

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16<sup>TH</sup> DAY OF JANUARY, 2015

PRESENT

THE HON' BLE MR. JUSTICE N.KUMAR

AND

THE HON' BLE MR. JUSTICE B. VEERAPPA

ITA No.235/2009

C/w.

ITA Nos.232/2009, 237/2009, 251/2009

ITA No.235/2009:

BETWEEN:

1. THE DIRECTOR OF INCOME-TAX  
EXEMPTIONS, C.R. BUILDING,  
QUEENS ROAD,  
BANGALORE
2. THE DY. DIRECTOR OF INCOME-TAX (EXMP),  
C.R. BUILDING,  
QUEENS ROAD,  
BANGALORE

... APPELLANTS

(BY SRI K.V. ARAVIND, ADVOCATE)

AND

DHAMAPAKASHA RAJAKARYA PRASAKTA  
B.M. SREENIVASIAH EDUCATIONAL TRUST,  
P.B. NO.1908,  
BULL TEMPLE ROAD,  
BANGALORE

...RESPONDENT

(BY SRI G. SARANGAN SENIOR COUNSEL FOR  
SRI BALARAM R. RAO)

THIS ITA IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 21.11.2008 PASSED IN ITA NO. 640/BANG/2008 FOR THE ASSESSMENT YEAR 2003-04, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BANGALORE IN ITA No.640/BANG/2008 DATED 21.11.2008 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRMING THE ORDER PASSED BY THE DEPUTY DIRECTOR OF INCOME TAX, (EXMP), CIRCLE-17(1), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

ITA No.232/2009

BETWEEN:

1. THE DIRECTOR OF INCOME-TAX  
EXEMPTIONS,  
C.R. BUILDING,  
QUEENS ROAD,  
BANGALORE
2. THE DY. DIRECTOR OF INCOME-TAX (EXMP),  
C.R. BUILDING,

QUEENS ROAD,  
BANGALORE

... APPELLANTS

(BY SRI K.V. ARAVIND, ADVOCATE)

AND

DHAMAPAKASHA RAJAKARYA PRASAKTA  
B.M. SREENIVASIAH EDUCATIONAL TRUST,  
P.B. NO.1908,  
BULL TEMPLE ROAD,  
BANGALORE

...RESPONDENT

(BY SRI G. SARANGAN SENIOR COUNSEL,  
FOR SRI BALARAM R. RAO)

THIS ITA IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 21.11.2008 PASSED IN ITA NO. 641/BANG/2008 FOR THE ASSESSMENT YEAR 2005-06, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BANGALORE IN ITA No.641/BANG/2008 DATED 21.11.2008 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRMING THE ORDER PASSED BY THE DEPUTY DIRECTOR OF INCOME TAX, (EXMP), CIRCLE-17(1), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

ITA No.237/2009

BETWEEN:

1. THE DIRECTOR OF INCOME-TAX EXEMPTIONS,

C.R. BUILDING,  
QUEENS ROAD,  
BANGALORE

2. THE DY. DIRECTOR OF INCOME-TAX (EXMP),  
C.R. BUILDING, QUEENS ROAD,  
BANGALORE

... APPELLANTS

(BY SRI K.V. ARAVIND, ADVOCATE)

AND

DHAMAPAKASHA RAJAKARYA PRASAKTA  
B.M. SREENIVASIAH EDUCATIONAL TRUST,  
P.B. NO.1908,  
BULL TEMPLE ROAD,  
BANGALORE

...RESPONDENT

(BY SRI G. SARANGAN SENIOR COUNSEL,  
FOR SRI BALARAM R. RAO)

THIS ITA IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 21.11.2008 PASSED IN ITA NO. 629/BANG/2008 FOR THE ASSESSMENT YEAR 2003-04, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BANGALORE IN ITA No.629/BANG/2008 DATED 21.11.2008 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRMING THE ORDER PASSED BY THE DEPUTY DIRECTOR OF INCOME TAX, (EXMP), CIRCLE-17(1), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

ITA No.251/2009

BETWEEN:

1. THE DIRECTOR OF INCOME-TAX  
EXEMPTIONS,  
C.R. BUILDING,  
QUEENS ROAD,  
BANGALORE
  2. THE DY. DIRECTOR OF INCOME-TAX (EXMP),  
C.R. BUILDING,  
QUEENS ROAD,  
BANGALORE
- ... APPELLANTS

(BY SRI K.V. ARAVIND, ADVOCATE)

AND

DHAMAPAKASHA RAJAKARYA PRASAKTA  
B.M. SREENIVASIAH EDUCATIONAL TRUST,  
P.B. NO.1908,  
BULL TEMPLE ROAD,  
BANGALORE

...RESPONDENT

(BY SRI G. SARANGAN SENIOR COUNSEL,  
SRI BALARAM R. RAO)

THIS ITA IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 21.11.2008 PASSED IN ITA NO. 630/BNG/2008 FOR THE ASSESSMENT YEAR 2005-06, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT,

BANGALORE IN ITA No.630/BNG/2008 DATED 21.11.2008 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY DIRECTOR OF INCOME TAX, (EXMP), CIRCLE-17(1), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE INCOME TAX APPEALS COMING ON FOR HEARING THIS DAY, N. KUMAR J., DELIVERED THE FOLLOWING:

JUDGMENT

The revenue has preferred these appeals against the order passed by the Tribunal dismissing the appeal filed by the revenue and allowing the appeal filed by the assessee and granting relief to the assessee. The impugned order relates to the assessment years 2003-2004 & 2005-2006, where a common order is passed. As the question involved is the same, the appeals are taken up for consideration together and disposed of as the other two appeals also arise out of the same order.

2. The assessee is running number of educational institutions. The assessee filed its return of

income. The Assessing Officer under Section 143(3) of the Income-Tax Act, 1961 (hereinafter referred to as 'the Act') has held that the assessee is not entitled to the benefit claimed under Section 11 of the Act. He did not go into the question of exclusion benefit claimed by the assessee under Section 10(23C)(iiiab) of the Act.

3. Aggrieved by the said order the assessee preferred an appeal to the Commissioner of Income-Tax (Appeals). The Appellate Commissioner set aside the order of the Assessing Authority refusing the grant under Section 11 of the Act and granted the relief to the assessee, but he declined to grant the relief under Section 10(23C)(iiiab) of the Act.

4. Aggrieved by the said order, both the assessee as well as the revenue preferred two appeals each. The Tribunal by its impugned order has set aside the order passed by the Appellate Commissioner holding

that the assessee is not entitled to the benefit under Section 10(23C)(iiiab) of the Act and allowed the appeals filed by the assessee. It dismissed the appeals of revenue on the ground that, once a benefit is granted under Section 10(23C)(iiiab) of the Act, the assessee is also entitled to the benefit under Section 11 and therefore the revenue's appeals were dismissed. Aggrieved by the impugned order, these appeals are filed.

5. Insofar as the claim of the assessee under Section 10(23C)(iiiab) of the Act is concerned, the material on record discloses that the Government has financed the institutions and their share is roughly about 25%. It is not in dispute that the assessee is carrying on its activities of imparting education. It is not existing for the sake of profit making. When 25% of the finance to the assessee institutions flows from the

Government it constitutes the substantial finance and therefore it has satisfied all the legal requirements provided under Section 10(23C)(iiiab) of the Act. In fact, this Court had occasion to consider the said question in the case of **COMMISSIONER OF INCOME TAX AND ANOTHER V. INDIAN INSTITUTE OF MANAGEMENT** reported in **(2015) 370 ITR 81 (KARN)** and a finance to the extent of more than 10% of the total finance would constitute substantial finance and therefore the finding recorded by the Tribunal that the assessee is entitled to the benefit exempted under Section 10(23C)(iiiab) of the Act cannot be found fault with.

6. In the light of the aforesaid findings, in our view it is unnecessary to go into the question whether the Assessing Authorities were justified in reopening the assessment and there was sufficient reasons and whether the assessee is entitled to the benefit under

Section 11 of the Act also. Accordingly, we pass the following:

ORDER

Appeals are dismissed.

Parties to bear their own costs.

The question, whether once a benefit under Section 10(23C)(iiiab) of the Act is granted, the grant of exemption under Section 11 of the Act is attracted or not is not gone into. It shall be decided as and when occasion arises before the appropriate Court. Therefore, the finding of the Tribunal to that extent is kept open to be agitated in an appropriate forum and it will not act as precedent in the future assessment.

Sd/-  
JUDGE

Sd/-  
JUDGE

Sbs\*