts of institutes run by BVP. This admission of fact was found to be matching with the findings that huge cash was actually seen deposited in the building fund accounts and other trust accounts of various institutes and BVP. This part of the statement of Mr.Shinde appears to have been given in spontaneity, as the same do not match with the stand that he has been taking generally in his statement that the money belong to him for his consultation. If he was giving consultancy and money seized represented the same, where is the *question of such earnings made in earlier years getting deposited in the accounts of appellant instead of that of Mr. Shinde. Such a statement given in spontaneity is known to be true as per the principles of psychology. Even though the appellant and Mr.Shinde have attempted to dilute this statement during the course of cross-examination of Mr.Shinde by the appellant, it got corroborated due to the finding of huge cash deposits in different fund accounts. The cash deposits in fund accounts were, however, claimed by the appellant to be arising from coupon donations collected through dedicated volunteers. Such coupon donations from unidentified persons in unsubstantiated manner was claimed to have been collected through volunteers from villagers in small denominations, for depositing in the corpus funds, in crores. The residence of Shri Shinde situated at "Ashirvad", Bharati Nagar, Paud Road, Pune was also covered in search and he was found in possession of cash of Rs.73,400/- and jewellery of Rs.2,95,553/- only. His other assets found at residence in the form of investments and immovable property were also found to be nominal compared to the huge claim made by him in the context of huge cash seizure made at Bharati Vidyapeeth Bhavan relating to his consultancy activity. However, the same was commensurating with his salary income of Rs.17,000/- p.m. From this finding also, the inference was made that the money seized and the charging of money in addition to fee as so called consultancy charges, could not belong to him as in that case, assets commensurating with the income being claimed should have been found at residence also. Similarly, if the statement of Shri Shinde regarding consultancy income would have been correct, then more of such income and documents should have been found at the residence than at the office of the appellant. This very fact that no such cash or incriminating documents was found at the residence goes to prove beyond doubt that Mr.Shinde was only a pawn in the system. The statements given by Shri Shinde during search and subsequently during cross-examination on the request of the appellant and his re-examination by Addl.CIT on behalf of CIT(Central) during the course of proceeding initiated u/s.12AA(3) for the cancellation of registration, in attempt to grant support to the appellant, were not given much weightage by the Department as the same were considered tutored and in obligation to his employment, to defend the employer. In his statement given during cross-examination on the request of the appellant and re-examination, Shri Shinde apparently made attempt to confirm that* *the money found during search belonged to him and the same was earned as consultation fee without the knowledge of BVP and also to negate the adverse statement earlier given. However, for the reasons discussed above they were not given much weightage either by the AO while making the assessment or the CIT(Central) while passing order u/s.12AA(3) or granting approval u/s.142(2A). For getting elaborate details of the documents found and statement etc. given by Shri Shinde and other associated materials and developments, assessment order of the AO passed in this case as well as the order of the CIT(Central) passed u/s.12AA(3) can be referred to. Such findings in the facts and circumstances of the case look logical and acceptable.*

5.5 The statements of Shri R.D. Shinde, recorded on 20/7/2005 and thereafter including his cross examination made by appellant and re-examination made by the Addl.CIT on behalf of CIT(Central) during the course of 12AA(3) proceedings, are vital, important and relevant. Both the department and the appellant have tried to rely on them selectively and conversely. However, if his statement is seen considering the fact that he was the trusted employee of appellant entrusted with the job of collecting money while granting admission in certain cases (especially under management quota) then inference becomes easy and it more or less shows that the departmental understanding and reliance is correct and credible. From the perusal of statements recorded during survey and search and thereafter during cross examination on the demand of the appellant and in the re-examination made by Addl.CIT, it is not difficult to see that Shri Shinde except for certain leakages made regarding the truth has made efforts to give a different colour to truth. Shri Shinde can be seen to be working in collusion with the appellant in defending appellant's interest. The interest and purpose is not difficult to see and notice. Thus, the statements given on the evidences found during search need to be looked from that perspective. Shri Shinde in his statement, in response to question No.6 recorded u/s.133A(3)(iii) dated 20/7/2005 stated that he looks after admission work of the trust. In the same statement in response to Q.No.12, he further admitted that the admissions under management quota are processed by him and placed before the committee. Though he admitted that the cash of Rs.3,14,83,870/- found, was his commission income, he also admitted that the same amount was *representing the commission earned in last 15 days. In another statement recorded u/s. 132(4) on 21/7/2005, in response to Q.No.4, he admitted that he has been handling this work for the last 2-3 years. To negate these findings, it has been argued and stated by the appellant that he has been doing it without the knowledge of the appellant which in the facts and circumstances of the case does not seem likely. For further strengthening this argument, returns declaring such income in the hands of Shri Shinde have been filed and he has been stated to have been removed from the service after 21 months of the search. These aspects have been dealt in detail by the AO and the CIT in the orders passed by them u/s.143 r.w.s. 147 / 153C and 12AA(3). On careful consideration, I find that the arguments of the department are stronger and the evidences created by appellant through Mr. Shinde are self serving and as an afterthought of search.*

5.6 Furthermore, the documents seized in Bundle No.2 of Panchnama dt.21/7/2005 had noting of the following nature, clearly establishing that the figure prefixed to the word "fee", represent donation/capitation fee collected in lieu of admissions granted. Shri Shinde in response to Q.No.17 and 18 of statement recorded on 20/7/2005 has admitted that the prefix amounts in the above mentioned documents are in lakhs and represent amounts to be collected from students in addition to regular fee. As such amount cannot possibly be given by students, by any stretch of imagination, to Shri Shinde, the Accounts Manager, as is claimed by him and the appellant, the same was held to be belonging to the BVP. Some such noting given below gives its nature quite clearly to establish, as per the AO, that the money collected was by the BVP and for the admissions :-

Page No. 5	*7+fee*	*Page No. 6*	*13+fees*
Page No. 9	*12+fee & 5+fee*	*Page No. 16*	*7+fees & 15+fee*
Page No.29	*35+fee*	*Page No. 30*	*1+fee*
Page No. 52	*7+fee*	*Page No. 56*	*9+fee*
Page No. 60	*12+fee*	*Page No. 61*	*11+fee*
Page No. 65	*10+fees*	*Page No. 76*	*3 to 4+fee*

It is worthwhile to note that at no place reference to "consultancy" is appearing in these documents. Shri Shinde however, in response to question No.17 and 18 of his statement dt.20/7/2005 admitted that the prefix amounts are in lakhs and the same are to be collected from students in addition to regular fee. The total of such collections for A.Y.2006-07 was determined by the AO to be at Rs.9,47,21,850/-.

The " + " appearing in the above referred documents have been argued by the AO to indicate that the cumulative amount has been quoted to the students seeking admissions on behalf of the trust by its trusted employee Shri Shinde. It has been also stated that the above bunch of documents in addition to containing the entries of the nature mentioned above, also has notings stating –

"READY TO PAY .... + FEE",
"READY TO PAY FEE ONLY"

"AMOUNT READY TO PAY AS LESSER THAN DEMANDED"

These have been taken by the Department to support its contention noted above.

5.7 From the documents found and seized from Shri Shinde, it was seen that even the cases of students with the reference of trustees and their family members were coming to Shri Shinde for admission as was apparent from the noting available on such documents in the handwriting of Shri Shinde wherein he had noted such references on the slips. This was taken as an evidence for the pivotal role Mr. Shinde was playing in the affairs of collecting money / capitation fee while granting admissions. Reference in this respect has been made to loose paper Bundle No.1 seized from the premises of Shri R.D. Shinde, where references of public personalities as well as trustees are noted. At page 1 and 2 of this bundle is noted the reference of Shri Shivajirao Kadam in the case of Kumari Anjali Girdharilal for BDS course- "student ready to pay 2+ fee". Similar such references are available as per the department at page No.3, 4, 40, 41 and 64 of this bundle with references of VI P and the amount of capitation fee to be charged along with the fee. The fact that additional money / capitation fee was charged from an aspiring student even in a case whose reference came from VI Ps and trustees, further goes to show that the collection was of the nature of capitation fee only, as had it *been consultation fee being taken by Shri Shinde without the knowledge of the BVP, Mr. Shinde couldn't have dared to demand so because in that case he certainly would be taking the risk of getting definitely caught by the management of the BVP. The above notings, therefore clearly show that Mr. Shinde is taking note of developments to present it before the trustees who would be taking the final call for granting admissions and take stock of the cash collections made in this manner.*

5.8 As per the department, collection of capitation fee for admissions given in various professional courses like MBBS, MD, BDS, MBA etc. can be seen from documents seized in bundle 1 (page 85), bundle 2 (page 24 & 39), bundle A1 (page 19), bundle A4 (page 1), bundle A6 (page 13 - 20, 31) and bundle A-8(page 140). Following students were found to have been given admission in the academic year 2005-06, as noted in the assessment order at page 38.

S No	Bundle No	Page No	Name of Student	Capitation Amount	Institute
1	1	85	Gesti Sabharwal	125000	BV Engineering College, Pune BE (Civil)
2	2	24	Prashant Patil	200000	BV Management Institute, Pune
3	2	39	KCKurian	100000	BV Nursing College, Pune
4	A-l	19	Narayan Kumar	1 75000	BVEngg College, Pune BE(Chem)
5	A-4	1	Mcdvika Singh	150000	BVEngg College, Pune BE(Comp)
6	A-6	13-20	Sidharth Shukla	125000	BVEngg College, Pune BE (Prodn Engg)
7	A-6	31	Bhav inkumar Maheshbhai Tilva	700000	BV Medical College, Sangli
8	A-8	140	Pooja Ravindra Shah	650000	BV Dental College, Mumbai

5.9 Shri Shinde in response to Q.No.7 & 8 of his statement recorded on 21/7/2005, on the issue of collection of money (consultations) in earlier years, admitted that such additional income earned by him in these two years at around Rs.2 crores each, which according to him, were deposited in the banks in Building Fund Account and Trust Account. The AO thereafter found huge cash deposits in many bank accounts of different institutes mainly relating to Imarat Account and held them to be taxable. Example of such *deposits has been given by the CIT in his order passed u/s.12AA(3) and the same is quoted below :-*

Name of the Accountholder	Account Details	Amount of cash collected	Amount transferred to BVP
Bharati. Vidyapeeth Law college Imarat A/c	SB A/c No 64818, Bharati Sahakari Bank Main Branch	95, 70, 000/-	92,85,112/-
B.V.D.URajiv Gandhi Institute of Information Technology Imarat	SB A/c No 64819, Bharati Sahakari Bank Main Branch	1,31,95,900/-	1,15,90,000/-
B.V College of Fine Arts Imarat	SB A/c No 64820, Bharati Sahakari Bank Main Branch	1,06,12,000/-	1,03,50,000/-
B.V Abhijit Kadam Institute of Management Imarat	SB A/c No 64821, Bharati Sahakari Bank Main Branch	95,21, 000/-	85,31, 000/-
Total		4,29,98,900/-	

This collection was stated to be for the period of June, 2004 to July, 2005 for the above four bank accounts only.

5.10 Such deposits, however, were claimed by the appellant to be arising out of coupon donations collected through volunteers. The deposits running in crores have been introduced in books as corpus donations. The figure of such deposits, as given at page 9 of the assessment order is quoted below:-

A.Y.	*Amount*
1999-00	*Rs.1,13,03,948.00*
2000-01	*Rs.3,33,16,876.82*
2001-02	*Rs.354,90,164,82*
2002-03	*Rs.3,85,14,459,82*
2003-04	*Rs.4,05,44,516.82*
2004-05	*Rs.4,06,38,016.82*
2006-07	*Rs.4,06,38,016.82*

It was found by the AO and not disputed by the appellant, that the coupon donations are in the denomination of Rs.25/- to Rs.1000/- and they do not bear the name, the signature, the address *and such other vital details of donors. The word 'corpus' was printed in such coupons. The AO therefore, held that these donations are in the nature of unexplained deposits. The evidence produced by the appellant through the statements of certain volunteers who claimed to have collected such coupon donations, were held not credible in the facts of the case. The appellant has raised objection as AO didn't cross examine them. The AO has stated that much purpose would not have been served as they were tutored. On the contrary, strength was drawn from the statement given by Mr. Shinde that the money / capitation fee collected has been partly deposited in such fund accounts, to say that they are linked to the capitation fee / collection of money for granting admissions. It was stated that the onus is on the assessee to prove that the particular donation whether coupon or otherwise, has in fact been given by the donor voluntarily. The claim of the appellant that the rural folk after knowing the good work of the trust, have voluntarily given these donations could not be accepted in the facts of the case. It was observed by the AO that such large rural population cannot be expected to know about the activities of the trust, when they hardly affect them. Such collections were seen in large quantity not only in the case of the appellant trust but also in the case of other group trusts who are hardly known to have any activities which could influence / impact the large rural population. A table showing such collections for different trusts has been given at page 68 of the assessment order and the same is quoted below:-*

Sr. No.	*Name of the trust*	*AY 99-00*	*AY 00-01*	*AY 01-02*	*AY 02-03*	*AY 03-04*	*AY 04-05*	*AY 05-06*	*AY 06-07*
1	*Bharati Kala Academy*	*22.63*	*48.05*	*23.45*	*37.50*	*24.20*	*8.28*	*9.00*	*26.70*
2	*Yeshwantrao Smriti Nyas*	*22.63*	*25.30*	*00.65*	*1.31*	*0.00*	*0.00*	*00.05*	*0.00*
3	*Patangrao Kadam Pratishtan*	*32.40*	*47,25*	*24.36*	*36.20*	*23.00*	*8.60*	*18.90*	*25.80*
4	*Yeshwantrao Mohite Pratishtan*	*22.70*	*25.20*	*00.10*	*00.15*	*0.00*	*0.00*	*0.00*	*0.00*
5	*Bharati Vidyapith Medical Foundation*	*9.10*	*31.25*	*48.45*	*43.50*	*53.55*	*13.05*	*50.93*	*38.65*
6	*Abhijit Kadam Memorial Foundation*	*0.00*	*0.00*	*43.75*	*45.22*	*29.10*	*29.26*	*9.85*	*26.75*
7	*Matoshri Bayabai Kadam Memorial Foundation*	*22.28*	*46.35*	*46.30*	*36.83*	*47.40*	*19.15*	*8.40*	*25.48*
8.	*Sonhira Foundation for Rural Development*	*0.00*	*47.70*	*28.97*	*38.15*	*23.05*	*3.75*	*8.05*	*26.05*
9	*Bnarati Krida Pratishtan*	*22.70*	*47.31*	*27.00*	*37.35*	*24.00*	*8.00*	*8.95*	*26.75*
	TOTAL	*154.44*	*343.16*	*243.03*	*276.21*	*224.3*	*90.09*	*114.13*	*196.18*

In view of the discussions made above and in the absence of any contrary evidence available with the appellant, such deposits *appearing in the funds as capital receipts were held taxable by the AO.*

5.11 The AO has also relied on the statements of 15 persons as quoted in the assessment order, in whose case the Investigation Wing in the course of their post search enquiries obtained evidences on oath in support of the claim that those persons had paid donations / capitation fee in addition to the regular fee for securing admission of their wards. These details have been given by the AO at page 60 of the assessment order and the same is quoted below:-

Sr. No.	Name of the donor	Amount (Rs.)	Purpose
1.	P.Mukherjee	80,000/-	Admission Grand children
2.	Jyoti P Puri	15,00,000/-	Admission for MBBS
3.	Sulochana Meharotra	1,00,000/-	Admission of son B.Tech
4.	Smt. Krishna Agarwal of Rotomac Industries	20,00,000	Admission of daughter
5.	Yatin Takkar	3,30,000/-	Admission
6.	Kirit B Patel	5,00,000/-	Admission of son
7.	AshokVPatel	10,00,000/-	Admission of daughter for MBBS
8.	Suman Gitesh Shah	14,00,000/-	Admission to MBBS
9.	Dr. Ajay Patel	3,00,000/-	Admission
10.	Dr. J.V.Shukla	1,00,000/-	Admission for daughter for BDS
11.	Ashok Kumar Roy	2,00,000/-	Paid BVMF for admission
12.	Dr. P. K. Gupta	9,50,000/-	for admission of Ravi Pratap
13.	Shri K. R. Naik, Link India Ltd., Mumbai	10,00,000/-	Admission for Medical Education.
14.	Shri Vijay Singh Thorat, Mumbai	4,00,000/-	-do-
15.	Y .E. Shroff, Mumbai	9,00,000/-	Donation admitted for the purpose of Medical Education.

The above exercise clearly establishes that the appellant has in certain cases accepted the donations/capitation fees in cheque from the students or their guardians in the name of group trusts. In other words AO held even donations from identifiable cases also as of for securing admissions.

5.12 The details of students admitted under management quota in various college/institutions during academic year 1999-2000 to 2005-06 were collected and have been enclosed at Annexure-ll of the assessment order. As the list is huge, the same is not quoted below but can be referred to know the extent of admissions which have been granted under this quota. The documents seized further indicated that the rate of capitation fee for different courses were as below (as given at page 61/62 of the assessment order :

Name of the course	Rates for admission
Medical (MBBS)	15 lakhs to 20 lakhs
B.D.S.	6 lakhs to 7 lakhs
M.S. (Ortho)	30 lakhs
Electrical Engineering	2 lakhs
Computer Engineering	1.5 lakhs
Information Technology	1 lakh
Civil/I. T./Chem. Engg.	2 lakhs
M.Sc. Nursing	0.75 lakhs
M.S. (Surgery)	25 lakhs
Hotel Management	1 lakh
B.Sc. (Nursing)	1lakh
M.B.A.	1.5 lakh
M.D. (Gynac.)	35 lakhs to 40 lakhs
M.C.A.	1.5 lakhs
D.G.O.	20 lakhs.

AO, with the above two findings could have calculated the estimated amount of such earnings but has restricted the additions to the figures which were clearly inferable. However, from the rate and the number of seats given in management quota the possible extent of such collections could be observed.

5.13 Along with the appellant trust, searches were also carried out at the premises of Shri Rajendra Singh Yadav, who was known to be acting as agent for arranging admissions in different colleges of Pune including that of assessee group. From the documents seized and statements recorded the AO concluded that Mr. Yadav was arranging admissions for Bharati group also, on payment of capitation fee.

5. 14 The list of certain donors submitted by the appellant before the AO in support of their claim that the donations shown by them in the books are genuine, were test-checked by the AO and the findings have been given at page 64, and the same is given below :-

SI. No.	*Name of the Donor*	*Amount (Rs.)*	*Date*	*Remarks.*
1	*Rqjkumar Virbhadra Shete*	*35,000*	*31-3-2003*	*Cash* No compliance.*
2	*N.U. Rqjmane*	*10,000*	*31-10-02*	*Cash - Party denied.*
3	*S.K. Kothari*	*6,000 15,000*	*10-12-02 6-01-2005*	*Claimed to be paid at the request of the Trust either in the form of Donations or Advertisement, as the Party is using the premises ofBVMF without paying any Rent*
4	*B. G. Thopte*	*15,000*	*31-10-02*	*Cash - Party denied.*
5.	*S. R. Swami*	*1,00,000*	*25-7-2000*	*Payment made towards admission in the College.*
6.	*M/s. Fleet Guard Filter Put Ltd.*	*10,00,000*	*30-4-2005*	*Party accepted, but the donations were given at the request of the Trust*
7.	*D.S. Choudhary*	*5,000*	*30-10-02*	*Cash - Party denied.*
8.	*Mrs. Meera Dudhane*	*10,000*	*30-10-02*	*Cash - Party denied.*
9.	*Mr. J.R. More*	*5,000*	*30-10-02.*	*Cash - Incorrect address of the party.*

Through the above, the AO has tried to establish that the contention of the appellant made before the AO was not found correct even in respect of cases which were offered for examination.

5.15 Documents seized vide bundle No.A-2, A-3, A-8, A-9 and bundle No.4, from the room of Shri R.D. Shinde, have been referred to show utilization of money collected by the trust for the personal benefits of trustees while meeting the expenditure relating to their agricultural farms and others (credit cards etc.) Subsequent to the findings of the nature described above and on receipt of a report from the AO, as described in the order passed u/s.12AA(3), the CIT (Central), Pune initiated action u/s.12AA(3) and cancelled the registration granted in the past u/s.12A on 13/9/1973, vide his order dated 8/11/2007 after making necessary inquiries and giving opportunity of being heard to the appellant. In this order, the activity of the trust for the reasons described therein in detail were held to be not genuine as a consequence of findings made during search / survey and other post search inquiries conducted by the department. This order of cancellation of registration was challenged by the appellant in appeal filed with ITAT, Pune in ITA N0.1793/PN/08. The Hon'ble Bench in their Oder dt. 19/9/2008 have vacated the order of the CIT(Central) passed u/s.12AA(3) and restored the registration granted u/s.12A by saying that "For the reasons set out above, and respectfully following the decisions of various coordinate benches on the scope of powers u/s.12AA(3), we hold that the impugned order was vitiated in law in as much as the learned Commissioner did not have powers to cancel the registration granted u/s.12A."

7. The Assessing Officer has given the details of the seized documents in the assessment order which are as under:

The Details of seized documents as per annexure A of Panchnama dated 22.07.2005, belonging to the asses see trust are as follows—

I. Panchnama dt 22 .07.2005

- Bundle No. 2 :- Page No. 1 to 4 - Bills of M/s Lokmanya Auto Center in the name of Bharati Vidyapeeth.

- Bundle A-2 :- Page No. 17 - Expenditure voucher of Bharati Vidyapeeth. An amount of Rs. 1500/- given as advance to Shri V. G. Dubalfor office work.

- Bundle A-2 :- Page No. 16 - Expenditure voucher. An amount of Rs. 5500/- given to Shri Harale.

- Bundle A-2 :- Page No. 18 - Expenditure voucher. An amount of Rs.10,000/- given to someone, name not identified.

- Bundle A-2 :- Page No. 19 - Expenditure voucher. An amount of Rs.25,000/- given to same unidentified person.

- Bundle A-2 :- Page No.21 to 22 - Details of payments made to Shri Rajiv Sathe, Architecture, payment made by Bharati Vidyapeeth, Pune.
- Bundle A-2 :- Page No. 23 to 25 - Details of payments of Rs. 25,000/- made by Bharati Vidyapeeth to Smt. Apama Deshpande.

- Bundle A-2 :- Page No. 42 to 46 - Details of payments made to M/s S.K. Granite by Bharati Vidyapeeth, Pune.

- Bundle A-2 Page No. 93-:- Details of payment Rs. 3,000/- made to Shri Rajendra Mohite by Bharati Vidyapeeth, Pune.

- bundle no A-2 Page No. 94 to 98-:- Bills of diesel expenses of Bharati Vidyapeeth, Pune.

- bundle no A-2 Page No. 101 to 106-:- Expenditure details of Bharati Vidyapeeth, Pune.

- Bundle No. A-3 :- Page No. 35 to 48 - Car expenses bills of Bharati Vidyapeeth, Pune.

- Bundle No. A-4 :- Pages 11 to 12 & 14 to 18 - Counterfoils of cash deposits in Bharati Sah. Bank Ltd. total of Rs. 21.20 lakhs.

- Bundle No. A-4 :- Page No. 20 to 25- Details of labour payment made to M/s Valmiki Enterprises of Rs. 1,06,400/- by Bharati Vidyapeeth.

- Bundle No. A-4 :- Page No. 26 - Details of payment of Rs. 10,000/- to Shri. Amrale Rohidas Dyanoba as a advance for office work by Bharati Vidyapeeth.

- Bundle No. A-8 :- Page No. 6 to 27 - Details of payments made to Shri D. G. Kanase of Rs. 22, 000/-.

- Bundle No. A-8 :- Page No. 28 to 30 - Details of payments made to Shri Rajiv Sathe of Rs. 1,25,000/-.

- Bundle No. A-8 :- Page No. 31 to 32 - Details of expenditure incurred by B.V. Medical College (B.V.M.C.), Sangali. Total Rs.6,34,479/-

- Page No. 33 to 37- List of teaching staff of B. V.M.C. Sangali.

- Bundle No. A-9 :- Page No. 45 - Counterfoil of cash deposit in Bharati Sahakari Bank in Poona College of Pharmacy building fundA/cNo. 69557 Rs. 1,75,000/-.

- Bundle No. A-9 :- Page No. 50 - Expenditure voucher of Bharati Vidyapeeth Trust.

- Bundle No .15:-This is a long book maintained by assessee trust as a inward register maintained for applications received under management quota for admission in MDS course.

- Bundle no 16- this is long book maintained by assessee trust as a inward register for receiving applications under management quota for admission in medical, dental, BHMS and BAMS course.

8. The Assessing Officer has noted that Shri R.D. Shinde in his statement recorded u/s. 132(4) on 27-07-2005 has stated that the amount of Rs.2 Crores on account of consultancy charges from the students has been deposited in the past to the building (Imarat) fund and equipment fund of the various trusts of the Bharati Vidyapeeth Group. It is further noted by the Assessing Officer that on examination of the seized books of account of the assessee trust shows that the amount credited in various dates in the Ledger Account of the development fund and trust fund claimed to be the receipts towards the corpus of the trust have been received entirely in cash and the donors have not been mentioned in the books of account and hence, the receipts on account of development fund and trust have been credited in the books are not genuine and also not from the genuine source.

9. On the basis of the above facts and case of the Department we have to address following core issue of the controversy –' whether on the facts of this case, the assessee is not entitled to get the benefit of exemption u/s. 11 for the reasons that the assessee has violated the provisions of Sec. 11(5) r.w.s. 13(1)(d) by investing the funds in the modes other than those prescribes in the said provisions, (ii) the assesse trust has violated the provisions of Sec. 13(1)(c) of the Act and (iii) the assessee trust is charging the capitation fees/donations to the students for their admissions. These issues arises from Ground Nos. 3, 5, 6 & 7 of the assessee's appeal. There is one more issue whether the Ld. CIT(A) justified in holding that as an activity of the assessee trust is covered under the provisions of Sec.10(23C) and hence, the claim of the assessee for getting the exemption of its income u/s. 11 cannot be entertained and this issue arises from Ground No. 4.

10. We first address to the issue arising from the Ground No. 4. The relevant discussion on this issue is in the order of the Ld. CIT(A) on Page Nos. 36 to 38 more particularly in Para No. 6.2 but there is no discussion on this issue in the assessment order. The operative part of the discussion in Para No. 6.2 of the Ld. CIT(A) is as under:

> *6.2 Education is a professed responsibility of the state having important bearing on the welfare of the society at large. Therefore, the legislature has included education as a charitable purpose to encourage more and more people to contribute to the attainment of this object. Tax exemption given to organizations engaged in such activities are indirect financial aids to such organizations. In view of the above, checks have been built in the scheme of provisions relating to these exemptions. To further augment this cause, benefits are also granted to the public also in their taxes u/s. 80G or so, who contribute money to organizations, engaged in such activities. Such large financial incentives increases the possibility its abuse which necessitates in turn the existence of strict restrictive clauses and regular checks. Therefore, very rightly such checks and balances have been built in these provisions, which can be seen from a careful*

reading of provisions contained in section 11 to 13 and 10(23C) of the I.T. Act. In fact, it can further be seen that the rigours for allowing exemption is higher in respect of cases covered u/s.10(23C). A plain study of all the provisions relating to the assessment of assessees engaged in the activity of charitable purposes claiming exemption from payment of taxes, reveal a clear scheme. As per the same, firstly, the activities should be of the nature of charitable purposes as defined in section 2(15) of the Act. Thereafter, such assessees have to follow the procedure as are laid in provisions contained u/s.11 to 13 or 10(23C) of the IT. Act. Any assessee engaged in any activity of charitable purposes can follow the procedure laid in section 11 to 13. However, if the activities are such which are covered under 10(23C)(iiiab) or (iiiac) or (iiiad) or (iiiae)or (iv) or (v) or (vi) or (via), then they are supposed to follow the procedure laid in these specific sections of the Act. A perusal of the sub-clauses available in section 10(23C) relating to exemption to trusts etc., very clearly show that they are generally applicable in the cases who are engaged in the establishment and running of educational institutions or university and hospitals of definite descriptions, which are of national spread and significance. The procedure and the concept based on which it has been laid is generally same in both the cases but the same appears more stringent in case of 10(23C). It is a trite law that the specific provisions cannot override general provisions. On that concept, the Hon'ble ITAT Hyderabad 'B' Bench in the case of Vodithala Education Society Vs. Astt. Director of IT. in ITA No.11387 Hyderabad / 2006 reported in 2008 20 SOT 353 (Hyd.), following the judgment of the Kerala High Court given in the case of Brahmin Educational Society Vs. ACIT (1997) 140 CTR (Ker.) 262: (1997) 227 ITR 317 (Ker.) held that "when the legislature enacted a specific provision for grant of exemption of income in respect of educational institutions under ss.10(23C)(iiiab), 10(23C)(iiiad) and 10(23C)(vi), the general provision contained in s. 11 may not override the provisions of specific section. In other words, the income of such educational institutions / hospitals, as are covered in these provisions, has to be examined under ss. 10(23C)(iiiab), 10(23C)(iiiad) and 10(23C)(vi) and not under s. 11 of the I.T. Act.

11. We have heard the Learned Counsel. The argument of the Learned Counsel is that Sec. 11 of the Income-tax Act applies to all the charitable trust including the educational trust and if the assessee satisfies the

conditions of Sec.11 of the Act then exemption cannot be denied. He submits that there is no statutory bar in Sec. 11 for excluding the trusts or institutions having objects of educational activities. The Learned Counsel also referred to Sec.2(15) and submits that the said section defines charitable purpose which also includes "Education". Per contra the Ld. CIT (DR) relied on the order of the Ld. CIT(A). There is a merit in the argument of the Learned Counsel. As per the definition of Sec. 2(15) of the charitable purpose the education is one of the purpose specified in the said provision and more over even though the registration was cancelled by the Ld. CIT exercising his powers u/s. 12AA(3) of the Act but the fact is that same has been restored by the Tribunal by squashing order of the Ld. CIT, Pune. The assessee trust was granted the registration u/s. 12A of the Act on 13-09-1973 only after examining the objects of the trust that the main object of the assessee trust was to impart the education and running of the educational institutions. Moreover, even presuming that assessee is also entitled for getting the exemption u/s. 10(23C) of the I.T. Act, in our opinion it is option of the assessee whether to avail the benefit u/s.10(23C) of the Act or to opt for the benefits of Sec. 11. We do not agree with the stand of Ld. CIT(A) that the assessee's case is squarely covered u/s. 10(23C) of the Act and hence, being it is special provision the assessee cannot claim the benefit of Sec. 11. The Ld. CIT(A) has referred to the decision of the Hon'ble High Court of Kerala in the case of Brahmin Educational Society Vs. ACIT, 227 ITR 317 (Ker). In the said case the assessee petitioner claimed the exemption u/s. 80G of the I.T. Act for the donations received. The CIT had granted exemption u/s. 80G for the A.Ys. 1980-81 and 1981-82 which was subsequently renewed also for the years 1982-83 to 1983-84. The ITO wanted to know whether the petitioner has fulfilled the condition laid in Sec. 12(a) & (b) of the Act as the assessee was also having the "Chit (Kuries) business" and income from the Chit (kuri) business was applied for the education purposes. The assessee petitioner also contended that it claim exemption u/s. 10(22) of the Act. In the said case, the petitioner was not claiming exemption u/s. 11 or Sec. 12 of the I.T. Act. In the said case nowhere it was claimed that the assessee was entitled for the exemption u/s. 11 and hence, the interpretation made by the Ld. CIT(A) is totally misplaced and not relevant to the assessee's case. In our opinion the facts of the case are different. We have to consider the ratio of any decision on the facts of the said case. In our humble opinion the principles laid down in the case of Brahmin Educational Society (supra) cannot be applied to the facts of the assessee's case. We, accordingly, hold that the CIT(A) was not justified in giving the finding that as the assessee income is exempt u/s. 10(23C), hence, the assessee cannot claim the benefit of Sec. 11. Accordingly, Ground No. 4 is allowed.

12. Now we proceed to address Ground No. 5 taken by the assessee. The relevant discussion on this issue is on Page Nos. 81 to 92 of the assessment order i.e. Para Nos. 10 to 10.17 and Page Nos. 76 to 95 (Para No. 12.1 to 12.5) of the Ld. CIT(A)'s Order. We prefer to reproduce relevant facts as well as discussions from the order of the Ld. CIT(A) for the A.Y. 2006-07 and in the said year the assessee has acquired the shares of the following institutions or Co-operative Bank:

A.Y. 2006-07	Shares in Abhyuday Sahakari Bk 25,000/- Shares Bharati Sahakari Bank Boys Hostel Kolhapur 3,31,000/- Shares Bharati Sahakari Bank (Boys Hostel Sangli) 4,25,000/- Shares Bharati Sahakari Bank (Central Bank) 34,57,160/- Shares Bharati Sahakari Bank E.M. School Balewadi 3,30,950/- Shares Bharati Sahakari Bank Girls Hostel Kolhapur 3,57,500/- Shares Bharati Sahakari Bank Girls Hostel Panchani 2,56,000/- Shares Bharati Sahakari Bank (Girls Hostel Sangli) 4,25,000/- Shares Bharati Sahakari Bank (Hospital Sangli) 4,25,000/- Shares Bharati Sahakari Bank (Medical College, Sangli) 4,25,000/- Shares Bharati Sahakari Bank (Pharm.College Pune) 5,600/- Shares Bharati Sahakari Bank - Sangli College 3,31,000/- Shares Bharati Sahakari Bank (Engg College Delhi) 1,000/- Shares Bharati Sahakari Bank (Engg. College, Kolhapur) 2,50,000/- Shares Bharati Sahakari Bank (Engg.Colllege,Pune) 55,000/- Shares Bharati Sahakari Bank (JNIOT)" 100/- Shares in Bharati Sahakari Bank (P.Press) 25,000/- Advance Umesh Goyal Delhi 1,06,19,255/-.

13. In this case, the assessee has made the investment in shares of Abhyuday Sahakari Bank and Bharati Sahakari Bank Ltd from which the assessee has obtained loans for its different institutions situated at different locations/towns. We confine ourselves to the investments made by the assessee for acquisition of shares in this year which is alleged violation of Sec. 11(5) r.w.s. 13(1)(d) and the discussion on this issue by the Ld. CIT(A) is as under:

14.1. Bharati Sahakari Bank:

As per the appellant, as contended at different stages described above, the shares in the above bank were purchased to become the member of the society running the bank with the objective of availing loans for the purpose of the trust. The loans availed, as per the appellant are verifiable from the balance sheet of the trust. The copies of the bye-laws were enclosed in their submissions before the AO. It was also contended that the amount of the loan availed was linked to the number of shares required to be purchased. Confirmation from the bank for the same was submitted. The circular of the RBI on linking of share holding to borrowing was also submitted. Further, it was stated that the bank had deducted money from the loan sanctioned against the purchase of the share, therefore according to them, it could even be treated as expenditure incurred for taking loan for the purpose of the trust activities. The AO on the other hand, has tried to harp on the provision of the Act given in s.11(5) and stated that such investing is not permitted and therefore, this tantamounts to violation of s.11(5) attracting s.13(1)(d). In the submission made during appeal, the appellant in addition to making the above submission, further submitted that as the amount invested in the share of the Bharati Bank were for raising the loans in connection with the objects of the trust, the purchase should be treated as application of the money. For this they have relied on (i) CIT Vs. St.George Forana Churth [170 ITR 62 (Ker)], (ii) CIT Vs. Sarladevi Sarabhai Trust [172 ITR 698 (Guj)], (iii) CIT Vs. Hindustan Charity Trust [139 ITR 913 (Cal)]. The AO, however, in the remand report reiterated his view point to state that the claim of the assessee is not acceptable as the Act does not provide for any exceptions and the shareholding therefore constitutes violation of s.11(5). The appellant has stuck to his ground in his rejoinder submitted on the remand report. Therefore, the fact remains

> *that the appellant has made the investment for the purpose of availing loan which have been utilized for the purpose of the trust. The dispute that remains is whether in the facts and circumstances of the case and in law, the investment made in the share of the above bank could be held as violation of s. 11(5) as there is no exception in the said clauses or not.*

14. So far as in respect of the investment in shares of the Bharati Sahakari Bank Ltd. the contention of the assessee is that the shares of Bharati Sahakari Bank Ltd. were purchased for the purposes of obtaining the loans from the Bank from time to time for developing infrastructure of different institutions and also enjoying Over Draft facility. It is condition as per the bye-laws of Bank that the loans would not be sanctioned unless the assessee had purchased particular number of shares and becomes member. Even if both the authorities have also considered and discussed the investment in the shares of K.T. Kukkut Palan Sangh, Sagareshwar Soot Girni and Sonhira Sugar Factory (all Co-operative Societies) but we find that the assessee had not made any investment in those societies during the A.Y. 2006-07. Hence, in our opinion, we need not go to examine the acquisition of the shares in above institutions/co-operative societies by the assessee in preceding years. So far as the acquisition of the shares of the Bharati Sahakari Bank Ltd. is concerned nowhere it is controverted before us by the Revenue that the assessee has obtain a loan from the said Bank for the purpose of carrying out activity of the trust. These issues stands squarely covered in favour of the assessee by the decision of the ITAT, Pune in the case of Bharati Vidyapeeth Medical Foundation ITA Nos. 969 & 970/PN/2010 order dated 31-12-2012 in which it is held as under:

> *18. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. In the instant case the AO denied the exemption u/s.11 on the ground that there is violation of*

provisions of section 13(1)(d) r.w.s.11(5) since the assessee has made the following investments or continued to hold the investments for the impugned assessment year as under :

a.	*Shares in Bharati Sahakari Bank*	*Rs.25,250/-*
b.	*Advance to Bharati Vidyapeeth- Deemed university Medical College*	*Rs. 56,73,499/-*
c.	*Advance to Ayurved Hospital*	*Rs.1,06,40,099/-*
d.	*Advance to Homeopathetic Hospital*	*Rs. 59,90,016/-*
e.	*Rent advance to Bharati Vidyapeeth(Trust)*	*Rs. 8,76,26,124/-*

18.1 We find the learned CIT(A) held that there is no violation of section 13(1)(d) r.w.s.11(5) on account of items (b) (c) (d) and (e) above for which the revenue is not in appeal. However, he held that by continuing to hold the shares in Bharati Sahakari Bank after the loan was repaid the assessee has violated the provisions of section 13(1)(d) r.w.s.11(5). It is the submission of the learned counsel for the assessee that the shares were purchased under compulsion for obtaining the loan from the bank as per the bye-laws of the bank. The investment in shares amounting to Rs. 25,250/- is very meagre considering the total assets of the trust amounting to Rs.23,24 crores. There was no objection by the revenue in the past for holding such shares in the Bharati Sahakari Bank and exemption u/s.11 was granted, therefore, exemption u/s.11 should not be denied to the assessee. It is the case of the revenue that by investing in shares of the cooperative bank the assessee has violated the provisions of section 13(1)(d) r.w.s.11(5). The loan so obtained from the bank has already been repaid and assessee is having only overdraft from the bank amounting to Rs.12,87,665/-. Therefore, the assessee is not entitled to benefit of exemption u/s.11.

18.2 The submission of the learned counsel for the assessee that in the instant case the assessee had availed loan from Bharati Sahakari Bank for which it had to buy certain number of shares of the Bank as a pre-condition for such loan and the bank while granting such loan had deducted the subscription to such shares could not be controverted by the learned DR. The further submission of the learned counsel for the assessee that there was no objection by the revenue in the past for holding the shares of the Bank in the scrutiny assessments and that still there is overdraft loan from the

Bank also could not be controverted by the Revenue. We find merit in the submission of the learned counsel for the assessee that the purchase of shares of the bank amounting to Rs.25,250/- is very negligible considering the total assets of the trust at 23.24 crores and the same was under compulsion for obtaining loan from the bank and that the bank while disbursing the loan had deducted the amount towards such share subscription from the loan amount and therefore, the same should be considered as an application of income. In our opinion, under the peculiar facts and circumstances of the case the purchase of shares amounting to Rs.25,250/- in the past which the assessee continued to hold during this year cannot be a ground to hold the same as in violation of provisions of section 11(5) r.w.s. 13(1)(d) especially when the assessee is still having an overdraft of Rs.12,87,665/- from the bank as mentioned by the AO. Since the assessee is still enjoying overdraft facility from the bank, therefore, we find no logic on the part of the AO & CIT(A) to hold that there is violation of provisions of section 11(5) r.w.s. 13(1)(d) because the assessee continues to hold the shares once the loan was repaid. Considering the totality of the facts of the case, considering the fact that the revenue had no objection in the past for holding the shares of the bank during the tenure of loan utilised by the assessee trust and considering the fact that the assessee trust is still enjoying overdraft facilities from the bank we are of the considered opinion that there is no violation of provisions of section 11(5) r.w.s.13(1)(d) on account of holding the shares of the bank. In this view of the matter, we set-aside the order of the CIT(A) and the grounds raised by the assessee on this issue are allowed.

15. We, accordingly, hold that the assessee has not violated the provisions of Sec. 11(5) r.w.s. 13(1)(d) of the Income-tax Act. Accordingly, Ground No. 5 is allowed.

16. Ground No. 6 is in respect of the charge that the assessee has violated the provisions of Sec. 13(1)(c) of the Act and hence, benefit of Sec. 11 of the Act cannot be given to the assessee. The relevant discussion in the order of the Ld. CIT(A) is as under:

13.2 The AO has dealt this issue in detail in the assessment order from para 11 to para 12.6. Annexure-IV of the Assessment order has *also been enclosed in this regard wherein the AO has enclosed detail of expenses and diversions made by the appellant for the benefit of the trustees or their relatives as prohibited in the s.13(1)(c). Specific and detailed discussion in respect of expenses on agricultural farm of the trustees has been separately made in the order. It can be further seen that the AO has also referred to the facts of seizure of cash of Rs.3,13,83,870/- and incriminating documents found during the search conducted in the main office of the appellant in connection with the search/survey of its trusted employee Shri R.D. Shinde, establishing collection of cash /capitation fee in lieu of the admissions granted to various aspirants under management quota or otherwise. The AO has also referred to other facts found during search which have been dealt in detail while giving the factual matrix of this case in para 5 of this order. Reliance has also been placed on the discussions made in the order of the CIT(Central) passed in this case u/s.12AA(3). Perusal of the order on this issue shows that the AO has tried to built its case saying that the appellant is engaged in collecting money/capitation fee in cash and part of it has been utilized in depositing the money in the Imarat and other accounts for the trust. The fund of the trust, as per the AO, was utilized for the benefit of the trustees, as evidenced from documents found during search and enlisted in Annexure-IV of the order and also in paras referred to above on this issue, for meeting expenses like agriculture expenses on farms of trustees (Rs.16,19,309/-) and other personal expenses like air tickets etc. and also for diversion of the funds noted in coded words or in abbreviated forms. Considering all these facts and evidences the AO has tried to establish that the case of the appellant is not only that of a trust not genuinely involved in carrying out its affairs properly but is also hit by provisions of s.13(1)(c).*

13.6 I have carefully considered the submissions of the appellant and also the assessment order and the remand report. It is important to note that s.13(1)(c) provides to make the benefits available u/s.11 and 12, inoperative, if the trust is found granting benefits, directly or indirectly to any person defined in s.13(3). Therefore, this section can come into operation even when registration is available to the trust. The AO on the strength of the documents found has concluded that the appellant has granted benefits to persons covered u/s.13(3) by meeting their personal expenses viz. agriculture expenditure on farms, air tickets etc. and diverting funds as indicated in Annexure-IV *of the order. In respect of documents found relating to expenses on agricultural farms, amounting to Rs.16,19,309/-, the ownership is not in dispute. The appellant seem to be admitting that these expenses relate and belong to them but it is being contended that the expenditures have not been met by the trust. According to them, the expenditures have been made from the personal sources and the documents found with Shri Shinde were there because the concerned person looking after the farms had kept it there to be handed over to Shri Kadam. It was explained that such persons keep on coming on regular intervals to submit details in respect of expenses on farms to the trustees and on finding them busy or away from the place used to leave it with either the P.A. or Shri Shinde. It has also been contended that Shri Shinde in his statement has also not stated at any point of time that those farm expenses have been met from trust's money. On careful consideration, I find that the evidences seized establishes that the expenditure has been made. The appellant says that there is no evidence that those expenses were met by Mr.Shinde from Trust money. It may be true but at the same time no credible evidence is available or were produced viz. cheque etc. to show that those expenses were met by trustees either. Therefore, whether it has been met from the funds of the trust or not can only be inferred from the surrounding circumstances. Much strength cannot be drawn from the statement of Shri Shinde as he has been seen from the statements given at different points of time to be making conscious attempt to protect the interest of the trust and trustees. It has also been argued that the expense on agriculture actually shown in the books is approximately Rs. 17,12,000/- which is more than Rs.16,19,309/- found during search. The appellant has argued that such expenses have been assessed by the AO as undisclosed income in the hands of the Kadam Family. The AO on this issue has not made any submission. Furthermore, the appellant has also claimed that the agricultural expenses have been met by the Kadam Family from their own sources. The AO has again not made any submission on this issue but has merely relied on the discussions made in the assessment order. However, in the facts that the details of majority of the expenses were found with Mr. Shinde, goes to support the contention of the AO about meeting the expenditure from the funds of the trust. This is because, the documents found during search is admittedly for periods when the caretaker could not meet the trustees or their PAs and therefore, they have to be quite partial in extent.*

Whereas it seems to be covering almost the entire expenditure shown in the books. That being the case, I find that the actual expenses on the farms has to b§ more than what has been shown in the books and in the facts of the case and the surrounding circumstances available it is not difficult to hold that they must have come from the source AO is claiming. The very fact that these papers were found from Mr.Shinde who was in charge of collecting money / capitation fee shows that he would also be in charge of its utilization. In view of the admitted position that Rs.17,12,000/- was spent and such documents were found with Mr. Shinde and the appellant could not produce any credible evidence of these payments from trustee's banks etc., it has to be accepted that those expenses were met by Mr. Shinde from cash collections. This inference gets further strengthened, if this aspect is considered in the overall facts of the case. The fact relating to the seizure of the cash and collection of money for granting admission etc. has been dealt in detail in para 5 of this order. The assertion of the appellant that the inference in this respect is not correct has also been dealt therein and therefore, repetition is being avoided. In respect of the reference in the submission to the finding of the Auditors in the Special Audit report, that no diversion for personal expenses of the trustees were found, it can be seen that the report of the Special Auditors was limited to the audit of the regular books of accounts maintained by the appellant and not in respect of incriminating documents found during search and therefore, the contention is not correct. The appellant has also raised the issue that the burden is on the department to show that the meaning drawn from the documents is correct. It can be stated in this respect that this issue has already been dealt above. Regarding the issue of presumption available u/s.132(4A), it can be seen that the presumption is available to the department against the appellant as the documents have been found and seized from the premise of the appellant, even if the warrant of search was in the name of the employee, who was suspected to be carrying out the targeted affairs on behalf of the assessee. Even otherwise, the contents are clear and there is no dispute on the ownership of documents. Support of presumptions is required in cases of ambiguity only. All the three judgments relied upon by the appellant on the above issues therefore become inapplicable. Now coming back to the issue of the appellant that the evidences relating to cash seizure, collection of money for admissions and agricultural expenses etc. are only for A.Y.2004-05 to

A.Y.2006-07 and therefore s.13(1)(c) could be invoked in these years only, I find that though the direct evidences are in respect of these years only but the indirect evidences found during Special Audit indicating deposits in cash in various Imarat accounts in all the years bring the case of the appellant within the mischief of s.13(1)(c). The direct evidences of collection of money/capitation fees for A.Y.2004-05 to A.Y.2006-07 got linked to cash deposits in Imarat accounts etc. As such deposits were found in Special Audit in all the years, it automatically gets established that the collection of money/capitation fee were existent from A.Y.1999-2000to A.Y.2006-07. Therefore, illegal earning/violation of s.13(C) get established in all the above years. In view of the above, the cases relied upon by the appellant on the above issue becomes inapplicable. It can further be found and seen that the AO, while describing the violation of s.13(1)(c) has referred to Annexure-IV of the assessment order. The appellant has given submissions in this respect in page 299 to 305 of paper book Vol.I. The perusal of the same very clearly shows that the explanations in most cases are evasive and objected towards protecting the interest of the appellant. In view of discussions made above, I find that the case of the AO to hold the appellant to have violated s. 13(1)(c) in all the assessment years from A.Y. 1999-2000 to A.Y. 2006-07 is correct. All the grounds raised by the appellant on this issue therefore are dismissed.

17. The Learned Counsel submits that during the course of the search against Shri R.D. Shinde some of the bills/vouchers in respect of agricultural expenses of the farms belonging to "Kadam Family" were found with him. In the statement given to the Department Shri R.D. Shinde clarified that the Managers/workers of the farms keep visiting to the office of the assessee trust to meet the trustees for giving the account of the agricultural expenses. On many occasions as the trustees are not available then they leave the papers/bills with Shri Shinde or P.As. but Shri Shinde has not incurred any of the expenses in respect of bills/vouchers found in his cabin. So far as expenditure on the Agriculture farms of the trustees of assessee is concerned, the trustees have made the entire payments and the papers are retained with Shri

Shinde. The Learned Counsel referred to the statement of Shri Shinde more particularly Q. No. 51E on 871, Q. No. 53 on 873, Q. No. 56 on 879 paper book IV.

18. He also referred to the bills and vouchers which were found with Shri Shinde which are placed at page no. 457 to 554 of paper book II. He submits that on none of those vouchers, nowhere it is indicated that Shri Shinde has paid the amount either himself or from the funds of the assessee trust. He argues that admittedly Shri Shinde is the employee of the assessee trust and as per the case of the Revenue he is looking after the accounts and it is logical that the said bills/vouchers could be with Shri Shinde. He also argues that the cash flow statements of the family members on page no. 919 to 924 of paper book No. IV which is in respect of the agricultural farms establish beyond the doubt that the expenditure incurred by them is not from any trust fund or by Shri Shinde which is to the extent of Rs.17,12,000/- but from their own funds. He vehemently argues that the conclusion is drawn by the Assessing Officer and the CIT(A) only on presumptions and surmises and not base on any iota of evidence to support said conclusion. He submits that in para no. 13.6, Ld. CIT(A) admits that explanation may be true but he puts burden on assessee to prove otherwise which is contrary to provisions of Law and well settled judicial principles. He submits that Shri Shinde is the only witness who can explain better whether the expenditure is incurred by him or from the funds of the trust. Moreover, not a single document has been found showing that any expenditure pertaining to Agriculture farms has been incurred by Shri Shinde out of the trust's money. He, therefore, pleads that the conclusion of both the authorities below that the assessee trust violated the provisions of Sec. 13(1)(c) is totally baseless without any supporting or corroborative evidence and it is merely on the suspicion.

We have heard the Ld. CIT (DR), who relied on the findings of the Ld. CIT(A).

19. In this case, the search was against Shri R.D. Shinde not against the assessee trust. It is clear from the fact that only search warrant was issued on the name of Shri Shinde and his personal cabin was searched as well as there was a search in his residence. During the course of search proceedings certain vouchers/bills in respect of expenditure on agricultural farm of the trustees of the assessee trusts were found. We find merit in the argument of the Learned Counsel as it is not disputed that Shri R.D. Shinde, who has explained the said vouchers has nowhere stated that the expenditure was incurred by him or out of money of the assessee trust. Even not a single document / evidence is found like diary or loose papers which support the case of the Assessing Officer for the said conclusion. The fact also remains that the premises belongs to the assessee trust and it may not be uncommon that the Mangers/Workers of the farm may be coming to meet the trustees and as the trustees are either not available or may be busy hence, the Manager/Workers would be leaving the vouchers/bills of the expenditure on the farms house with Shri Shinde who was available there and looking after the accounts of the assessee trust. Merely because the bills and vouchers in respect of the expenditure pertaining to farm house are seized from the cabin of Shri Shinde in assessee premises that do not establish that in fact the expenditure has been incurred by Shri Shinde from the funds of the assessee trust. We do not agree with the finding of the authorities below that the expenditure is incurred by Shri Shinde from the funds of the assessee trust. We, accordingly, hold that there is no iota of evidence to support the said finding of the Assessing Officer and hold further that the assessee has not violated the provisions of Sec.13(1)(c) of the Income-tax Act as there is no evidence to suggest that any direct or indirect benefits

are enjoyed by the trustees by meeting expenses of Agriculture Farms from funds of the assessee trust.

20. The next important and crucial issue arises from the Ground Nos. 7, 8 and 10. The cash to the extent of Rs.3,14,83,870/- was seized from the Almari (cupboard) of Shri R.D. Shinde which was in his cabin. On the basis of said seizure it is held by the authorities below that the assessee trust was involved in collecting the capitation fee/donations for admission of the students and the cash seized from the Shri Shinde from his Almari kept in his cabin in fact belong to the assessee trust. It is necessary to narrate the relevant facts as given in the order of the Ld. CIT(A). The relevant facts pertaining to the seizure of the cash of Rs.3,14,83,870/- has been already analyzed in this order and for avoiding the repetition those facts are to be treated as facts pertaining to issue arising from these grounds. The Assessing Officer dealt with the issue in the assessment order in details from para no. 5 onwards (A.Y. 2006-07) the Assessing Officer has noted that Shri Shinde is a trusted employee of Bharati Vidyapeeth (BV) working as Accounts Officer in the main office. As per his reply in response to Q-6 of statement recorded u/s. 133A(3)(iii) dated 20-07-2005, he looks after admission work of the trust. In response to Q-12 he further stated that applications for admission under Management Quota (MQ) are processed by him and placed before the committee. During the course of search, Shri Shinde admitted that he was earning commission on admissions granted to various aspirants/candidates and the entire cash of Rs.3,14,83,870/- was his commission income for last fifteen days. He further admitted in Q-4 of statement u/s. 132(4) dated 21-07-2005 that he had been handling admission work for last 2-3 years. In sum and substance, as noted by the Assessing Officer Shri Shinde denied that no part of the money seized from his cabin belongs to the assessee trust. The Assessing Officer has also analyzed the evidence seized including certain figures found recorded in the single or two digits

and the relevant discussion is from para nos. 5.2 to 5.21 of the assessment order which is as under:

5.2. However, the evidences contained in the seized material, as per Annexure-I, clearly indicate otherwise. The notings on loose papers found and seized from the cabin of Shri Shinde, vide bundle 2 of panchnama dated 21-7-2005, clearly indicate that the figure prefixed before "fee" is for the donation/ capitation fee to be collected at the time of admission. The noting on some of the pages found and brought to the notice of Shri Shinde during the course of his statement are as under:-

Page No. 5	*7+fee*
Page No. 6	*13+fee*
Page No. 9	*12+fee & 5+fee*
Page No. 16	*7+fee & 15+fee*
Page No. 29	*35+fee*
Page No. 30	*1+fee*
Page No. 52	*7+fee*
Page No. 56	*9+fee*
Page No. 60	*12+fee*
Page No. 61	*11+fee*
Page No. 65	*10+fee*
Page No. 76	*3 to 4 +fee*

5.3. Shri Shinde admitted in response to Q.17 & 18, of statement dated 2O-7-2005, that the prefix amounts are in Lakhs and amounts to be collected from student in addition to regular fee. The narration -- + Fee appearing on all these papers clearly show that the aggregate sum including fee has been quoted to all students at the time of admission. The notings found on some of the seized papers are as under:-

" READY TO PAY .... + FEE',
" READY TO PAY FEE ONLY"
" AMOUNT READY TO PAY IS LESSER THAN DEMANDED"

5.4. Even though Shri Shinde agreed that the entire money found and seized during the course of Search belongs to him and that he is earning consultancy income from aspiring students by guiding them, the same is contrary to the facts. The contention that this amount stands for his consultation fees defies all logic as no one will pay consultancy charges of Rs. 7 lakhs, 12 lakhs, 35 lakhs, etc. for the securing admission to the course where fee itself is between 1 to 5 lakhs.

5.5. Even trustees and their family members were found to be directing students orally to Shri Shinde for admission in certain cases and Shri Shinde has been noting it down in his own handwriting clearly giving reference of the person who has sent the slip or who has referred the matter to him. Specific reference in this regard may be made to some pages, of Loose Paper Bundle no. 1, seized from the premises of Shri R.D.Shinde, on 21/07/2005. In these pages, there are references from public personalities as well as trustees to grant admission and even in such cases, additional amounts have been agreed to be paid by candidates against admission. Some such instances are, as below.

(a) Page no 1 & 2- Reference from Shri Shivalirao Kadam (Trustee) in case of Kumari Anjali Girdharlal for BDS course - Student ready to pay 2 + Fee

(b) Page 3 & 4 Reference from Shri Shivajirao Kadam for Mr. Yelmar - Student ready to pay 1O to 12.5 lakhs + College fee

(c) Page 40 - Reference from Shri Kripa Shankar Singh. Ex-Home Minister of Maharashtra State. Student ready to pay 5 + Fee

(d) Page 41- Reference from Shri Raghunath Raje Nimbalkar to Shri Vishwajeet Kadam for Manjula Gaikwad. Student ready to pay fee + 1.5 Lakh

(e) Page 54- Reference from Shri Balasaheb Guruv to trustee for Anushka Chikhalika. Student ready to pay fee + 8 Lakh for MBBS course.

5.6. Perusal of Annexure I would show that the trust has been charging donation for admission in professional courses such as

MBBS, MD, BDS, BE, MBA, Hotel Management, Nursing etc. The details of students in these papers have been matched with admissions granted in institutes run by BVP under various quotas. Following students were found to be given admission in academic year 2005-06.

s No	Bundle No	Page No	Name of Student	Capitation Amount	Institute
1	1	85	Gesti Sabharwal	125000	BV Engineering College, Pune BE
2	2	24	Prashant Patil	200000	BV Management Institute, Pune
3	2	39	K C Kurian	100000	BV Nursing College, Pune
4	A-l	19	Narayan Kumar	175000	BVEngg College, Pune BE(Chem)
5	A-4	1	Malvika Singh	150000	BVEngg College, Pune BE(Comp)
6	A-6	13-20	Sidharth Shukla	125000	BVEngg College, Pune BE (Prodn Engg)
7	A-6	31	Bhavinkumar Maheshbhai Tilva	700000	BV Medical College, Sangli
8	A-8	140	Pooja Ravindra Shah	650000	BV Dental College, Mumbai

5.7. Shri Shinde is a man of small means and as per his admission his monthly salary is Rs.17,000/- only. During the search action at his residence he was found in possession of cash of Rs.73.400/- and jewellery worth Rs.2,95,553/- only. His other assets in form of investments and immovable properties are nominal compared tohuge claim made in his statement. It is impossible to believe that Shri Shinde sitting in the office of Bharati Vidyapeeth itself was collecting huge cash amounts from students seeking admission and the trustees were unaware of this fact. The only logical conclusion which can be drawn from above facts is that this cash belong to the Trust which has been earned by charging illegal donation from students seeking admission in various courses run by Educational Institutions of the trust.

5.8 Nobody can believe such a stand that entire money was kept in Bharati Vidya Bhavan building only. This is furthermore against his very answer given during the course of search that Rs. 3.14 crores is the intake of last 15 days only. Besides, as already discussed, who would pay consultancy charges from Rs. 5 lac to Rs. 30 lacs, for kind of consultancy statedly given by him, as discussed in later part of this order.

5.9 In the course of proceedings u/s.l2AA{3) of the I.T. Act, before the CIT(C), Pune, on 15.10.2007, the assessee requested for copies of the statements which were relied upon and also the papers and documents which have been seized from Shri Shinde. These were duly supplied. Further, Shri Shinde was cross-examined by the assessee on 29.10.2007 and was re-examined by the Jt. Commissioner of Income Tax, Central Range-2, Pune, on behalf of the CIT(C), Pune on the basis of commission issued by the CIT(C), Pune. The copies of the cross-examination of Shri R.D. Shinde and re-examination were also given to the assessee on 31.10.2007.

5.10. In the course of re-examination, Shri R.D. Shinde was cross examined by Shri Vineet Agrawal, Jt. CIT, Central Range-2, Pune, on commission issued by CIT(C), Pune. In response to Q.No. 13, Shri R.D. Shinde categorically stated that he is handling cash and that his cash receipts and cash balances were checked and signed by him and one of the Joint Secretaries viz. Shri V.B. Mhetre and the cash was kept in cash box in his cabin. If this was the position that cash balances were checked everyday and were signed by the Jt. Secretary and thereafter kept in the cash box, it is difficult to believe that cash of more than Rs. 3 crores which was found in search escaped the notice of the Jt. Secretary.

5.11. There are two significant things which came out of the re-examination of Shri R.D. Shinde. In his statement recorded on 14.10.2005, in response to Q.No. 76, Shri Shinde. had categorically stated that he is doing Consultancy business for the last two years. Now, on re-examination it has been stated by him in response to Q.No. 18 on 29.10.2007 that the work of consultancy started in January,2005. A bare look at the return of income filed in response to notice u/s 153A, shows that what is stated now is wrong. The consultancy work cannot start in the month of January because at that time the process of admission does not start. Moreover, in the returns of income which have been filed by him for A.Y. 2005-06 and 2006-07 in response to notice u/s 153A, the income disclosed is as under :-

A.Y. 2005-06	*Rs.2,02,23,891/- (This includes Rs.2,00,00,000 as consultancy charges).*
A.Y. 2006-07	*Rs.1,26,75,600/- (This includes Rs.1,25,00,000 as consultancy charges).*

5.12. If no such work was carried out during F.Y. 2004-05 how is it that Shri R.D. Shinde has disclosed income of Rs. 2,00,00,000/- for A.Y. 2005-06. This shows that Shri Shinde is not speaking the truth.

5.13. Secondly, in response to Q.No. 5 of re-examination, Shri Shinde has stated that he was removed from the services of Bharati Vidyapeeth in April, 2007. The search took place in the month of July, 2005 and Shri R.D. Shinde was removed from services in April, 2007. This means that he remained under the employment of Bharati Vidyapeeth for a period of 21 months even after the Management came to know that Shri R.D. Shinde has in his possession sum of Rs.3.14 crores and is doing consultancy business without the knowledge of the Trust. This brings the Management to great disrepute. Penal action under various Acts including Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987 can be initiated against the Management, still the Management decided to keep him in service for a period of 21 months on its rolls and paid salary. No Management, worth its salt would keep a person who brings the Management in disrepute, on its rolls for a single day. Normally, he would have been\ show the door on that very day itself. The fact that Shfi R.D. Shinde remained in the employment for 21 months even after the scandal came to light goes to show that Shri Shinde was not acting on his own behalf, hut was acting on behalf of the Management as a trusted employee.

5.14. Even consultancy work has its own limitation. The charges would also be limited. In response to Q.No. 19, re-examination of Shri R.D. Shinde specific question was put to him regarding charging of commission of Rs. 30 lacs for the so called consultancy for admission of students and what is the expertise or the services which were rendered for which such huge sum was charged. The answer of Shri Shinde in response to Q.No. 19 was totally vague. It was stated by him that the amounts were agreed but were not actually paid unless admission was there.

5.15. He was again asked in response to Q.No. 20, to clarify the expertise or services which were provided for by him for which such hefty amounts were asked for and were paid by the students. The reply thereto was again vague and it was stated by Shri Shinde that he was paid for the knowledge acquired in the educational field and was also guiding the students and parents about the hostel *admission, entrance fees etc. Nobody is going to pay such hefty money for this kind of services. It has already been stated in para (iii) above, which is part of the show cause notice that the consultancy fee varies from Rs. 5 lacs to Rs. 30 lacs, is to be believed because in the slips it is written '5+ fee', '10 + fee', '30 + fee' and nobody is going to pay so much of consultancy fee. The assessee has not given any reply to this query. Strangely enough not even a single question has been asked in this regard by the representative of the assessee during the course of cross-examination. Obviously, the assessee wants the story of Consultancy Business under wrap.*

5.16 Sum exceeding Rs. 3 crores is not a small amount which was found from the office of the Shri Shinde which according to Shri Shinde's admission at the time of search is that it is collection of last 15 days. Who would pay heavy amount for mere consultancy? It is obvious that there is something more to it. It is the money charged for the admission of the students and since Shri Shinde was not removed from services and continued in services for 21 months thereof, the only logical conclusion is that Shri R.D. Shinde was charging this money on behalf of the Management.

5.17. The assessee has dealt at length on the admission procedure and has stated that the Admission Committee consists of eminent persons and Shri Shinde has no hand in admission. He was not in the Committee at all. It was further been stressed that out of Annexure I where 146 names have been given, 26 students have been given admission on merit and therefore issue of charging any donation from them does not arise. It has been admitted that 8 students out of 146 students as per Annexure I which depicts the number of students whose slips have been found, have been given admission in Management quota.

5.18. Regarding Management quota also, it has been emphasized that it is strictly based on merit. If two students have applied for a seat in Management quota, admission has to be given to the student who has scored higher marks. No evidence has been led in this regard. Here also it has been stressed that the Managing Committee has no discretion. The assessee was only confronted with the slips found from the cabin of search. In its reply, the assessee has confined itself only to these and not other seats in the Management Quota. The assessee Trust is running a number of educational *institutions. The number of seats in the Management Quota is more than 600.*

5.19. The fact that Shri Shinde is not a member of the Admission Committee is immaterial. The slips found from his room makes it absolutely clear that he was processing the cases for admission. It is obvious that the Managing Committee or the Admission Committee is not going to take donations for admission. This work is always left to a trusted employee. From the documents and the cash found from the room of Shri Shinde it becomes clear that Shri Shinde is that employee. The assessee has filed number of letters from the students to the effect that they have not paid any donation for the purpose of admission. The names of these students are mentioned in the slips which are given in Annexure I.

5.20. There is no denial of the fact that these students are still studying in the College. Therefore, they are under the thumb of the College Authorities and they would be willing to write anything. Therefore, no importance can be attached to these confirmation letters.

5.21 On perusal of the seized material and relevant records, I am in agreement with the discussion made, in the order u/s. 12AA(3) dated 08/11/2007, as above. On the basis of the above discussion, following irresistible conclusions are drawn.

a) That cash exceeding Rs.3.14 crores was found from the office of Shri R.D. Shinde which is located in the premises of the assessee.
b) That Shri R.D. Shinde was not in a position to earn so much cash from his alleged consultancy business.
c) That even though the cash has been owned up by Shri Shinde, this in fact belongs to the assessee Trust.

21. The Assessing Officer finally concluded that Shri Shinde was not speaking truth and the cash seized from his cabin belonged to the assessee trust and the Assessing Officer made the addition of Rs.3,14,83,870/- as undisclosed income of the assessee trust for the A.Y. 2006-07 and at the same time the said amount was also taxed in the hands of Shri R.D. Shined protective basis for the A.Y. 2006-07. The

Assessing Officer held that sum of Rs.3,14,83,870/- was the cash collected on account of donations/illegal capitation fee, over and above regular fee, against granting of admissions. The assessee carried the issue before the Ld. CIT(A). The Ld. CIT(A) confirmed the action of the Assessing Officer treating the amount of Rs.3,14,83,870/- though it was found in the cabin of Shri Shinde, was in fact belonged to the assessee trust and hence, the Assessing Officer has rightly made the addition of the said amount on substantive basis in the hands of the assessee. The assessee is in appeal before us.

22. The Learned Counsel vehemently argued that the search is conducted u/s. 132(1) of the Act against Shri R.D. Shinde and hence, the intention of the Department was to unearth the undisclosed income of Shri R.D. Shinde not the assessee trust. The Department did not conduct any search or seizure operation against the assessee trust or it's trustees. In the search operation, the residence of Shri Shinde was covered and his statement u/s. 132(4) was recorded. The search warrant was only on the name of Shri R.D. Shinde and the Revenue cannot be take the different stand stating that the search was intended for the assessee trust. If the Department was of the opinion that the assessee trust is collecting the funds then the warrant should have been against the assessee trust or it's trustees but surprisingly not a single warrant is issued against any of the trustees. He submits that in the statement recorded u/s. 132(4), the Shri Shinde has categorically denied that the cash seized from his Almari in his office had any relevance with the assessee trust. He submits that in the statement recorded at the time of search u/s. 132(4) Shri Shinde has admitted consistently that he used to collect the money illegally from the students under name of consultancy charges for the admissions and it was his income and he accordingly declared the said income in his returns and also paid entire tax as said amount.

23. The Learned Counsel referred to the copies of the statement given by Shri Shinde which are place at page Nos. 843 and 844 of the compilation. He also referred to the different questions and answers in those statements. He submits that Shri Shinde was under tremendous pressure as his statement was recorded and continued in the late mid night and in one question he answered that earlier cash collected might have been deposited in the building fund account of the trust. The Assessing Officer has capitalized the said answer of Shri Shinde for using against the assessee trust discarding and ignoring all the earlier answers. Shri Shinde has consistently told to investigation team that the said cash belong to him and he has also explained his modus operandi how used to collect the money from the new students who used to approach him for admissions in the different faculties/institutions of the assessee trust. He submits that when Shri Shinde himself has confessed that he was indulged into illegal collection of money from the students, how the Assessing Officer can discard the said confession and put the entire charge on the assessee trust. He also referred to the statement of Shri Shinde and submits that as per his statement Shri Shinde was under mental pressure, tension and disturb state of mind and this is quite clear the way conflicting answer is given that is only to one question which was also subsequently retracted by him. No person would admit the liability in the form of doing some charity on behalf of somebody else which can be only in the stories and not in reality. If the Assessing Officer is aware that Shri Shinde is handling the accounts of the assessee trust then he must also be aware for falsely taking the liability on him on behalf of the assessee trust as there would be serious consequence for such admissions. Whatever stated by Shri Shinde is a truth and the Assessing Officer has trying to make out story against the assessee trust for fastening tax liability which is not in accordance with the law. He submits that the Revenue has not come forward to explain why the search

warrant was not issued against the assessee trust or any of the his trustees if it is a case of the Revenue that the assesse trust is engaged into collection of money through Shri Shinde. The Department should have first issued the search warrant against the assessee trust as well as his trustees and then against Shri Shinde and not only against Shri Shinde, if the Revenue has any information as to form belief against the assessee u/s. 132(1). As per the provisions of Sec. 132(4A) of the Income-tax Act the presumption in law is that the money or documents found at the time of search belongs to the persons searched.

24. Ld. Counsel argues that in the present case also the money was found with Shri Shinde and hence, in terms of Sec. 132(4A) as Shri Shinde has accepted the ownership of that money and has also explained how he has earned that money misusing his position in the assessee trust the said money cannot be taxed in hand of the assessee trust. He argues that the stand of the Department about the theory of the probability is totally baseless as in the search action the Department has direct access to the evidence and in the present case whatever the evidence is collected during the course of the search support the case of Shri Shinde in respect of the way the Shri Shinde used to collect the money by illegal way from the students. The Learned Counsel relied on the decision in the case of Madhu Gupta Vs. DI 350 ITR 598 (Del). He submits that in the said decision the Hon'ble High Court has held that while issuing the warrant the DI must be of the opinion that the unaccounted income belongs to the persons searched and he cannot have the opinion that someone else's income is with the person searched. He submits that as per the principles laid down in the case of Madhu Gupta (supra) the money found which Shri Shinde belongs to him only and if the Department was of the opinion that cash collection and the papers found with Shri Shinde were actually that of the trust then at least the Revenue could have recorded the statements of the trustees, registrar and other officials of the trust even if

the search was carried out against Shri Shinde. Without doing all these exercises there is no justification on the part of the Department to hold that whatever is found with Shri Shinde belonged to the assessee trust. He submits that the presumption engrafted in Sec. 132(4A) is a legal presumption and that overrides the theory of probability. He submits that the presumptions based on theory of probability may be workable in cases where there is no direct provision in the Act to draw the presumption regarding particular fact or circumstances.

25. He submits that the Revenue has not produced any evidence to establish that the money and the papers found with Shri Shinde belong to the assessee trust. It is only on presumption that the Revenue is holding that the money and the papers belonged to the trust. He submits that the Revenue is banking on the theory of probability by contending that an ordinary official like Shri Shinde cannot have so much of cash with himself and it is bound to be of the assessee trust. He submits that the Revenue has also searched one Shri R.S. Yadav along with Shri Shinde, who is also an agent for admissions to the students in various colleges in Pune and he also collects commission. The Assessing Officer has referred to him on page 62 of the assessment order and he also earns the commission by managing the admissions. If Shri Yadav could earn the commission from admissions then why the Department should not believe with Shri Shinde, who has made the clear admissions also could earn the income in same way. It is not uncommon that the employees can misuse his positions for their personal benefits. He submits that the loose papers which have been seized from Shri Shinde are only in his handwriting and the said evidence suggest that Shri Shinde was actively involved in collecting the money from the students in the name of commission. He argues that even the Department has seized innumerable documents but not single documents suggest that Shri Shinde has handed over money to the assessee trust. He submits that as per the documents found during

the course of the search with Shri Shinde the papers were about 146 candidates. He submits that out of 146 candidates, the admissions were given only to 34 students out of which 8 students were given admission in Management Quota and 26 students were given admission in regular quota. He submits that the balance 112 candidates whose names were noted on the loose papers were not given any admission at all in the various colleges of the assessee trust. This fact has not been disputed by the Assessing Officer. He argues that this is suffice to support the claim of the assessee that the assessee trust was never involved in manipulation of the fees or collection of capitation fees. He concluded his argument on this issue by submitting that both the authorities below have not considered the evidence is at all and their finding is based on prejudice.

26. Per contra, the Ld. CIT (DR) argues that Shri Shinde has stated in his statement that part of the collections made by him was deposited in the assessee trust's Bank A/c. He submits that Shri R.D. Shinde is a trusted employee is of the assessee trust and said information was with the Department and hence, the warrant was issued in the name of Shri R.D. Shinde. He relied on the orders of the authorities below on this issue.

27. We have heard the rival submissions of the parties and perused the record. We are on the core issue to adjudicate whether the cash found and seized from Shri Shinde during the course of search and seizure operation against him in his cabin from the Almari, belongs to the assessee trust or does it belong to Shri R.D. Shinde? In this case there is no dispute about the fact that the search is carried against Shri R.D. Shinde who is Accounts In-charge as well as the employee of the assessee trust. It is also fact that no search warrant was issued against the assessee trust or any of the trustees and no search action is taken against the assessee trust. It is also clear from the fact that the assessment of the

assessee trust has been completed u/s. 153C of the Income-tax Act. It is true that huge cash was found in the cabin of Shri Shinde which is a work place where as per the case of the Department Shri R.D. Shinde is carrying out his job as an employee of the assessee trust. It is also fact that Shri Shinde has consistently told and also admitted that entire money belong to him and has collected the said money from the students who used to approach him for the admissions and he used to charge "Consultancy Fee". Shri Shinde has also declared the said amount as his undisclosed income and also paid the taxes. It is necessary to examine the provisions of Sec. 132 reads as under:

> ***"132.*** *(1) Where the [Director General or Director] or the [Chief Commissioner or Commissioner] 86-87**[***or Additional Director or Additional Commissioner] 88**[***or Joint Director or Joint Commissioner***]** in consequence of information in his possession, has reason to believe that—*
>
> *(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or*
>
> *(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, or*
>
> *(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property [which has not been, or would not be, disclosed] for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),*
>
> *[then,—*

*(A) the [Director General or Director] or the [Chief Commissioner or Commissioner], as the case may be, may authorise any **[**Additional Director or Additional Commissioner or**]** [Joint Director], [Joint Commissioner], [Assistant Director 98[or Deputy Director]], [Assistant Commissioner [or Deputy Commissioner] or Income-tax Officer], or*

*(B) such **[**Additional Director or Additional Commissioner or**]** [Joint Director], or [Joint Commissioner], as the case may be, may authorise any [Assistant Director [or Deputy Director]], [Assistant Commissioner [or Deputy Commissioner] or Income-tax Officer], (the officer so authorised in all cases being hereinafter referred to as the authorised officer) to—]*

(i) enter and search1 any [building, place, vessel, vehicle or aircraft] where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

[(iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;]

[(iib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;]

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

*[**Provided** that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;]*

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing :

*[**Provided** that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any [Chief Commissioner or Commissioner], but such 9[Chief Commissioner or Commissioner] has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in section 10[120], it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the 11[Chief Commissioner or Commissioner] having jurisdiction over such person may be prejudicial to the interests of the revenue :]*

*[**Provided further** that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii) :]*

*[**Provided also** that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business:]*

[Provided also *that no authorisation shall be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after the 1st day of October, 2009 unless he has been empowered by the Board to do so.**]***

*[(1A) Where any 15[Chief Commissioner or Commissioner], in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the 16[Director General or Director] or any other [Chief Commissioner or Commissioner] or **[**Additional Director or Additional Commissioner**]** **[**or Joint Director or Joint Commissioner**]** to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such 20[Chief Commissioner or Commissioner] may, notwithstanding anything contained in section 21[120], authorise the said officer to take action under any of the*

clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.]

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) [or sub-section (1A)] and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, [for reasons other than those mentioned in the second proviso to sub-section (1),] serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this subsection.

[Explanation.—For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).]

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

[Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.]

[(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person ;
(ii) that the contents of such books of account and other documents are true ; and
(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.]"

28. Section 132(1) contemplates the information to form the believe for the situation mentioned in Clauses (a), (b) and (c). The information should be about any specific person against whom the search warrant can be issued. Sec. 132(1) suggests that where the search warrant is issued against a particular person, then the first legal presumption would be that information about undisclose income pertains to that specific person. In the present case, search warrant u/s. 132(1) was issued in the name of Shri R.D. Shinde that suggests that the information with the Department was against Shri Shinde only. If it is not so and the information was against the assessee trust then why the search warrant was not issued against the assessee trust which the Department could have done. It is very interesting that the search warrant is issued against Shri Shinde in which his place of employment and his residence is covered in the search but apart from that no search was carried out in any of the premises of the assessee trust or it's trustees. We fail to understand on which basis the Department is claiming that Shri R.D. Shinde is a trusted employee and hence, the search was carried against him. But the fact remained that if the assessee trust was targeted for taking the action against Shri Shinde then why out of 100 employees only Shri Shinde was searched. We also find that in the statement recorded u/s. 132(4) Shri Shinde has

admitted in clear terms that he was collecting the money by charging the "Consultancy Fee". We are not concerned here what nomenclature is given by Shri Shinde for collecting the money from the students or their parents who approached him. We also find that lot of loose papers which are in the handwriting of Shri Shinde were found and seized. There were singular/plural numbers may be in the form of code numbers, found noted on the loose papers suggesting that there was some bargain and some amount was fixed for helping the students for setting admission.

29. So far as the assessee trust is concerned it is running innumerable institutes and faculties. We have also find that the loose papers were seized from Shri Shinde are pertained to 146 students and out of which 8 students are given admission in Management Quota and 26 students were given in regular quota. In respect of balance 112 candidates, as explained before us, were not given admission in any of the colleges of the assessee trust and this is also very important evidence to go against the Department. It is true that the Department has examined some parents and students but their statements are not supported the case of the Revenue except in one or two cases. Now the college admissions to the personal courses are having the control of the Government and at least the Revenue authorities could have taken a pains to verify out of 146 students how many students were given admissions in the Management Quota by using discretion. In majority cases admissions are given in general quota on the merit and there is no scope much so for manipulation. At the most manipulation can be there were the management quota is explored but out of 146 only 8 students were given the admissions in the management quota. This fact also suggests that whatever case is built up by the Department against the assessee trust is having very week foundation. At the time of hearing also we put the query to the Ld. CIT (DR) if the Department was having information that there was undisclosed income of the assessee trust then why the Investigation

Department did not search the assessee trust or any of the trustees but there is no answer. We also find that none of the trustees were examined. It is true that on one question put to Shri Shinde he has stated that part of the money collected has been deposited in the building (Imarat) fund account of the assessee trust. There is no direct evidence. In our opinion, the said statement cannot be the basis to fasten the assessee trust with the huge tax liabilities.

30. In the course of search and seizure action if any documents, money, billion and jewellery are found in the possession and control of any person then the presumption is that such other documents and money belong to such person. In this case, the Assessing Officer has also noted that the noting on loose papers are in the handwriting of Shri Shinde and Shri Shinde has also admitted same. Hence in terms of Sec. 132(4A) of the Act the legal presumption is that the money seized from Shri Shinde belong to him unless he had denied that the said money did not belong to him and also explained how same was with him. In our opinion, both the authorities below have erred in holding that the amount of Rs.3,14,83,870/- which was found in the possession of Shri Shinde belong to the assessee trust. We, accordingly, hold that the said cash found in the possession of Shri Shinde did not belong to the assessee trust. In the light of our above discussion, we, accordingly, reverse the finding of the Ld. CIT(A) on this issue and allow the Ground Nos. 7, 8 and 10 of the assessee.

31. Ground No. 11 is in respect of the different disallowances are made by the Ld. CIT(A). In the present case, the registration of the assessee trust u/s. 12A has been restored by the Tribunal. Moreover, we have also held that the assessee has not violated the provisions of Sec. 11(5) r.w.s. 13(1)(d) and 13(1)(c) hence the disallowance made by the Assessing Officer treating the assessee's income as a business income become redundant.

So far as Ground No. 12 is concerned the said ground is not pressed by the assessee hence the said ground is dismissed as not pressed.

32. Ground No. 13 is concerned it is in respect of the donations collected through the coupons. The Assessing Officer has discussed this issue in para nos. 8.15 to 8.26 and relevant discussion is as under:

8.15. On perusal of the Balance Sheets, filed by the Authorized Representative of the Trust, it is observed that, from the F.Yrs. 1999-2000 to 2003-04, increase in the Building Fund Accounts created by Bharati Vidyapeeth is as under:

Financial Year	***Progressive Building Fund A/c.***	***Increase***
1999-2000	*Rs.33,46,65,141/-*	*Rs.7,69,69,244/-*
2000-2001	*Rs.39,44,24,534/-*	*Rs.5,97,59,393/-*
2001-2002	*Rs.46,37,82,131/-*	*Rs.6,93,57,597/-*
2002-2003	*Rs.54,60,50,057/-*	*Rs.8,22,67,926/-*
2003-2004	*Rs.56,09,76,841/-*	*Rs.1,49,26,784/-*
	Total increase in the Building Fund Account	**Rs.30,32,80,944/-**

8.16. In view of the aforesaid discussion and facts of the case, the amount of Rs.32,31,55,228/- (Silver Jubilee Fund – Rs.1,98,74,284/- being unproved Corpus Fund + Rs.30,32,80,944/- being increase in the Building Fund A/c.), is over and above Regular Tuition Fees received from the students is nothing but undisclosed taxable income brought into the books by the assessee in the guise of various funds. However, the said amount is part of the receipts, on account of donations, which are already proposed to be taxed as per the recasted accounts in the special audit report. To this extent, a show cause letter dated 23/06/2O08, was issued.

8.17. The assessee, in response to the show cause notices dated 23/06/2008, 30/06/2008 and 04/07/2008, covering the issues relating to corpus donations, other donations and credits in various funds, furnished certain submissions, vide letters dated 11/07/2008, 21/07/2008 and 24/07/2008. Mostly, the assessee has reiterated the submissions made, on earlier occasions.

8.18. The assessee was asked to furnish the details of names and addresses of the donors in respect of the Corpus fund and other specified funds like Imafat A/c, Fine Arts A/c and other Imarat A/cs etc. The assessee was also asked to furnish confirmation letters of such donors. It may be noted that the onus *is on the assessee to prove that a particular donation, be it in the form of Coupon or otherwise has in fact been given by the donor as Corpus donation. As the registration of the Trust is cancelled, the receipts, on account of donations, are taxed as per the recast accounts, in the special audit report, as the receipts are not proved to be on account of capital account.*

8.19. In response to the show cause notices, the assessee stated that various donations are received towards the corpus i.e. building fund, development fund and that is the reason why the same have been treated towards the corpus and credited to the balance sheet, directly. It is the stand of the assessee that donations are collected from the public at large. The assessee stated that there are various volunteers who collect donations from the public by issuing coupons ranging between Rs.25/- to Rs.1000/-.

8.20. Now coming to the question whether the above donations are indeed for the purpose of the corpus of the trust the same can only be confirmed by the donor and not by the donee. Here in this case the assessee has not even filed the confirmation for the donation, leave alone the direction letter from the donor to treat these donations as Corpus Donation.

8.21. The crux of the reply of the assessee is that it has received coupon donations ranging from Rs.25/- to Rs.1000/- through various volunteers. It is to be noted that no separate receipt was issued to the donors and hence the name and addresses of the Donors are not available. The assessee has filed confirmation from some volunteers who have made collection of the coupons but strangely enough the coupons do not carry their signature.

8.22. Whether the donations claimed by the assessee are genuine donations, whether the said donations can be termed as voluntary donations and whether the same can come under the provisions of section ll(l)(d) of the IT Act 1961 are the key issues.

8.23. About genuineness of the coupon collections it will be seen from the assessee's submissions that the same mainly harps upon the procedural aspects of effecting collections and its further accounting. Of course, the assessee has made all possible efforts to bring home the point that the collections made by them are genuine coupon collections but the same is totally devoid of any evidence. As is evident from the said coupons and as admitted by the assessee these coupons do not bear the name and address of the donor from whom the donation is claimed to have been received by the trust.

8.24. In the absence of name and address on the respective coupon the authenticity of so called confirmations are questionable. Incidentally, it is also noticed from the coupons *that were produced for verification that the same did not even bear the signature of a person who has collected donations on behalf of the trust nor any date is available on the said coupons. The same bear the facsimile signature of trustee. In the absence of this signature even the verification of so called coupon collector is also not possible.*

8.25. It is difficult to believe that such a large number of rural population shall be making payment to a trust, the existence of which is hardly known to them apart from the fact that the activities of the trust hardly affects their welfare. It is also interesting to note that not only the assessee trust but similar donations running into lakhs of rupees have also been collected by the other trusts of the same group from very same villages in a similar manner by way of unnamed unsigned coupon collections of small donations and also in all the years as indicated below:-

s. No.	Name of the trust	AY 99- 00	AY 00-01	AY 01-02	AY 02-03	AY 03-04	AY 04-05	AY 05-06	AY 06-07
1	Bharati Kala Academy	22.63	48.05	23.45	37.50	24.20	8.28	9.00	26.70
2	Yeshwantrao Smriti Nyas	22.63	25.30	00.65	1.31	0.00	0.00	00.05	0.00
3	Patangrao Kadam Pratishtan	32.40	47,25	24.36	36.20	23.00	8.60	18.90	25.80
4	Yeshwantrao Mohite Pratishtan	22.70	25.20	00.10	00.15	0.00	0.00	0.00	0.00
5	Bharati Vidyapith Medical Foundation	9.10	31.25	48.45	43.50	53.55	13.05	50.93	38.65
6	Abhijit Kadam Memorial Foundation	0.00	0.00	43.75	45.22	29.10	29.26	9.85	26.75
7	Matoshri Bayabai Kadam Memorial Foundation	22.28	46.35	46.30	36.83	47.40	19.15	8.40	25.48
8.	Sonhira Foundation for Rural Development	0.00	47.70	28.97	38.15	23.05	3.75	8.05	26. 05
9	Bharati Krida Pratishtan	22.70	47.31	27.00	37.35	24.00	8.00	8.95	26.75
	TOTAL	154.44	343.1	243.0	276.2	224.3	9O.09	114.1	196.1

8.26. About the voluntary nature of such receipts without conceding the assessee's claim on existence of such donor, it can also be said that in a situation where more than fifty percent of population is illiterate the writing on preprinted coupons, allegedly supplied by the trust to volunteers hardly makes any sense: The donors are neither aware of the nature nor the *purpose of donation claimed in their names. These donations, therefore, are dubious and certainly cannot partake the character of corpus donation within the meaning of section ll(l)(d) of I. T. Act 1961.*

33. We have heard the parties. The Learned Counsel fairly admitted the identical issue has been decided in the case of Patangarao Kadam Prathistan ITA Nos. 289 & 312/PN/2011 dated 31-12-2012 and Hon'ble Tribunal has held that the donations collected through coupons cannot be the part of the corpus funds but are to be treated as revenue receipt. He submits that there is no base in the charge of the Department that the coupon collected reflected the capitation fee and this particular allegation/charge has to be rejected. We find that in the case of Patangarao Kadam Prathistan (supra), the identical issue has been considered by the Tribunal and held that the donations collected through the corpus cannot be treated as a part of the corpus fund hence, this issue has goes against the assessee. But the next question is whether donations collected through coupons established that the assessee has collected the capitation fee. We are unable to accept finding of the authorities below. The assessee has filed the sample copies of the coupons which are of the smaller denominations i.e. Rs.100/- to Rs.500/-. Moreover, there is no evidence to suggest that the donations collected through said coupons are for giving any particular admission. Law is well settled that merely on the suspicion no liability can be fastening on any person how strong the suspicion may be unless there is evidence against the assessee. On the perusal of the discussion on this issue in the assessment order, we find that the Assessing Officer has not even examine any of the donors but his finding only suggest his suspicion. We, accordingly, hold that without any evidence, both the authorities below are wrong to give finding that the donations collected through the coupons having the smaller denominations are towards the capitation fee. We,

accordingly, reverse the said finding of the CIT(A) and Ground No. 13 is allowed.

34. Ground No. 14 is in respect of donations received by cheques for specific purpose are treated as income of the assessee not for forming part of the corpus donations. On this issue there is no separate discussion in the assessment order as this issue is merged with the issue of the donations collected through coupons. During the course of the appellate proceedings the remand report was called on this issue which reference is given on page no. 194 of the order of the Ld. CIT(A). In addition to the donations through the issue of the coupons as per the books of account of the assessee, the assessee has received the following donations grant:

(a).	Donations from the specified donors	Rs.3,72,62,223/-
(b).	Grant Funds received from various educational bodies like UGC, AITE etc.	Rs.1,21,17,965/-

35. So far as grants of the statutory bodies are concerned, the Ld. CIT(A) held that the same cannot be treated as Revenue receipts as the grants received are for purchase of the capital items. There is no dispute about the fact that all the donations are received through the cheques which are duly recorded in the books of account of the assessee. The assessee filed the list of the donations received by cheque which is at page nos. 597 to 600 (Paper Book, Vol.-III). The assessee has also filed the confirmation letters from the donors. In spite of all the evidences, the Assessing Officer has put those donations in the basket of the donations collected through the coupons i.e. cash donations. The assessee has filed the confirmation letters from the various donors from which it is seen that the donations are for the corpus funds of the assessee trust. We, therefore, hold that there is no violation by the assessee and the specific donations received by the assessee trust to the extent of Rs.3,72,62,223/- are only towards the corpus funds. We, accordingly, allow the Ground No. 14. Ground No. 15 is not pressed, the same is dismissed as not pressed.

Ground No. 16 is in respect of charging of the interest u/s. 234A, 234B and 234C which is a consequential.

36. There is one more issue arising from the Ground No. 9 which is in respect of addition of Rs.2,00,50,000/- which was sustained by the Ld. CIT(A) in the hands of the assessee trust on the substantive basis out of the addition of Rs.9,47,21,850/- made by the Assessing Officer. The Assessing Officer has discussed this issue in para no. 7 onwards in the assessment order which is reproduced below:

> *"7. As already mentioned large number of incriminating documents evidencing collection of donations/capitation fee, over and above regular fee, were found and seized in the course of search operation. For instance, vide Panchanama dated 21/07/2005, Loose Paper Bundle No. 1 containing pages 1 to 85, was seized. Page No. 1 is related to page No.2. In this connection, it was stated by Shri Shinde that Shri Girdharilal came to him through Dr.Kadam (Shri Shivajirao Kadam) for admission of Kum. Anjali Girdharilal. Page No.2 is Hall Ticket of CET-SM-205 Exam conducted by Bharati Vidyapeeth, Pune. On this page, there are notings in pencil in the handwriting of Shri Shinde which he explained as under:-*
>
> i) *Telephone Numbers of parents,*
> ii) *Marks obtained in 12th Std. (PCB)*
> *(iii) Visited for admission in BDS Course in Mumbai College,*
> *iv) Double 'tick marks' at two places on this page means information given on this page has been verified and found to be correct,*
> *v) Student is ready to pay "2 + Fee" means Rs.2,00,000/-as his consultancy fee PLUS regular fee of College.*
>
> *7.1 The theory of consultation fee and related income, in the case of Shri Shinde, has already been rejected. Amounts, contained in the seized material, are nothing but donations/capitation fee, over and above regular fee, collected by Shri Shinde for and on behalf of Bharati Vidyapeeth. Shri Shinde was specifically asked to explain the contents of each loose paper and the details of the notings on the loose papers seized in bundle no. 1 to 3 seized under Panchanama dated 21/07/2005 and bundle no. 1 to 6 , 8 & 9 seized on 22-07-*

2005. As per the notings, extracted from these loose papers, the transactions are found to be as under:-

(1) Loose paper Bundle No. 1 of the Panchanama dt. 21/07/2005

Page No.		*Amount (Rs.)*
1 & 2		*200000*
3 & 4		*1000000*
5		*700000*
7		*700000*
9 to 12		*4000000*
15		*1500000*
19		*2500000*
20 & 21		*2500000*
29 & 30		*1000000*
31		*500000*
36 to 40		*500000*
42 to 54		*800000*
55 to 57		*1400000*
58 to 61		*1000000*
62 to 64		*600000*
65		*1500000*
66		*700000*
68		*1900000*
69		*500000*
70 & 71		*500000*
72 to 74		*1000000*
75		*700000*
76 to 82		*1700000*
Total	*Rs.*	*2,74,00,000/-*

(2) Loose paper B. No. 2 of Panchanama 21.07.2005 – Para 4.12(2)

Page No.	Amt. in Rs.
1	1000000
2	1000000
3 to 5	700000
6	1300000
7 & 8	350000
9&10	500000
11&12	1500000
13 to 17	1500000
18&19	3000000
21&22	150000
23	150000
24	200000
25	150000
29	2500000
31	100000
32	100000
33	1500000
34	100000
35	2000000
36	700000
37	1500000
39	100000
40	150000
41	25000
42	200000
43	150000
44&45	1300000
48	150000
49	1000000
50&51	1500000
52	700000
53 to 55	1500000
56	900000
57	700000
58&59	800000
60	1200000
61	1100000
62&63	750000
64	1000000
65	1000000
66	500000
70&71	1000000
72	2500000
73	1100000
74	1300000
75	1000000
76	700000
Total	**42325000**

(3) Loose Paper B. No. 3. of Panchanama 21.07.2005 –

Page No.	Amount (Rs.)
28 to 30	1500000
34 to 37	2000000
Total	3500000

Rs. 35,00,000/-

(4) Loose Paper B. No. 1 of Panchanama 22.07.2005 –

Page No.	Amt in Rs.
1	200000
6	25000
8	200000
11&12	50000
13 & 14	100000
16	100000
19	890000
20	150000
21	3000000
23	200000
24	675000
25 to 33	600000
34 to 36	700000
40	125000
50	2500000
55&56	275000
58	60000
Total	9850000

(5) Loose Paper B. No. 4 of Panchanama 22.07.2005 -

Page No.	Amount (Rs.)
1	150000
2	500000
36	150000
37	200000
Total	Rs. 10,00,000/-

(6) Loose Paper B. No. 6 of Panchanama 22.07.2005 –

Page No.	Amount (Rs.)
1	80000
12	1650000
13 to 20	125000
23	50000
24	41500
25 to 30	650000
31	650000
Total	Rs.32,46,500/-

(7) Loose Paper B. No. 8 of Panchanama 22.07.2005 –

Page No.	*Amount (Rs.)*
4 & 5	*2850000*
138 to 142	*650000*
Total	*Rs.35,00,000/-*

(8) Loose Paper B. No. 9 of Panchanama 22.07.2005 –

Page No.	*Amount (Rs.)*
12	*735000*
13	*1500000*
45	*175000*
65	*490350*
Total	*Rs.29,00,350/-*

(9) Loose Paper B. No. 7 of Panchanama 22/07/2005 (Page No. 41 & 42) Para 4.12 (7)(A) of the Report Rs.10,00,000/-

7.2. The total of the above, works out to Rs.9,47,21,850/- and the same was proposed to be taxed as undisclosed income in the case of Bharati Vidyapeeth. The assessee, vide letter dated 21-07-2008, submitted that Shri Sinde has Shri Shinde has owned up the papers found with him. The assessee stated that the papers found a does not constitute incriminating evidence against the assessee. In effect, the assessee is reiterating the stand taken earlier. It is clear from the discussion, made in this order, that the evidences emanating from the seized material are relevant to the case of the assessee and the correctness of the same is established. The evidences show that the assessee is charging donations/ capitation fee, over and above the regular fee, and therefore the assessee is conveniently ignoring the seized cash and material.

7.3 In view of the above, the sum of Rs. 9,47,21,850/-, is *treated as undisclosed income, on account of donations/capitation fee arising out of seized material, in the case of Bharati Vidyapeeth, as below.*

A.Y.	*Amount*
2006-07	*Rs.9,47,21,850/-*

7.4. In view of the discussion made at paras 7 to 7.3, as above, I am satisfied that the sum of Rs.9,47,21,850/- is the amount collected on account of donations/illegal capitation fee, over and above regular fee, against granting of admissions and the same would not have been disclosed as income for A. Y.2006-07. As discussed, the said amount is quantified on the basis of seized material. The nature of income has not been recorded correctly in the books for A.Y.2006-07. Having regard to the nature and quantum of cash seized, the assessee has concealed the particulars of income and would have certainly not disclosed the income as such. In view of this, I am satisfied that this is a fit case for issue of notice u/s.271(l)(c) of the I.T. Act, for A.Y. 2006-07."

37. When the issue reached before the Ld. CIT(A), the remand report was called from the Assessing Officer on this issue and the Assessing Officer filed the remand report before the Ld. CIT(A) dated 11-03-2010 and the relevant part of the report is reproduced which is as under:

"7. Capitation fees arising out of seized material (Pertaining to AY 2006-07 only):

7.1. The issue regarding, capitation fees arising out of seized material has elaborately been discussed in the assessment order vide Para No. 7, wherein the amount of capitation fees has been worked out at Rs.9,47,21,850/- on the basis of papers/documents found and seized from Shri R. D. Shinde, the accountant of the assessee. In respect of this ground, the assessee has submitted that the addition made is incorrect in view of its submission in para 5.1 to 5.9 of its submission before your honour dated 07.07.2009.

7.2. The assessee has claimed that addition is not justified at all for the reasons that the papers were found with Shri R D Shinde *and it has no connection with the assessee. The assessee also claims that it has not collected any capitation fees from students. Without prejudice, it is also a claim of the assessee that out of the amount of Rs.9.47 Crs., Rs.6,59,21,500/- is pertaining to the 112 candidates whose names are noted on the loose papers and who were not given admission or have not been admitted in any of the institutes or colleges of the assessee during the year under consideration. Accordingly, the assessee claims that there is no reason in making addition when none of these candidates were given admission in any institutes of the assessee.*

7.3. The assessee, further, submitted that out of the amount of Rs. 9.47 Crs., Rs.87,50,350/- is pertaining to the various loose papers which are dumb documents in nature and are not relevant to the capitation fees nor does it indicate any other matter for making addition. The list of such papers has been given on Page 2046 of Volume II Part 7. The assessee has discussed each of these papers in detail in para 5.8 of its submission and has also submitted documentary evidences in support of its claim vide page no. 2046-2057 of Volume II Part 7. The assessee, therefore, claim to delete the addition made.

7.4. The submission made by the assessee is considered and the documentary evidences produced are verified. These documents were submitted by the assessee at the fag end of the assessment proceedings and therefore could not be verified at that stage. Now, on verification of the same, the report on each of the above contention of the assessee is submitted as under -

a. In respect of the claim of the assessee that it has not collected any capitation fees, it is submitted that it is proved beyond doubt that the assessee is collecting the capitation fees. A detailed discussion in this regard has already been made in the asst. order and earlier remand report.

b. Secondly, in respect of number of students actually admitted, the assessee has submitted a certificate of the respective person-in-charge clarifying that out of 146 *candidates specified in the asst. order, only 34 candidates have taken admission and rest 112 candidates have not taken admission in any of the constituent colleges of the assessee till the academic year 2005-06. The assessee also produced a list of such candidates. The claim may be decided on merits.*

c. In respect of the addition of Rs.87,50,350/- on the basis of documents seized, it is submitted that the claim may be decided on merits."

38. In the remand report the Assessing Officer accepted that out of 146 candidates which notings were found on paper seized from Shri Shinde, 112 candidates were not given admissions in any of the institutes of the assessee trust. The Ld. CIT(A) on the basis of the remand report granted the relief to the extent of Rs.6.59 Crores. The Ld. CIT(A) also gave the relief of Rs.87.50 Lacs accepting the plea of the assessee that the said addition was based on dumb documents. Finally the Ld. CIT(A) sustained the addition to extent of Rs.2,00,50,000/-. The reasons and finding of the Ld. CIT(A) on this issue for giving the relief are as under:

"14.4.5. I have carefully considered the submissions of the AO and the appellant available on record in relation to the addition of Rs.9.47 crores made by the AO. From the above, it can be seen that the arguments can be broadly classified to be relating to either on the ownership of the documents / cash seized and related legal issues or on the quantification of Rs.9.47 crores. So far as the ownership and other legal issues relating to the documents are concerned, it can once again be reiterated that most of them have already been dealt in para 5 of this order and it has been held in the facts and circumstances of the case and also in law that the documents and cash found at the premise of the appellant during the search conducted in the name of Shri R.D. Shinde, belonged to the appellant. However, certain other issues raised in this context, in the detailed submissions quoted above, which were not discussed to keep the discussion in para 5 compact, are now being discussed hereafter. It is important to declare that these issues were also considered while coming to the final decision, but found not so relevent to alter the decision or worthy of discussions there in the objective in which that para was created. On the issue of statements of 15 persons considered by the AO in para 8.3 of the order to show collection of donation for granting admissions, the appellant has, in para 5.9 of his submissions has contended that the opportunity to cross-examine

those persons has not been given and therefore, the AO cannot be permitted to place reliance on them in view of the judgment of the Hon'ble Supreme Court given in the case of Kishanchand Chellaram, 125 ITR 713, I find that the objection in a strict sense, is correct, as the AO has apparently not given the said opportunity. However, AO has not entirely based its arguments and conclusions on the above statements. He has only drawn a strength in the light of other facts and evidences to support them. Therefore, I find that, even if the evidences collected in the form of statements of 15 persons are not given much weightage, the inference drawn above is not alterable. It could be seen from the arguments made by the appellant in para 7 of his submissions dt.7/7/2009 that they are not quite relevant mostly in the context of the totality of the facts found in this case. Most of the arguments raised therein could be seen as met from the facts and evidences emerging from the search. The perusal of para 7 referred to above, very clearly show that the appellant has tried to argue on every references / instances / arguments made by the AO or referred by the AO in the assessment order as well as in remand report. However, it is very clear that again they are based on the assertion that the cash / documents found during search belonged to Shri Shinde and appellant has nothing to do with it. This issue has already been dealt in detail in para 5 of this order and I find no merit in the appellant's arguments in that context. The arguments in this manner can continue endlessly if they are advanced repeatedly and with total disregard to the actual facts discovered during search. In view of the above, they are considered as of no value in consequence. The ownership of the cash and the documents found has to be considered in the hands of the appellant and therefore, all the grounds raised in connection to this are treated as dismissed.

Now on coming to the other category of the grounds of the appellant, which is relating to the quantification of Rs.9.47 crores is concerned, it is noted that the appellant has argued that out of the above, additions of Rs.87,50,350/- (para 5.8 of the submissions) is based on documents which are dumb / incorrectly interpreted and Rs.6,59,21,500/- relates to 112 students who have not been granted any admission in any of the colleges so far. In view of the above and based on the detailed arguments made in the relevant paras, the appellant has requested for granting relief relating to the above two amounts out of Rs.9.47 crores. The detailed arguments made by the appellant in their submissions are self explanatory and I do not find it necessary to reiterate them as they are mostly based on facts. In view of the above, the report of the AO submitted under remand u/s. 250(4) is important. It is observed that the AO in his remand report dt. 11/3/2010, on the above additions has stated in para 7.4 that the documentary evidences produced before him during the remand were considered and verified. According to him, the same were not considered during assessment as they were produced at the fag end of the assessment proceedings. However, on verification during remand, of the facts / evidences relating to quantification, the AO has not been able to find or state that the conention of the appellant that admissions to 112 candidates in respect of which collection Rs.6.59 crores has been calculated and that the documents based on which

Rs. 87,50,350/- was added are dumb, are not correct or not acceptable. The AO, is seen to have accepted the facts stated by the appellant for the above two figures and has requested to consider these issues on merit. On careful consideration of the facts relating to the quantification of Rs. 9,47,21,850/-, I find that the evidences, based on which the appellant has sought relief were available before the AO at the time of the assessment and therefore, no objection for their admission exists. Further the documents referred to by the appellant in para 5.8 to show that the addition of Rs. 87,50, 350/- were either based on dumb documents or were of nature which could not form basis for addition in the hands of the appellant, have been found acceptable. Therefore, the appellant gets relief of Rs.87,50,350/-. Similarly, it is also seen that the evidences submitted by appellant to show that out of 146 candidates in respect of which the documents for collection of capitation fees were available, 112 candidates were not given admission in any of the institutes of the trust, were found acceptable by the Assessing Officer and therefore, the arguments of the appellant that in such a situation the question of collection of any capitation fee from them cannot be considered, becomes valid. In such a situation, the appellant deserves a further relief of Rs.6,59,21,500/-. Therefore, the appellant gets a total relief of Rs.7,46,71,850/-. All the grounds relating to the above issue can be considered as partly allowed.

14.4.6. The appellant has made two more consequential arguments / grounds. The first was dependent on the grant of relief of s.7.46 crores described above. As the same has been allowed, this argument of the appellant requires to be considered and decided. It has been stated by the appellant that the addition which would remain after granting relief of Rs.7.46 crores, out of Rs.9.47 crores, will be less than Rs.3.14 crores (cash seized) and therefore, it should be held as covered out of the above cash seizure. On careful consideration of this argument, it is found that the figure of Rs.9.47 crores were based on lose papers, which cannot be considered as complete. The appellant has also not accepted the above finding of the department and taken the opportunity to come clean after declaring every detail relating to the collection of capitation fee with necessary modus operand! and other corroborative facts and therefore, such relief cannot be considered to be allowable. Furthermore, the cash seized was admitted to be relating to the collection of 15 days only and therefore, the actual collection for the entire year has to be presumed to be of a much higher figure. Similarly, the possibility of actual earnings which could be estimated by multiplying the rates of capitation fee for different courses and the total number of admissions granted under management quota in different years, are much higher and therefore, it cannot be said that the total of such figure could be limited to or pegged to any particular figure. Therefore, this argument of the appellant is not considered as allowable.

Similarly, the other consequential arguments of the appellant could be seen as made in Ground No.19 of the appeal, wherein the

> *appellant has requested to delete the addition of Rs.3.14 crores as the same should be considered to be covered by the figure of Rs.9.47 crores. As the appellant has been granted relief out of the addition of Rs.9.47 crores and the total remaining addition is now less than Rs.3.14 crores, this ground of the appellant is of no relevance. Therefore, the same is considered as dismissed.*

39. Now the assessee is in appeal before us. The Ld. Counsel submits that the Assessing Officer has made the addition of Rs.9.47 Crores on the basis of the papers/documents found and seized from Shri Shinde. He submits that the Assessing Officer has not given how the amount of Rs.9.47 Crores was calculated when the said addition was made in the original assessment but in the remand proceedings the Assessing Officer accepted that out of the 146 students no admission is given to 112 students. He argues that there is no iota of evidence to suggest that the assessee has taken capitation fee from the students for giving the admission. He argues that whatever is done by Shri Shinde is his personal affairs and moreover, it is proved that whatever documents the Revenue has seized from Shri Shinde are not giving true pictures in respect of the admissions of the students and alleged charges of the capitation fee while making the high pitch additions. The Assessing Officer has not at all bothered to investigate whether the names which were found in the documents seized from Shri Shinde pertains to the students, who have been admitted in any institution/college run by the assessee. He submits that it is not uncommon in the education field that there are agents like Shri Shinde who makes the promises to the parents and the students without knowledge of the educational institutes for helping them to get admission in any course. He submits that at least Shri Shinde has fairly disclosed his *modus operandi* in his statement by stating that he is to take the token money from the students and once, the student gets admission on merit itself then he is to collect the balance amount settled between him and the student or candidate and in case if no admission is given then he used to refund the money. He submits that

these explanations or confessions of Shri Shinde suggest that whatever the 146 students / candidates whose names are found noted, they are just the customers of Shri Shinde and Shri Shinde would have made them the false promises for helping them to get the admissions in the assessee's education institutes by using his position. He argues that the part addition has been sustained by the Ld. CIT(A) is totally baseless as assessee trust has no role to play in the personal affairs of Shri Shinde. He submits that during the investigation itself Shri Shinde has accepted which is also proved subsequently that he was indulged into all mal practices then how those documents can be used against the assessee trust. He also placed his heavy reliance on the remand report of the Assessing Officer.

40. Per contra, the Ld. CIT (DR) argues that Shri Shinde was trusted employee of the trust and whatever he has done that is on behalf of the assessee trust or the trustees. We find force in the argument of the Learned Counsel. In the assessment on the basis of the documents seized from Shri Shinde, the Assessing Officer made very high pitch additions by presuming that whatever the figures are appearing in respect of 146 students all have got the admissions. He further proceeded by estimating the alleged capitation fee and worked out on the basis of the statement of Shri Shinde that whatever the cash was found with him that was in respect of 15 days admissions and he was indulged into the said affair in much more earlier period also. Nothing has been controverted before us that in fact out of the 146 students to the extent of 112 candidates no admissions were given at all in any of the institutions of the assessee trust. This suggests that whatever the evidence in the form of loose papers is collected during the course of the search has no relevance with the assessee and cannot be relied on to sustain the addition. Moreover, another important aspect is to be considered that Shri Shinde has admitted that he is working as a consultant or agent. We have also

perused the statements given by him to the Revenue during investigation stating that he used to make promises to many students and if the admission is by luck confirm then he used to collect whole money otherwise used to refund the token amount taken. In our opinion when this facts are clear and Shri Shinde has admitted documents are pertaining to his own affairs no liability can be fastening of the assessee trust on the basis of evidence which is concerning somebody else. We find no justification even to sustain the addition of Rs.200,50,000/- in the hands of the assessee trust. This issue will be independently decided in the case of Shri Shinde in his appeal. We, accordingly, delete said addition in hands of the Assessee trust and accordingly ground no. 9 is allowed.

41. In the result, the assessee's appeal for A.Y. 2006-07 is partly allowed.

42. Now we take up the Revenue's appeal (A.Y. 2006-07). The Revenue has taken the following grounds in the appeal:

1. *On facts and circumstances of the case and in law, the Ld. CIT (A) erred in treating fees collected from the students as per the circulars and norms of the universities and other Government authorities amounting to Rs.12,02,48,380/- and grants received from various educational bodies like UGC, AICTE, etc. amounting to Rs.1,21,17,965/- as non- taxable without actually verifying if the fees collected and grant received are towards capital expenditure as per the terms and conditions of the collections 7 grants.*

2. *On facts and circumstances of the case and in law, the Ld. CIT (A) erred in treating the fees as mentioned in ground no. 1 above which includes development fees as collection towards capital expenditure when para 6.7(c) of Government of India, Ministry of Human Resource Development Resolution dated 18/03/1997 from F.No. 20-13/96 - Desk (U), a copy of which is among papers submitted by the assessee in paper book, vol. 2 part -I, clearly mentions that the assessee will have an option*

to debit expenditure on improvement of faculty which is revenue in nature to the development fees account.

3. *On facts and circumstances of the case and in law, the Ld. CIT (A) erred in treating expenses of Rs. 2,45,91,642/- as revenue expenses in the absence of full details and proper reasons for treating them as revenue expenses.*

4. *Without Prejudice to ground no. 3 and in particular, the Ld. CIT (A) erred in treating the Gramin Vikas Pratishthan expenses as allowable expenses on the ground that these are met out of grants received by the assessee for specific purposes which were credited to income and expenditure account, in the absence of any details of such grants credited to the income and expenditure account.*

5. *On facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting a part of the additions u/s. 40A(3) amounting to Rs.53,756/- when the corresponding payments were not covered by any of the exceptions in Rule 6DD.*

6. *On facts and circumstances of the case and in law, the Ld. CIT (A) erred in allowing deduction for Rs.31,99,423/- towards debit balances written off in the absence of full details of such debit balances.*

7. *Without Prejudice to ground no. 6, the CIT (A) failed to appreciate that a part of the debit balances written off towards fees and grants receivable may be relating to the fees and grants mentioned in Ground No. 1 which the Ld. CIT (A) has directed not to treat as income thereby resulting in double relief to the assessee.*

43. So far as Grounds No. 1 & 2 are concerned it is in respect of the treatment of the fees collected by the assessee trust from the students and as well as grants received from UGC, AICTE etc. On this issue there is no specific discussion in the assessment order and income is re-casted by adopting the Special Audit Report. The Ld. CIT(A) has discussed this issue in para no. 18 onwards. This issue arises from the Special Audit

Repot more particularly para no. 6.2.(a). The details of the amounts are as under:

Capital receipts and donations credited to Corpus Fund and Earmarked Funds now treated as income and credited to the Income & Expenditure Account:

Particulars	-	*Rs.*
Build. Fund - Donations	-	*20,000*
Build. Fund - Head Office	-	*33,720,460*
Book Bank Fund		*667,299*
Development Fund	-	*19,640,478*
Reserve Fund		*400,688*
Student Welfare Fund	-	*213,417*
University Development Fund	-	*17,511,044*
Collage Development Fund	-	*82,400,405*
Shripatrao Kadam Pratisthan Fund	-	*72,255*
Serve Shiksha Abhiyan Grant Fund	-	*182,693*
Late Mamjusha Mandke P. Fund (Social s. Centre)	-	*196*
Grant Fund	-	*1,630,255*
UGC Grant Fund		*1,319,694*
Project Grant Fund (IRSHA)		*673,510*
Pharmacy Collage (Degree\) Pune Grant Fund		*7,514,215*
Corpus Fund		*37,100,000*
Sports Grant Fund		*46.390*
Ground Development Grant Fund		*32*
E.G.S. Grant Fund		*36.280*
Students Security Fund		*82,348*
S.S.M. Grant Fund		*45,827*
Sonhira Foundation (Endowment)		*69,772*
EGMIS Grant Fund		*1,800*
Total		*203,349,028*
Less: Decrease in Balances of Fund Accounts	-	
Equipment Purchase Fund Acounts		*(37,721)*
School Developemnt Fund		*(47,784)*
Student Aid Fund		*(41,520)*
Teachers Hostel Building Fund (YMC)		*(23,275)*
Social Welfare Grand Fund	-	*(11,070)*
Equipment Fund	-	*(118,000)*
AICTE Grant Fund	-	*(459,471)*
Central Govt. Grant Fund	-	*(678,379)*
Donation Fund	-	*(9,570)*
Grant Fund (Infligbnet)		*(140,550)*
Gratuity Fund		*(104,985)*
S.W. Book Bank Fund		*(693,395)*
Best School Award		*(2,952)*
Non-recurring Grant Fund		*(7,530)*
Library Grant Fund		*(810)*
Ms. BTE Grant Fund (JNIOT)		*(10,250)*
Project Grant Fund		*(369,372)*
National Harit Sena Yojana		*(1,000)*
Net Total		*200,591,394*

44. The Ld. CIT(A) has discussed this issue in para no. 18.3 of the impugned order and we preferred to reproduce the same for the sake of clarity.

"18.3. The AO has dealt this issue in paras 8 to 8.32 of his order. The details can be seen from the order. It is however noted that the AO in

his order has referred to the seizure of cash of Rs.3.14 crores from the premise of the appellant in the search of Shri R.D. Shinde, and also the statement recorded on 21/7/2005, wherein Shri Shinde is stated to have said that the amount seized represents money collected from students in last 15 days and on being further confronted about such collections made in earlier year, he has stated that he has earned Rs.2 crores each in earlier two years, which were probably deposited in building fund accounts or trust accounts. The AO has further stated in the order, that in view of the above statement of Shri Shinde all such building fund accounts for the period of June.r 2004 to July 2005 were scrutinized and huge deposits mainly in cash was noted, which were ultimately transferred to the account of BVP. The summary of such details has been given in para 8.1 of the order which is shown below:-

Name of the Accountholder	Account Details	Amount of cash collected	Amount transferred to BVP
Bharati Vidyapeeth Law college Imarat A/c	SB A/c No 64818, Bharati Sahakari Bank Main Branch	95,70,000/-	92,85,772/-
B.V.D.URajiv Gandhi Institute of Information Technology Imarat	SB A/c No 64819, Bharati Sahakari Bank Main Branch	1,31,95,900/-	1, 15, 90, 000/-
B.V College of Fine Arts Imarat	SB A/c No 64820, Bharati Sahakari Bank Main Branch	7,06,72,000/-	1, 03,50, 000/-
B.V Abhijit Kadam Institute of Management Imarat	SB A/c No 64821, Bharati Sahakari Bank Main Branch	95,27,000/-	85,31,000/-

The above finding, as per the AO gave credence to the statement of Shri Shinde and other findings made based on other incriminating documents suggesting collection of money/capitation fee and its utilization for various purposes including deposit in building fund account etc. This contention of the department, as per the. AO further got strengthened by the investigation carried out by the Investigation Wing, wherein following persons are stated to have accepted in their statements that they have given money for securing admissions of their wards. Such a list has been enclosed by the AO in para 8.3 of the order and the same is also given hereunder.

S.No	Name of the donor	Amount	Purpose
1	P.Mukherjee	80,000/-	Admission Grand children
2	Jyoti P Puri	15,00,000/-	Admission for MBBS
3	Sulochana Meharotra	1,00,000/-	Admission of son B.Tech
4	Smt. Krishna Agarwal ofRotomac Industries	20,00,000	Admission of daughter
5	Yatin Takkar	3,30,000/-	Admission
6	Kirit B Patel	5,00,000/-	Admission of son
7	Ashok V Patel	10,00,000/-	Admission of daughter for MBBS
8	Suman Gitesh Shah	14,00,000/-	Admission to MBBS
9	Dr. Ajay Patel	3,00,000/-	Admission
10	Dr. J.V.Shukla	1,00,000/-	Admission for daughter for BDS
11	Ashok Kumar Roy	2,00,000/-	Paid BVMFfor admission
12	Dr. P. K. Gupta	9,50,000/-	for admission of Ravi Pratap
13	Shri K. R. Naik, Link India Ltd., Mumbai	10,00,000/-	Admission for Medical Education.
14	Shri Vijay Singh Thorat, Mumbai	4,00,000/-	-do-
15	Y .E. Shroff, Mumbai	9,00,000/-	Donation admitted for the purpose of Medical Education.

The AO in para 8.4 and 8.5 have further tried to link the collection of the money to the trust based on the statement of Shri Shinde. In para 8.6 the AO has further referred to Annexure-ll of the order wherein the details of the number of students admitted under management quota in various colleges / institutions for the academic years 1999-2000 to 2005-06 are given. The AO has further given a table of rates at which collection for different courses were made, based on the seized documents. The said table is also given below:

Name of the course	Rates for admission (Rs.)
Medical (MBBS)	15 lakhs to 20 lakhs
B.D.S.	6 lakhs to 7 lakhs
M.S. (Ortho)	30 lakhs
Electrical Engineering	2 lakhs
Computer Engineering	1.5 lakhs
Information Technology	1 lakh
Civil/I. T./Chem. Engg.	2 lakhs
M.Sc. Nursing	0.7 5 lakhs
M.S. (Surgery)	25 lakhs
Hotel Management	1 lakh
B.Sc. (Nursing)	1 lakh
M.B.A.	1.5 lakh
M.D. (Gynac.)	35 lakhs to 40 lakhs
M.C.A.	1.5 lakhs
D.G.O.	20 lakhs.

In addition to the above discussions, the AO has also referred to findings made in searches simultaneously conducted in the case of Shri Rajendra Singh Yadav Group at Wadhwani Plaza, Pimpri, Pune-18 including the statement of Mr. Yadav, to support that the appellant was engaged in collecting money for granting admissions. Through all these discussions the AO has basically tried to establish that the appellant is engaged in collecting money / capitation fee for granting admissions and part of the same were deposited in different funds accounts and partly utilized for the benefit of the interested persons defined in s.13(3). As per the AO, once the linkage between the collection of capitation fee and the deposits in the fund accounts were established, the next logical step was to collect figures for deposits made in the fund accounts. For A.Y.1999-2000 to 2003-04, the assessee was seen to have brought in the books additional funds of Rs. 63,94,29,280/-, over and above Regular Tuition Fees under various funds (as mentioned in para 8.12 of the assessment order). As per the AO, when these facts were confronted to the assessee to explain the deposits etc., they could file the details of certain donations for the period of 1-4-1999 to till the date of search, i.e. 20-7-2005. Total of such donations received from various persons has been claimed to be at Rs.2,29,79,100/-. The AO has further stated in the order that for verifing the above explanation of the appellant in respect of gifts of Rs.2.29 crores summons to the following persons were issued and the outcome as noted in the order is as below.

Sl. No.	*Name of the Donor*	*Amount (Rs.)*	*Date*	*Remarks.*
1	*Rajkumar Virbhadra Shete*	*35,000*	*31-3-2003*	*Cash. No compliance.*
2	*N. U. Rajmane*	*10,000*	*31-10-02*	*Cash - Party denied.*
3	*S.K. Kothari*	*6,000 15,000*	*10-12-02 6-01-2005*	*Claimed to be paid at the request of the Trust either in the form of Donations or Advertisement, as the Party is using the premises of BVMF without paying any Rent.*
4	*B. G. Thopte*	*15,000*	*31-10-02*	*Cash - Party denied.*
5	*S. R, Swami*	*1,00,000*	*25-7-2000*	*Payment made towards admission in the College.*
6	*M/s. Fleet Guard Filter Pvt. Ltd.*	*10,00,000*	*30-4-2005*	*Party accepted, but the donations were given at the request of the Trust.*
7	*D.S. Choudhary*	*5,000*	*30-10-02*	*Cash - Party denied.*
8	*Mrs. Meera Dudhane*	*10,000*	*30-10-02*	*Cash - Party denied.*
9	*Mr. J.R. More*	*5,000*	*30-10-02.*	*Cash - Incorrect address of the party.*

The Assessing Officer in para 8.14 has further referred to the documents seized and the statement given by Shri Shinde to establish that the cash collected was partly deposited in building accounts. In this respect, the Assessing Officer has further referred *to documents seized at Page Nos. 11 to 18 of Bundle No. 14 of Panchnama dated 22-7-2005. These pages are stated to be counter-parts of the pay-in-slips for deposits in cash in Bharati Sahakari Bank Ltd. in the accounts of the institutions affiliated to the Bharati Vidyapeeth. It is noted in the assessment order that Shri Shinde explained these documents to represent cash collected through coupons by Organizers of the Trust, well wishers etc. As per the AO, the assessee was given an opportunity to prove the coupon donations or other donations. They were asked to furnish the details of names and addresses of the donors in respect of the Corpus fund and other specified funds like Imarat A/c, Fine Arts A/c and other Imarat A/cs etc. The assessee was also asked to furnish confirmation letters of such donors. It may be noted that, as per the AO, the onus was on the assessee to prove that a particular donation, be it in the form of Coupon or otherwise has in fact been given by the donor as Corpus donation. From the discussions made in the order, it is seen the AO formed the opinion that the appellant had no identifiable proof, whatsoever, available with him to establish and link each donation to a particular person. In that situation, he concluded that they cannot represent the real donations but actually represent partly the cash collected while granting admissions. The AO has also referred to the increase in building funds noted from year to year in the balance sheet of the appellant and has given it in a table shown below :-*

Financial Year	*Progressive Building Fund A/c.*	*Increase*
1999-2000	*Rs. 33, 46,65, 141/-*	*Rs. 7,69,69,244/-*
2000-2001	*Rs. 3 9,44,24, 5 34/-*	*Rs. 5,97,59,393/-*
2001-2002	*Rs. 46,37,82,1 3 1/-*	*Rs. 6,93,57,597/-*
2002-2003	*Rs. 54,60, 50,057 /-*	*Rs. 8,22,67,926/-*
2003-2004	*Rs. 56,09,76,84 /-*	*Rs. 1,49,26,784/-*
	Total increase in the Building Fund Account	*Rs. 30,32,80,944/-*

The claim of the appellant that the cash deposited in these accounts represents coupon donations of Rs.25 to Rs.1000/- from numerous persons through volunteers. On that issue, the Assessing Officer concluded that the donors are not identifiable and the support claimed by the appellant on the strength of statements submitted from volunteers was considered self-serving and manufactured. As per the Assessing Officer, the genuinity of the donations was not established and the claim that they are for corpus was found unsubstantiated. The coupons were said to be pre-printed with amounts and the word corpus, denying the opportunity of voluntary exercise of option to a donor, even if it could be considered as *genuine donation. The discussions made by the appellant in this regard in para 8.24 to 8.31 are quoted below:-*

"8.24 In the absence of name and address on the respective coupon the authenticity of so called confirmations are questionable. Incidentally, it is also noticed from the coupons that were produced for verification that the same did not even bear the signature of a person who has collected donations on behalf of the trust nor any date is available on the said coupons. The same bear the facsimile signature of trustee. In the absence of this signature even the verification of so called coupon collector is also not possible.

8.25 It is difficult to believe that such a large number of rural population shall be making payment to a trust, the existence of which is hardly known to them apart from the fact that the activities of the trust hardly affects their welfare. It is also interesting to note that not only the assessee trust but similar donations running into lakhs of rupees have also been collected by the other trusts of the same group from very same villages in a similar manner by way of unnamed unsigned coupon collections of small donations and also in all the years as indicated below: -

S. N.	Name of the trust	AY 99-00	AY 00-01	AY 01-02	AY 02-03	AY 03-04	AY 04-05	AY 05-06	AY 06-07
1	Bharati Kala Academy	22.63	48.05	23.45	37.50	24.20	8.28	9.00	26.70
2	Yeshwantrao Nvas	22.63	25.30	00.65	1.31	0.00	0.00	00.05	0.00
3	Patangrao Kadam Pratishtan	32.40	47,25	24.36	36.20	23.00	8.60	18.90	25.80
4	Yeshwantrao Mohite Pratishtan	22.70	25.20	00.10	00.15	0.00	0.00	0.00	0.00
5	Bharati Vidyapith Medical Foundation	9.10	31.25	48.45	43.50	53.55	13.05	50.93	38.65
6	Abhijit Kadam Memorial Foundation	0.00	0.00	43. 75	45.22	29.10	29.26	9.85	26.75
7	Matoshri Bayabai Kadam Memorial Foundation	22.28	46.35	46.30	36.83	47.40	19.15	8.40	25.48
8.	Sonhira for Rural Development	0.00	47.70	28.97	38.15	23.05	3.75	8.05	26.05
9	Bharati Krida Pratishtan	22.70	47.31	27.00	37.35	24.00	8.00	8.95	26.75
	TOTAL	154.44	343.1	243.0	276.21	224.3	90.09	114.13	196.1

8.26 About the voluntary nature of such receipts without conceding the assessee 's claim on existence of such donor, it can also be said that in a situation where more than fifty percent of population is illiterate the^ writing on preprinted coupons, allegedly supplied by the trust to volunteers hardly makes any sense. The donors are *neither aware of the nature nor the purpose of donation claimed in their names. These donations, therefore, are dubious and certainty cannot partake the character of corpus donation within the meaning of section 11(1)(d) of I. T. Act 1961.*

8.27 With regard to the application of provisions of section ll(l)(d), as per the provisions contained in section ll(l)(d) of the IT Act the corpus donations apart from being voluntary should also have a specific direction from the donor to treat the said donation as corpus donations. I have already pointed out that in the absence of name and address of the donor on the respective coupons the authenticity of the so called sample confirmation is itself questionable.

8.28 In fact, in the absence of names and addresses of the donors, the assessee trust itself is not aware as to who is the real donor in respect of each individual coupon. The matter of the similar situation had come before the Hon. Members of the ITAT Pune Bench in the case of DCIT Vs. Nasik Gymkhana 77 ITD 500 in which the Hon'ble members of the bench had held that such donations cannot be attributed towards corpus of the Trust since the names and addresses of the donors are not available and there is no confirmation in this regard.

8.29 It is noticed that the word corpus is found to be preprinted on the coupons. In other words the nature of donations is decided by the assessee trusts itself without the knowledge of the donor. In this context, it will also be worthwhile to reproduce the following observations of the Honourable Members of the ITAT C Bench Mumbai in case of "Prabodhan Prakashan" Vs. ADIT (Exmp) as below.

"It is true that there is no stipulation in the above section that the specific directions should be in writing and, therefore, we agree that it should be possible to come to a conclusion from the facts and circumstances of a case whether a specific direction was there or not, even where there were no written directions accompanying the donations. However, at the same time, it has to be kept in view that the specific direction should be that of the donor and not of the donee. In other words, it will not be sufficient for the donee alone to declare that the voluntary contributions were being allocated to the corpus. There should be evidence to show that the direction came from the donor.""

8.30 Merely because the assessee produced stray evidences incapable of verification, it cannot be held that it has discharged its onus of proving the genuineness of the transactions claimed by it. The said receipts are therefore liable to be brought to tax as unproved donations. Once they are taxed so, they lose to enjoy the benefit of exemption under Section 11, because the Section considers the exemption only to the donations and not to unproved and dubious donations. However, in the present case, as the registration is cancelled, all receipts on account of donations are considered for the purpose of taxation, unless the receipts are shown to be on account of capital account.

8.31 The assessee, vide letter dated 11/07/2008, has furnished copies of confirmation letters from certain donors who are said to have given donations meant for corpus fund. In this regard, it may be noted that the donation receipts, covered by the confirmation letters furnished, are also considered for the purpose of computing the taxable income as the same are not proved to have been spent as capital expenditure ".

The AO in view of the above discussion has concluded that the credit appearing in the various accounts and funds of BVP are on account of donations / capitation fee collected over and above the regular fee for granting admissions and therefore, the appellant has not correctly recorded the nature and quantum of income in the books for A.Y. 1999-2000 to 2006-07."

45. The assessee objected to the Special Audit Report on this issue by taking the following contentions:

12.1 As stated in our earlier submissions, special auditor was appointed u/s 142(2A) of the Act. The special auditor has treated certain capital receipts and donations which were credited to corpus funds / earmarked funds as revenue receipts and has included them in the income and expenditure accounts. The details of these receipts are given in para 6.2, page 22 of the audit report for F.Y. 2005-2006.

12.2 During the course of asst. proceedings, the assessee explained to the A.O. that the special auditor was not correct in holding that the various donations / grants were revenue in nature. The *assessee clarified that these receipts are capital in nature and therefore, should not be taxed. The learned A.O. has disregarded the submissions of the assessee and on page 72 has held that the income is to be computed on the basis of the Recasted income & expenditure account prepared by the special auditor. The assessee has given voluminous details to the learned A.O. in this context and had submitted the details in the form of circulars issued by the State Govt. and other documentary evidence to justify that the grants received are capital receipts not chargeable to tax.*

12.3 The assessee submits that the special auditor and the learned A.O. has erred in taxing the various donations / grants received. The assessee had received donations of Rs.3,71,00,000/-from various donors list of which is enclosed herewith. The assessee had also submitted the letters from the said parties that the said amount should be treated towards the corpus of the trust. The learned A.O. has totally ignored these letters. Once, the donation was towards the corpus of the trust, the said amount is exempt from tax u/s 11(1)(d). Accordingly, the assessee submits that this amount of Rs.3,71,00,000/- is exempt from tax u/s 11(1)(d) and hence, there is no reason to treat the said amount as revenue receipt.

12.4 The assessee has received the following donations through issue of coupons –

i. Building fund Donations Rs.20,000/-

ii. Building fund head office Rs.3,37,20,460/-

The appellant trust has been collecting donations through coupons from the public at large. In the state of Maharashtra, the appellant's main trustee Dr. Shri Patangrao Kadam and his family members through the medium of Bharati Vidyapeeth a charitable trust in the field of education, have done a substantial work in the field of education. It has set up educational institutions in Pune, Sangli, Satara, Kolhapur, Mumbai districts. It has also set up the educational institutions in New Delhi. After noticing their work in the educational field, there are number of willing donors who contribute donations to the various charitable trusts set up by this family. The appellant trust is one of such trusts. The volunteers, every year have been contacting the persons at large in Maharashtra and they collect the donations by *issuing coupons to the willing donors. These coupons are in various denominations like Rs.5/-, 100/-, Rs.500/-, Rs.1,000/-, etc. A few sample copies of the coupons are enclosed herewith. Thus, right from inception of the trust, the appellant has been showing the donations collected through the coupons in its accounts. These donations are collected for the various capital expenses to be incurred like construction of a building, purchase of plant and machinery, etc. and therefore, these coupons clearly stated that the donations are towards corpus / development fund. Accordingly, the assessee in the past right from the beginning has been showing such donations as donations to the corpus and was not including the same in the Income & expenditure Account. As already clarified, right from beginning, the assessee gave the same treatment to the above funds collected and the dept. never raised any objection to the above treatment in the sense that for all these years, the dept. never reopened the assts. completed u/s 143(1)(a). Now, in this asst., the special auditor and the learned A. O. has treated these donations as revenue receipts.*

12.5 It is submitted that these donations were collected by issue of coupons from the public at large and the assessee was not able to identify each and every donor for the donations received. However, at the time of assts., the appellant submitted the affidavits of some of the volunteers, donors in order to prove that the donations were accepted from such persons. The assessee submitted that on all the coupons it was clearly mentioned that these are towards the corpus. The learned A. O. has not accepted the contention of the assessee and has taxed the same as revenue receipts. The assessee also submits that these coupons were issued , to the donors for the donations received clearly state that these donations are towards the corpus. If that be so, it is submitted that the donations should be considered as the corpus donations. Accordingly, we submit that the appellant was justified informing the opinion that they were corpus donations. We also draw your kind attention to the provision of section 115BBC which is introduced w.e.f. 1.4.2007 wherein it is stated that in the case of a charitable trust, the anonymous donations would be taxed as an income @ 30%. This amendment also shows that the legislature itself has accepted that in the case of a charitable trust, the anonymous donations are received. Further, we submit that the affidavits given from the donors and the volunteers are not contravened by the dept. by cross examining them and therefore, the *question of holding a view that this money is out of unexplained cash credits is not possible.*

12.6 There is no doubt that as per section11(1)(d) that there should be a specific direction by the donor that the donation shall form a part of the corpus. It is submitted that the trust had received the donations against the coupons issued. The coupons clearly stated the purpose of the donations. If that be so, it is very clear that the noting on the coupons impliedly constituted the direction from the donors for the donations given and which was clearly a direction that the donation was towards the corpus. It is further submitted that a mere look at the balance sheet and the accounts of the assessee would indicate that such donations have been accumulated in the prescribed securities u/s 11(5) by the assessee over the years and they have not been spent on any revenue purpose. Hence, the treatment given by the assessee to the donations also supports the contention that they were corpus donations. Accordingly, we submit that the contention of the assessee is justified and may kindly be accepted.

12.7 The Auditor has considered such donations as income u/s 28 in his computation of profit of the trust for the various years. It is submitted that these donations are capital receipts in nature. They are by way of gifts. Accordingly, they do not constitute income in our hands. We draw your kind attention to the provisions of section 2(24)(iia) wherein the voluntary contributions are considered as income only in the case of a charitable trust. Hence, in the hands of the other entities, such contributions do not constitute income at all. Accordingly, it is submitted that if Your Honour treats our trust as charitable trust, such donations do not constitute income u/s 11(1)(d) and if the trust is considered non charitable, these donations do not constitute income u/s 2(24) at all.

12.8 It is for this reason, we submit that the receipts by way of donations should be excluded from the computation of income in our hands for all these years. In view of above, it is submitted that the donations collected through issue of coupons should not be taxed.

12.9 The assessee has collected donations of Rs.3,37,20,460/-. Out of this amount, the amount of Rs. 20,000/- is collected from various persons and the list is enclosed herewith. It is submitted that since the donations are towards the corpus of the trust, the same is exempt *from tax u/s 11(1)(d). Without prejudice, the assessee submits that as clarified in para 12.7, these receipts are towards corpus fund and if exemption u/s 11 is denied, then, these receipts are to be treated as capital receipts not chargeable to tax.*

12.10 The auditor has taxed Rs.8,24,00,405/- being amount credited to college development fund account and Rs.1,96,40,478/- being amount credited to development fund in this year. He has also taxed an amount of Rs.1,75,11,044/- being received from on account of University Development fund. The assessee submits that out of Rs.1.96Crs., actual amount collected from the students is Rs.l,45,77,978/- and Rs.50,62,500/- is on account of transfer from the income expenditure account to the development fund account. This amount of Rs.50,62,500/- is nothing but appropriation entry passed by the assessee and it is not a case of any donations / grants received by the assessee. This aspect is clear from the fact that the said amount of Rs.50,62, 500/- is debited to the income and expenditure account and the said amount is also not allowed as an expenditure by the special auditor. In para 6.2(b), he has given the details of the expenses not allowed while computing the income and amount of Rs.50,62,500/- is clearly stated in respect of development fund expenses. Accordingly, he has made double addition and secondly, this amount being transferred from income and expenditure account cannot be considered as income of the assessee and hence, the same should be deleted.

12.11 As regards the addition in respect of amounts collected various funds namely, university dev. Fund, college dev. Fund, student welfare fund, Grant Funds, etc. Those amounts are collected from the students as per the circulars and norms of fee collection prescribed by the AICTE, Fee Fixation Committee and various rules and regulations of state governments. As per these norms, out of total collection of development fund, they have to be spent and utilized in the prescribed manner by the respective authorities. As per the norms prescribed by these circulars, the said amount of fees has to be spent only on the capital expenditure ' of the Institutions. Accordingly, the purpose behind such collections is to mitigate the cost of capital expenditure of the trust. Hence, the said amount is not a revenue receipt but is a capital receipt allowed to be collected from the students as per norms and rates prescribed by the government and to be utilized only for capital expenditure purpose. It is therefore, *submitted that such amounts cannot be considered as income in the hands of the trust in all these years. The auditor has considered such collections as revenue receipts. As already clarified, the above receipts are as per the Govt. circular for the purposes of capital expenditure of the trust and hence, by no stretch of imagination can such receipts be considered as income in our hands. We submit that the same may kindly be removed from the computation of income of the assessee trust as adopted by the auditor and the A.O. for all these years. It is also to be noted that the expenditure incurred by the assessee out of the development fund has been debited to the development fund account and has not been debited to income and expenditure account. It is to be noted that during the course of asst. proceedings, the assessee submitted voluminous information to the learned A. O. in respect of the various grants received by the assessee. The learned A. O. has not considered our submissions and has merely taxed the amount only on the reason that the special auditor has also held it to be revenue receipt. The various documentary evidences were submitted to the learned A.O. along with our submissions dated 10' July and 25th July, 2008 in number of box files. In case, Your Honour desires, we can submit the said voluminous information on hearing from Your Honour.*

12.12 It is further submitted that these types of grants are received by the institutions of the trust from various government authorities for meeting capital expenditure. These grants are receipt of capital nature and are treated by the trust as capital fund. The same are accounted as per the principles of accounting for grants as specified by the ICAI in this respect. The accounting standard specifies that the capital grant received should be treated as capital receipt. The project grants are of repetitive nature also. As already clarified earlier, the assessee trust receives grants from the Govt. for various purposes. The trust is running various educational institutions on grantable and non-grantable basis. There are number of schools and colleges giving profession, vocational and regular curriculum, sports education and training. The Central government, HRD Department and the state government education, social welfare *and various other depts. has got allocation in their budget for promotion, research and up-liftment of lower class. Accordingly, our institution receives different type of grants from different authorities with the specific purpose for which the grants can be utilized by the assessee. It is binding on the institution to spend the said grant as per the directions and submits the audited utilization statement duly certified by the chartered accountant. If any surplus is their in the grant in a particular year, it has to be spent in the next year and again necessary utilization certificate for the total amount is to be submitted. If for any reason the grant could not be utilized it has to be refunded to the particular authority who has given the said grant to the institution. It is further clarified that the entire grant received and spent is monitored by the respective granting authorities form time to time. These grants are to be spent on such purposes. Whatever is the unspent balance lying unutilized out of the grants received is reflected in the accounts every year as on 31st March. However, such amounts have been spent thereafter on the specific purposes in the later years. This is verifiable from the accounts which would indicate that the expenditure on those specific items in the later years is more than the grants received. The details of such unspent grants and the amount of expenditure incurred on those specific objects in the later years are given in the details in a separate box file submitted before the Learned AO which clearly will prove that the unspent grants have been utilized in the later years and they do not remain unspent with the trust. Every year the government sanctions grant mostly in the month of February and March and the cheques for the same grant are received by the institution in the month of April to June with ihe^ cheque dated prior to 31 March. Hence the institution has to record the cheques or grant as received prior to 31 March i.e. in the year of disbursement of the grant. Hence the grants or part of the grants remain un-spent as on 31 March of the financial year. The same is in case of Scholarships and free ships.*

12.13 Without prejudice to the above submissions, in case, Your Honour desires to tax the development fund receipts as revenue income, the expenditure incurred by the assessee should be allowed as an expenditure while computing the income. It is also submitted *that in respect of certain grants, the assessee had utilize those grants for acquiring assets. The assessee submits that without prejudice to the earlier submissions, the grant received should be reduced from the cost of the assets which are purchased from the grant received. This is in view of explanation 10 to section 43(1). As regards, student aid, student welfare, school development fund, these amounts are collected from the students as per the norms and regulations of the university. These funds have to be spent on the welfare, aid of the students and the emergency situation of the students. So the said amount is a liability of the trust and income.*

46. The Ld. CIT(A) has called remand report of the Assessing Officer on the above submissions of the assessee. The relevant part of the remand report is reproduced by the Ld. CIT(A) in para no. 18.5 of the impugned order. The assessee's submissions in rejoinder to the remand report of the Assessing Officer are reproduced in para no. 18.6 by the Ld. CIT(A). The assessee contended that the donations were received mainly by cheques and all the donors are identified. The assessee further contended that all the donors have issued the letters confirming that the donations were given towards the corpus of the assessee trust. Once it is established that the donors are identified and the purpose of the donations then there is no justification for the Assessing Officer to take the difference stand. The assessee also contended that whatever the alleged information is gathered by the Assessing Officer in respect of the donations recorded in books of account for arriving at misplaced conclusion that the assessee collected the donations for giving the admissions is not sustainable in law as no information or material is confronted by the Assessing Officer to the assessee nor the assessee is giving any opportunity to cross-examine the persons on whose statements. The assessee also pointed out that even in the remand proceedings, the Assessing Officer had not given them any opportunity to cross-examine the donors whose statements were recorded. The assessee heavily relied on the decision of the Hon'ble Supreme Court in the case of

Kishanchand Chellaram (supra) and contended that unless the assessee has been given opportunity to cross-examine the persons who have allegedly stated against the assessee, the said evidence cannot be used against the assessee in framing assessment.

47. The assessee also contended that the exemption u/s. 11 is denied because, the registration of the assessee trust granted u/s. 12A was cancelled by the CIT but the same has been restored by the Hon'ble ITAT, Pune. The assessee also contended that as regards the fees collected by the assessee trust from the students as per the Government Circulars, the assessee the said fees were collected to incur Capital Expenditure and therefore, the fees were Capital Receipts. The Assessing Officer has verified the claim of the assessee and accepted that as per the circulars the amounts collected are to be utilized only for acquisition of the Capital Assets and it is clear as per the remand report of the Assessing Officer. Once the receipts are in the Capital nature the same cannot be treated as a revenue receipts. The Ld. CIT(A) after considering the remand report of the Assessing Officer held as under:

> *"18.7.I have carefully considered the ground No. 12 of the appeal, which is arising from the details computed by the Special Auditor in his report in para 6.2(a). The said computation said computation made by the Auditor u/s.142(2A) is based on the directions issued by the AO for the reasons discussed in paras 8 to 8.32 and the same has been given in this order at para 18.2 above. The AO in the discussions referred to above has concluded that the appellant on the basis of the evidences collected during search and survey and also in the post search inquiry, was found to be collecting donations / capitation fee for granting admissions under the management quota and even otherwise, and the same money was either utilized for depositing in various fund accounts of the trusts or for the personal benefits of persons described in s.13(3) of the IT.Act. These findings were supported by the AO with the seizure of cash and documents from the head office of the BVP, in the search of Mr. Shinde, one of the trusted employees of the group looking after the accounts as well*

as the admissions in BVP's institutions. Therefore, it can be seen that the AO has established from the cash and documents seized, that the appellant has been charging capitation fee / donation for granting admissions. Even though the said evidences were directly relating to A.Y.2006-07, but the same was the situation in at least earlier two years was established by the AO from the statement of Mr. Shinde wherein he confirmed to have collected money of approximately Rs.2 crores each in earlier two years and have deposited it in the building and other fund accounts of the various institutes and the trust. This contention of the AO has been further established to be true from the finding made showing huge amount of cash deposits in different fund accounts in different assessment years. On noticing this linkage that part of the collections made were going into the fund accounts, the AO after obtaining approval of the CIT(Central) issued directions u/s.142(2A) for making various inquiries including the culling out of figures of accretions in fund accounts and to treat them as revenue receipts. Other directions issued to the Special Auditor were in respect of other findings. Most of the cash deposits appearing in the fund accounts, which were shown by the appellant over the years as corpus receipts, were explained by the appellant to have been of the nature of "Coupon Donations". From the perusal of the discussions made in this regard and also from the submissions made by the appellant, it can be seen that the appellant has no identifiable evidence of credible nature to show that they are genuine donations. The evidences submitted in the form of statement of certain volunteers to support that they have acted to collect donations from public of Rs.25 to Rs.1000/-, appears unacceptable being self serving. They are also not credible in the light of the finding made during search suggesting collection of money for granting admissions and its deposit in cash in fund accounts as admitted by Mr. Shinde. The above finding further establishes that the donations have been collected in atleast all the years, where books have been examined after search by the department and also by the Special Auditors. The appellant on the issue of taxability of coupon donations has raised many issues but all of them can be treated to be of no value and consequence, if they are viewed in the background of the findings made by the Special Auditors, who is an independent and technically qualified person. The same appearing in Chapter-9 of the Special Audit report, in response to point No. 12 of the reference of the AO, is quoted below:-

> *"Point No. 12: re – Coupon Donations received:*
>
> *Upon examination of the records and enquiry with BVP it was noticed that the Coupon Donations were received in cash from various unnamed persons. Such cash collections, which have been designated as coupon donations, have been deposited in various bank accounts of the assessee (i.e. BVP). The coupons do not bear the name of the donor nor any directions from the donor as to the purpose for which the same was to be used. It is seen that the cash deposits on account of coupon donations have been credited to 'building fund' and various other 'earmarked fund' accounts. In the absence of identity of the donors and directions from , the donors, the coupon donations cannot be regarded as donations towards corpus/earmarked funds. The total amount stated to be collected by coupon donations during the year under consideration is quantified at Rs.................. , which is in agreement with the amount recorded in the books of account. The assesses could not make available for our verification the counterfoils of all coupons issued against coupon donations, the coupon donation Registers and other relevant records and, therefore, we were unable to check the entire amounts collected as coupon donations. The particulars of coupon donations verified by us, and the reconciliation with consolidated audited accounts is given in Exhibit-'F1'."*

The above report of the auditors clearly establishes that the coupon donations are from unnamed persons without any directions for its utilization for any specific purposes and the details maintained in respect of the above were neither complete nor verifiable. In the light of the above and the fact that the only evidence available with the appellant in the form of statements of so called volunteers asserting to have collected the donations cannot be considered credible being self serving. In view of the above, the donations deposited in cash, in different accounts as coupon donations, are held to be rightly considered by the AO to be the income arising out of the collections made for granting admissions. The objection of the appellant that the volunteers were not cross-examined by the department is held not valid as such strict adherence to the rule of evidence is not required in Income-tax proceeding especially when there are other facts available to negate that. The AO has also established on the strength *of investigations carried out subsequent to tne search in the case of identifiable donations made in cheques also that they have been in most of the cases, collected from persons in lieu of granting admissions and therefore the finding of the AO made in this respect also appears correct. The claim of the appellant that introduction of S.115BBC w.e.f. 1/4/2007 to tax anonymous donations show that such donations were not taxable before 1/4/2007, appears incorrect. In my opinion, this provision was clarificatory in nature and was brought on statute to prevent such misuse. Even otherwise, said arguments can hold good only if the receipt should be of the nature of donation. In the present case, when the facts show that the cash deposits made in the fund accounts have its sources in the collection of capitation fee taken from students or their guardians in lieu of granting admissions, the above arguments loses its sheen altogether. On the issue of applicability of section 2(24)(iia), where the AO and the appellant are in disagreement, I find that the argument of the AO is correct. Careful study of the above provision show that they are in respect of voluntary contributions received by a trust created wholly or partly for charitable or religious purposes and therefore, in the present case, where it is not in dispute that the appellant who has been assessed in the status of AOP has come into the existence due to the formation of the trust deed. Therefore, the existence of the AOP under assessment is definitely in the deed of trust created by settlers and managed by trustees. Therefore, in my opinion, even if the exemption is withdrawn, the applicability of this provision to take certain receipts as income will continue. On the argument of the appellant that gifts, being a capital receipt cannot be taxed u/s.28, it is observed that such an argument is based on the presumption that the gift / donations are genuine. In a case where the receipts are either in lieu of exchange or trade off for granting admissions, or are fully unexplained, they are definitely of the nature of business assessable u/s.28.*

On careful consideration of the items appearing in para 6.2(a) of the Auditor's Report, already quoted at para 18.2 of this order in the light of the submissions of the appellant made to show that certain items appearing therein deserve to be considered differently even on the argument of the department vis. a. vis. the argument of the AO made in the assessment order and the remand report, it is noticed that the AO has examined this aspect in detail before *submitting the remand report. The relevant portion of the remand report available on this ground of appeal has already been quoted at para 18.5. The AO has already reconciled various items appearing in para 6.2(a) of the Audit Report which has gone into the computation of income as assessable income with the submissions of the appellant and has arrived at a conclusion after discussing the same with the appellant. In the remand report, the AO has stated that the amount appearing in para 6.2(a) of the Audit Report, is required to be regrouped in following four sub-heads and the figures for these sub-heads have been given in Annexure to the remand report. The same for this assessment year is quoted below:-*

a.	Donations through the issue of Coupons	3,37,20,460
b.	Other Donations from the specified donors	3,72,62,223
c.	Fees collected from the students as per the circulars & norms of the Universities & other Govt. authorities.	12,02,48,380
d.	Grant Funds received from various educational bodies like UGC, AITE etc.a	1,21,17,965
	Sub-total	20,33,49,028
e.	Deduction in Earmarked Funds	(-) 27, 57,634
f.	Net increase in Earmarked Funds	20,05,91,394

It is observed that the AO has regrouped the items appearing in para 6.2(a) of the Auditor's report which is the cause of this ground of appeal, to consider the submissions of the appellant properly. The total figure remains the same. From the above it is observed that the item appearing at 'a' of the above table relating to coupon donations have already been discussed in detail and its treatment as income relating to collection made for granting admission has been held as correct. The item appearing at 'b' of the table relating to other donations from specified persons was considered. It is seen that they are stated by the appellant to be relating to persons where details in confirmations are available as against the situation which was in the case of the coupon donations. The AO in this respect in the remand report has stated that such donations have also been found in post search investigation to be in lieu of securing admissions and this aspect has been dealt in detail in the assessment order and therefore, they are to be treated at par with coupon donations. The AO has further argued that such donations would become taxable in view of section 2(24)(iia) once the exemptions are withdrawn. This issue has already been discussed in 'detail while considering the coupon donations and therefore, following the same it is stated that the contention of the AO is correct. Such receipts have to be considered as income whether we consider it u/s.2(24)(iia) or s.28.

Considering the same, the item appearing at 'b' in the table above is to be treated as income of the appellant. Items appearing at 'c' and 'd' of the table have been more or less accepted by the AO in the remand report to be non-taxable in view of the submissions made and evidences submitted during remand proceedings. On careful consideration during the appeal and on submissions made in this regard by the appellant before and after the remand, I find that the AO has rightly accepted these items appearing in para 6(2)(a) of the Audit Report as not taxable. Collections made from students as per the circulars of the Govt. / other statutory bodies for the purchase of capital items and the grant received from UGC, AICCE etc. have been held as not taxable as revenue receipts. However, it is important to point out that the AO has incorrectly included the items relating to "appropriation of development fund" under the head 'c' which is for "fees collected from students as per circular etc.". They should have been bifurcated here to separately show the amount relating to development fund appropriation account which for this assessment year is of Rs.50,62,500/-. The same amount is appearing in para 6.2(b) of the Special Audit Report as capital expenditure debited to the profit and loss account. It was explained during the hearing that the appellant create this contra entry in the books of different institutions and the head office to reflect the cost of teaching in relation to creation of infrastructure viz. buildings etc. which remain in the ownership of head office. This exercise was explained to be followed to support their claim for higher fee fixation. Therefore when this entry is passed in branch account, expense relating to building is debited in I & E a/c and HO a/c is credited in the B/S. In HO books, no entry is passed in I & E a/c but in the B/S, bran.-a/c is debited and development fund is credited. On amalgamation of I & E and B/S, Development fund credited in HO b/s remains and Development fund expense debited in I&E of branch a/c comes in I&E of amalgamated a/c. The remaining two entries get cancelled. Therefore, as per the appellant, the continuing entries, one in the I&E and another in the B/S are notional entries. If item appearing in the balance sheet is not treated as income, the expense will be required to be disallowed as the same will be relating to an income not taxable. In view of the above the Dev Fund appearing in 6.2(a) is not treated as income and the equivalent entry appearing in 6.2(b) is kept as a disallowable amount. The same amount therefore was shown to be appearing in para 6.2(a) and para 6.2(b). Considering the above *explanation, even though the grouping made by the AO in the remand report was found incorrect, the actual impact is found same. However, this discussion has an important bearing when the same issue will come in the next ground of appeal, as capital amount debited in the profit and loss account, not allowable as revenue expenditure. There is Rs. 1,21,17,965/- amount in respect of item appearing at 'd' of the table in this assessment year. As already discussed above, the items appearing at'd' of the table is to be treated as non-taxable as they are held to be grants for capital purposes from various statutory bodies. In view of the above discussions, the appeal on the above issue is statistically treated as partly allowed.*

48. In sum and substance, so far as the donations collected in cash through the coupons are concerned the Ld. CIT rejected the argument of the assessee and held that the donations collected through corpus is to be treated as income of the assessee trust. The identical issue has been dealt with by us in assessee's appeal also and the same has been decided against the assessee save the observation of the Ld. CIT(A) that the donations were collected from donors through coupons for giving the admissions as there is no evidence to suggest that the said coupons were utilized for collection the donations from the candidates or their parent coming for the admissions in the different institutes run by the assessee trust. But so far as nature of the "coupons donations" is concerned, it cannot be treated as a capital receipts in respect of the fees collected from the students. We find that the Ld. CIT(A) has given the reference to the remand report of the Assessing Officer in which the Assessing Officer has accepted that the grants and funds received from various institutes like UGC, AICTE as well as the collection made from the students have been held as non-taxable as revenue receipts. Now the Revenue is in appeal before us.

49. We have heard the parties and perused the record. So far as the issue of the donations collected through coupons are concerned those are

to the extent of Rs.33,720,460/-. We have already held that said coupon donations cannot be part of corpus fund and the said donations are to be treated as a revenue receipts. In respect of the donations from the specified donors to the extent of Rs.3,72,62,223/-, we find that all those donations are recorded in the books of account of the assessee. We further find that the assessee has filed the confirmation letters from those donors and the identity of the donors is also established. The donors have clarified that the donations are towards the corpus funds i.e. building (Imarat) funds etc. Though the Assessing Officer has rejected the contention of the assessee by making the observation that some investigation was done and it was found that those donations are not genuine but as argued by the Learned Counsel even as noted by the Ld. CIT(A) whatever the evidences are collected by the Assessing Officer those were not confronted to the assessee. In the case of Kishanchand Chellaram (supra), the Hon'ble Supreme Court has held as under.

> *"The sole question which arises for determination in this appeal is whether there was any material evidence to justify the findings of the Tribunal that the amount of Rs. 1,07,350 said to have been remitted by Tilok chand from Madras represented the undisclosed income of the assessee. The only evidence on which the Tribunal could rely for the purpose of arriving at this finding was the letter dated 18th February, 1955, said to have been addressed by the manager of the Punjab National Bank Ltd. to the ITO. Now, it is difficult to see how this letter could at all be relied upon by the Tribunal as a material piece of evidence supportive of its finding. In the first place, this letter was not disclosed to the assessee by the ITO and even though the AAC reproduced an extract from it in his order, he did not care to produce it before the assessee or give a copy of it to the assessee. The same position obtained also before the Tribunal and the High Court and it was only when a supplemental statement of the case was called for by this court by its order dated 16th August, 1979, that, according to the ITO, this letter was traced by him and even then it was not shown by him to the assessee but it was forwarded to the Tribunal and it was for the first time at the hearing before the Tribunal in regard to the preparation of the*

supplemental statement of the case that this letter was shown to the assessee. It will, therefore, be seen that, even if we assume that this letter was in fact addressed by the manager of the Punjab National Bank Ltd. to the ITO, no reliance could be placed upon it, since it was not shown to the assessee until at the stage of preparation of the supplemental statement of the case and no opportunity to cross examine the manager of the bank could in the circumstances be sought or availed of by the assessee. It is true that the proceedings under the income tax law are not governed by the strict rules of evidence and, therefore, it might be said that even without calling the manager of the bank in evidence to prove this letter, it could be taken into account as evidence. But before the I.T. authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to cross examine the manager of the bank with reference to the statements made by him."

50. We, therefore, confirm the finding of the Ld. CIT(A) that the donations from the specified donors are in the nature of the "capital receipts" and part of the corpus fund. In respect of the fees collected from the students as per circulars and norms of the universities and other Government Authorities which have been worked out by the Special Auditor to the extent of Rs.12,02,48,380/-, Ld. CIT(A) has referred to the remand report in which the Assessing Officer has accepted that those are towards the corpus funds of the assessee trust otherwise also grants received from the different educational bodies like UGC, AICTE cannot be said to be the revenue receipts as those grants are towards capital account. Nothing has been placed before us to controvert the finding of the Ld. CIT(A). In fact when the Assessing Officer has accepted the explanation of the assessee, then why the revenue should have grievance. We accordingly, hold that save the donations collected through the coupons, all other donations grants and the fees collected from the students are in the nature of the capital receipts and Ld. CIT(A) has rightly held so. We, therefore, confirm the order of the Ld. CIT(A) and dismiss the Ground Nos. 1 and 2.

51. Ground Nos. 3 and 4 are in respect of the treatment of the expenses of Rs.2,45,91,642/- which the Ld. CIT(A) has treated as revenue expenses. There is no specific discussion on this issue in the assessment order and the Assessing Officer has only referred to the Special Audit Report. In Special Audit Report the following expenditure debited to the original income and expenditure account had been excluded and treated as a Capital Expenditure and transferred to the Fixed Assets in the re-casted Balance Sheet. The details are as under:

N.A. Charges		*245,711*
Gramin Vikas Pratisthan Project Exp.		*3,366,120*
Development Fund Expenses		*5,062,500*
Computer Expenses		*1,125,664*
Internet Expenses		*26,000*
Laboratory Expenses		*1,140,930*
Building Repairs and Maintenance		*4,024,521*
Repairs - Furniture / Equipment		*316,052*
Electricity Charges Exp.		*120,365*
Bank Commission		*1,873,400*
Municipal Taxes		*608,000*
Stamp Paper Expenses		*1,870,033*
Service, Survey & Inspection Charges		*85,500*
Insurance Charges		*1,934,798*
Interest on Loan		*5,601,265*
Interest on Property Loan		*9,46,026*
Total		*37,346,892*

52. The Ld. CIT(A) has dealt with this issue as under:

"In the assessment order certain expenses appearing in the books were treated as capital expenditure on the basis of audit report submitted by the Special Auditor. The Assessee has objected to such addition on the ground that these expenses are of revenue nature and may not be considered as capital expenses. The assessee has however not submitted the documents in support of its claim".

19.6. The appellant in the rejoinder dt. 17.02.2010 to the remand report on the above issue submitted as under:-

> *"9] In para 8, the A.O. has stated that the assessee had objected to the treatment of holding certain expenses as capital expenses. He has stated that the assessee has not submitted any details. The assessee submits that the A.O. has erred in*

holding that the assessee has not submitted any such details. It is submitted that all during the remand proceedings. Therefore, the A. O. is not correct in holding that no details are submitted by the assessee trust. Secondly, as per the chart submitted by the assessee trust, it is clear that the A.O. has erred in treating some of the expenses as capital expenses. The A.O. has only relied upon the special auditor's report while making the disallowance. It is submitted that in view of the detailed submissions made by the assessee trust, the claim of the assessee may kindly be allowed".

19.7. On careful consideration of the submissions of the appellant and the remand report, it can be seen that the appellant has not made any elaborate submissions on the above issue. The AO has also commented that no submissions have been made in support of the claim by the appellant. The appellant however, in the rejoinder has objected to the same. When this issue was discussed with the AR, it was explained that all the details along with evidences have been submitted in paper book Vol.11 (Part-11). Considering th'e objection, I personally examined the same and found that the case of the appellant is correct. It do exist in the paper book as has been claimed by the appellant. Even though the appellant has not made detailed reference in the submissions in respect of these documents placed in the paper book, as the paper book itself was sent to the AO under remand order, he ought to have taken care to consider it and submit the report completely and properly. He was also at liberty to make any enquiry on the remanded issues. He has taken around 8 months for submitting this report. However, at the same time, the appellant also should have made proper references to the paper book in their submissions made on this issue, for proper appreciation of the facts. On careful consideration of the papers available in paper book and the items appearing in para 6.2(b), I find that out of the total amount of Rs.3,73,46,892/-, Rs.50,62,500/- relates to development fund expenses. This amount has already been considered and discussed in para 18 above, wherein the AO was found to have included this under the head "fees collected from students" but after discussion even though it was considered to be not collected from students but the same was held to be not o?" revenue nature also. The said amount has already been not assessed as income being a notional entry, and therefore, the question of allowing any expense *relating to that cannot be permitted. Otherwise also, this is definitely of capital nature.*

On the remaining items appearing in para 6.2 of the audit report, the appellant drew my attention to the submissions made by them in Paperbook Vol.II (Part 2). On examination it was found to be relating to a) Development Fund Expenses, b) Gramin Vikas Pratisthan Expenses, c) Interest on loan, bank charges and Stamp Paper Expenses not relating to purchase of land, d) Ground Development Expenses, relating to maintenance of play-grounds etc. of various educational institutes, e) Insurance Expenses, relating to various buildings owned by the appellant and alredy under use, and f) Remaining which are apparently of capital nature. A table was accordingly prepared after discussing the above matter with the appellant and the same is placed below for A.Y.2000-01 to A.Y.2006-07. In this table, the items out of the above, which on examination appear to be of the nature of revenue has been shown. Accordingly, the total relief which the appellant would get is appearing in the last column. Development Fund Expenses and other expenses which are considered not allowable being capital in nature will continue to remain disallowed. The Gramin Vikas Pratisthan Expenses was explained to be relating to project expenses carried out by the appellant for rural development ory behalf of State Govt. As per the appellant, this was shown as expenditure as the receipts were also shown as income. Otherwise, neither the expenditure nor the receipt relates to the appellant as they are working only as an implementing agency to fulfil their commitment of rural development. Other items considered allowable viz. Interest on Loan & Bank Charges etc. were shown to be relating to day-to-day work activity. The interest expenditure wherever were relating to the construction of the building, were explained to be for the years when the building is already in use and therefore, they are to be allowed as expenditure. Other expenses like Ground Maintenance Charges were shown to be of the nature of revenue. The appellant in certain cases have accepted the expenditure to be of the nature of capital. All such expenses remain in the disallowable amount. Out of the total disallowance made under the above head of Rs.3,73,46,892/-, Rs.2,45,91,642/- is held as allowable being revenue in nature and the remaining amount consisting of Development Fund Expenses of

Rs.50,62,5007- and the balance being capital in nature will be retained as disallowable amount.

BHARATI VIDYAPEETH

Details of expenses disallowed as per para 6.2.(b) of Spl. Audit Report

A.Y	Total expenses disallowed	Amount Allowable as revenue				Total allowable
		a) Gramin Vikas Pratisthan Expenses	b) Interest on Loan, Bank Charges, & Stamp Paper Exp.	c) Ground Dev. Expenses	d)lnsurance Expenses	
2000-01	7,309,951	1,398,094	150,000		115,552	1,663,619
2001-02	15,192,996	87,100	,		18,245	105,345
2002-03	12,365,756	158,819	-		4,217,642	4,376,461
2003-04	14,842,649	890,723	,		5,873,160	6,763,883
2004-05	29,579,618	2,887,611		2,417,220	200,602	6,016,665
2005-06	11,337,841	1,341,777		744,717	72,341	2,750,266
2006-07	37,346,892	3,366,120		19,290,724	-	24,591,642
	141,257,06	11,578,694		22,602,661	3,037,461	47,951,804

The above ground is therefore considered partly allowed.

53. We have heard the parties. We find that the Ld. CIT(A) has personally examined the evidences produced by the assessee. We further find that the evidences filed by the assessee in the form of Paper Books were sent to the Assessing Officer when the remand report was called, but it appears that in remand report the Assessing Officer has just reiterated his original stand without any further investigation or enquiry. After examining the evidences the Ld. CIT(A) held that to the extent of Rs.50,62,500/- out of Rs.3,73,46,892/- the amount relates to development fund expenses. The Assessing Officer has considered this amount under the head “fees collected from students” and Assessing Officer has held the said amount is not in revenue nature. The main thrust of the Assessing Officer is on the Special Audit Report and during the assessment proceedings the Assessing Officer has not at all the considered submissions of the assessee. We find that the Ld. CIT(A) has made the analysis of the expenditure which were disallowed by the Assessing Officer on the basis of the Special Audit Report which are to extend of Rs.141,257,069/- concerning the assessment years 2000-01 to

2006-07 and allowed the expenses to the extent of Rs.47,951,804/- in respect of expenditure incurred (a) Gramin Vikas Pratisthan Expenses, (b) Interest on Loan, Bank Charges, and Stamp Paper Expenes, (c) Ground Development Expenses and (d) Insurance Expenses are allowed as a revenue expenditure.

54. So far as A.Y. 2006-07 is concerned the Assessing Officer disallowed Rs.37,346,892/- but the Ld. CIT(A) has sustained the addition to Rs.1,27,55,250/- giving the substantial relief to the assessee. We find that the grants received for "Gramin Vikas Pratisthan"'s expenditure are treated as revenue receipt by the assessee in his books and are not forming part of capital grants if this the position, in our view the Ld. CIT(A) has rightly allowed the said expenditure as a revenue expenditure. After giving our anxious consideration to the factual aspects in our opinion the reasons given by the Ld. CIT(A) are self-explanatory and do not held any more deliberation. We, accordingly, confirm the finding of the Ld. CIT(A) and dismiss Ground Nos. 3 and 4.

55. Ground No. 5 is in respect of deleting the addition of Rs.53,756/- u/s. 40(A)(3) of the Act. We have heard the parties. In our opinion, this ground becomes infructuous as the disallowance made by treating the assessee's activity is a business activity rather than which are the charitable activities. The assessee is entitled for exemption u/s. 11 hence, the ground taken by the revenue will not have any bearing as the said disallowance can be made only while computing the income under the head "Profits and Gains" of business of profession. We, accordingly, dismiss the said ground as infructuous.

56. Ground Nos. 6 and 7 are in respect of allowing the deduction towards debit balances written off. There is no specific discussion in the assessment order but the Assessing Officer has only referred to the Special Audit Report. The Ld. CIT(A) has discussed this issue in para no.

25.2 onwards. The disallowance is based on the report of the Special Auditor. The relevant part of the Ld. CIT(A) discussing his issue is as under:

> *25.2. The Assessing Officer has not made any detailed discussion on the above addition. These additions have been made based on the Special Audit Report received on the directions of the Assessing Officer, after giving a show cause to the appellant vide letter dt. 23/6/2008 and after considering the submissions made by the appellant.*
>
> *25.3. The appellant has made following submissions on the above ground vide their letter dt. 7/7/2009 and the same is quoted below for ready reference and proper appreciation:-*
>
>> *"17] Ground No. 20 - The learned A.O. erred in not allowing the claim of the assessee of unrecovered debit balances written off which ought to have been allowed as a deduction while computing the income.*
>>
>> *The Ld. A. O. has added in the total income of the assessee the amount of Rs. 41,53,082/- being liabilities written back in all the years under consideration. In this context it is submitted that it is not an income of the assessee but only an amount written back in the books by mere book entry and therefore is not an income in the hands of the assessee. Hence it is requested to kindly delete the same. Secondly, it is further submitted that the assessee has a. same time written off the unrecoverable debit balances in all the years under consideration. It may be kindly be noted by your honour that these amounts were allowed as deduction by the special auditor but the Id. A.U. has erred in disallowing the same. He has relied upon para 6.2(d) of the audit report and has made an addition of Rs. 31,99,423/-. In this connection we would like to submit that the assessee is having a number of institutions and thousands of staff members, lecturers, etc. In a normal course of activities, the assessee has to give these employees certain advances for festivals, car, personal problems, etc. etc. Some of these employees who have left the service have not repaid their advances. Despite the best efforts, the assessee has not recovered such advances from these persons and accordingly, the same are written off. The details of these advances pertaining to some of the institutions are given. There is no reason to make any addition on this account. Similarly, the assessee has given petty advances to the small contractors. Some of these persons have not repaid these advances and accordingly, they are written off. On the same logic, these amounts do not constitute any income in the hands of the assessee. Further, the fees receivable from the students are not recovered and therefore, written off by the assessee.*

> *This amount is allowable as a bad debt. The details of all such amount are furnished before the A. O."*

25.4 On the above submissions of the appellant, the AO in para 10 of his remand report dated 09.02.2010 for AY 1999-2000 to 2006-07, has stated as under:-

> *"10.1 The assessee in its submission made in the appellate proceedings has discussed the details of the claim. The assessee claims that it has written back certain amounts of liabilities which are no longer payable. It is therefore not an income of the assessee but only an amount written back in the books by mere book entry. The assessee has at the same time written off the unrecoverable debit balances like advances paid to staff member who have left the service and no longer recoverable and also the fees from students in all the years under consideration. Hence being the bad debts the same should be allowed as deduction.*
>
> *10.2 On going through the submission it is seen that the claim of the assessee in respect of liabilities written back is not justifiable in view of the explanation to proviso to section 41(1). However the debit balances like advances & fees receivable etc. written off as bad debts may be considered on merits."*

25.5 In the rejoinder to the remand report, the appellant has reiterated his submissions made earlier. However, it was contended that the claim should be allowed as the AO has accepted the contention of the appellant. On careful consideration of all the facts available on the issue, it is observed that the assertion of the appellant that the AO has accepted the contention of the appellant is not correct. The AO has not made any comments in respect of the claim of the appellant but has merely stated that it be considered on merits. It is seen that the AO made adjustment in making the computation of income while passing the assessment order based on the figures determined by the Special Auditor in respect of liabilities written back and debit balances like advances and fees receivable written off. It is the claim of the AO that the liabilities written back of Rs.41,53,082/- in this year is taxable in view of specific provision contained in explanation to proviso to s.41(1). The appellant also seem to have no objection to the same in view of the specific provisions available in the statute. Therefore, it is held that the action of the AO to disallow liabilities written back under the above quoted provision was legally correct and is accordingly confirmed. So far as the claim of the appellant to allow debit balances like advances and fees receivable written off as bad debt is concerned, I find that the AO in the remand report has not raised any objection in respect of the nature of the debit balances are concerned which have been written off in this year. This amount for this assessment year was shown at Rs.31,99,423/-. The appellant claims that the above amount was allowed by the Special Auditor but added back by the Assessing Officer despite the objection raised by them. On reiteration of facts relating to the above adjustment, the Assessing

> *Officer has not raised any further objection but has simply stated that it should be allowed on merit. Considering the same and the facts in respect of the above claim, Rs.31,99,423/- is allowed.*

57. We have heard the parties. We find that the Assessing Officer made adjustment in the computation of income while passing the assessment order based on the figures determined by the Special Auditor in respect of liabilities written back and debit balances like advances and fees receivable written off to the extent of liabilities written back. The action of the Assessing Officer has not been confirmed by the Ld. CIT(A). The only controversy before the Ld. CIT(A) was in respect of allowing the debit balance like advances and fees receivable written off as bad debt. The Ld. CIT(A) has given the reference of the remand report and has noted that the Assessing Officer has not raised any objection. The Learned Counsel submits that the amount written off by the assessee trust represent sundry advances given to the staff for festivals etc., the small advances to the contractors and some part of student's fees. Those amounts could not be recovered for one or other reasons. He submits that in the remand report the Assessing Officer has accepted that the debit balances written off may be allowed as deduction. When the Assessing Officer has accepted in the remand report that those balances written off are bad debts then how there can be grievance to the Department as the Ld. CIT(A) has allowed the claim of the assessee only after considering the remand report of the Assessing Officer. In our opinion, no interference is called for, accordingly, same is confirmed.

58. In the result, the Revenue's appeal is dismissed.

59. Now we take up the assessee's appeal for the A.Y. 2007-08 which is arising out of the assessment order framed u/s. 143(3) of the Income-tax Act. The assessee has filed the abridged/concise grounds in place of original multiple grounds. The assessee has taken the following abridged/concise grounds:

1. *The learned CIT(A) erred in holding that the appellant trust was not entitled to the exemption u/s 11 as the registration granted was cancelled u/s. 12AA(3).*

2. *The learned CIT(A) erred in holding that the appellant trust has violated the provisions of section 13(l)(d) by investing the funds in the modes other than those prescribed in section 11(5).*

3. *The learned CIT(A) erred in holding that the set off of the excess deficit till A.Y. 2006 - 07 in the hands of the appellant trust was not available against the income of the appellant for this year.*

4. *The learned CIT(A) erred in holding that the capital expenditure incurred of Rs. 18,90,76,715/- is not allowable as a deduction from the income for this year.*

5. *The learned CIT(A) erred in holding that the amount of Rs. 16,39,64,625/- being the capital expenditure incurred by the appellant out of earmarked funds is not allowable as a deduction from the additions to the earmarked funds.*

6. *The learned CIT(A) erred in holding that the donations collected from various persons/institutions towards the corpus/endowment funds worth Rs. 3,02,123/- are neither corpus donations as per section ll(l)(d) nor capital receipts and therefore chargeable to tax.*

7. *Without prejudice, the learned CIT(A) erred in directing to verify the claim of the appellant regarding the fees collected from students as per Circulars & norms of the'Govt. authorities instead of directly allowing the amount of Rs. 20,20,62,721/- as the issue was already decided in the cases for earlier years*

8. *The learned CIT(A) erred in holding that the benefit of 15% as allowable u/s. 11 is not available to the appellant trust.*

9. *The learned CIT(A) erred in holding that the benefit of 15% as allowable u/s. 11 is not available to the appellant trust.*

10. *The* appellant requests for reduction in the interest charge u/s. 234A/B/C.

60. While deciding the assessee's appeal for the A.Y. 2006-07, we have held that the assessee has not violated the provisions of Sec. 11(5) r.w.s. 13(1)(d) of the Act. We have also held that the registration of the assessee u/s. 12A has been restored by the Tribunal, hence, the assessee is entitled for benefit of the exemption to it's income by treating it as a trust u/s. 11 of the Income-tax Act. The Assessing Officer has relied on and referred to the assessment order for the A.Y. 2006-07. We find there are precisely two issues which are arising from the grounds taken by the assessee. The first issue is the cancellation of registration by the Ld. CIT, Pune by exercising his powers u/s. 12AA(3) vide order dated 08-11-2007 but the said order has been cancelled by the Tribunal and the assessee's registration is restored and hence, the first disqualification for getting the benefit of Sec. 11 of the Act has been removed. In other words, the assessee trust has crossed first barrier by getting the restoration of it's registration u/s. 12A of the Act which is one of the condition for availing the benefit of exemption as a trust or institution u/s. 11 of the Act.

61. In the A.Y. 2006-07 there were mainly three reasons given by the Assessing Officer for denying the benefit of exemption to the assessee u/s. 11 of the Act. One of the reason was the cancellation of the registration by the Ld. CIT by exercising his powers u/s. 12AA(3) of the Act, second reason that the alleged violation of the provisions of Sec. 11(5) r.w.s. 13(1)(d) and third reason that the trustees of the assessee have violated the provisions of Sec.13(1)(c), by allegedly deriving benefit directly or indirectly from the income of the assessee trust as there is a charge that the trustees have used the money of the assessee trust for meeting their agricultural expenditure.

62. Ground No. 2 is in respect of the charge of the Assessing Officer that the assessee has violated the provisions of Sec. 13(1)(d) by investigating the funds in the modes other than those prescribed in Sec.

11(5). The Assessing Officer has discussed this issue in para No. 5 of the assessment order which is reproduced below:

"5. A major important issue in the case of the assessee relates to violation of Section 11(2) r.w.s. Section 11(5) of the I T Act.

After carefully perused the balance sheets and the accounts of the assessee and I find that the assessee has freely continued to violate the provisions of section 11(2) r.w.s. 11(5) in the year under consideration like that of the earlier years. For the sake of convenience the details about such investments in the under year under consideration is compared as under –

Nature of Violation	*Amount Rs.*
Shares - Bharati Sah. Bank- Boys Hostel Kolhapur	*3,31,000*
Shares - Bharati Sah. Bank- Boys Hostel Sangli	*4,25,000*
Shares - Bharati Sah. Bank- (Central Office)	*34,57,160*
Shares - Bharati Sah. Bank- E.M. School Balewadi	*3,30,950*
Shares - Bharati Sah. Bank- Girls Hostel, Kolhapur	*3,57,500*
Shares - Bharati Sah. Bank- Girls Hostel Panchgani	*2,56,000*
Shares - Bharati Sah. Bank- Girls Hostel, Sangli	*4,25,000*
Shares - Bharati Sah. Bank- Hospital Sangli	*4,25,000*
Shares - Bharati Sah. Bank- medical College Sangli	*4,25,000*
Shares - Bharati Sah. Bank- (Pharm College, Pune)	*5,600*
Shares - Bharati Sah. Bank Sangli College, Sangli	*3,31,000*
Shares — Homoeopathic Medical College, Pune	*3,49,000*
Shares - Bharati Sah. Bank- Eng. College, Delhi	*1000*
Shares - Bharati Sah. Bank- Engg. College, Kolhapur	*2,50,000*
Shares - Bharati Sah. Bank- Engg. College, Pune	*55,000*
Shares - Bharati Sah. Bank- (JNIOT)	*100*
Shares - Bharati Sah. Bank (P. Press)	*25,000*
Total	***74,49,310/-***

5.1. As it can be seen, during the previous year relevant to the assessment year under consideration, the assessee continues to hold Shares of Bharati Sahakari Bank Ltd., of the value of Rs 74,49,310/-

5.2. The details tabulated as above, show that the assessee has defaulted in application of the accumulated funds strictly in accordance with the provisions contained in the IT Act 1961. In this regard the assessee was asked to explain whether the said investments made by the assessee are strictly in accordance with the provisions contained in section 11 (5) of the IT Act 1961. The assessee was also given an opportunity to clarify as to why these investments/advances should not be treated as violation of section 11(5) vide the notice u/s. 142(1) dated 02.12.2009. In reply to this the assessee submitted as under

"The details of investment of Rs. 14,04,91,319.23 are shown in Annexure B of the audit report vide page No. 2 to 8/ 95 of the audit report. In this respect it is submitted that all these investment and deposits including the shares of the bank is for the object of the trust and in compliance with the rules and regulation for the purpose. In respect of holding of shares of Bharati Sahakari Bank as appearing in Annexure B it is submitted that purchase of these shares is mandatory for the client who take the loan from the bank.

It is submitted that the assessee trust had taken the loans from the said bank in the past and also availing the loan facility in the current year. For the purposes of obtaining the loans as per the bye laws of the bank, we had to buy the shares thereof and become member of the society. The relevant portion of the bye laws of the said bank are already submitted in the asst. proceedings for earlier years. It is also to be noted that the number of shares to purchased depends upon the amount of loans to be obtained by us and this is the reason why we had invested in the shares of these co-op banks. It may be noted that no loan is granted unless its shares are purchased and the confirmation from the Bharati Sahakari Bank in this regard was also submitted in the earlier assessment proceedings. Further the certified copy of the relevant extract of Reserve Bank of India Circular on Linking of share holding to borrowing was clarified and submitted in asst. proceedings for earlier years. Further, the bank deducts the subscription for the shares from the loans granted to us. The relevant letter from bank is also submitted in the previous assessments, which is produced herewith for verification. Accordingly, this was not an investment made by the trust but it was an expenditure incurred in order to obtain the loans *for the purposes of trust activities. Hence, such purchase of shares cannot be considered as an investment in violation of section 11(5).*

It may further be appreciated in this regard that it was a prerequisite on the part of the assessee to purchase the shares of the bank. Hence, it is not a case that the assessee trust has on its own invested in the shares of Bharati Sahakari Bank. On the other hand, it was purely out of compulsion that the assessee was required to purchase the shares and therefore, the said amount even though, shown as investment in the balance sheet is nothing but application of income on the part of the assessee trust. Thus, the amount invested in the shares was in order to raise the loans for achieving objects of assessee trust and hence, the purchase of shares is also to be considered as an application of income. In this context, the assessee relies upon the following decisions wherein it has been held that where the outlay is made to sub serve the objects of the assessee, the same cannot be considered as an investment but should be treated as application of income:

CIT v/s. St. George Parana Church [170 ITR 62 (Ker)]

CIT v/s. Sarladevi Sarabhai Trust [172 ITR 698 (Guj)]

CIT v/s. Hindustan Charity Trust [139 ITR 913 (Col)]

In view of above, the assessee submits that it has not committed any violation of the provisions of section 11(5) by purchasing the shares ofBharati Sahakari Bank Ltd."

5.3. Considering that the assessee has violated the provisions of Section 11(2) r.w.s. 11(5), I have to state that the benefits available to a trust are not allowable to the assessee by virtue of the provisions of Section 13(l)(d), and accordingly, the trust is assessed as an Association of Persons. These investments by the assessee are made in the earlier year and continued in the current year. In this respect it is worth to note that taking into consideration such investment as violation of provisions of sec. 11 (5), the trust has been treated as A.O.P. and the income is taxed denying the status as Trust, for A.Y. 2006-07 and earlier years. The defects in violation of provisions of Sec. 11(5) of the I.T. Act continue in the year under consideration and hence the income shown by the assessee as income of the trust is not found to be correct.

63. The Ld. CIT(A) relying on the order of his predecessor for the A.Y. 2006-07 has held that the investment in the shares of the Bharati Sahakari Bank Ltd. has resulted in the violation of provisions of Sec. 11(5) r.w.s. 13(1)(d) of the I.T. Act for the A.Y. 2007-08.

64. We have heard the parties. We find that the identical issue has been adjudicated by us in the appeal filed by the assesse for A.Y. 2006-07 (ITA No. 923/PN/2010) and this issue is decided in favour of the assessee. As the facts are identical in this year we, accordingly, following our reasons in the A.Y. 2006-07 hold that acquiring the shares of the Bharati Sahakari Bank Ltd. as a condition for availing the loans cannot be said to be the violation of Sec. 11(5) r.w.s. 13(1)(d) of the Act. Accordingly, Ground No. 2 is allowed in faour of the assessee. Ground No. 3 is in respect of set off of the excess deficit. The assessee has not pressed this ground hence, the Ground No. 3 is dismissed as not pressed.

65. Ground Nos. 4, 5, 6, 7 and 8 are concerned the Ld. Counsel submitted that if it is held that the assessee is entitled for benefit of exemption u/s. 11 in that case these grounds become redundant. While deciding the appeal for the A.Y. 2006-07, we have held that the assessee is entitled for the benefit of exemption u/s. 11 of the Income-tax Act in the status as a trust for the details reasons given in the order for the A.Y. 2006-07. We may also put on record that there is a charge against the assessee that in this year there is any violation of Sec. 13(1)(c) of the Act by the trustees by deriving direct or indirect benefit from the money or property of the assessee trust.

66. So far as Ground Nos. 9 and 10 are concerned these are consequential in nature and no specific adjudication is required. So far as applicability of Sec.115BBC is concerned the assessee has already offered anonymous donations to the extent of Rs.21,57,000/- to tax

which has been separately taxed in the assessment order. To sum up we hold that –

a) The registration of the assessee u/s. 12A/12AA has been restored by the Tribunal and

b) The assessee has not violated the provisions of Sec. 11(5) r.w.s. 13(1)(d) nor has violated any of the provisions of Sec. 13(1)(c) of the Act hence, the assessee is entitled for benefit of exemption as claimed by it u/s. 11 & 12 of the Act in A.Y. 2006-07 & A.Y. 2007-08.

67. In the result, the assessee's appeal for the A.Y. 2007-08 is allowed.

Pronounced in the open Court on **27-11-2013**

Sd/-	Sd/-
(R.K. PANDA)	**(R.S. PADVEKAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

RK/PS
Pune, Dated: 27th November, 2013

<u>Copy to</u>

1 Assessee
2 Department
3 The CIT(A)-IV, Pune
4 The CIT-IV, Pune
5 The DR, ITAT, "B" Bench, Pune.
6 Guard file.

//True Copy//

By Order

Private Secretary
Income Tax Appellate Tribunal
Pune