आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

श्री आर. के. पांडा, लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

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

आयकर अपील सं. / **ITA No.1166 & 1167/PN/2014**
निर्धारण वर्ष / **Assessment Years : 2008-09 and 2009-10**

Progressive Education Society,
W.I.E., Sports Complex,
Shivajinagar, Pune – 411 005
PAN No.AAATP5481C
.... अपीलार्थी / Appellant

बनाम v/s

Addl.CIT (HQ) (Coord), Pune
.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Assessee by : Shri Arvind Shinde
Shri Kishor Phadke
प्रत्यर्थी की ओर से / Respondent by : Shri Hitendra Ninawe

सुनवाई की तारीख / Date of Hearing :15.02.2016		घोषणा की तारीख / Date of Pronouncement:15.04.2016

आदेश / ORDER

PER R.K. PANDA, AM :

The above 2 appeals filed by the assessee are directed against the common order dated 08-01-2014 of the CIT(A)-II, Pune relating to Assessment Years 2008-09 and 2009-10 respectively. Since identical grounds have been taken by the assessee in both the appeals, therefore, these were heard together and are being disposed of by this common order.

ITA No.1166/PN/2014 (A.Y. 2008-09) :

2. Facts of the case, in brief, are that the assessee trust filed its return of income for the impugned assessment year on 16-02-2009

declaring total Nil income. The return was accompanied with audited accounts and computation of income. During the course of assessment proceedings the AO asked the assessee to file copies of registration u/s.12A and 80G of the I.T. Act. In response to the said notice, the assessee submitted a copy of the latest order under Rule 11AA(4) for exemption granted u/s. 80G upto 31-03-2009. However, the trust could not produce the certificate of registration u/s.12A of the I.T. Act, 1961. The AO noted that the CIT-II, Pune vide letter dated 14-05-2010 has also not granted the approval u/s.80G since the assessee trust has not submitted the certificate of registration u/s.12A of the I.T. Act. In view of the above, the AO issued a show cause notice dated 28-12-2010 asking the assessee to explain as to why exemption u/s.11 should not be denied as the assessee has failed to produce the certificate of registration u/s.12A of the I.T. Act.

3. It was submitted by the assessee that the assessee trust is claiming exemption u/s.11 from A.Y. 1999-2000 over the years and prior to that the income of the society was exempt u/s.10(22). It was submitted that all the applications u/s.80G for continuance for the approval made by the assessee to the CIT from 2000 onwards were accepted and the approval was granted after making the necessary enquiries with the trust about the exemption of its income u/s.11 as otherwise the approval could not have been granted. Copies of all past 80G certificates from 1995 onwards were produced before the AO. It was submitted that the earlier certificates are not traceable since the records are very old. It was further submitted that from time to time the AO had issued certificate u/s.197(1) in favour of the society to the effect that the payers were not required

to deduct TDS on the payment of rent and interest received by the society. This otherwise proves that the society had satisfied all the conditions for exemption u/s.11 which included registration u/s.12A. It was submitted that the society is about 75 years old and just because it is not able to trace the record and produce registration u/s.12A, it did not imply that the registration was not granted. It was submitted that without existence of 12A registration the department would not have issued 80G certificates. Therefore, it is incorrect to assume that 12A registration does not exist in the case of the assessee.

4. Referring to the decision of the Pune Bench of the Tribunal in the case of Phaltan Education Society it was argued that the Tribunal in the said decision has held that non-availability of 12A with the assessee cannot be found fault with when the 80G certificates were given for past so many years. Referring to the decision of the Pune Bench of the Tribunal in the case of Poona Blind Mens Association it was argued that the said trust also could not produce registration certificate u/s.12A. Considering the past records and facts the CCIT directed the CIT not to press for production of 12A certificate. It was argued that the CCIT has also directed the concerned CITs under his charge that in deserving cases similar approach should be adopted. The assessee further submitted it is purely an educational trust and there is no other activity except bonafide education which is undertaken by the trust.

5. However, the AO was not satisfied with the arguments advanced by the assessee. According to him in the absence of registration u/s.12A the assessee is not entitled to exemption u/s.11. Registration u/s.12A is a mandatory requirement. Further

the CIT also has not granted the assessee's application for approval u/s.80G since the trust had not submitted the certificate of registration u/s.12A. In view of the above, the AO held that the assessee trust is not eligible for exemption u/s.11 of the I.T. Act. Accordingly, the assessee has to be assessed in the status of an AOP.

6. The AO further noted that the assessee has claimed to have received donation of Rs.3,07,42,484/- during the year, all of which have been claimed towards the corpus of the trust. From the balance sheet submitted by the assessee along with the return of income the AO noticed that there was a deduction from the head "corpus" mentioned as "paid during the year Rs.2,29,300/-". The AO, therefore, asked the assessee to furnish the details and purpose of return of such donation from the corpus of the trust. In response to the same, the assessee vide reply dated 26-11-2010 replied as under :

> "Copy of list of Trust Fund paid during the year of Rs.2,29,300/- is enclosed. The amount pertains to amount refunded on account of cancellation of admissions of students, refund of deposits to students take as donation for admission, refund of membership fees, etc."

7. From the above, the AO inferred that the society has taken donations for admissions. He, therefore, asked the assessee to furnish the details of their students who took admission, courses taken, fees paid, donations paid, date of admission cancelled and all amount refunded including donations.

7.1 The assessee submitted that the refund of Rs.2,29,300/- is on account of requests made by the donors for their personal problems on account of health/financial problems. In special cases the committee has decided to refund these amounts by way of crossed account payee cheques. The AO, thereafter, asked the assessee to state clearly when the donations were given and specific reasons for return in each case. He also asked the assessee to clearly state the details of students in whose cases the donations were returned and the date on which the admissions were cancelled. He also asked the assessee to produce the list of entire corpus donations and its link to admissions if any. In response to the same, the assessee vide letter dated 22-12-2010 provided a list of donations towards corpus fund, summary of which is as under :

1. Donations against management quota Admissions (Donation to Permanent Fund)	:	Rs.3,05,16,500/-
2. Fellowship of Member	:	Rs.1,33,500/-
3. Shri Anirudha Upasana Kendra Pune 5 Willingly Fund and other Pratishthan	:	Rs.92,484/-
		Rs.3,07,42,484/-

8. On verification of the submissions the AO noted that around 20% out of the sanctioned seats are under management quota and against each seat of management quota, standard donation amounts were mentioned in the list. The total of such donations against management seats comes to Rs.3.05 crores. Additionally, fellowship of Rs.1,33,500/- and willingly fund of Rs.92,484/- has been received which makes total of Rs.3,07,42,484/- which is exactly the same figure of donations to permanent fund shown in the balance sheet. It was also categorically accepted by the Authorised Representative of the assessee that the society has taken donations of Rs.3.05 crores for the management seats. The AO noted from the receipt books for the donations that the entire donation of Rs.3.70 crores

has been accepted by the assessee in cash and each receipt is below Rs.20,000/-. There are 3542 donors/receipts. On many days more than one receipt are issued in the name of a single person. On being asked as to why the receipts for donation to permanent fund were not in the names of students taking admission under management quota it was submitted that the receipts were made out in the names given by the donors without verification.

9. As regards the refund of donation it was submitted that there are no records with the society to state which admission was cancelled for refund of donation. In view of the above, the AO inferred that the students were admitted in different courses against consideration of the donations/capitation fee collected from them or in the name of others under the guise of corpus donation. Such donations were paid in relation to the admission of students. Under no circumstances such payments could be said to be either voluntary or towards the corpus of the trust. It is pure commercial consideration for admission. The AO referred to provisions of section 2(a) of the Maharashtra Educational Institutions (Prohibition of Capitation fee) Act, 1987 according to which capitation fees means :

> "Section 2(a) – "Capitation fee" means any amount by whatever name called, whether in cash or kind paid or collected directly or indirectly, in excess of the prescribed or, as the case may be approved rates of fees regulated under section 4.

10. According to the AO in view of the definition of "Capitation fee" as above there need not be a quid-pro-quo for admissions or the admissions need not be for the consideration of and in lieu of the money received. If an impression was created by the management in the minds of the students/parents that admission will not be

possible but for the donation, it amounts to capitation fee. There need not be a direct demand and direct payment from the student also. These are in reality nothing but capitation fee, collected in the guise of corpus donation. In view of the above and relying on various decisions the AO issued a show cause notice to the assessee to explain as to why the donations should not be added to the income of the assessee trust as the same are related to admissions and are non-voluntary in nature and therefore why it should not be treated as violation of the provisions of section 11(1)(d) of the I.T. Act. He also asked the assessee to explain as to why the income of the society should not be assessed as AOP within the meaning of section 164 of the I.T. Act.

11. The assessee replied that the donations are voluntary in nature and no one is forced to give the donation. The entire amount of donation has been received for the noble cause of charity. Every donor has been given receipt for the corpus donation. Entire amount received by way of donation has been deposited in the bank account of the assessee. Further society has allotted 80% of the seats as per the Government regulations and norms and only 20% seats are free as per Government norms which are referred to as management quota. The fees for all seats whether 80% Government quota or 20% Management quota are same in quantum. However, considering the compelling expenses on infrastructure such as Library, Hostel Building etc. the trust solicits donation for the noble cause. It was further submitted that there is no single instance wherein any of the management quota seats are charged at differential rates. There is no finding as to any commercial pursuit in the whole process.

12. However, the AO was not satisfied with the explanation given by the assessee. According to him the assessee has not denied to have taken donations for giving admission against management quota and therefore the donations are not voluntary. This is a clear violation of the provisions of section 11(1)(d) and the taking of donations/capitation fee is against public policy or the law of the land. Hence, the activities of the trust are not charitable in nature and are against the stated objects of the trust. He, therefore, denied exemption u/s.11 of the I.T. Act to the assessee. The AO accordingly determined the total income at Rs.10,15,45,927/- by making addition of Rs.3,05,16,500/- to the income of Rs.7,10,29,427/- as per the income and expenditure account. While doing so, the AO also denied deduction u/s.54 from the long term capital gain on sale of flat at Vasi on the ground that the same is not allowable to entities other than individuals and HUF.

13. Before CIT(A) the assessee made elaborate submissions based on which Ld.CIT(A) called for a remand report from the AO. After considering the remand report of the AO and comment of the assessee to such remand report the Ld.CIT(A) upheld the action of the AO in determining the income of the assessee at Rs.10,15,45,927/-.

13.1 So far as the denial of exemption u/s.11 in absence of 12A registration certificate is concerned the CIT(A) upheld the action of the AO by observing as under :

> "3.4 I have considered the submission made by the appellant and perused material on record. Registration is one of the condition precedent for availing of exemption u/s 11 and 12. As per see 12A(1)(aa) as effective from. 1-4-2007, the provision of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the person in receipt of the income has made an

application for registration of the trust or institution unless the person in receipt of the income has made an application for registration of the trust or institution on or after 01-06-2007 in the prescribed form and manner to the Commissioner and such trust or institution is registered u/s 12AA. The apex court in the case of UP Forest Corporation & Anr. Vs DCIT (2008) 297 ITR 1 (SC) held that for the purpose of claiming benefit u/s 11(1)(a) registration u/s 12A is a condition precedent. It is also seen that the CIT-II vide letter dated 14-05-2010 has lodged and not granted the appellant's application for approval u/s 80G as the trust had not submitted the certificate of registration u/s 12A. The appellant on the other hand has contended that it should be deemed to an entity eligible for claiming benefit of exemption u/s.11 of the Act, however, it is noticed that the Pune ITAT's order dated 30-12-2011 in appellant's own case, as is available on record and submitted by the appellant during the appellate proceedings relating to 80G exemption, has set aside the matter to the file, CIT. In the given circumstances and facts on record the appellant cannot presume that the eligibility u/s 12A will be available before issuance of certificate u/s 12A as such. The reliance placed by the appellant on the letter of the Hon. CCIT is not decisive in the fact of the present case and the appellant has without considering the legal position as applicable to the case has assumed availability u/s 12A on some analogy. In view of the above fact in the absence of the registration u/s 12A the action of the Assessing Officer in denying exemption u/s 11 is liable to be upheld and the ground of appeal No 2 raised by the appellant is dismissed for both the assessment years under consideration.

4. In ground of appeal No 3 the appellant has contested that the Assessing Officer erred in applying the maximum marginal rate to the taxable income of the assessee: It has been submitted by the appellant that its status ought not have been assumed as an AOP reaping profits and income in such a manner that the maximum rate of tax to be applied. The appellant has stated further that the immediate location of certificate u/s 12A is a matter of records, compliances and the spirit with which the maximum marginal rate is provided is one wherein such an assessee is expected to be treated at a highest point of taxing statute and such treatment is contrary to the appellant's pursuit of engaging in education.

4.1 I have considered the submission made by the appellant and perused material on record. The appellant had not raised this ground before the Assessing Officer, however, taxation of charitable trust is governed by section 164(2) and 164(3). When the income of a charitable trust becomes taxable, it is taxed at the rate applicable to an AOP subject to certain exception when it is chargeable at maximum marginal rate. The tax in the case of wholly charitable trust is determined as per provision of sec 164(2) and (3). In the present case the exemption u/s 11 has been denied by the Assessing Officer and which has also been upheld while adjudicating ground of appeal No.2 and in such a circumstance the applicability of the taxation at maximum marginal rate is an automatic process under the law and the contention raised by the appellant is not tenable.

4.3 In view of the above fact the ground of appeal No.3 raised by the appellant is dismissed for A.Y. 2008-09."

14. As regards the denial of exemption u/s.11 by the AO for violation of provisions of section 11(1)(d) of the I.T. Act for accepting the corpus donations for admissions is concerned the Ld.CIT(A) also upheld the action of the AO by observing as under :

> "6.3 I have considered the submission made by the appellant and perused material on record. The only issue raised by the appellant relates to the denial of exemption u/s 11 with respect to the donation of Rs. '3,05,16,500/- for A.Y. 2008-09 and Rs. 2,02,23,533/- for A.Y. 2009-10 received by the appellant trust which has been held by the Assessing Officer to have been taken against management quota seats and that the donations were not voluntary and hence were in violation of provisions of sec 11 (1)(d). The Assessing Officer during the assessment proceedings found that the appellant had received total donations of Rs. 3,07,42,484/- during A.Y. 2008-09 and the same had been claimed to be towards corpus of the trust. The details of the donations towards corpus fund is as under:

1. Donations against management quota admissions (Donation to Permanent Fund)	:	Rs.3,05,16,500/-
2. Fellowship of Member	:	Rs.1,33,500/-
3. Shri Anirudha Upasana Kendra Pune 5 Willingly Fund and other Pratishthan	:	Rs.9,484/-
Total		Rs.3,07,42,484/-

> The Assessing Officer also noticed that there was a deduction from the head 'corpus' mentioned as 'paid during the year' in the balance sheet and in the explanation sought by the Assessing Officer with respect to the nature and purpose of the return of donations from the corpus of the Trust, it was explained vide letter dated 26-11-2010 that the amount of Rs.2,29,300/- pertained to "amount refunded on account of cancellation of admission of students, refund of deposit to students taken as donation for admission, refund, of membership fees etc", The Assessing Officer on further enquiry found that around 20% out of all sanctioned seats were under management quota and against each seat of management quota, standard donation amounts were mentioned in the list of management quota admission for F.Y. 2007-08 of various institutes under the appellant's society which totaled to about Rs.3,05,16,500/-. The Ld. AR of the appellant has also in categorical terms accepted vide order sheet noting dated 22-12-2010 that the appellant society had taken donations of Rs. 3.05 crores for the management seats during the course of assessment proceedings for AY 2008-09. However, the appellant subsequently claimed that the AR. was pressurized to furnish inaccurate facts arid accordingly an affidavit has also been filed. However.jhe same cannot be considered at this stage because the same ought to have been filed during the assessment proceedings before completion of assessment. The Assessing Officer on examination of the receipt books which were produced for verification found the entire donation to have been received in cash and each receipt was below Rs. 20,000/- and there were 3542 donors/receipts. The Assessing Officer has clearly mentioned that on many days more

than one receipt were issued in the name of a single person as found by him in the case of the donor Dr. Mrs. Hazra S. The Assessing Officer also sought the explanation regarding the issue of receipts in the name of donors and not the students seeking admission and the appellant explained that the receipts were made out in the names given by the donors without verification. The appellant regarding the refund of donation stated that there were no records with the society to substantiate and furnish the details with respect to the admissions cancelled for refund of donation during the assessment proceedings. However, subsequently had claimed before the Assessing Officer that the refunds were for bonafide personal reasons of the donors, however, the A.O. though has not discussed the issue nor any finding has been given. The appellant in any case has not been able to substantiate the contention raised. Thus. the material brought on record by the Assessing Officer clearly indicate to the fact of the students being admitted in different courses against the donation collected by the appellant in the guise of corpus donations which, in fact, were paid in relation to the admission seats. The inference drawn by the Assessing Officer that the donations received could not be said to be voluntary or towards the corpus of the trust rather for pure commercial consideration prima facie appear to be correct and justified in the given set of facts of the case. The appellant has never denied to have taken donations against management qi.ota seats. The appellant had raised various objections including the fact that the Assessing Officer had not carried our proper fact verification and did not consider the denial of nexus between the receipt of the corpus donations and the admission process and, therefore, the matter was referred back to the Assessing Officer for further verification of the issues raised by the appellant. In the remand report dated 28- 6-2013 the Assessing Officer has noted that summons *u/s* 131 were issued to, some of the persons who had given donation to the appellant trust and also recorded their statement and which revealed that most of the donations are given in cash and in few cases the donors had taken back the money by way of cheque. The Assessing Officer in its report has on verification of the receipt books impounded earlier has categorically mentioned that there were names and class-of education written on the back of some of the receipts which clearly established the connection/nexus between the donation received by the appellant and the admission granted under the management quota admission. Thus the contention raised by the appellant that the Assessing Officer assumed- nexus between the corpus donations and admission is not found to be true and , tenable in view of the above fact on record which indicate that the Assessing Officer has concluded not on assumption but derived the conclusion from the facts brought on record. The reliance placed by the Assessing Officer on the decision of the Madras High court in the case of P.S. Govindasamy Naidu & Sons Vs ACIT (2010) 324 ITR 44 (Madras) is found to be appropriate and fits into the fact of the present case. The court held as under:

> "5. It is seen from the order of the assessing authority that on examination of a random number of parents who admitted the children into the college, if was found that the amount paid was not to the corpus donation account but it was collected only by way of capitation fee. The assessee treated it on its own as corpus donation and issued receipts as corpus donation and credited it under the corpus donation. The assessing authority rightly held that it is immaterial how the recipient, namely the assessee herein, accounted for the same and issued receipts

towards charitable purpose at the time of receipt of the income. Admittedly, it was towards capitation fee. In such circumstances, the assessing authority rightly rejected the contention of the assessee that the contribution by the parents credited under the head 'corpus donation'. It IS also seen that the assessing authority referred to the decision of ITAT B Bench, Bombay in a similar circumstance, wherein it was held that the donation given for material gain for securing admission could not be characterized as donation towards charitable purpose, and as such, the assessee is not entitled to have the benefit."

In para 7 of the judgment, Hon Judge has said "It must be noted that the nature of quality of the receipt has to be adjusted as at the time of receipt. The subsequent act of the assessee to enter the same under some head on receipt could alter the quality of the receipt.

6.4 The Assessing Officer has also reproduced the definition of the capitation ·fees as found in the. Maharashtra Educational Institution (Prohibition of capitation fee) Act, 1987 which was enacted to prohibit collection of capitation fee for admission of students in the educational institutions in the State of Maharashtra. The said enactment also refers to the National Policy of Education, 1986 which envisages' that' the commercialization of technical and professional education should be curbed and steps taken to prevent the establishment of institutions set up to commercialize education. Section 2(a) defines 'capitation fee' means any amount by whatever name called whether in cash or kind paid or collected directly or indirectly in excess of the prescribed or, as the case may be approved rates of fees regulated u/s. 4. The Assessing Officer has thus rightly held that the appellant had created an impression in the minds of students/parents that admission will not be possible but for donation, amount to 'capitation fee' which the appellant has collected in the guise of corpus donation. The donation shown to have received as corpus donation do not appear to be voluntary and related to the admission granted to the students which is a clear violation of the provisions of section 11 (1)(d) and hence the Assessing Officer has rightly assessed the income of the appellant society as an AOP at maximum· marginal rate. The act of the appellant is against public policy and the activities of the trust cannot be described as of charitable in nature contrary to the objects of the trust. The decision relied upon by the appellant in the case of CIT Vs Willington Charitable Trust (supra) for the proposition that any donations taken for admission and used for cause of the trust does not lead to violation of section 11 being reasonable, but the fact in that case related to acquisition of property and in the said case the trust was registered u/s.12A(a). However, in the present case the facts relate to receipt of donation and the trust is also not registered u/s.12A. The other case laws relied upon by the appellant are on different set of facts and hence the same are not applicable to the present case. In view of the above facts, the detailed and well reasoned order passed by the Assessing Officer is liable to be upheld.

6.5 In view of the above facts the grounds of appeal No.1 & 5 for A.Y. 2008-09 and for A.Y. 2009-10 ground of appeal No.1 & the additional ground No.6 raised by the appellant are dismissed."

15. As regards the argument of the assessee that depreciation has been calculated at commercial rates and with respect to the original cost of acquisition of the fixed assets the Ld.CIT(A) dismissed the ground holding that such issue was never raised before the AO during the assessment proceedings. Further, the assessee has not been able to submit the details in respect of which the said ground of appeal has been raised. Further, by its own admission the assessee has stated that the working of the eligible depreciation on actual cost is incomplete and the assessee has not submitted any such working till date. He accordingly dismissed the ground raised by the assessee as premature in nature.

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

> "1. The learned CIT(A)-II, Pune erred in law and on facts in upholding the taxable income worked out by the learned AO at Rs. 10,15,45,927/- and corresponding tax liability amounting to Rs. 4,83,21,648/- on the appellant. The learned CIT(A)-II and the learned AO ought to have appreciated that the appellant is a bonafide Charitable Trust solely engaged in education.
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> 2. The learned CIT(A)-Il, Pune erred in law and on facts in upholding AO's contention that the appellant is not eligible to claim exemption u/s 11 of the ITA, 1961 in the absence of 12A Registration certificate. The learned CIT(A)-II, Pune ought to have considered the genuine and bonafide cause of education for which the appellant exists for past many years; and; the presence of 80G Certificates granted to the appellant for the past many years till 31/03/2009.
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> 3. The learned CIT(A)-II, Pune erred in holding that the appellant has violated section 11(1)(d) of the ITA, 1961 by accepting CORPUS donations for admissions. The learned CIT(A)-II and the learned AO erred in law and on facts in holding that donations have been received for Management Quota seats, and, that such donations are capitation fees, and against the public policy.
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> 4. The learned CIT(A)-II, Pune erred in law and on facts in denying exemption u/s 11 of the ITA, 1961 to the donations of Rs. 3,05,16,500/- received by the trust on the analogy that the said donations are not in keeping with the law.
>
> 5. Alternatively and without prejudice, the learned CIT(A)-II, Pune erred in not calculating depreciation at commercial rates and w.r.t. the original cost of acquisition of the fixed assets.

> 6. The appellant craves leave to add/ modify /alter / delete all / any of the grounds of appeal."

17. The assessee has also taken the following additional ground :

> "7. Alternatively & without prejudice to Grounds 1 to 5, the appellant is entitled for exemption u/s.10(23C)(iiiab) since the appellant is existing solely for educational purposes and substantially financed by the Government."

18. The Ld. Counsel for the assessee strongly objected to the order passed by the CIT(A). He submitted that the assessee trust was established in 1934 under the Bombay Public Trust Act. It is owning around 58 educational institutions with about 4800 students and more than 3500 teachers and staff. The assessee trust was having registration u/s.80G since last so many years which was getting renewed from time to time. During the impugned assessment year the AO denied the exemption u/s.11 on the ground that 12A certificate was not produced and the assessee is collecting capitation fee in the guise of corpus donation from various persons for giving admission. He submitted that the AO has issued summons and examined 21 donors who have denied to have made any donation for admission. Referring to page 187 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to the order of the CIT dated 31-07-1995 granting exemption u/s.80G of the Act for the period from 01-04-1995 to 31-03-00. Referring to page 188 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to the order of CIT-II, Pune dated 12-02-2001 granting exemption u/s.80G of the I.T. Act to the assessee trust for the period from 01-04-2000 to 31-03-2003. Referring to page 189 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to order passed by the CIT-I, Pune dated

23-04-2004 under Rule 11AA granting benefit of deduction u/s.80G for the above trust for the period from 01-04-2003 to 31-03-2006. Referring to page 190 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to order passed under section 11AA(4) by the CIT-II, Pune on 04-12-2007 granting exemption u/s.80G to the trust from 01-04-2006 to 31-03-2009. Referring to pages 191 and 192 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to order dated 18-08-2014 passed u/s.80G(5)(vi) of the I.T. Act read with Rule 11AA, 1962 according to which the approval has been granted from 20-02-2014 till it is withdrawn. Referring to page 193 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to the certificate of registration granted u/s.12AA of the I.T. Act, 1961 read with Rule 17A of the I.T. Rules, 1962 on 31-12-2013 w.e.f, 01-04-2013. Referring to page 237 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to order dated 30-09-2015 passed u/s.10(23C)(vi) of the I.T. Act, by the CCIT, Pune granting approval u/s.10(23C)(vi) to the assessee trust.

18.1 Referring to page 197 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to the letter addressed by CCIT to the CIT in case of the Poona Blind Men's Association wherein he has directed to the concerned commissioners that in deserving cases the production of certificate u/s.12AA may not be pressed for. He submitted that despite such a direction by the CCIT, the AO and the CIT(A) in the instant case have not followed the direction of the CCIT. Referring to the decision of Hon'ble Gujarat High Court in the case of Adivasi Kheti Vikas Yojana reported in 107 taxmann 445 he submitted that the Hon'ble High Court in the said decision has directed the department to decide the application for issuing duplicate certificate since the certificate of registration u/s.12A said to have been issued to the assessee trust in the past is not traceable with the assessee nor the order is traceable with the department.

19. Referring to the decision of the Pune Bench of the Tribunal in the case of Phaltan Education Society Vs. CIT reported in Pune Chartered Accountants Society Journal for April 2009 he submitted that the Tribunal in the said decision has held that when the trust was granted all the benefits such as exemption u/s.11, eligibility u/s.80G etc. for past as many as 30 years, merely for the reason that assessee trust is not able to produce the age old registration certificate u/s.12AA the department cannot take a stand that trust was not granted registration u/s.12A for all the past years. The burden is on the revenue to demonstrate that such registration was not granted earlier. He accordingly submitted that merely because the 12A certificate registration is not traceable, the CIT(A) was not justified in denying the exemption u/s.11 when the assessee trust was granted 80G benefits in the past so many years. He submitted that 80G benefit is not available unless registration u/s.12AA is there.

20. So far as denial of exemption u/s.11 due to acceptance of capitation fee in the guise of donation for giving admission is concerned the Ld. Counsel for the assessee referred to pages 153 to 156 of the paper book and drew the attention of the Bench to the affidavit of the Chairman and Managing Trustee of the assessee trust Dr. Gajanan Ramakant Ekbote. Referring to the said affidavit he submitted that the Chairman-cum- Managing Trustee has clearly

stated in the affidavit that the assessee trust has never accepted any donation for granting admission to any of the educational courses. The donors have given the donations voluntarily. Further, during the course of assessment proceedings the Managing Trustee had categorically stated that no management quota seat has been sold, auctioned, charged commercially. It was clarified that the donations are voluntarily given by the donors to the society and they are fully accounted for. Referring to to the letter addressed by the assessee trust to the AO vide letter dated 30-12-2010 a copy of which is placed at pages 88 to 90 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to the following :

> "2. CORPUS DONATIONS :
>
> Following are the facts about donations accepted by the trust.
>
> A) The donations are voluntary in nature and no one is forced to give it. The donations are paltry in quantum and no any large amounts are received by the trust. All these amounts are received for the noble cause of the charity. Everyone is given receipt for the CORPUS donation. No any (not a single) donations/contributions/fees, etc. are taken without giving a valid receipt. Entire amount received by way of donation is immediately deposited in bank.
>
> B) The society has to compulsorily allot 80% sears as per the government regulations and norms whereas, 20% seats, are free as per government norms, which are referred to as MANAGEMENT QUOTA.
>
> C) The fees for all seats, whether 80% government quota or 20% management quota, are same in quantum. However, considering the compelling expenses on infrastructure such as LAB, HOSTEL BUILDING, etc. the trust solicits donations for the noble cause. Kindly peruse the audited accounts as per which, large CAPEX exists for College Building during all these years.
>
> D) The objections contained in para 3 of your goodself's letter appear rather surprising as the trust endeavours and ensures that no management quota seats are sold/auctioned/charged commercially, etc. etc. The only pursuit of the trust is to explore some help to the compelling expenditures of the trust.
>
> E) Your goodself will appreciate, there is no single instance wherein, any of the management quota seats are charged at differential rates. There is no any finding as to any commercial pursuit in the whole process."

21. Referring to the statements of some of the donors recorded by the AO during the course of assessment proceedings, copies of which are placed at pages 157 to 171 of the paper book the Ld. Counsel for the assessee submitted that none of the donors has stated that donations have been given for getting admission. Referring to page 227 of the paper book the Ld. Counsel for the assessee submitted that the admission as per chart in order u/s.143(3) varies from 1% to 17%. It is only 17% in the case of pre-primary curriculum and 2% in Junior college whereas in remaining colleges it is only 1% or sometimes less than that. He submitted that the assessee has universally asked for donation and is accepting donation. He submitted that 14 persons were summoned by AO whose statements were recorded and the copies of which are placed at pages 198 to 225 of the paper book. Referring to the said affidavits, he submitted that nobody has stated that he or she has given donation to the assessee trust as a quid-pro-quo in lieu of getting admission in the institutions set up by the assessee trust. Referring to page 121 of the paper book the Ld. Counsel for the assessee drew the attention of the Bench to the refund donation to permanent fund which was as per Board Resolution and specific request by the concerned donors. Further, the donations have been refunded by cheque. He submitted that no complaint has been lodged u/s.5 of the Maharastra Educational Institutions (Prohibition of Capitation Fee) Act, 1987 by any of the donors. The AO has also not lodged any complaint against the assessee before the competent authority if he was of the opinion that acceptance of donation is illegal. He submitted that donations are not banned as per

Maharastra Educational Institutions (Prohibition of Capitation Fee) Act, 1987.

22. Referring to the decision of Hon'ble Karnataka High Court in the case of Director of Income Tax (Exemptions) and another Vs. Sri Belimatha Mahasamsthana Socio Cultural and Educational Trust reported in 336 ITR 694 he submitted that the Hon'ble High Court in the said decision has held that merely because the assessee is an institution which is running professional courses, it could not have been presumed that the amount of donation received to an extent of Rs.28.30 lakhs was in violation of the Prohibition of Capitation Fee Act, 1984 and/ or attributable to allotment of seats. Further, the sum of Rs.14,36,500/- which was shown as corpus donation by the assessee, if found to be utilized or expended for charitable purposes, would be eligible for exemption u/s.11(1)(d) of the I.T. Act.

23. Referring to the decision of Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Khalsa Rural Hospital and Nursing Training Institute reported in 304 ITR 20 he drew the attention of the Bench to para 7 and 8 of the order which reads as under :

> "7. The contentions raised by Mr. Putney are devoid of any force. There is nothing on record to show that the assessee's trust was charging any capitation fee. There is no admission of the respondent-trust on record. The so-called verbal admission during the course of assessment proceedings by the managing director of the trust cannot be relied upon. Neither it can be presumed from mere assumptions that BDS seats are allotted after payment of capitation fee in the absence of any material. Even otherwise, the Assessing Officer has not found any irregularity in the accounts of the trust. There is no document to show that the trust is being run for any purpose of profit except that for educational purposes.
>
> 8. In view of this, no interference is called for in the pure findings of fact given by the Tribunal. No substantial question of law arises from the order of the Tribunal. Thus, both the aforementioned appears are dismissed being without any merit."

24. He also relied on the decision of the Chennai Bench of the Tribunal in the case of ACIT Vs. Balaji Educational and Charitable Public Trust reported in 48 SOT 281.

25. The Ld. Counsel for the assessee submitted that even if the assessee has received capitation fees, if the same is applied for charitable purposes, then the same is not taxable. For the above proposition he relied on the following decisions :

1. ACIT Vs. M/s.Padanilam Welfare Trust – ITA No.1766 to 1772/Madras/2011 order dated 19-06-2012 for A.Yrs. 2002-03 to 2008-09
2. Sadvidya Educational Institution Vs. Addl.CIT reported in (2014) 39 CCH 178 (Bang.) (Trib.)
3. Deccan Education Society Vs. Addl.CIT – ITA No.1480/PN/2014 order dated 13-07-2015
4. Queen's Educational Society Vs. CIT reported in 55 taxmann.com 255

26. In another alternate contention the Ld. Counsel for the assessee submitted that the assessee trust has received the corpus donation without any consideration. Therefore, it being a capital receipt, is not exigible to tax. For the above proposition, he relied on the decision of the Chennai Bench of the Tribunal in the case of ITO Vs. M/s. Pentafour Software Employees Welfare Foundation reported in 2008-ITS-3221 wherein it has been held that all the receipts of an assessee cannot be deemed to be income of the assessee for the purpose of income tax. Only those receipts which bear the nature of income can be made exigible to tax. The definition of the word "income" as given u/s.2(24) is inclusive and is not exhaustive. Donations towards corpus are not falling within the ambit of the definition of income. This is a capital receipt and not exigible to tax especially when the department did not doubt the nature or veracity of the receipt.

27. The Ld. Counsel for the assessee submitted that the assessee trust has been granted registration u/s.12AA w.e.f. 01-04-2013. The Ld.CCIT vide order dated 30-09-2015 passed u/s.10(23C) (vii) of the I.T. Act has granted approval for the said purpose. The revenue sought to reopen the case for A.Y. 2007-08 on the ground that assessee does not possess certificate of registration u/s.12AA of the I.T. Act. However, in the order dated 27-03-2015 passed u/s.143(3) r.w.s.147, the AO, after considering the reply given by the assessee has dropped the 147 proceedings and accepted the returned income at NIL. A copy of the same is placed at page 233 to 236 of the paper book.

28. The Ld. Counsel for the assessee in another alternate contention submitted that the first proviso to section 12A also applies to the assessee. He submitted that according to the said provision where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of section 11 and 12 shall apply in relation to that income of such trust or institution from the date of the creation of the trust or the establishment of the institution if the PCIT or CIT is for the reasons to be recorded in writing satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons.

29. Referring to the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Mayur Foundation reported in 274 ITR 562 he submitted that the Hon'ble High Court in the said decision has held that proceedings before the Tribunal are meant to correctly assess the tax liability of an assessee. If this be so, it follows that the assessment cannot be said to be complete and is pending till the

appeal is heard and disposed of by the Tribunal and the order of the Tribunal is given effect to by the assessing authority by computing the correct tax liability of an assessee. In other words, whether an assessee is required to pay tax or becomes entitled to a refund, would be ascertained by the assessing authority after giving effect to the order of the Tribunal.

30. So far as the additional ground is concerned the Ld. Counsel for the assessee referring to the memorandum explaining the Finance Bill 2014 and the decision of the Pune Bench of the Tribunal in the case of Deccan Education Society vide ITA No.1480/PN/2014 order dated 13-07-2015 for A.Y. 2008-09 submitted that the same is decided in favour of the assessee. He accordingly submitted that the order of the CIT(A) be set aside and the grounds raised by the assessee be allowed.

31. The Ld. Departmental Representative on the other hand heavily relied on the order of the AO and the CIT(A). He submitted that there is a direct linkage between donation and admission. Even some of the donors are seeking refund. The AO as well as the CIT(A) has categorically mentioned the above fact. He accordingly submitted that the order of the CIT(A) be upheld and the grounds raised by the assessee be dismissed.

32. The Ld. Counsel for the assessee in his rejoinder submitted that in the case of Deccan Education Society 80G exemption was granted because of 10(23C). However, in the case of the assessee 10(23C) was never granted earlier. Therefore, it follows that 12A registration was granted earlier since granting of 12A registration is one of the pre-requisite for getting 80G deduction certificate.

33. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find in the instant case the trust is running various educational institutes. It filed its return of income declaring total income at Nil. The income and expenditure account furnished by the assessee shows surplus of Rs.7,10,29,427.89. We find the AO during the course of assessment proceedings denied exemption u/s.11 on 2 grounds (a) the assessee did not produce the certificate of registration u/s.12A of the I.T. Act and (b) the assessee has received capitation fee in the guise of donation for giving admission against Management Quota seats and that the donations are not voluntary. Therefore, there is a clear violation of provisions of section 11(1)(d) of the I.T. Act. We find the Ld.CIT(A) upheld the action of the AO which has already been reproduced in the preceding paragraphs.

34. It is the submission of the Ld. Counsel for the assessee that since the assessee trust was granted deduction u/s.80G in the past so many years and has never claimed exemption u/s.10(23C), therefore, merely because the assessee could not submit the12A registration certificate cannot be a ground to deny benefit of deduction u/s.11 since without such certificate, the department could not have and would not have granted deduction u/s.80G. Similarly, the allegation of the AO that assessee has received capitation fees in the guise of donations for giving admissions under the Management Quota and therefore there is complete violation of section 11(1)(d) is also without any merit since the entire amount of corpus donation has been accounted for in the books of account

and has been utilized for the purpose of charity, i.e. Education and that no part of the money has been siphoned off by any of the trustees and no complaint has been filed either by any of the donor or the AO himself before the competent authority for violation of the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987. It is also the alternate claim of the Ld. Counsel for the assessee that the assessee trust is entitled for exemption u/s.10(23C)(iiiab) since the assessee is existing solely for educational purposes and substantially financed by the Government.

35. We find merit in the above arguments of the Ld. Counsel for the assessee. As regards the denial of exemption u/s.11 for non furnishing of the registration granted u/s.12A of the I.T. Act is concerned we find the assessee before the AO during the course of assessment proceedings has submitted that the same is not traceable. We find the AO based upon the order of the CIT for non granting of approval u/s.80G for non submission of certificate of registration u/s.12A, held that assessee is not entitled to exemption u/s.11. It is an admitted fact that the assessee trust was getting approval u/s.80G from time to time in the past. From the various orders placed in the paper book we find that exemption u/s.80G of the I.T. Act was granted to the assessee trust vide order dated 31-01-1998 for the period 01-04-1995 to 31-03-2000. The said order bearing No.Pn-165/T-44/95-96 dated 31-07-1995 is placed at page 187 of the paper book. Similarly from the order of the CIT granting exemption u/s.80G of the Act vide order No. Pn/T-II/80-G/P/141/2000-2001/425. dated 12-02-2001, a copy of which is placed at page 188 of the paper book, we find such exemption has

been granted for the period from 01-04-2000 to 31-03-2003. We find from page 189 of the paper book that the CIT-I, Pune vide order under Rule 11AA bearing No.Pn/CIT-I/Renewal/80G/R-197/2004-05/30 order dated 23-04-2004 has granted exemption u/s.80G for the period from 01-04-2003 to 31-03-2006. From the paper book page 190 we find the CIT-II, Pune vide order No. Pn/CIT-II/Admn./12A/80G/23/33/2007-08 dated 04-12-2007 has granted benefit of section 80G to the assessee trust for the period from 01-04-2006 to 31-03-2009. We find for denial of exemption u/s.80G by the CIT for want of production of certificate u/s.12A the assessee filed an appeal before the Tribunal and the Tribunal vide ITA No.915/PN/2010 order dated 30-12-2011 restored the matter to the file of the CIT directing him to examine the issue. We find the CIT-II, Pune vide order No. PN/CIT-II/HQ/80G/PESCS/2014-15/1453 dated 18-08-2014 granted benefit of deduction u/s.80G of the I.T. Act from 20-02-2014 till it is withdrawn. We find the CIT-II, Pune vide order No. Pn/CIT-II/Tech/12A/2013-14/3131 dated 31-12-2013 has granted registration u/s.12AA to the assessee trust w.e.f. 01-04-2013 being the first day of the financial year in which the application has been made.

35.1 We further find the CCIT, Pune vide order No. PN/CC/Tech/Fwd/804/2009-10/1145 dated 05-06-2009 in the case of Poona Blind Men's Association has directed the concerned CITs under his jurisdiction that in deserving cases the production of certification u/s.12A may not be pressed for. The relevant order of the CCIT is reproduced as under :

> "To
> The Commissioner of Income Tax-I/II/V,
> Pune

Sir,

Sub : Grant of renewal of exemption u/s.80G – Reg.

Kindly refer to the above.

02. In this matter, I am directed to inform that this office has received a petition from The Poona Blind Men's Association, Pune a renowned organization of Pune, which is functioning since 1952 and registered under Bombay Public Trust Act and Societies Registration Act. The said organization is stated to have been receiving I.T. exemption u/s.80G and presently holds registration u/s.80G upto 31-03-2001. It has also received I.T. exemption u/s.35AC.

03. The said organization has approached this office with a request that since the registration certificate u/s.12A is not traceable, the duplicate certificate may be issued to it for record purpose. From the facts of the case, it is seen that since the organization is receiving exemption u/s.80G continuously for last 54 years and one of the document required to be submitted for grant of continuance of 80G(5)(vi) is copy of registration granted u/s.12A, it is obvious that the said organization actually holds registration u/s.12A and the fact holds ground that it is registered u/s.12A and the same is presently not traceable, as stated by the applicant.

04. In view of the facts of this case, I am directed to convey the CCIT, Pune desires that in the deserving cases, such as the one reported herein above, the production of certificate u/s.12A may not be pressed for. I am further directed to request that the CIT may take the appropriate action within the frame work of statue in this regard.

Yours faithfully,
Sd/-
(Smt. S.S. Dandawate)
Income Tax Officer (Tech.)
For the Chief Commissioner of Income Tax, Pune"

36. From the various documents furnished by the assessee in the paper book it is an admitted fact that the assessee trust has been granted deduction u/s.80G for last so many years. Granting of registration u/s.12A is one of the prerequisite for getting exemption u/s.80G. Unless such 12A certificate has been granted earlier by the department the assessee society could not have been granted deduction u/s.80G. Merely because the assessee trust has misplaced or lost the 12A registration certificate, the same in our opinion cannot be a ground to deny the benefit u/s.11 of the Act to

the assessee society especially in absence of any material before the revenue that the assessee was never granted exemption u/s.80G of the Act or that the 80G certificates produced by the assessee are false or untrue. Further, in view of the direction of the CCIT, Pune in the case of Poona Blind Men's Association the revenue authorities should not have insisted for production of 12A certificate for getting deduction u/s.11 in deserving cases such as the case of the assessee.

37. We find the Hon'ble Gujarat High Court in the case of Adivasi Kheti Vikas Yojana (Supra) has directed the department to decide the application of the petitioner for issuing duplicate certificate within a fortnight by observing as under :

> "2. Heard the learned counsels for the parties. The short issue raised by the petitioner claiming to be a public charitable trust is that it applied for registration under the provisions of the Income-tax Act, 1961 under section 12A on 11-1-1989. Another trust, namely, Adivasi Pragati Mandal, Meghraj, having the same management, which is also a registered public charitable trust, also applied for the registration under section 12A on the same date. According to the petitioner, on 31-7-1989, both the trusts were granted registration under section 12A. While the other trust, Adivasi Pragati Mandal, has its registration certificate in its possession, the registration certificate in the case of the petitioner is not traceable. The difficulty faced by the petitioner is that they have filed returns of their income for the assessment years 1991-92 to 1994-95 and claimed exemption under sections 11 to 13 of the Act and which have been accepted by the revenue. However, for the assessment year 1995-96, the ITO demanded production of the certificate of registration under section 12A. As the same is not traceable, the petitioner has applied for issue of duplicate certificate. However, no response has been received from the revenue.
>
> 3. The learned counsel for the revenue urges that, though the application dated 11-1-1989 is on record, the order made thereon is not traceable with them either. In these circumstances, assessment for the assessment year 1995-96 has been completed by treating as if there is no registration and the claim to exemption has been rejected for which an appeal against that order has been filed. However, in the absence of registration certificate, the same difficulty is likely to be faced by the petitioner in appeal.
>
> 4. In the circumstances, the respondents are directed to decide the application of the petitioner for issuing duplicate certificate within a fortnight If it is found that by any inadvertence no order actually has

> been made on the application dated 11-1-1989, the same may now be considered and decided in accordance with law, also within this period."

38. Since in the instant case nothing has been brought on record that the certificate u/s.80G was not granted to the assessee in the past and since registration u/s.12A is one of the prerequisite for granting of certificate u/s.80G and the 80G certificates produced by the assessee for the past several years are not found to be false or untrue, therefore, it has to be held under the facts of the instant case that there is registration u/s.12A of the I.T. Act. The first issue on which the AO has denied the benefit of section 11 for non submission of 12A registration certificate is accordingly rejected.

39. The second issue on which the AO has denied the benefit of section 11 is due to violation of provisions of section 11(1)(d) since the assessee according to the AO has received donation of Rs.3,05,16,500/- for A.Y. 2008-09 for giving admission against management quota seats and that the donations are not voluntary and hence were in violation of provisions of section 11(1)(d). It is the submission of the Ld. Counsel for the assessee that the trust is not being run on commercial lines. The submission of Ld. Counsel for the assessee that the money collected from students towards fees and donations are spent only for the purpose of education and no part of the funds of the trust has been diverted for the personal benefit of any of the trustees could not be controverted by the Ld. Departmental Representative. There is nothing on record that any person has been denied admission for non payment of donation or any student or parent has made any complaint to the appropriate authority for violation of the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987. The AO has also not

complained to the Government authorities for violation of the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987.

40. We find a somewhat similar issue had come up before this Bench of the Tribunal in the case of Deccan Education Society Vs. ACIT vide ITA No.1480/PN/2014 for A.Y. 2008-09. We find the Tribunal vide order dated 13-07-2015 (to which both of us are parties) has decided the issue in favour of the assessee by holding that assessee is entitled to exemption u/s.10(23C). The relevant observation of the Tribunal from para 66 to 73 are as under :

> "66. The second question that arises for our consideration as to whether the trust is for profit motive. It is the allegation of the Revenue that the assessee trust was collecting the capitation fee in the garb of donation and was therefore running with a profit motive. We find the Assessing Officer has not reported the violation, if any, by the assessee trust to the Government of Maharashtra for taking any action for violation of The Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987. None of the persons who have deposed against the assessee by stating that they had given donation for the purpose of getting admission has complained to the Government for any such violation by the society. It is also to be noted that those persons have filled up the requisite proforma stating that they have given donation to the assessee voluntarily and not for seeking admission. Even some of them claimed deduction u/s.80G, a fact stated by Ld. Counsel for the assessee and not controverted by the Ld. Departmental Representative. Therefore, changing the stands after their wards completed their education from the institutions run by the assessee trust are contradictory. Further, it is also a fact that all donations received by the assessee trust are recorded in the books of account. There is no allegation by the Revenue that any part of such donation has been siphoned off for the benefit of any of the trustees or related persons. Nothing has been brought on record that any student has been denied admission for not giving donation. Merely because some of the donors stated that they have given the donation for admission the same in our opinion will not disentitle the society from getting exemption which is existing solely for educational purposes and which is otherwise entitled to the exemption.
>
> 67. We find a somewhat similar issue had come up before the Hon'ble Rajasthan High Court in the case of Chief CIT and Another Vs. Geetanjali University Trust reported in 352 ITR 433. In that case the assessee-trust, for the assessment year 2008-09, filed an application seeking exemption of its income under section 10(23C)(vi) of the Income-tax Act, 1961. After exchange of several letters between the assessee and the authorities whereby several queries were raised and

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

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

68. We find the Pune Bench of the Tribunal in the case of Shikshana Prasaraka Mandali Vs. CIT Central Pune vide ITA Nos.1348 and 1349/PN/2010 order dated 27-03-2014 (where one of us – Accountant Member is a party) while dealing with denial of registration u/s.12A for violation of The Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987 by accepting donations has observed as under:

"8. We have considered the rival arguments made by both the sides, perused the order of the Ld.CIT and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find there is no dispute to the fact that the assessee trust is more than 100 years old and it runs more than 60 educational institutions imparting education to more than 70000 students in various fields. The trust was granted registration earlier u/s.12A. However, the Ld.CIT cancelled the registration granted earlier on the ground that the objects of the assessee trust are not genuine since the assessee trust is collecting huge donation from students for admission to the various institutes run by it in violation of the Maharashtra Educational Institutions (Prohibition of Capitation Fe) Act, 1987. The collection of such donations according to him is illegal and therefore the activities of the said society are not genuine. He further observed that the institutes are being run on commercial lines with profit motive. He also held that the assessee trust has violated provisions of section 11(5) r.w.s. 13(1)(d) by investing in shares of cooperative banks.

8.1 . . . .
. . . .

8.2 . . . .
. . . .

8.3 Now coming to the first issue on which the Ld.CIT has cancelled the registration u/s.12A, i.e. the assessee society is collecting huge donation from students for admission to various institutes which is in clear violation of the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987, we find there is no such complain before the Government of Maharashtra or AICTE or any other Government Department either by the Income Tax Department or by any of the student/parents stating that the assessee society has charged Capitation fee for giving admission which is in violation of the Maharashtra Educational Institutions (Prohibition of Capitation Fee Act) 1987. Even the CIT who is alleging that the assessee trust has collected huge donation for admission of students to various institutes run by it has not informed the Government of Maharashtra if he was serious about any such violation done by the society. The submission of the Ld. Counsel for the assessee that as against 70 Management Quota Seats it has collected donation from 9 students and such donation is within the permissible limit prescribed by the Government of Maharashtra and that all such receipts are reflected in the accounts could not be controverted by the Ld. Departmental Representative.

8.4. . . . .
8.5 . . . .
8.6 . . . .

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

27. It cannot be lost sight of that if an institution has to expand, additional infrastructure has to be created, quality education has to be imparted, all these activities require funds. There may be an original corpus of the Society but thereafter the corpus for such activity can be created only through voluntary donations either from any philanthropist or through collection of funds in the process of admission. We are not concerned with the morality of the issue while deciding whether exemption has to be granted. Personal prejudices seem to have stepped in when allegations

were made without any material against certain members (which have rightly been struck off by the majority opinion of Tribunal) alleging that these members were well known for making profit through educational institutions. We also fail to appreciate the doubts cast or the possibilities expressed about there being something more to it in view of the funds being deposited in private banks. The opinion is completely based on surmises and conjectures as it seems to suggest that merely because funds were in a private bank, there may have been divergence of funds to the members of the Society. Similarly, the factum of construction being carried out by Ahluwalia Construction Co. (P) Ltd., stated to be a family concern of the President, was not material as there was no allegation of any inflated cost of construction or unreasonable profits being derived from the same by third parties as a mode of divergence of funds."

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

“13. Though the assessee has denied receipt of capitation fee/donations and running on commercial lines, however, without going into the merits of such plea, the pertinent question is the consequences of acceptance of capitation fee/donations by the assessee at the stage of examining assessee's application for registration under section 12AA of the Act. Somewhat similar situation arose 10 before the Mumbai Bench of the Tribunal in the case of Ramarao Adik Education Society (supra) wherein the Commissioner of income-tax was considering cancellation of registration on the basis of the plea that the assessee was accepting capitation fee/donations. Following discussion by our co-ordinate Bench is relevant:

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

49. The Karnataka High Court in the case of Sanjeevamma Hanumanthe Gowda Charitable Trust Vs. Director of Income Tax (Exemption) [285 ITR 327] has considered that in matters of registration and exemption of Charitable Institutions, the satisfaction of the Commissioner should be regarding the application of the income of the trust for the specified purposes, which only entitles the assessee to claim exemption. The Court observed that for arriving at such satisfaction primarily he has to look at the object of the trust, when the same is reduced into writing in the form of trust deed. If on the date of the application the trust has received income from its property, then find out how the said income has been expended, and

whether it can be said that the income is utilized towards charitable and religious purposes. Therefore, for the purposes of registration u/s. 12AA of the Act, what the authorities have to satisfy is the genuineness of the activities of the trust or institution and how the income derived from the trust property is applied to charitable or religious purposes and not the nature of the activity by which the income was derived to the trust.

50. The above judgment proposes that what is to be looked into is the character of application of funds and the character of the activities carried out by an assessee and not the colour and nature of the sources out of which necessary funds were collected by the assessee. In other words, the source of funds is not an important ingredient in assessing the character of the activities carried on by a Charitable Institution. The Allahabad High Court in the case of CIT Vs. Red Rose School [163 Taxmann 19] has held that educational activities carried on by a Society are for charitable purposes and not against the public policy. Therefore, the activities carried on by the Assessee-Society in the present case cannot in any way held as opposed to public policy. The objection expressed by the Commissioner could at a maximum be attributed to the question of accepting capitation fees / donations. In this context, the Commissioner-DR has raised a contention that the donations received by the Assessee-Trust are not voluntary and that fact also should be contributed to justify the cancellation of the registration." On the basis of the aforesaid decision of the Tribunal, which has been rendered after considering the judgments of the Hon'ble Karnataka High Court in the case 11 of Sanjevamma Hanumanthe Gowda Charitable Trust (supra) and that of the Allahabad High Court in the case of CIT v Red Rose School 163 Taxmann 19 (AIL), it is quite clear that the objection raised by the Commissioner with regard to the receipt of capitation fee/donations are factors to be considered at the time of assessments while examining the eligibility of the assessee trust for the benefit of section 11 & 12 and the same do not come into play in the course of the examination by the Commissioner for the purposes of grant of registration under section 12AA of the Act.

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

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

"(VI) Conclusion :

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

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

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

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

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

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

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

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

"............In this situation, if the registration applied for under s. 12A is not granted to it for violation of the provisions of s. 13(l)(b) and it is ultimately found that the assessee-trust actually accomplished the objects as indicated in clause No. 3(4) only for the benefit of public at large without there being any activity undertaken as per object clause Nos. 3(1) and 3(2), it would be deprived of any benefits which otherwise were available to it under s. 11 or s. 12. This certainly is not the legislative intention as reflected in the scheme laid down in ss. 11, 12, 12A, 12AA and 13. On the contrary, the phraseology of s. 13, as already discussed, makes it explicitly clear that the said provisions become operative or relevant only at the stage of assessment when the AO is required to examine the claim of the assessee for benefits under s. 11 or s. 12 while computing the total income of the assessee of the relevant previous year. The application of s. 13 thus falls within the exclusive domain of the AO and the provisions contained therein can be invoked by him while framing the assessment and not by the CIT while considering the application for registration under s. 12AA."

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

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

11.9 We have also gone through a decision referred from the side of the Revenue namely the Jammu & Kashmir Bank Priority Sector Asset Risk Fund vs. CIT (ITA No. 61/Asr/2006 order dt. 1st Sept., 2006) (supra); cited in support of the argument that firstly the CIT has been vested with the powers vide s. 12AA(3), inserted w.e.f. 1st Oct., 2004, to enquire about the genuineness of the activities of a trust and to satisfy himself that such activities are being carried out in accordance with the objects of the trust. Secondly in case of dissatisfaction he is empowered to cancel the already granted registration. Thirdly in case it is found that the activities are not in conformity with the object that too is the good reason for cancellation of registration. Fourthly the sweep of the section is wide enough to empower the CIT to examine the nature of the object whether for general public utility and philanthropic in nature. In our conscientious view there is no disagreement about the above-mentioned four legal proposition as eruditely laid down by the respected Amritsar Bench. Undisputedly we have also to decide this appeal more or less within these parameters. But the basic question is that before stepping towards the cancellation of registration the heavy burden is on the learned CIT to conclusively demonstrate that all had gone haywire i.e., objects are meant for personal benefits; that engaged in immoral activities or that there is no element of public benefit. In the present appeal none of the above criteria for rejection of registration was in existence, however mainly confined to the finding that by charging donation the trust has infringed the rules of Prohibition of Capitation Fee Act.

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

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

19. In any event, as a plain reading of s. 12AA(3) would indicate that a registration granted under s. 12AA can only be withdrawn when the CIT is satisfied that (a) the activities of the trust or the institution are not 'genuine'; or (b) the activities of the assessee are not being carried out in accordance with the objects of the trust or the institution. There cannot be any other legally sustainable reason for cancelling or withdrawing the registration granted under s. 12AA. By no stretch of logic, the activities of the assessee can be said to be not genuine and the assessee is admittedly pursuing the objects for which it was established. When the assessee is engaged in bona fide activities, with the framework of law, to pursue its objectives, it cannot be said that the activities of the assessee are not genuine. Learned CIT has also not brought on record any material to demonstrate activities of the assessee are not being carried out in accordance with the objects of the trust or the institution. Under these circumstances, the withdrawal of registration granted under s. 12AA cannot be sustained in law. Learned CIT has extensively referred to as to why the assessee is not eligible for exemption under s. 11 as the activities of the assessee cannot be said to be for 'charitable purposes' defined under s. 2(15), but then this aspect of the matter is relevant for the assessment proceedings and not in the context of exercise of CIT's powers under s. 12AA(3). The impugned order passed by the learned CIT is thus vitiated in law on this count as well.

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

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

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

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

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

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

Thus the findings of the learned CIT has not to be only conceptual or contextual but should be within the four corners of law so that not surpassing the power, as listed above, granted in sub-s. (3) of s. 12AA. But unfortunately the fallacy is writ large as gathered on perusing the impugned order. We can hold that the CIT's approach for deciding the eligibility of registration of a trust should be different from the angle by which an assessment of an income is made by the AO. We are afraid about the ramification if we approve the action of learned CIT because in that case it may adversely affect the imparting of education especially when the Revenue has not made out a case that the very purpose for creation of the trust was defeated. Rather we wonder that what purpose does it serve to Revenue by cancelling a registration if the activities are in public interest because in case of any breach of the laws the same is subject to tax under ss. 11 and 12 of IT Act. These two provisions and few other provisions are competent enough to tackle firmly a defaulter of philanthropic application of income or funds of the trust. The other adverse side of cancellation is that on refusal of registration the entire receipts shall be subject to assessment without granting benefit of s. 11 and s. 12 of IT Act to assess income which do not form part of total income though the factual position could be that major part might have been devoted towards achieving the objects i.e., imparting education, as in this case, but the AO shall be automatically forbidden to grant advantage of exemption consequent upon the cancellation as is mandatory in statute; relevant section already reproduced ante. The outcome of the deliberation made in detail hereinabove is that percurian opinion is to debar the CIT to enter into the area of investigation of source of income and also application of income, so that the amount of correct exempt income be not prejudged.

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

11.14 Facts of this appeal are peculiar, as already discussed in above paras in detail and thereupon can comment that prima facie no case was made out by the learned CIT so as to even vaguely demonstrate that the activities of the appellant were not genuine or activity of imparting of education, for which the trust was created, were not carried out. Even the learned CIT has failed to establish that any part of the income/receipt of the trust was in any manner misutilized by the trustees for their personal benefit i.e., not in fulfillment of the object of the trust. Otherwise also there are three ways to look at this problem. One is, that the donations are raised but not utilized for achieving the objects i.e., towards imparting education; then such an institution must bear the consequence of cancellation of registration since ipso facto infringed s. 12AA(3) condition. Second aspect is, that though the donations received are meant to fulfill the objects but together with fees have infringed Anti Capitation Prohibition Act; then comes within the clutches of that Act but definitely not under s. 12AA(3) provisions. The third aspect is, that the donation plus fees do not exceed the prescribed limit of Anti Capitation Fee Act i.e., five times the normal fees; further that no evidence of misutilization other than the prescribed activity then no action can be suggested under s. 12AA(3). The assessee's case falls under the third category. With the result, totality of the circumstances thus warrants, in the light of the foregoing discussion, not to endorse the view of the learned CIT; consequence there upon reverse those findings. The order of cancellation of registration is hereby revoked. Grounds allowed."

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

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

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

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

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

Held :

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

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

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

Held :

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

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

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

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

It then summed up its conclusions as follows:

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

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

(2) The provisions of Section 10(23C)(vi) of the Act are analogous to the erstwhile Section 10(22) of the Act, as has been laid down by Hon'ble the Supreme Court in the case of American Hotel and Lodging Association (supra). To decide the entitlement of an institution for exemption under Section 10(23C)(vi) of the Act, the test of predominant object of the activity has to be applied by posing the question whether it exists solely for education and not to earn profit [See 5-Judges Constitution Bench judgment in the case of Surat Art Silk Cloth Manufacturers Association (supra)]. It has to be borne in mind that merely because profits have resulted from the activity of imparting education would not result in change of character of the institution that it exists solely for educational purpose. A workable solution has been provided by Hon'ble the Supreme Court in para 33 of its judgment in American Hotel and Lodging Association's case (supra). Thus, on an application made by an institution, the prescribed authority can grant approval subject to such terms and conditions as it may deems fit provided that they are not in conflict with the provisions of the Act. The parameters of earning profit beyond 15% and its investment wholly for educational purposes may be expressly stipulated as per the statutory

requirement. Thereafter the Assessing Authority may ensure compliance of those conditions. The cases where exemption has been granted earlier and the assessments are complete with the finding that there is no contravention of the statutory provisions, need not be reopened. However, alter grant of approval if it comes to the notice of the prescribed authority that the conditions on which approval was given, have been violated or the circumstances mentioned in 13th proviso exists, then by following the procedure envisaged in 13th proviso, the prescribed authority can withdraw the approval.

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

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

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

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

And finally held:

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

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

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

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

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

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

73. From the submission of the Ld. Counsel for the assessee we further find that out of more than 47000 students the assessee trust has collected donations from only 1217 students out of which only 23 persons had admitted to have given donations for admission. We find out of the above 23 persons only 6 were available for cross examination. We find the relatives or parents of the students have filled up the declaration stating that they have given voluntary donations to the institutions, even some of them claimed deduction u/s.80G also. Nothing has been brought on record that any such amount of donation has not been accounted for in the books of account or has been utilised by any of the trustees or their relatives or has not been utilised for purposes other than education. Therefore, we are of the considered opinion that the assessee trust whose main object is imparting education, cannot be denied the benefit of provisions of section 10(23C)(iiiab) and (iiiac) merely on the basis of contradictory

> statements of a few donors. Neither any donor nor the Assessing Officer has lodged any complain before Government authorities for violation of the Act. Assessments of the trust have been completed in the past accepting the exemption u/s.10(23C) of the Act. Therefore, we find no reason to deviate in absence of any evidence brought on record for denying the exemption claimed u/s.10(23C) for the year. So far as the decision relied on by Ld. Departmental Representative is concerned, the same in our opinion is not applicable to the facts of the present case which was in context of section 10(23C)(iiiad). In view of our reasons given above we hold that the Ld.CIT(A) is not justified in denying the exemption u/s.10(23C) (iiiab) of the I.T. Act. We accordingly set aside the same and the grounds raised by the assessee are allowed."

41. Since in the instant case also nothing has been brought on record that the donations received from various persons has not been entered the books of the assessee or has been utilized by any of the trustees or their relatives or has been utilized for purposes other than education and since neither any of the donor nor the AO has lodged any complaint before the Government authorities for violation of the Act, therefore, the revenue authorities in our opinion are not justified in denying the exemption u/s.11 of the I.T. Act to the assessee on the ground of violation of provisions of section 11(1)(d) of the I.T. Act. We accordingly set aside the order of the CIT(A) and direct the AO to allow the claim of exemption u/s.11 of the I.T. Act. Grounds raised by the assessee are accordingly allowed.

42. Since the assessee succeeds on the grounds of appeal No.1 to 4, ground No.5 and the additional ground raised by the assessee being academic in nature are not being adjudicated.

ITA No.1167/PN/2014 (A.Y. 2009-10) :

43. Grounds raised by the assessee are as under :

> "1. The learned CIT(A)-II, Pune erred in law and on facts in upholding the taxable income worked out by the learned AO at Rs. 9,44,98,180/- and corresponding tax liability amounting to Rs. 4,49,67,903/- on the appellant. The learned CIT(A)-II and the learned AO ought to have appreciated that the appellant is a bonafide Charitable Trust solely engaged in education.

2. The learned CIT(A)-II, Pune erred in law and on facts in upholding AO's contention that the appellant is not eligible to claim exemption u/s 11 of the ITA, 1961 in the absence of 12A Registration certificate. The learned CIT(A)-II, Pune ought to have considered the genuine and bonafide cause of education for which the appellant exists for past many years; and; the presence of 80G Certificates granted to the appellant for the past many years till 31/03/2009.

3. The learned CIT(A)-II, Pune erred in holding that the appellant has violated section 11(1)(d) of the ITA, 1961 by accepting CORPUS donations for admissions. The learned CIT(A)-Il and the learned AO erred in law and on facts in holding that donations have been received for Management Quota seats, and. that such donations are capitation fees, and against the public policy.

4. The learned CIT(A)-II, Pune erred in law and on facts in denying exemption u/s 11 of the ITA, 1961 to the donations of Rs. 2,02,23,533/- received by the trust on the analogy that the said donations are not in keeping with the law.

5. The learned CIT(A)-II, Pune erred on facts in not providing opportunity to Cross Examine the statements recorded during the course of assessment proceedings and failed to seek appellant's <u>SAY</u> in the manner.

6. The appellant craves leave to add / modify / alter / delete all / any of the grounds of appeal."

44. After hearing both the sides we find the grounds raised by the assessee in the impugned appeal are identical to the grounds of appeal No. in ITA No.1166/PN/2014. We have already decided the issue and the grounds raised by the assessee have been allowed. Following the same reasoning the above grounds by the assessee are allowed.

45. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 15-04-2016.

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

पुणे Pune; दिनांक Dated : 15th April, 2016.

सतीश

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

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

आदेशानुसार/ BY ORDER,

// True Copy //

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